WRITTEN TESTIMONY OF THOMAS R. HOWES,
FARC NARCO-TERRORISM HOSTAGE VICTIM
TO THE U.S. HOUSE OF REPRESENTATIVES FINANCIAL SERVICES COMMITTEE, SUBCOMMITTEE ON MONETARY POLICY AND TRADE
IN SUPPORT OF THE JULY 17, 2014 HEARING ON
THE BASTA AMENDMENT TO H.R. 4871

Thank you for inviting me to testify here today. My name is Tom Howes. I am a U.S. Citizen and a victim of international terrorism. I live in Melbourne, FL.
I was held hostage by the FARC for 5 and ½ years where I was tortured, chained and starved. I also endured repeated "mock executions".

My fellow hostages Keith Stansell and Marc Gonsalves are also present here today. Our captivity began on Feb. 13, 2003. I was the co-pilot flying a U.S. DOD counter-narcotics surveillance flight mission in Colombia when the aircraft went down in a FARC controlled area of the jungle. The FARC executed our pilot, Tom Janis, a former member of Delta Force, by shooting him in the head.

The FARC controls the rural regions of Colombia and the coca. The FARC used the coca fields as navigation points during our many long marches and became angry whenever we stepped on a coca leaf. Our guards were assigned to kill us if there ever was a rescue attempt. The only time our guards left our sides was to guard large shipments of cocaine. The FARC always told us they could increase the cocaine production and shipments or shut off the supply anytime they wanted.

After our rescue, we retained the law firm of Porter & Korvick in Miami Florida to pursue our claims for damages from captivity. In 2010, the U.S. federal court in Tampa awarded us a judgment under the Anti-Terrorism Act against the FARC and 80 individual FARC leaders.

The FARC itself has no blocked assets in the US, never has and likely never will. FTOs simply do not open bank accounts or hold assets in their name. Instead, they operate through cartels, groups, and individual drug traffickers and money launderers – the agencies or instrumentalities of the FARC.

The only U.S. blocked account actually owned by an individual FARC leader is a blocked account of Alonso Olarte Lombana at HSBC with a balance of @ $30,000. The Executive Branch has refused us a license to execute upon this account even though we have a judgment against him.

The agency or instrumentality FARC drug trafficking partner cartels, and their members, front companies and money launderers - the Kingpins - do hold assets in their name, that is why they get added to OFAC's List.

We are using TRIA § 201 to execute on the blocked assets of these FARC agencies or instrumentalities. TRIA allows post-judgment execution against property of an instrumentality of the judgment-debtor, even if the instrumentality is not itself named in the judgment.

Congress intended for TRIA to deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism.

The SDNT program was authorized by act of Congress – the International Emergency Economic Powers Act (or IEEPA for short) – which gave the President the power to declare the national emergency of Colombian cocaine trafficking in his 1995 Executive Order 12978.

The Executive Branch and the 11th Circuit Court of Appeal have agreed that we can use TRIA to execute on these IEEPA blocked assets.

The Kingpin Act was modeled on IEEPA. Congress intended the Kingpin program to expand the IEEPA SDNT "centered in Colombia" program to apply worldwide.

The FARC and its leaders were all designated under the Kingpin Act.

The last time a narcotics trafficker was designated as an SDNT under IEEPA was July 15, 2010, one month after our judgment was entered. To this day OFAC continues to block traffickers centered in Colombia under the Kingpin Act instead of designating them under IEEPA. Kingpin Act blocked assets are now off limits to victims of terrorism.

In October of 2010, the Executive Branch identified two blocked accounts of OFAC designated FARC money launderers for our post-judgment execution under TRIA. Both of these FARC money launderers were designated under the "Kingpin Act", but not under IEEPA.

Originally, the Executive Branch agreed to our TRIA executions on these blocked Kingpin assets. It was not until August of 2011 that the Executive Branch flip flopped and challenged the TRIA definition of "blocked asset" with the 11th Circuit Court of Appeals.

Unfortunately, in 2013 the 11th Circuit in Mercurio ruled that assets blocked under the Kingpin Act were not specifically included in TRIA's definition of "blocked assets" even though the Kingpin Act was modeled on and virtually identical to the IEEPA sanctions program.

The BASTA Act corrects this anomaly and makes Congressional intent consistent by adding assets blocked under the Kingpin Act to the definition of blocked assets under TRIA and subject to execution by terrorism victims.

It makes no sense to apply TRIA to narcotics assets blocked under one Act of Congress, the IEEPA statute, but not to narcotics assets blocked under another Act of Congress, the Kingpin Act, especially where the latter was specifically modeled after the former.

It makes no sense for TRIA to reach terrorist organizations like the FARC, but then for the victims to be prevented from executing on blocked assets of FARC leaders merely because the Executive designated them all as Kingpins rather than under IEEPA.

It makes no sense to apply TRIA to traffickers "centered in Colombia" but not to Mexican or Peruvian or other Kingpin traffickers worldwide.

It is improper that the Executive Branch have exclusive control over assets blocked under the Kingpin Act at the expense of terrorism victims.

It is also improper for the Executive Branch to cut deals with FARC trafficking partners which allow them to recover their blocked assets upon delisting at the expense of terrorism victims.

The Executive Branch's leverage will be enhanced by allowing terrorism victims to execute on blocked Kingpin Act assets. BASTA will have no effect on the government's ability to designate, extradite, convict and forfeit blocked assets of drug Kingpins.

BASTA will not only protect us as FARC victims, it will also protect the rights of other Americans, including U.S. military, who may be victims of other narco-terrorist organizations like the Taliban, Hezbollah, Hamas or Al Qaeda.

Background:

On February 13, 2003, Keith Stansell, Marc Gonsalves, Tom Janis and myself were engaged in a Department of Defense counter-narcotics operation in Colombia when our surveillance plane crash-landed. We were captured by members of the designated Foreign Terrorist Organization *Fuerzas Armadas Revolucionarias de Colombia* ("FARC"), a violent Marxist guerilla group that is one of the world's largest narcotraffickers. The guerillas executed Tom Janis at the crash site. Keith, Marc and I were held hostage and tortured for more than five years (1,967 days), until rescued by the Colombian military in a daring raid (Operacion Jaque) on July 2, 2008.

