

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRANCE MOKHATEB RAFII,

Plaintiff,

v.

THE ISLAMIC REPUBLIC OF IRAN

and

THE IRAN MINISTRY OF
INFORMATION AND SECURITY

Defendants.

Civil Action No. 01-850 (CKK)

FILED ✓

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**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(December, 2, 2002)

I. INTRODUCTION

This is an action for extrajudicial killing against Defendants Islamic Republic of Iran ("Iran") and the Iran Ministry of Information and Security ("MOIS"). Jurisdiction for this action lies in the 1996 amendments, 28 U.S.C. § 1605(a)(7), to the Foreign Sovereign Immunities Act of 1976 ("FSIA"), 28 U.S.C. § 1602 *et seq.* This action is brought by France Mokhateb Rafii ("Plaintiff"), a United States national and the daughter of Dr. Chapour Bakhtiar. Dr. Bakhtiar, a dissident of the Iranian regime, was murdered in France in 1991. Rafii claims that her father was assassinated as a result of the efforts of Defendants.

Defendants have failed to enter an appearance in this lawsuit, despite the fact they were served with process in accordance with the FSIA's procedures. *See* Plaintiff's Status Report (Oct.

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2, 2001); 28 U.S.C. § 1608(a)(4). Consequently, the Court, pursuant to 28 U.S.C. § 1608(e), ordered the Clerk's Office to enter a default against the Defendants on January 9, 2002.

However, a default judgment was not entered, as the FSIA requires that "the claimant establish[] his claim or right to relief by evidence satisfactory to the court" before entry of judgment by default against a foreign state or political subdivision thereof. *Id.* § 1608(e). Accordingly, on November 4 and 5, 2002, the Court conducted a non-jury trial at which Plaintiff presented the testimony of seven witnesses¹ and documentary evidence consisting of 118 exhibits² in support of her claims. Defendants did not appear at trial or present any evidence in their defense.

Based on the credible evidence presented in this case, and in the absence of any evidence from the Defendants, the Court will accept as true Plaintiff's uncontroverted evidence, permitting it to make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

The Defendants

1. Defendant the Islamic Republic of Iran ("Iran") is a foreign state established in 1979 by Ayatollah Khomeini following the overthrow of the prior government of the Shah of Iran. Transcript ("Tr.") at 12-13 (Boroumand). Ayatollah Khomeini died in 1989, and was

¹ Testifying on behalf of Plaintiff were: Dr. Ladan Boroumand, one of the authors of *Report on the Islamic Republic's Terrorism Abroad*, and Visiting Fellow at the National Endowment for Democracy; Dr. Manouchehr Ganji, Secretary-General of the Flag of Freedom Organization; Jacques S. Boedels, Esq., Armand, Boedels & Associates; Dr. Patrick J. Clawson, Director of Research at the Washington Institute for Near East Policy; Farhad Rafii, Plaintiff's son; Kiumars Rafii, Plaintiff's husband; and Plaintiff herself.

² At the outset of the trial, the Court admitted into evidence all of Plaintiff's exhibits, with the exception of Exhibit 116 which consists of testimony of Dr. Ganji, who testified in person at the trial.

succeeded by the less influential Ayatollah Khamenei. Tr. at 144 (Clawson). At about the same time, Ali-Akbar Hashemi Rafsanjani became President of Iran. Rafsanjani was a more charismatic and influential politician than the previous President of Iran. *Id.* Rafsanjani was President of Iran at the time of Dr. Bakhtiar's death. Tr. at 35 (Boroumand); *see also* Exhibit 119 at 32 (Testimony of Kenneth Timmerman, founder of Foundation for Democracy in Iran).

2. The United States State Department has designated Iran a state sponsor of terrorism since 1984. *Higgins v. Islamic Republic of Iran*, 2000 U.S. Dist. LEXIS 22173, *14 (D.D.C. Sept. 21, 2000); *see also* Exhibits 1-13 (United States Department of State, Patterns of Global Terrorism, 1989-2001). Iran's support for international terrorism in part has led the United States to declare a national emergency "to deal with the threat to national security, foreign policy, and economy of the United States." Exhibit 28 (Notice: Continuation of Iran Emergency). This national emergency has not been lifted. Tr. at 160-61 (Clawson).
3. Defendant Ministry of Information and Security ("MOIS"), is Iran's intelligence service. Tr. at 141 (Clawson). Iran has admitted that MOIS has engaged in the killing of dissidents. Tr. at 41-42 (Boroumand). The United States Department of State concluded in its *Patterns of Global Terrorism: 1991* publication,³ covering the time period at issue in this case, that "Iranian intelligence services continue to facilitate and conduct terrorist attacks, particularly against regime opponents living abroad. This policy is undertaken

