116TH CONGRESS
2D SESSION

S.

To resolve certain pending claims against Sudan by United States citizens,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice
and referred to the Committee on

A BILL

To resolve certain pending claims against Sudan by United States citizens, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Sudan Claims Resolu-
tion Act”.

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the United States should support Sudan’s
democratic transition, particularly in light of the
country’s dire economic situation, and this is a crit-
ical moment to address longstanding issues in the relationship between the United States and Sudan;

(2) as part of the process of restoring normal relations between Sudan and the United States, Congress supports efforts to provide meaningful compensation to citizens of the United States and foreign nationals employed by or serving as contractors for the United States Government, as well as their family members, who personally have been awarded by a United States District Court a judgment for compensatory damages against Sudan; and

(3) the terrorism-related claims of victims and family members of the September 11, 2001, terrorist attacks must be preserved and protected.

SEC. 3. RECEIPT OF ADEQUATE FUNDS; IMMUNITIES OF SUDAN.

(a) IMMUNITY.—

(1) IN GENERAL.—Subject to sections 4 and 6, and notwithstanding any other provision of law, upon submission of a certification described in paragraph (2)—

(A) Sudan, an agency or instrumentality of Sudan, and the property of Sudan or an agency or instrumentality of Sudan, shall not be subject to the exceptions to immunity from juris-
diction, liens, attachment, and execution under section 1605(a)(7) (as such section was in effect on January 27, 2008) or section 1605A or 1610 (insofar as section 1610 relates to a judgment under such section 1605(a)(7) or 1605A) of title 28, United States Code;

(B) section 1605A(c) of title 28, United States Code, section 1083(c) of the National Defense Authorization Act for Fiscal Year 2008 (Public Law 110–181; 28 U.S.C. 1605A note), section 589 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208; 28 U.S.C. 1605 note), and any other private right of action relating to acts by a state sponsor of terrorism arising under Federal, State, or foreign law shall not apply with respect to claims against Sudan, or any of its agencies, instrumentalities, officials, employees, or agents in any action in a Federal or State court; and

(C) any attachment, decree, lien, execution, garnishment, or other judicial process brought against property of Sudan, or property of any agency, instrumentality, official, employee, or agent of Sudan, in connection with an action
that is precluded by subparagraph (A) or (B) shall be void.

(2) CERTIFICATION.—A certification described in this paragraph is a certification by the Secretary to the appropriate congressional committees stating that—

(A) the August 12, 1993, designation of Sudan as a state sponsor of terrorism has been formally rescinded;

(B) Sudan has made final payments with respect to the private settlement of the claims of victims of the U.S.S. Cole attack; and

(C) the United States Government has received funds pursuant to the claims agreement that are sufficient to ensure—

(i) payment of the agreed private settlement amount for the death of a citizen of the United States who was an employee of the United States Agency for International Development in Sudan on January 1, 2008;

(ii) meaningful compensation for claims of citizens of the United States (other than covered naturalized United States citizens) for wrongful death or
physical injury in cases arising out of the August 7, 1998, bombings of the United States embassies located in Nairobi, Kenya, and Dar es Salaam, Tanzania; and

(iii) funds for compensation through a fair process to address compensation for terrorism-related claims of foreign nationals for wrongful death or physical injury arising out of the events referred to in clause (ii).

(b) SCOPE.—Subject to sections 4 and 6, subsection (a) of this section shall apply to all conduct and any event occurring before the date of the certification described in subsection (a)(2) with respect to any action filed before, on, or after October 30, 2020, in which final judgment has not been entered on the date of enactment of this Act.

(c) AUTHORITY OF THE SECRETARY.—The certification by the Secretary referred to in subsection (a)(2) may not be delegated and may not be subject to judicial review.

SEC. 4. AMENDED CLAIMS AGREEMENT.

(a) FINDINGS.—Congress makes the following findings:

(1) Congress and the executive branch share responsibility for the foreign relations of the United
States pursuant to Article I and Article II of the Constitution of the United States.

(2) All legislative powers of the Federal Government, including on matters of foreign relations, are vested in the Congress of the United States pursuant to section 1 of Article I of the Constitution.

(3) The executive branch may not direct Congress to take any action, nor may it convey any legislative or other power assigned to Congress under the Constitution to any entity, domestic or foreign.