The United States designated the FARC as a Foreign Terrorist Organization and Specially Designated Global Terrorist pursuant to 5 USC § 1189 and IEEPA Executive Order 13224 on October 8, 1997. On May 29, 2003, the F ARC was also named a Specially Designated Narcotics Trafficker under the Foreign Narcotics Kingpin Designation Act (Kingpin Act). Many individual FARC members were subsequently designated Specially Designated Narcotics Traffickers under the Kingpin Act. They were not, however, designated under the International Emergency Economic Powers Act (IEEPA) or Specially Designated Global Terrorist program even though they were centered in Colombia.

In 2002, Congress passed the Terrorism Risk Insurance Act (TRIA). Title II of the Act allows the victims of terrorism to recover judgments from the assets of terrorist parties blocked under IEEPA and the Trading With the Enemy Act (TWEA).

The FARC Victims' ATA Lawsuit and Judgment:

After our July 2, 2008 rescue from FARC captivity, we were returned to Fort Sam Houston in San Antonio, TX for military debriefing and reintegration. At that time I learned that

Tom Janis' widow and children had previously retained the Miami law firm of Porter & Korvick, P.A. and that they were on the ground in Colombia within days of the February 13, 2003 crash to assist in the retrieval of the crashed plane's engine. At Keith Stansell's request, Mr. Porter and Mr. Korvick arrived in San Antonio on July 5, 2008 and briefed us extensively on their investigation to date and the applicable anti-terrorism laws that could be pursued to seek some measure of civil justice for our captivity and torture.

In 2008, Keith Stansell, Marc Gonsalves and myself all decided to retain the Porter & Korvick law firm to represent us in civil litigation to seek compensation for all of our past and future non-economic physical and mental pain and suffering damages arising from our captivity and torture at the hands of the FARC narco-terrorist organization. In 2009, our lawyers filed a civil lawsuit on our behalf, and on behalf of the Tom Janis family, against the FARC and 80 individual FARC leaders.

American terrorist victims have 2 types of lawsuit remedies available to them. Those who are victims of designated state sponsors of terrorism must sue that foreign state under the Foreign Sovereign Immunities Act ("FSIA"), specifically 28 USC 1605A, *Terrorism exception to the jurisdictional immunity of a foreign state*. Those who wish to sue non-state terrorist actors – an individual terrorist(s) or a designated Foreign Terrorist Organization ("FTO") like the FARC or Al Qaeda - must bring their lawsuit under the civil remedy provision in the Anti-Terrorism Act ("ATA") 18 USC § 2333.

Our lawsuit was filed under the civil remedy provision of the ATA. Under the ATA, the action was filed in the Middle District of Florida [Case No. 8:09-cv-2308-RAL-MAP] where myself and Keith Stansell and Jonathan Janis were domiciled. Our lawyers effected personal service on the many FARC defendants that were in various Colombian or U.S. prisons. The district court judge ordered that the FARC itself, and the remaining individual FARC fugitive defendants, be served by publishing a Notice of Action in a Colombian and Venezuelan newspaper for four consecutive weeks.

After defaults were entered, our lawyers then filed extensive legal briefs with the court explaining the basis for our legal standing to file the lawsuit, and confirming the court's subject matter jurisdiction under the ATA, including extra-territorial jurisdiction that was granted by Congress when it enacted the ATA. Thereafter our lawyers proffered extensive damages evidence and legal authorities setting the federal courts legal precedent for hostage damage calculations that dates back to the Iran hostage crisis victims' lawsuits. On June 14, 2010, the district court entered an Order awarding damages to each of the 8 plaintiffs [DE 232] and on June 15, 2010 a Final Judgment [DE 233] was entered against the FARC and the named individual FARC leaders.[1]

[1] The 8 plaintiffs are myself, Keith Stansell and Marc Gonsalves (3 hostages all held for 1,967 days of captivity) and Judith Janis (surviving spouse of Tom Janis) and his four children: Christopher, Michael, Greer and Jonathan.

Once the terrorist victim obtains a final judgment against a terrorist party (either an ATA or FSIA judgment), then TRIA §201 provides that "the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment." The 2d Circuit Court of Appeals and many federal district courts have held that "it is clear beyond cavil" that TRIA authorizes execution on blocked assets of an agency or instrumentality of the terrorist party even though the agency or instrumentality itself is not named in the judgment with the terrorist party. Weinstein v. Islamic Republic of Iran, 609 F.3d 43, 50 (2d Cir. 2010).

Our Lawyers' Extensive Work:

In addition to the February 2003 trip to Colombia for the crash engine retrieval, our lawyers have made several trips to Colombia requiring armed security. Our lawyers have had many meetings with Colombian police, military and civil aviation officials. They have also personally interviewed 9 former FARC members who had demobilized from the Aurelio Rodriguez front in the Choco region of Panama. That testimony reveals the inner workings of the FARC and how it moves its money from front to front.

Our lawyers have met with Colombian military and members of the rescue team who participated in the July 2, 2008 rescue. Our lawyers have also met with members of the Colombian military who perform counter-intelligence and who enter the FARC undercover as militianos to gather information on the FARC. Porter & Korvick has reviewed thousands of pages of captured FARC documents – all on detailed computer spreadsheets and hard drives setting forth the flow of cocaine trafficking proceeds and through which companies the illegal proceeds travel. Porter & Korvick has gathered photographic evidence of ton quantity cocaine seizures where the out of country cartels "joint venture" cargo ships with both FARC cocaine and Mexican cocaine kilos. Porter & Korvick, P.A. is now investigating the cross-ocean links and routes of the FARC and African and Southwest Asia terrorist groups, cartels and DTO's.

It may be helpful to also understand the process our lawyers have followed to identify the blocked accounts of FARC narcotics-trafficker partner cartels. First they serve a *Tuohy* affidavit with a proposed subpoena on OFAC. The subpoena requests a list of bank names/addresses that filed an annual report that year stating that they were holding assets blocked under the narcotics sanctions programs. Once OFAC confirms that it will respond to the subpoena, an Assistant U.S. Attorney is assigned to OFAC and an agreed protective order is entered in the district court requiring strict confidentiality.

After the Protective Order is entered, OFAC provides our lawyers with a long list of bank names and addresses. There is no breakdown of the identities of the blocked parties or the amount of any blocked party's assets. Our lawyers must then issue and serve over separate subpoenas on each bank (@ 50 banks listed in response to last subpoena in 2011) requesting the details on each of the reported blocked accounts (blocked party name, account #, type of account, and balance).