³ Dr. Clawson testified that the State Department's *Patterns of Global Terrorism* report "is probably the most . . . respected report from the U.S. government about terrorism." Tr. at 154 (Clawson).

with the approval of the highest levels of the regime” Exhibit 3 at 30. Furthermore, American courts have found MOIS responsible for coordinating numerous terrorist attacks in the Middle East and Europe. See e.g. *Wagner v. Islamic Republic of Iran*, 172 F. Supp. 2d 128 (D.D.C. 2001); *Jenco v. Islamic Republic of Iran*, 154 F. Supp. 2d 27 (D.D.C. 2001); *Sutherland v. Islamic Republic of Iran*, 151 F. Supp. 2d 27 (D.D.C. 2001); *Elahi v. Islamic Republic of Iran*, 124 F. Supp. 2d 97, 101 (D.D.C. 2000); *Eisenfeld v. Islamic Republic of Iran*, 172 F. Supp. 2d 1, 6 (D.D.C. 2000); *Anderson v. Islamic Republic of Iran*, 90 F. Supp. 2d 107, 112 (D.D.C. 2000); *Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 9 (D.D.C. 1998).

4. Ayatollah Fallahian was head of the MOIS at the time of Dr. Bakhtiar’s death. Exhibit 119 at 32 (Timmerman testimony). Fallahian has made public comments taking responsibility for the killing of members of foreign-based groups which oppose the Iranian regime. Exhibit 23 at 55 (Thomas Sancton, *The Teheran Connection*, Time 50 (Mar. 21, 1994)) (“In an August 1992 interview on Iranian TV, Fallahian openly boasted of his organization’s success in stalking Teheran’s opponents. ‘We track them abroad too,’ he said. ‘Last year [1991, the year of Bakhtiar’s assassination] we succeeded in striking fundamental blows to their top members.’”) (parenthetical in original); see also Tr. at 21-22, 51 (Boroumand); Exhibit 24 at 13 (Amnesty International, *Iran: Official Secrecy Hides Continuing Repression* (May 1995)).

Plaintiff and Her Relationship with her Father

5. Plaintiff France Mokhateb Rafii is the youngest of Dr. Bakhtiar’s four children. Tr. at 189-94 (France Rafii). She was born on March 13, 1948 in Abadan, Iran. *Id.* at 194;

- Exhibit 53 (Certificate of Naturalization). Plaintiff lives in Virginia, with her husband, Kiumars, and has three sons, Furosh, Farad, and Chapour. Tr. at 189-90 (France Rafii).
6. Plaintiff's parents were divorced in 1953, but she continued to live with her father. *Id.* at 195. Plaintiff described her relationship with her father as being "close" and testified that "[h]e was a great father." *Id.* After graduating from high school in 1963, Plaintiff spent time in France and the United States. *Id.* at 197-98. In 1975 she returned to Iran with her husband and her son Furosh, and during this period of time saw her father every day. *Id.* at 199.
 7. After the overthrow of the Shah, Plaintiff was the only child of Dr. Bakhtiar living in Iran. *Id.* at 201. In the early days of the revolutionary regime, Dr. Bakhtiar was forced into hiding, and Plaintiff would visit him occasionally even though her father feared her visits could result in her death. *Id.*
 8. In 1979, both Plaintiff and her father managed to escape Iran, with Dr. Bakhtiar settling in Paris, France, and Plaintiff in the Washington, D.C. area. *Id.* at 203-04. Plaintiff was naturalized as a United States citizen on February 21, 1991. *Id.* at 209; Exhibit 53. Between 1981 and 1990, Plaintiff would visit her father at least twice a year for monthly stays and Dr. Bakhtiar visited her in the United States three times. *Id.* at 206. Plaintiff and her family also spoke with her father by telephone every Sunday. Tr. at 168 (Farhad Rafii) (describing the Sunday telephone conversations as "almost a family ritual").
 9. Plaintiff testified that the death of her father was very painful for her. Ms. Rafii testified that she is "not the same person" since his murder, Tr. at 216 (France Rafii), and that she cries for her father "every day," *id.* at 220. After Dr. Bakhtiar's death, Ms. Rafii