(4) The claims agreement sets out specific legislative text, seeks to force Congress to pass that text, and purports to provide Sudan with a veto over exceptions to that text.

(5) Congress rejects the approach described in paragraph (4).

(b) Conditional Legal Effect of Immunity Provision.—Section 3 shall have force and effect only if the conditions described in subsection (c) are satisfied in full and confirmed as required by subsection (e).

(c) Conditions Described.—The conditions described in this subsection are satisfied if—

(1) each amendment to the claims agreement described in subsection (d) is incorporated, in full
and without any deviation, in the amended claims agreement;

(2) no amendment other than an amendment described in subsection (d) is incorporated in the amended claims agreement, except in the case of an amendment that is purely clerical in nature and necessary to bring the amended claims agreement into force;

(3) not less than 7 days before the passage of this Act by either the Senate or the House of Representatives, the Secretary, or another appropriate officer of the United States, provides to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives—

(A) the escrow agreement among the Central Bank of Sudan, the Federal Reserve Bank of New York, and the escrow agent appointed thereby;

(B) any document containing a written commitment, whether binding or non-binding, between the United States and Sudan, or any entity thereof, related to the settlement of international terrorism-related claims unless such document was provided to the Committee on
Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives as part of the Department of State’s transmittal of the claims agreement on November 6, 2020; and

(C) a detailed written description of any oral commitment, whether binding or non-binding, between the United States and Sudan, or any entity thereof, concerning the settlement of international terrorism-related claims;

(4) the Secretary certifies to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives that—

(A) all commitments between the United States and Sudan concerning the settlement of terrorism-related claims are included in the amended claims agreement; and

(B) the amended claims agreement has been signed by both parties, or otherwise concluded, and will enter into force upon the enactment of this Act; and

(5) the Secretary transmits the amended claims agreement to the Committee on Foreign Relations of
the Senate and the Committee on Foreign Affairs of
the House of Representatives.

(d) AMENDMENTS DESCRIBED.—The amendments
described in this subsection are amendments to the annex
to the exchange of diplomatic notes between the United
States and Sudan, dated October 21, 2020, as follows:

(1) An amendment to paragraph 1(B) that—

(A) strikes the following text: “Enactment
of legislation that (i) contains the provision set
forth at Schedule 2 to this Annex and (ii) does
not contain any exception, carve out, or limita-
tion to that provision unless the Government of
the Republic of the Sudan notifies the Govern-
ment of the United States of America by writ-
ten diplomatic communication that the Govern-
ment of the Republic of the Sudan accepts such
exception, carve-out, or limitation;”; and

(B) inserts the following text: “The De-
partment of State commits to working with the
United States Congress, consistent with the
constitutional structure of the Government of
the United States of America, in support of the
enactment of legislation providing to Sudan the
sovereign, diplomatic, and official immunities
normally provided by the United States to other
states, as appropriate;”

(2) An amendment to strike Schedule 2.

(e) Confirmation That Conditions Have Been
Satisfied.—

(1) In general.—Not later than 10 business
days after receiving the amended claims agreement,
the chairpersons and ranking members of the Com-
mittee on Foreign Relations of the Senate and the
Committee on Foreign Affairs of the House of Rep-
resentatives shall—

(A) confirm whether or not the conditions
in subsection (e) have been fully satisfied; and

(B) if those conditions have been fully sat-
isfied, jointly submit to the Secretary a letter,
signed by the chairpersons and ranking mem-
bers of both committees, confirming that those
conditions have been fully satisfied.

(2) Publication.—The Secretary shall publish
the letter described in paragraph (1) in the Federal
Register.

(3) Effective Date of Section 3.—Section 3
shall take effect on the date on which the letter de-
scribed in paragraph (1)(B) is published in the Fed-
eral Register under paragraph (2).
(f) Consequences for Failure to Satisfy Conditions.—Section 3 shall have no force or effect and shall provide no immunity in any proceeding before any court in the United States unless the conditions described in subsection (c) are satisfied in full and confirmed as required by subsection (e).

(g) Approval of Amended Claims Agreement.—Upon satisfaction in full of the conditions described in subsection (c) and confirmation that those conditions have been satisfied as required by subsection (e), this Act shall constitute approval by Congress of the amended claims agreement.

SEC. 5. REAUTHORIZATION OF AND MODIFICATIONS TO UNITED STATES VICTIMS OF STATE SPONSORED TERRORISM FUND.