After extensive proceedings with the garnishee bank lawyers, eventually our lawyers get these lists of blocked parties. Then our lawyers investigate that blocked party to see the factual

basis for its original OFAC final agency action designating them (ie. member of the Cali Cartel or North Valley Cartel or Sinaloa Cartel money laundering network, etc.). Our lawyers must prove through expert witness testimony that the cartel or drug trafficking organization was or is trafficking FARC supplied coca leaf, paste or cocaine, or laundering FRAC cocaine proceeds. Then and only then do our lawyers move for issuance of the TRIA writ of execution/garnishment with our supporting evidence (motion and evidence is always served on DOJ and OFAC).

There are very few blocked assets reported that are pursued, because the vast majority of blocked accounts consist of only a few hundred or a few thousand dollars. But OFAC continues to block new Kingpin Act persons/entities each year and the FARC continues drug trafficking relations with all the major south and Central American cartels and across Africa whose members continue being designated under Kingpin Act.[2]

Our Expert Witnesses on FARC's Narcotics Trafficking & Money Laundering:

Porter & Korvick, P.A. retained three highly qualified experts on our behalf, including Chris Porter and Col. Luis Miguel Cote, both highly qualified experts with direct experience against the FARC and its various drug trafficking partner cartels and Drug Trafficking Organizations.[3]

Mr. Porter worked in the field of counter-narcotics and counter-terrorism since 1998. He was personally involved in identifying, tracking, interdicting, and apprehending leaders, members, and drug trafficking partners or agents of the FARC for more than 10 years, and conducted direct combat operations against the FARC and its drug trafficking partners. [DE 311, ¶ 2]. Mr. Porter was a former: active duty United States Army officer in the U.S. Military Group, U.S. Embassy, Bogota Colombia; the Chief of the Rotary Wing Aviation Programs in Colombia used in counter-narcotics aviation programs; the U.S. Department of State Narcotics Affairs Section Operations Advisor to the Colombian National Police involved in direct action operations against the FARC and its drug trafficking partners; managed the Medium Altitude Reconnaissance and Surveillance System in Colombia which oversaw ground and maritime intelligence collection of narco-terrorist FARC and its drug trafficking partners activities; Deputy Program Manager for the Plan Colombia Helicopter Program for the Narcotics Affairs Section, Bureau of International Narcotics and Law Enforcement, U.S. Embassy, Colombia; the primary planner and High Value Target ("HVT") Operations Coordinator for the Narcotics Affairs Section, U.S. Embassy Colombia; and Senior Analyst in the Office of Naval Intelligence Western Hemisphere Counter-Narcotics Division – Colombia focused on the identification of

[2] There are no significant remaining assets of IEEPA designated SDNTs, and the last SDNT was designated in 2010 shortly after our Judgment was entered. In contrast, over 750 SDNTKs have been designated under the Kingpin Act since 2010.

[3] Both Mr. Porter and Col. Cote have extensive on the ground experience in Colombia. Our third expert, a retired DEA agent who has not yet testified, has also made several trips to South America meeting with FARC trafficking partner sources and Peruvian law enforcement and prosecutors to gather additional evidence confirming Kingpin trafficking agency or instrumentality partners of the FARC.

narco-terrorism and drug trafficking routes from Colombia, Peru, and Ecuador through Central America and Mexico into the United States.

Mr. Porter's affidavit provides an extensive factual basis supporting his opinions that the NVC is an agency or instrumentality of the FARC, including its "individual members, divisions and networks". [DE 311, ¶¶ 36-63, 133].

Luis Miguel Cote is a Colonel in the Colombian Marine Corps and was recently promoted to the Chief of Staff for the Colombian Marine Corps. He was previously the Chief of the Operations Department of the Colombian Marine Corps. During his career he was assigned to the planning and execution of military operations and the implementation of intelligence and counter-intelligence activities against terrorist groups and the transnational criminal system organized by the FARC. [DE 312]. During Colonel Cote's career, he was: Chief of the Intelligence & Counter-Intelligence Section of the Sixth Riflemen Battalion of the Marine Corps, deployed in the Municipality of Buenaventura (Department of Valle del Cauca – the NVC's stronghold), whose main mission was to fight the drug trafficking cartels particularly that of the Department of Valle del Cauca and its relationship with the FARC Fronts that were carrying out criminal activities in Colombia's Pacific Ocean region; his operations led to seizure of more than 5 tons of cocaine HCL powder, the confiscation of weapons, ammunition and supply materials, as well as the capture of several members of the drug trafficking cartels; the destruction of laboratories used to process cocaine base paste cocaine HCL powder; the seizure of raw materials used to process cocaine; the destruction of clandestine air fields, and the capture of members of the FARC and drug traffickers; Chief of Operations for all Colombian marine corps riverine combat operations, including planning, supervising and coordinating all joint and coordinated combat operations against the FARC and its drug trafficking groups that used Colombia's rivers and navigable tributaries to traffic weapons, ammunition, explosives, general logistic supplies, as well as raw materials used for coca leaf cultivation and cocaine processing and trafficking; Chief of the Intelligence Department of the Marine Corps River Brigade, with duties including the exchange of intelligence information and the execution of joint military operations with U.S. law enforcement agencies such as the DEA and the FBI, Colombian security and investigation agencies such as the National Police, the DAS and the CTI, targeted to fighting the FARC and its drug trafficking and organized crime groups; Commander of the hostage rescue unit that rescued more than sixty (60) persons who had been kidnapped, and captured more than one hundred (100) FARC drug traffickers and terrorists; Commander of the 2nd Counter-Guerrilla Battalion involved with the capture and demobilization of a large number of members of the FARC drug trafficking and terrorist forces and drug trafficking cartels; Chief of Operations of the Colombian Marine Corps, the 2nd largest marine corps in the world after the U.S. Marine Corps. [DE 312, ¶¶ 8-30].

Col. Cote has unique experience into the FARC's relations with the Colombian cartels and drug trafficking organizations:

> 36. During my more than 24 years of active military service I have interrogated more than 350 FARC members or FARC militia after their capture. I have debriefed more than 300 demobilized FARC members or FARC militia after their

surrender. I have reinserted more that 200 former members of the FARC to conduct intelligence operations against the FARC after their surrender.

37. I have been responsible for the capture of more than 300 FARC members or FARC militia, including several squadron chiefs or commanders, company commanders, commission members, members of urban militias, replacements going to the fronts, among others.

38. I have reviewed numerous military, intelligence and law enforcement reports related to the FARC and its drug trafficking and terrorist activities. I have personally listened to hundreds of hours of real time FARC radio transmissions. I have reviewed and analyzed all types of captured FARC documents and records, including computers, ledgers, buried records, narcotics, cash, weapons and ammunition, and logistic materials in general.

