

SCOTUS Opinion: Republic of Sudan Exposed to \$4.3 Billion In Punitive Damages

18 May 2020

Victims of an al Qaeda terrorist attack sued the Republic of Sudan under the Foreign Sovereign Immunities Act, which carved a specific exception under 28 U.S.C. sec. 1605(a)(7) for states that sponsored terrorism. When the victims filed suit, Section 1605(a)(7) did not permit recovery of punitive damages. Then In 2008, Congress amended FSIA through the National Defense Authorization Act, which moved Section 1605(a)(7) to 1605A(c) and permitted punitive damages for claims under the new section, and in Section 1803(c)(3) permitted those who filed under the old section to file under the new section. The victims amended their complaint and were awarded \$4.3 billion in punitive damages in addition to compensatory damages. On appeal, the D.C. Circuit vacated the punitive damages award because nothing in the NDAA expressly authorized punitive damages for pre-enactment conduct, and further ruled that punitive damages were unavailable for state-based claims because it would be “puzzling” if punitive damages were available for one and not the other.

In *Opati v. Republic of Sudan*, Justice Gorsuch entered a unanimous opinion (without Judge Kavanaugh, who recused) vacating and remanding the case, holding that plaintiffs who filed claims under the new section created by the NDAA could seek punitive damages for pre-enactment conduct. The Court found Congress’ language in the new Section 1605A(c) clearly applied to claims for pre-enactment conduct and made its relief retroactive in application. The Court then remanded for further consideration of whether punitive damages were available under the state claims as well.

A link to the opinion is here: https://www.supremecourt.gov/opinions/19pdf/17-1268_c07d.pdf

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