(a) In General.—The Justice for United States Victims of State Sponsored Terrorism Act (34 U.S.C. 20144) is amended—

(1) in subsection (c)(2)(A)(i), by striking “state sponsor of terrorism” and inserting “foreign state that was designated as a state sponsor of terrorism at the time the acts described in clause (ii) occurred or was so designated as a result of such acts”;
(2) in subsection (e)(6), by striking “January 2, 2030” each place it appears and inserting “January 2, 2039”; and

(3) in subsection (j)(6), in the first sentence, by inserting after “final judgment” the following: “, except that the term does not include payments received in connection with an international claims agreement to which the United States is a state party or any other settlement of terrorism-related claims”.

(b) LUMP SUM CATCH-UP PAYMENTS FOR 9/11 VICTIMS, 9/11 SPOUSES, AND 9/11 DEPENDENTS.—Subsection (d)(4) of the Justice for United States Victims of State Sponsored Terrorism Act (34 U.S.C. 20144) is amended—

(1) in subparagraph (A), by striking “subparagraph (B)” and inserting “subparagraphs (B) and (C)”; and

(2) by adding at the end the following:

“(C) LUMP SUM CATCH-UP PAYMENTS FOR 9/11 VICTIMS, 9/11 SPOUSES, AND 9/11 DEPENDENTS.—

“(i) IN GENERAL.—Not later than 60 days after the date on which the Controller General of the United States sub-
mits the report required under clause (ii), the Special Master, after consultation with the Comptroller General, shall, from amounts appropriated to the Fund for payments under this subparagraph, authorize and complete making all lump sum catch-up payments described in that clause to satisfy eligible claims under this section of 9/11 victims, 9/11 spouses, and 9/11 dependents who have submitted applications in accordance with subparagraph (B).

“(ii) AUDIT.—

“(I) IN GENERAL.—Not later than 60 days after the date of enactment of this subparagraph, the Comptroller General of the United States shall conduct an audit and publish in the Federal Register a notice of proposed lump sum catch-up payments to 9/11 victims, 9/11 spouses, and 9/11 dependents who have submitted applications in accordance with subparagraph (B) in amounts that, after receiving the lump sum catch-up payments, would result in the percentage
of the final judgments of 9/11 victims, 9/11 spouses, and 9/11 dependents received from the Fund being equal to the percentage of the final judgments of 9/11 family members received from the Fund, as of the date of enactment of this subparagraph.

“(II) Public comment.—The Comptroller General shall provide an opportunity for public comment for a 30-day period beginning on the date on which the notice is published under subclause (I).

“(III) Report.—Not later than 30 days after the expiration comment period in subclause (II), the Comptroller General of the United States shall submit to the Committee on the Judiciary and the Committee on Appropriations of the Senate, the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives, and the Special Master a report that includes the de-
termination of the Comptroller General on—

“(aa) the amount of the lump sum catch-up payment for each 9/11 victim;

“(bb) the amount of the lump sum catch-up payment for each 9/11 spouse;

“(cc) the amount of the lump sum catch-up payment for each 9/11 dependent; and

“(dd) the total amount of lump sum catch-up payments described in items (aa) through (cc).

“(iii) FUNDING.—

“(I) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund such sums as may be necessary to carry out this subparagraph, to remain available until expended.

“(II) LIMITATION.—Amounts appropriated pursuant to subclause (I) may not be used for a purpose other
than to make lump sum catch-up pay-
ments under this subparagraph.”.

SEC. 6. PRESERVATION OF CERTAIN PENDING INTER-
ATIONAL TERRORISM CLAIMS AGAINST
SUDAN.

(a) IN GENERAL.—Nothing in this Act shall apply
to, be construed to apply to, or affect any claim in—

(1) any of the proceedings comprising, or relat-
ing to the enforcement of any judgments entered in,
the multidistrict proceeding 03–MDL–1570 in the
United States District Court for the Southern Dis-
trict of New York; or

(2) any other proceeding filed in any Federal or
State court before October 30, 2020, involving a
claim against Sudan relating to international ter-
rorism if the event and conduct that are the subject
of the claim are not addressed by the certification
described in section 3(a)(2).