39. As the Chief of Operations of the Colombian Marine Corps I have personally supervised and participated in the planning of combat operations of the marines and naval forces against the FARC, its agents, drug trafficking partners, and other criminal elements who provide support or are otherwise associated with the FARC and its narcotics trafficking and terrorist activities.

[DE 312, ¶¶ 36-39].

Col. Cote's expert witness affidavit [DE 312] also provides an extensive factual basis supporting his opinions that the NVC is an agency or instrumentality of the FARC, including "all of their members, successors, affiliates and financial network supporters." [DE 312, ¶¶ 45-50, 56]. Our experts have already proffered opinions that ALL the major cocaine trafficking cartels in Colombia, Peru, MX, etc meet the definition of agencies or instrumentalities of the FARC, an FTO/SDNTK/SDGT, including, but not limited to, the following:

Cali Cartel
Norte Valle Cartel
Manuel Aguirre Galindo Organization
Sinaloa Federation
Los Zetas
Beltran Leyva Cartel
Gulf Cartel
Arellano-Felix Organization
La Familia Michoacana
Tijuana Cartel
Juarez Cartel
Cartel Pacífico Sur
Carrillo Fuentes Organization
Edgar Valdez Villarreal faction,
Zambada Garcia Organization
Ochoa Vasco Network
Ochoa Vasco Colombia/Mexico network
Cifuentes Villa Organization – Colombia/ Sinaloa, Mexico
Los Mastrojos

Los Machos
Amezcua Contreras Organization
Arriola Marquez Organization
Fernando Zevallos DTO in Peru

In addition to the cartels themselves, OFAC also designates hundreds of individual cartel leaders, front persons and companies, and members of the cartel or DTO financial or money laundering networks. There are literally hundreds of these individual SDNTKs out there who may someday soon have a blocked account or blocked asset subject to US jurisdiction.

In addition to the Porter and Cote affidavits, before entering Orders determining that a blocked party was an agency or instrumentality of the FARC, and issuing TRIA writs, the district court also reviewed a voluminous appendix of supporting materials. [DE 313, Appendix]. This Appendix contained 73 exhibits consisting of hundreds of pages of evidence.

Multiple district court rulings [MDFL, SDFL and SDNY] that the FSIA definition of "agency or instrumentality *of a foreign state*" does not apply to terrorists and FTOs:

When Congress passed TRIA in 2002 it did not say "any agency or instrumentality *of a foreign state*", it specified that TRIA applied to blocked assets of "any agency or instrumentality *of that terrorist party*". TRIA §201(d) defines "terrorist party" as either a terrorist, or a foreign terrorist organization, or a state sponsor of terrorism.

The legislative history of TRIA S. 201 [from the Joint Explanatory Statement of the Committee of Conference on H. Rept. 107-779] clearly states that Sec 201 "authorizes the enforcement of judgments against terrorist organizations" and that "This provision is intended to reach terrorist organizations". Had Congress intended for TRIA to be limited to agencies or instrumentalities of foreign states it could have said so, but it did not.

The Foreign Sovereign Immunities Act ("FSIA") (28 USC 1603(b)) defines the term "agency or instrumentality *of a foreign state*" to mean only an entity that is an organ, or political subdivision of the foreign state, or a state owned entity. [Note: the FSIA does not define the broader term "agency or instrumentality", nor "agency or instrumentality *of a terrorist party*"].

Obviously, the FSIA definition has no meaning in the context of a "terrorist party" that is not a foreign state. Congress could not have intended for the FSIA definition – which excludes individuals – to apply to FTOs where it is common knowledge that individuals often act for or on behalf of FTOs. FTOs and individual terrorists do not have political subdivisions, organs, or state owned entities. They can and do act through individual couriers, suicide bombers, smugglers agents, networks, cartels, cells, drug trafficking organizations (DTOs), straw men and front companies, etc. If an ATA judgment creditor of Osama Bin Laden identified a blocked account of his personal courier, clearly TRIA would allow such execution as an agency or instrumentality of the terrorist. The same is true for a judgment creditor of an FTO like the FARC or Al Qaeda who identifies a blocked account of a money launderer of the FTO.

Judge Lazzara of the MDFL recognized that the FSIA definition of "agency or instrumentality *of a foreign state*" does not apply to a "terrorist party" under TRIA that is an individual terrorist or an FTO. Instead, he looked to the "plain and ordinary meaning" of the words and found them consistent with the existing statutes and OFAC regulations on derivative designations under its counter-narcotics sanctions programs and he set forth a legal standard for determining an agency or instrumentality of the FARC [an FTO/SDGT/SDNTK] in multiple orders and turnover judgments. [Stansell et al. v. FARC, MDFL 8:09-cv-2308]. Judge Huck in the SDFL has also rejected the FSIA definition and adopted Judge Lazzara's standard. [John Doe v. ELN and FARC, SDFL 1:10-cv-21517].[4]

It is clear, therefore, that Congress intended TRIA to define "terrorist party" to include terrorists and Foreign Terrorist Organizations, and that the standard for determining agency or instrumentality of an individual terrorist, or a designated Foreign Terrorist Organization is different from the standard for determining agency or instrumentality of a foreign state.

Post-judgment steps we have followed under TRIA to execute/garnish on blocked assets [all with full notice to OFAC and DOJ]:

After entry of an ATA final judgment against a terrorist or an FTO, the plaintiff can only proceed against a blocked asset of an agency or instrumentality of that FTO after the district court reviews evidence and makes a finding that the blocked party does in fact meet the standard for an agency or instrumentality of that terrorist party. At that time a writ of execution (a/k/a attachment or garnishment depending on the state where the district court is located) is issued by the court and then the U.S. Marshal serves the writ on the bank holding the blocked asset. In Florida service of the writ of garnishment on the bank is the operative event that perfects a judgment lien against the blocked asset. Thereafter the garnishee answers the writ stating if it is indebted to the blocked party agency or instrumentality, and the amount. The plaintiff then moves for entry of a turnover judgment or turnover order and upon entry the bank (after confirming with OFAC) turns the funds over to the plaintiff.

Throughout the entire TRIA execution process, OFAC is copied on every single pleading related to the blocked asset as per OFAC litigation reporting requirement 31 CFR § 501.605 so the Executive Branch is aware of what is happening, and why, the whole way through execution on a blocked account, starting with the original discovery to OFAC to identify the banks reporting holding the blocked assets. The Assistant U.S. Attorney representing OFAC is also copied on every single pleading after their appearance in the district court.

If the blocked A/I party is unblocked and removed from the SDN list by OFAC before the writ is served on the bank then the plaintiff cannot complete the TRIA execution because

[4] *See also In re 650 Fifth Ave.*, 2013 WL 2451067 at *5 n.7 ("Section 1603(b) defines 'agency or instrumentality of a foreign state' for purposes of FSIA, not agencies or instrumentalities of 'terrorist parties'-the term used in TRIA § 201); *Samantar v. Yousuf*, 130 S. Ct. 2278, 2286 (2010)(individuals could be an agency or instrumentality if those terms are given their normal meaning of: anyone who acts for or on behalf of).

there was no longer a blocked asset at the time the writ was being served and TRIA only applies to blocked assets as defined.

The district court made the FARC agency or instrumentality determinations using the plain and ordinary meaning of those terms, and finding that these were consistent with the OFAC designation criteria used to designate narcotics traffickers. [DE 323, ¶¶ 11-15]. Both of our experts, Mr. Porter and Col. Cote, in part based their opinions on the district court's standard for determining when an organization, individual, or cartel, or its members, qualifies as an "agency or instrumentality" of the FARC:

> 11. The Court finds that OFAC's designation authority and criteria under its counter-terrorism and counter-narcotics sanctions programs is derived from statutes,[5] executive orders[6] and regulations,[7] are consistent with the ordinary and plain meaning of the terms agency or instrumentality and further finds that these definitions should be applied to determine that any SDNT or SDNTK with a nexus to the FARC qualifies as an agency or instrumentality of the FARC.
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> 12. Any SDNT or SDNTK person, entity, drug cartel or organization , including all of its individual members, divisions and networks, that is or was ever involved in the cultivation, manufacture, processing, purchase, sale, trafficking, security, storage, shipment or transportation, distribution of FARC coca paste or cocaine, or that assisted the FARC's financial or money laundering network, is an agency or instrumentality of the FARC under the TRIA because it was either:
>
> > (1) materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a specially designated narcotics trafficker [FARC]; and/or
> >
> > (2) owned, controlled, or directed by, or acting for or on behalf of, a specially designated narcotics trafficker [FARC]; and/or
> >
> > (3) playing a significant role in international narcotics trafficking [related to coca paste or cocaine manufactured or supplied by the FARC].
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> This includes SDNT and SDNTK cartels, organizations, persons or entities which have ever supplied currency, weapons, ammunition, logistics, transportation, or supplies and/or financial or money laundering services to the FARC or its trafficking partners, directly or indirectly, as consideration for FARC coca paste or cocaine. Similarly, any SDNT or SDNTK person or entity involved with the financial or money laundering network of a drug cartel or organization described above also qualifies as an agency or instrumentality of the FARC under the TRIA.[8]

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[5] 21 U.S.C. § 1904(b).
[6] Presidential Executive Orders 12978 and 13224.
[7] 31 C.F.R. § 598.314.
[8] The TRIA is not limited to the definition of "agency or instrumentality" under the definition applicable to foreign ***state sponsors*** of terrorism found in the Foreign Sovereign Immunities Act,

13. All specially designated narcotics traffickers who assist and provide financial or technological support for or to, or who provide goods or services in support of, or who act on behalf of the international narcotics trafficking activities of a specially designated narcotics trafficker like the FARC here – a designated FTO - are each an "agency or instrumentality of a terrorist party." See Ungar v. The Palestinian Authority 304 F. Supp. 2d 232, 241 (D.R.I. 2004)(HLF is an agency or instrumentality of Hamas because it acts "for or on behalf of" Hamas).

[DE 311, ¶ 115; DE 312, ¶¶ 53, 56; DE 314, ¶¶ 11-13].

The United States has not objected to the Court's standard for determination of an agency or instrumentality of a Foreign Terrorist Organization ("FTO") prior to issuing or enforcing any of the TRIA writs in this case, nor has the United States done so since.

In 2010, our lawyers moved to enforce our judgment against a blocked account of Mercurio Infernacional, S.A., a Colombian casa de cambio and FARC money launderer (the Mercurio Account). Mercurio Internacional was a Specially Designated Narcotics Trafficker, and the account was blocked by the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) under the Kingpin Act [SDNTK]. It was not, however, blocked under IEEPA or TWEA. The district court issued a writ of garnishment against the Mercurio blocked account which was served on the garnishee bank thereby perfecting the lien on the blocked asset.[9]

Mercurio challenged our writ arguing that it was about to be "exonerated" by being removed from the OFAC list, but its own filings demonstrated that the reason for its removal was the changed circumstance of being in liquidation in Colombia. The district court ruled that under the OFAC regulations Mercurio's subsequent removal from the OFAC list did not defeat our prior perfected judgment lien under TRIA. Mercurio appealed arguing that its removal was both retroactive and an exoneration that should defeat the TRIA execution, and the parties briefed these issues on appeal. At no time did Mercurio or the government ever raise any challenge to the TRIA definition of "blocked asset" until August 2011 when the United States filed a motion for leave to file an Amicus Brief out of time in the Mercurio appeal.

On January 9, 2013, the 11th Circuit ruled that assets blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S .C. 1901 -1908 ("Kingpin Act") were outside the reach of TRIA, because they were not specifically included in TRIA's Sec. 201 (d)(2) definition of "blocked assets" ("…under IEEPA …or TWEA…"), and even though the Kingpin Act was

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because state sponsors of terrorism are only one type of specifically defined types of "terrorist party" under the TRIA.

[9] Mercurio had previously agreed to forfeit to the U.S. one third of its bulk currency seized in an ICE/DEA undercover operation [@ $677,000] in exchange for return of two thirds of the seized funds [@ $1.25 million] that was subsequently blocked when OFAC designated Mercurio as an SDNTK FARC money launderer]. USA v. €9,145,000 in European currency et al, SDFL Case No. 08-cv-20368, DE 35.

modeled on and virtually identical to the IEEPA sanctions program, those were separate acts of Congress. Stansell v FARC (Mercurio) et al., 704 F.3d 910 (11th Cir. 2013).

Prior to the 11th Circuit Court of Appeal decision in Mercurio, the district court ruled that TRIA's definition of "blocked asset" ["…under IEEPA…"] included assets blocked under the Kingpin Act because it was modeled on and identical to the IEEPA counter-narcotics sanction program. In its first subpoena response to our lawyers in October 2010, OFAC itself identified 2 FARC money launderers that OFAC had designated as Tier II SDNTKs under the Kingpin Act. In December 2010, our lawyers proceeded with the TRIA post-judgment execution process described above, and throughout this entire process both OFAC and DOJ were served with copies of the motions for issuance of the writ, the bank's answer to the writ, the motion for entry of turnover judgment and the court's turnover judgment under TRIA. Neither OFAC nor DOJ objected to these TRIA executions until long after one had been completed, and long after appellate briefing was completed by the parties in the Mercurio appeal.