(b) APPLICABLE LAW.—Proceedings described in
subsection (a) shall be governed by applicable law in effect
before the date of the enactment of this Act, including—

(1) chapter 97 of title 28, United States Code
(commonly known as the “Foreign Sovereign Immu-

nities Act of 1976”);
(2) section 201 of the Terrorism Risk Insurance Act of 2002 (Public Law 107–297; 28 U.S.C. 1610 note), with respect to any asset that, on or after the date of the enactment of this Act, is designated as a blocked asset (as defined in subsection (d)(2) of that section);

(3) rules governing the rights of parties to amend pleadings; and

(4) other relevant provisions of law.

(c) RULE OF CONSTRUCTION.—Nothing in this Act shall apply to, be construed to apply to, or affect claims pursuant to section 1605B of title 28, United States Code.

(d) PROHIBITION ON USE OF FUNDS.—

(1) IN GENERAL.—Notwithstanding any commitment between the United States and Sudan, no funds authorized to be appropriated or appropriated by any Act may be used to support, directly or indirectly, any efforts on the part of any officer or employee of the executive branch to file a Statement of Interest or any other submission, or otherwise intervene, in the multidistrict proceeding described in paragraph (1) of subsection (a) or any proceeding described in paragraph (2) of that subsection in connection with the rescission of the designation of Sudan as a state sponsor of terrorism.
(2) APPLICABILITY.—Paragraph (1) shall apply without regard to whether any proceeding described in subsection (a) or any issue related to any such proceeding is under consideration by any Federal or State court.

SEC. 7. AMENDMENTS TO FOREIGN SOVEREIGN IMMUNITIES ACT OF 1976.

Section 1610 of title 28, United States Code, is amended—

(1) in subsection (a)(7), by inserting after “is based” the following: “, and regardless of whether the foreign state is no longer designated as a state sponsor of terrorism”;

(2) in subsection (b)(3), by inserting after “is based” the following: “, and regardless of whether the foreign state is no longer designated as a state sponsor of terrorism”;

(3) in subsection (f)(1)(A), by inserting after “section 1605A” the following: “, regardless of whether the foreign state is no longer designated as a state sponsor of terrorism”; and

(4) in subsection (g)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting “, 1605(a)(7) (as
such section was in effect on January 27, 2008), or 1605B” after “1605A”;

(ii) by redesignating subparagraphs (A) through (E) as subparagraphs (B) through (F), respectively; and

(iii) by inserting before subparagraph (B) the following new paragraph:

“(A) whether the foreign state is no longer designated as a state sponsor of terrorism;”;

and

(B) in paragraph (2), by inserting “,

1605(a)(7) (as such section was in effect on January 27, 2008), or 1605B” after “1605A”.

SEC. 8. COMPENSATION FOR COVERED NATURALIZED UNITED STATES CITIZENS AND FOREIGN NATIONALS.

(a) TRANSFER AND CONSOLIDATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, from funds described in paragraph (3), the President shall cause to be transferred an amount described in paragraph (2) to the account of the United States into which the payment by Sudan in compensation for the victims of terrorism awarded final judgments against Sudan arising from the 1998 East Africa embassy bombings in Kenya and
Tanzania was deposited and consolidated with that payment.

(2) Amount described.—The amount described in this paragraph is an amount sufficient to ensure that covered naturalized United States citizens who are victims of the acts of terrorism described in paragraph (1) receive compensation equal to the compensation received by other citizens of the United States who are victims of those acts.

(3) Funds described.—The funds described in this paragraph are the funds paid to the United States by the Goldman Sachs Group, Inc., as part of, or related to, the deferred prosecution agreement dated October 22, 2020, entered into between the Department of Justice and the Goldman Sachs Group, Inc., and presented in United States v. the Goldman Sachs Group, Inc., Docket No. 20–CR–437, in the United States District Court for the Eastern District of New York.

(4) Victims of terrorism.—For purposes of this section, the victims of the acts of terrorism described in paragraph (1) include the following:

(A) The estate of each judgment creditor killed as a result of those acts.
(B) Each employee of, and individual performing a contract with, the United States Government who was injured as a result of those acts.

(C) Each family member of an employee or other individual described in subparagraph (B) who personally has been awarded by a United States District Court a judgment for compensatory damages against Sudan.