Purpose of BASTA is to harmonize anti-terrorism statutes and definitions and clarify the intent of the comprehensive remedy in TRIA, and to eliminate unfair results:

The Bank Account Seizure of Terrorist Assets or BASTA Act **will enhance the ability of U.S. national terrorism victims to enforce judgments against the blocked assets of narco-terrorists and their trafficking partners and financial networks**. The Act harmonizes the laws governing the recovery of terrorist and narco-trafficking assets by including assets blocked under the Foreign Narcotics Kingpin Designation Act (Kingpin Act) in the list of blocked assets already subject to attachment and execution under Section 201 of the Terrorism Risk Insurance Act of 2002 (TRIA). The Act also brings TRIA in conformity with existing federal anti-terrorism civil remedy statutes defining the persons covered, and the operative dates for determining terrorist party status. The BASTA Act is sound public policy that provides justice to the victims of terrorism and further enhances the public-private partnership between private litigants and law-enforcement to deprive financial assets to terrorist and narco-traffickers. The bill is a technical fix to existing U.S Code and authorizes no additional spending or taxes.

Current TRIA Law:

At present, Section 201 of the Terrorism Risk Insurance Act of 2002 ("TRlA"), provides:

> TITLE II--TREATMENT OF TERRORIST ASSETS
> SEC. 201. SATISFACTION OF JUDGMENTS FROM BLOCKED ASSETS OF TERRORISTS, TERRORlST ORGANIZATIONS, AND STATE SPONSORS OF TERRORlSM.
>
> (a) IN GENERAL- Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)

shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

(d) DEFINITIONS- In this section, the following definitions shall apply:
(2) BLOCKED ASSET- The term ' blocked asset' means-

(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U .S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U .S.C. 170 I; 1702); and

Purpose/Explanation of Each BASTA Act Amendment:

(1) Subsection (a) of TRIA is amended by inserting at the end the following:

"For purposes of this section, the blocked assets of a terrorist party are subject to execution or attachment in aid of execution in order to satisfy such judgment regardless of whether the terrorist party ceases to be a terrorist party after such judgment is entered."

Purpose/Explanation:

The section ensures that blocked assets can be levied against without regard for whether the terrorist party is de-listed, so long as the judgment was granted and a writ of execution served before the de-listing. Subsequent Executive action cannot defeat the execution of a judgment so long as the defendant was a terrorist, terrorist organization or state sponsor of terrorism at the time of the terrorist act and when the judgment was granted.

Congress has already made clear that victims of state sponsors of terrorism can sue so long as the state sponsor was designated at time of the attack and the time of filing suit [28 U.S.C. § 1605A (a)(2)(A)(i)(I)]. Congress has also made clear that with respect to FTOs, removal from the FTO list does not affect any prior action or proceeding [8 USC § 1189(7)]. It would be unjust to allow the Executive Branch to thwart Congressional intent by arguing that the standard under TRIA should be different. This amendment does not deprive the President of a "carrot" because current terrorist parties still have a significant incentive to change their ways: protection against future asset blocking and award under TRIA for future acts (which are, of course, those that the carrot is designed to influence).

If the FARC is someday removed from the FTO list – and therefore ceases to be a "terrorist party" under the TRIA definition – that removal will not affect the blocked assets of its many SDNTK "agency or instrumentality" drug trafficking partners and money launderers who may still be blocked for years to come, and who continue to be newly blocked every year.

The FARC itself has no blocked assets in the US, never has and likely never will. FTOs simply do not open bank accounts or hold assets in their name, they get paid in currency and weapons etc. The agency or instrumentality trafficking partner cartel members, front companies, and money launderers do hold assets in their name, that is precisely why they get added to the OFAC

List. If the agency or instrumentality itself gets removed from the OFAC list before the TRIA post-judgment execution is perfected, then neither TRIA or BASTA will allow the victims to get at that now unblocked asset.

It would be impossible for any narco-terrorist victim to identify and sue the many hundreds (1000+) of the FTO's OFAC designated trafficking partner members and networks at the inception of the Anti-Terrorism Act lawsuit in order to obtain a judgment against 1000+ defendants. Also, the FTOs – like the FARC – continue to traffick after entry of judgment and OFAC continues to designate more agency or instrumentality cartel members after entry of Judgment vs the FTO.

The 2nd Circuit Court of Appeals in Weinstein v. Islamic Republic of Iran, 609 F.3d 43, 50 (2d Cir. 2010) held that: "Accordingly, we find it **clear beyond cavil** that Section 201(a) of the TRIA provides courts with subject matter jurisdiction over post-judgment execution and attachment proceedings against property held in the hands of an instrumentality of the judgment-debtor, **even if the instrumentality is not itself named in the judgment**." Id. at 50.

We did sue and get a judgment against not only the FARC itself, but also 80 individual FARC leaders who we were able to identify by name [others will surely be discovered in the future as they get arrested or turn themselves in]. Only one FARC leader named in our Judgment - Alonso Olarte Lombana – has a blocked account in the US under the Kingpin Act. It is true that if the FARC and Alonso Olarte Lombana himself were simultaneously delisted by OFAC, we would still have a judgment against him. But with the lifting of the blocking sanction there is no mechanism to prevent Lombana – or any other delisted agency or instrumentality – to simply transfer its assets out of the reach of US courts. This is exactly what Mercurio Internacional, SA [OFAC designated FARC money launderer] did after the Mercurio appeal so that its $1.25 million left the US and is no longer available for execution if BASTA is enacted into law.

BASTA will ensure that if the FARC, or any other narco-terrorist FTO, is ever delisted, the FTO's victim judgment creditors can still pursue blocked assets of the agency or instrumentality narco-trafficker/money launderer whose assets remain blocked.

Nothing in BASTA protects terrorist victims from OFAC delisting of the agency or instrumentality itself before the TRIA execution attaches. Nothing in BASTA protects terrorist victims from government civil or criminal forfeiture of any blocked asset.

(2) Subparagraph (A) of subsection (d)(2) of TRIA is amended to read as follows:

''(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)), under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702), or under section 805(b) of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1904).

Purpose/Explanation:

The Kingpin Act, 21 U.S.C.A. § 1901-1908, was enacted pursuant to Congressional findings and

authority arising from the International Emergency Economic Powers Act ("IEEPA") (50 U.S.C. § 1701 et seq.). The Kingpin Act was modeled on IEEPA, and "restates the applicable provisions of the [IEEPA]". H.R. CONF. REP. 106-457, Sec. 806, 810. Congress based the Kingpin Act on the IEEPA counter-narcotics program established by President Clinton's Executive Order 12978 in issued on October 24, 1995. The related regulations are styled the "Foreign Narcotics Kingpin Sanctions Regulations" (31 C.F.R. Part 598). The original counter-narcotics sanctions regulations under IEEPA EO 12978 are found at 31 CFR Part 536.

NOTE: When Congress passed the Kingpin Act, it set forth specific findings and policy in the text of the statute itself:

> 21 U.S. CODE § 1901 - FINDINGS AND POLICY
>
> (a) Findings
> Congress makes the following findings:
> (1)Presidential Decision Directive 42, issued on October 21, 1995, ordered agencies of the executive branch of the United States Government to, inter alia, increase the priority and resources devoted to the direct and immediate threat international crime presents to national security, work more closely with other governments to develop a global response to this threat, and use aggressively and creatively all legal means available to combat international crime.
> (2)Executive Order No. 12978 of October 21, 1995, provides for the use of the authorities in the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.) to target and apply sanctions to four international narcotics traffickers and their organizations that operate from Colombia.
> (3)IEEPA was successfully applied to international narcotics traffickers in Colombia and based on that successful case study, Congress believes similar authorities should be applied worldwide.
> (4)There is a national emergency resulting from the activities of international narcotics traffickers and their organizations that threatens the national security, foreign policy, and economy of the United States.
> (b) Policy
> It shall be the policy of the United States to apply economic and other financial sanctions to significant foreign narcotics traffickers and their organizations worldwide to protect the national security, foreign policy, and economy of the United States from the threat described in subsection (a)(4) of this section.

OFAC's 2011 Publication "*What You Need to Know About U.S. Sanctions Against Drug Traffickers*" states as follows:

> The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act blocks the property and interests in property, subject to U.S. jurisdiction, of foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, who are found to be: (1) materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned,

> controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.
>
> Significant foreign narcotics traffickers and foreign persons designated by the Secretary of the Treasury are referred to collectively as Specially Designated Narcotics Traffickers. Foreign persons designated under the Kingpin Act are referred to as "[SDNTK]s" on OFAC's listing of "Specially Designated Nationals and Blocked Persons" to differentiate them from the Specially Designated Narcotics Traffickers named under Executive Order 12978

Specially Designated Narcotics Traffickers designated under IEEPA's Executive Order 12978 included the Cali Cartel, North Valley Cartel, the North Coast Cartel and the Ochoa Vasco Network. OFAC uses the **SDNT designation label** for these IEEPA Specially Designated Narcotics Traffickers (no SDNTs have been designated under IEEPA since 2009, but many have been and continue to be removed from the OFAC SDN List).

Specially Designated Narcotics Traffickers designated under the Kingpin Act are referred to using the **"SDNTK" designation label**. Many new SDNTKs have been designated since 2009, and continue to be so designated. The FARC was designated under the Kingpin Act as a "significant foreign narcotics trafficker" [SDNTK] in 2003 by President George W. Bush. Many FARC leaders have also been designated as SDNTKs under the Kingpin Act (none were ever designed under IEEPA EO 12978 even though they operate in Colombia).

The intent, purpose, and criteria for designation of Specially Designated Narcotics Traffickers are the same for the SDNT and SDNTK sanctions programs. In fact, there is substantial overlap in the SDNT and SDNTK sanctions programs and each program uses the same language for designation criteria:

The term *specially designated narcotics trafficker* means:

> (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a specially designated narcotics trafficker;
> (2) Owned, controlled, or directed by, or acting for or on behalf of, a specially designated narcotics trafficker; or
> (3) Playing a significant role in international narcotics trafficking.

Compare 31 CFR Part 536.312 (SDNT Program) with 31 CFR Part 598.314 (SDNTK Kingpin Act).

When Congress passed TRIA in 2002, it defined the term "blocked asset" as any asset seized or frozen by the U.S. government "under TWEA or IEEPA". TRIA §201(d)(2)(A). Of the more than 30 sanctions programs administered by OFAC, all but one are based on the executive authority derived from either IEEPA or TWEA. These assets fall within the meaning of "blocked assets" as defined by TRIA Section 201 (d)(2)(A) and are therefore subject to attachment by U.S. national victims of terrorism.

The sole exception to this group of blocked assets subject to attachment under Section 201(d)(2)(A) are those blocked under the Kingpin Act. It is difficult to believe that Congress intended Section 201(d)(2)(A) to apply to agencies or instrumentalities of a Foreign Terrorist Organization centered in Colombia, but not to agencies or instrumentalities of that same Foreign Terrorist Organization operating in other parts of the world and that maintain narcotics transshipment corridors in South and Central America, Africa and Europe. This would lead to an absurd result whereby TRIA would apply to a FARC trafficking partner in Colombia [labeled as an IEEPA SDNT or SDGT by OFAC], but not to a FARC trafficking partner or financial network in Central America, like Panama or Mexico in the case of the Sinaloa cartel [who gets labeled as an SDNTK by OFAC], where the criteria for derivative designations are the same.

It is also illogical for TRIA to reach assets blocked under the IEEPA counter-narcotics sanctions program [SDNT], but not to reach assets blocked under the Kingpin Act [SDNTK], especially where Congress expressly modeled the latter sanctions program on the former.

Similarly, Congress clearly did not intend for TRIA to apply to narcotics trafficking agencies or instrumentalities of Al-Qaeda who happen to be designated as an SDGT under E.O. 13224, but not to narcotics trafficking agencies or instrumentalities of Al-Qaeda who happen to be designated by OFAC as an SDNTK under the Kingpin Act.