(b) COVERED NATURALIZED UNITED STATES CITIZENS.—

(1) DISTRIBUTION.—Not later than April 30, 2021, the Secretary shall distribute payments from the consolidated account described in subsection (a)(1) to victims of the acts of terrorism described in that subsection who are covered naturalized United States citizens and were awarded final judgments by a United States District Court against Sudan arising from those acts of terrorism in amounts that are not less than the amounts of payments made to other similarly situated citizens of the United States who are eligible for compensation as a result of judgments arising from the same bombings.
(2) Requirement before distribution.—

Before making a payment to a covered naturalized United States citizen under paragraph (1), the Secretary shall require the covered naturalized United States citizen to execute a writing as required under Article IV(2) of the amended claims agreement.

(3) Transfer.—Following the distributions described in paragraph (1), any remaining funds transferred pursuant to subsection (a) shall be transferred to the general fund of the Treasury.

(c) Foreign Nationals.—Notwithstanding any other provision of law, the claims agreement, or the amended claims agreement—

(1) covered naturalized United States citizens are not eligible to receive any compensation as provided by Sudan pursuant to Article III of the amended claims agreement; and

(2) the funds allocated by Sudan for distribution of compensation to covered naturalized United States citizens pursuant to the Annex of the amended claims agreement shall be redistributed among all eligible foreign nationals consistent with the principles set out in the Annex.

(d) Department of State Reporting Requirements.—
(1) INITIAL REPORT.—Not later than 30 days after the date of the enactment of this Act, the Secretary shall submit to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report that includes—

(A) a detailed description of the plan of the Department of State for the distribution of payments to each category of covered naturalized United States citizens described in subsection (a)(4), including how the Department is arriving at compensation levels for each covered naturalized United States citizen and the amount of compensation each such citizen will receive from the funds described in subsection (a)(3); and

(B) a detailed description of how the funds allocated by Sudan will be redistributed in accordance with subsection (c)(2), including the additional amount of compensation for each category of eligible foreign nationals.

(2) UPDATED REPORT.—Not later than May 30, 2021, the Secretary shall submit to the Committee on Foreign Relations of the Senate and the
Committee on Foreign Affairs of the House of Representatives a report describing—

(A) whether the distribution plan described in paragraph (1)(A) was carried out; and

(B) whether compensation levels were provided as described in the report required by paragraph (1).

(c) COMPTROLLER GENERAL REPORT.—Not later than April 30, 2022, the Comptroller General of the United States shall submit to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives a report assessing the implementation of this section by the Department of State, including whether—

(1) all distributions were made in accordance with the requirements of subsections (b) and (c); and

(2) all covered naturalized United States citizens received compensation from the funds described in subsection (a)(3) equal to similarly situated citizens of the United States.

SEC. 9. DEFINITIONS.

In this Act:

(1) AMENDED CLAIMS AGREEMENT.—The term “amended claims agreement” means a claims settle-
ment agreement between the Government of the United States and the Government of the Republic of the Sudan that complies with the requirements of section 4, including all annexes, appendices, side letters, related agreements, and instruments for implementation, including the escrow agreement among the Central Bank of Sudan, the Federal Reserve Bank of New York, and the escrow agent appointed thereby.

(2) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” means—

(A) the Committee on Foreign Relations and the Committee on the Judiciary of the Senate; and

(B) the Committee on Foreign Affairs and the Committee on the Judiciary of the House of Representatives.

(3) CLAIMS AGREEMENT.—The term “claims agreement” means the Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of the Sudan, done at Washington, D.C., on October 30, 2020, including all annexes, appendices, side letters, related agreements, and instruments for implemen-
tation, including the escrow agreement among the
Central Bank of Sudan, the Federal Reserve Bank
of New York, and the escrow agent appointed there-
by.

(4) Covered naturalized United States
Citizen.—The term “covered naturalized United
States citizen” means an individual who became a

(5) Foreign National.—The term “foreign
national” means an individual who is not a citizen
of the United States.

(6) Secretary.—The term “Secretary” means
the Secretary of State.

(7) State Sponsor of Terrorism.—The term
“state sponsor of terrorism” means a country the
government of which the Secretary of State has de-
termined is a government that has repeatedly pro-
vided support for acts of international terrorism, for
purposes of—

(A) section 1754(c)(1)(A)(i) of the Export
Control Reform Act of 2018 (50 U.S.C.
4813(c)(1)(A)(i));

(B) section 620A of the Foreign Assistance
Act of 1961 (22 U.S.C. 2371);
(C) section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)); or

(D) any other provision of law.

(8) Sudan.—The term “Sudan” means the Government of the Republic of the Sudan.