We secured our ATA final judgment [for the capture, torture, and killing of their family member] against the FARC and multiple individual FARC members including Alonso Olarte Lombana, whom OFAC has identified as a Front Commander for the FARC. Mr. Lombana is not merely some financier or remotely-related FARC entity; he is an actual commander in FARC's guerilla military operations who was clearly "centered in Colombia" [and therefore he could have been designated under IEEPA E.O. 12978]. See Stansell et al. v. FARC et al., M.D. Fla. No. 09-CIV-2308, D.E. 233, 322-1. Nevertheless, the Executive designated Mr. Lombana as an SDNTK, rather than as an SDNT or an SDGT. So even though the Government has formally identified the FARC as a terrorist entity [FTO, SDGT, and a Significant Foreign Narcotics Trafficker under the Kingpin Act], and has also formally identified Mr. Lombana as a front commander in that terrorist organization – that actually caused our damages - his designation was not as a terrorist (SDGT) or an SDNT (narcotics trafficker centered in Colombia), but rather as an SDNTK under the Kingpin Act. Because Lombana was designated under the Kingpin Act,we cannot execute upon Lombana's assets blocked in the U.S., despite having a judgment against him and having perfected a TRIA writ of garnishment on Lombana's blocked bank account. This amendment will allow us to proceed with TRIA execution on a small $30,000 U.S. blocked account owned by Alonso Olarte Lombana.

The present scope of TRIA's Section 201(d)(2)(A) thwarts terrorism victim judgment holders' efforts to collect from blocked assets of narco-traffickers and their financial networks.
The Act, therefore, clarifies Congress' intent that the TRIA "deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism in any court of competent jurisdiction by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties." H.R. CONF. REP. 107-779, Congressional Record 148 (November 13, 2002) H8728.

The BASTA Act corrects this anomaly and makes Congressional intent consistent by adding assets blocked under the Kingpin Act to the definition of blocked assets under TRIA and subject to execution by terrorism victims.

(3) Subsection (d) of TRIA is amended— (D) by inserting after paragraph (3) the following:

‘‘(4) PERSON.—In subsection (a), the term ‘person’ means a person who, at the time the act of terrorism described in subsection (a) upon which the judgment obtained by the person was committed, was either—
‘‘(A) a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22); or
‘(B) a member of the Armed Forces of the United States; or
‘(C) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment.”

Purpose/Explanation:

The Act harmonizes Section 201 of TRIA with the provisions of the Anti-Terrorism Act (18 USC 2333(a) and 18 USC 2331(2)), as well as the state sponsored terrorism exception to the Foreign Sovereign Immunities Act, 28 U.S.C. 1605A(a)(2)(A)(ii)(I-III). In those statutes, Congress has defined the “persons” entitled to bring suits against terrorist parties, and the Act merely adopts this definition of persons under TRIA.

BASTA will also prevent opening the floodgates to our court system with alien national tort lawsuits from foreign FTO victims all over the world seeking to use TRIA to compete with U.S. national terrorism victims collection efforts on the same pool of blocked assets.

SEC. 3. EFFECTIVE DATE.
The amendments made by this Act apply to any judgment entered before, on, or after the date of the enactment of this Act.

Purpose/Explanation:
The provision protects terrorism victim judgment holders ' rights by clarifying that the Act applies retroactively only to judgments previously entered, and does not supersede any existing statutes of limitations within which to file a lawsuit. Any claim currently barred by the statute of limitations would not be revived, and would remain time barred.

BASTA is not a terror victim compensation fund.

Neither TRIA or the BASTA Act allow a plaintiff judgment creditor of the FARC to go after Iranian assets, or on any blocked assets of the Qadhafi family that may someday be returned to benefit the new Libyan government and people.

The ATA judgment against the FARC can only be satisfied against the blocked assets of the FARC, or blocked assets of a person or entity that a district court determines to be an agency or instrumentality of the FARC.

BASTA does not amend the federal judicial code, and it does not amend the federal criminal code.

BASTA does not impose or expand on the liability of any foreign state, or its officials or employees.

BASTA does not impose or create any new liability for aiders and abetters, or material supporters of terrorist organizations.

BASTA does not expand liability of Chiquita, or any other U.S. multinational corporations, who may operate in areas controlled by terrorist organizations.

BASTA does not change any statute of limitations period, and it does not revive any time barred actions.

BASTA will clarify and remedy incomplete definitions in the original legislation, and will correct an unexpected appellate court interpretation of a definition in the original law.

BASTA's retroactive effect is based on important public policy grounds, and has a legitimate and rational purpose – protecting the original Congressional intent of a "comprehensive remedy" for victims of terrorist organizations.

Retroactive application of this definition will protect our right to enforce several pending writs of execution/garnishment on blocked accounts of Specially Designated Narcotics Traffickers blocked under the Kingpin Act [SDNTK]. The district court has already determined that these SDNTKs are agencies or instrumentalities of the terrorist organization FARC, the writs have been issued by the district court, and served on the garnishee banks by the U.S. Marshal's Service, but any further enforcement or compliance therewith remains stayed in light of the Mercurio decision.

BASTA's retroactive **definition of "person"** – U.S. nationals, U.S. military and certain foreign nationals (i.e. embassy workers/government employees) - harmonizes TRIA with the other prior federal statutory anti-terrorism causes of action (18 USC § 2333 for actions against terrorists and terrorist organizations that are not foreign states; 28 USC §1605A for FSIA actions against state sponsors of terrorism) and is sound public policy. BASTA's retroactive clause harmonizing the definition of "person" will protect the comprehensive remedy for U.S. nationals and military, and still allow an alien judgment holder to apply for OFAC license to execute on a blocked asset. Clearly, Congress did not intend to limit anti-terrorism causes of action to U.S. nationals and U.S. armed forces, without also so limiting the TRIA post-judgment remedy.

BASTA's amendment to TRIA §201(a) will clarify that if the FARC (or other FTO) is **someday removed from the FTO list** such removal will not serve to defeat the terrorism victim's right to enforce their judgment on assets which otherwise remain blocked.

Congress has also made clear that with respect to FTOs, removal from the FTO list does not affect any prior action or proceeding. It would be unjust to allow the Executive Branch to thwart Congressional intent by arguing that the standard under TRIA should be different. This amendment does not deprive the President of a "carrot" because current terrorist parties still have a significant incentive to change their ways: protection against future asset blocking and award under TRIA for future acts (which are, of course, those that the carrot is designed to influence).

The currently proposed retroactivity provision makes good and important public policy for the Legislative Branch. It prevents U.S. nationals from having to compete with non-U.S. nationals for a very limited pool of blocked assets. It will prevent a floodgate of Alien Tort Statute lawsuits in U.S. courts by foreign national victims of FTOs seeking to use TRIA and thereby deplete blocked assets that would otherwise be available to compensate U.S. terrorism victims.

BASTA will clarify and remedy incomplete definitions in the original legislation, and will correct an unexpected appellate court interpretation of the original law.

BASTA's retroactive effect is based on important public policy grounds, and has several legitimate and rational purposes.