continually faced publicity and references to his murder in the press. *Id.* at 227. When asked to describe her grief, Plaintiff responded: “I cannot put it in words I cry. I cannot explain my feelings. I’m really sad.” *Id.* at 231. Plaintiff’s sister, Vivian, who was ill at the time of Dr. Bakhtiar’s murder, died shortly after his funeral, and Plaintiff believes her death was hastened by the news of her father’s death. *Id.* at 215-16. Plaintiff’s brother, Guy, who discovered Dr. Bakhtiar’s body, was diagnosed with cancer within a year of his father’s death and died shortly after the French criminal trial for Dr. Bakhtiar’s murder. *Id.* at 214, 219. Plaintiff believes his death was a result of stress related to the assassination. *Id.* at 219. Plaintiff’s son, Farhad Rafii, testified that he had never seen his mother cry the way she did after her father’s death, and that although she has always been someone who tries not to show emotion in front of her children, since her father’s death she has difficulty concealing her sadness. Tr. at 170, 171 (Farhad Rafii). Plaintiff’s husband, Kiumars Rafii, also testified that he had never seen his wife as upset as when she learned the news of her father’s death and attended his funeral. Tr. at 183 (Kiumars Rafii). Mr. Rafii stated that his wife has “just changed since all these incident [sic] and quite a bit of suffering.” *Id.* at 185.

Dr. Chapour Bakhtiar

10. Dr. Chapour Bakhtiar earned a Ph.D. in law and philosophy. Tr. at 65 (Boroumand). During World War II, he fought with the French resistance. *Id.* at 66. He worked in the labor movement in Iran, and was an advocate of democracy in Iran. *Id.* According to Dr. Boroumand, Dr. Bakhtiar could easily have joined the government of the Shah and taken the opportunity to ascend to the highest offices of that regime. Tr. at 66 (Boroumand).

However, he refused and instead served in opposition to the regime, often spending time in jail as a result of his political activities. *Id.*; Tr. at 195 (France Rafii). His imprisonment was one of the causes of his divorce from the Plaintiff's mother. Tr. at 195 (France Rafii).

11. Dr. Bakhtiar was appointed Prime Minister of Iran in January 1979 and served in that capacity for thirty seven days until Khomeini returned to Iran and led an insurrection which toppled the regime. Tr. at 12-13 (Boroumand).
12. With the rise of the Khomeini regime in Iran, Dr. Bakhtiar's life was in danger. Tr. at 14 (Boroumand). Dr. Bakhtiar remained popular after the fall of the Shah's regime, a fact that worried Iran's leadership. Tr. at 16 (Boroumand). On May 14, 1979, Ayatollah Khalkhali, a religious judge and Chairman of the Revolutionary Court, in an interview in the Iranian newspaper *Kayan*, announced his intention to eliminate "the corrupters on earth," naming Dr. Bakhtiar specifically as a criminal who had incurred the death penalty. Exhibit 68 at 3 (Translation of Judge Bruguiere's Report in the Bakhtiar Murder Case). "Corrupter on earth" is a key phrase, indicating that a *Fatwa*, a religious judgment, has been issued for that person's death. Tr. at 33-34 (Boroumand); *see also* Tr. at 133 (Boedels); Tr. at 142 (Clawson) (stating his certainty that a *Fatwa* was issued for Dr. Bakhtiar's death). This *Fatwa* instructed Muslims anywhere in the world that they could legally kill Dr. Bakhtiar. Tr. at 34 (Boroumand). The *Fatwa* on Dr. Bakhtiar's life was reiterated on December 7, 1979 by Ayatollah Kahlkahli. Exhibit 68 at 4.
13. After a period of hiding in Iran, Dr. Bakhtiar fled to Paris where he started a group called the National Movement for the Iranian Resistance, or NAMIR, with Dr. Abdul Raman

Boroumand. Tr. at 14-16 (Boroumand). NAMIR was a major Iranian dissident group based outside of Iran. *Id.* at 16.

14. In 1980 there was an attempt to kill Dr. Bakhtiar in Paris. *Id.* The gunman killed a policeman and a neighbor in the attack, but failed to kill Dr. Bakhtiar. *Id.* at 17. A man named Anish Naccache was found guilty of the attack, and the French court found that Naccache was acting pursuant to the order of Ayatollah Khomeini to assassinate Dr. Bakhtiar. Tr. at 129-31 (Boedels). Naccache was sentenced to life imprisonment, but was released to Iran by France in 1990. Tr. at 28 (Boroumand); Tr. at 130 (Boedels).

Iran's Involvement in the Assassination of Iranian Dissidents Abroad
and the Assassination of Dr. Bakhtiar

15. The Court heard substantial testimony that Iran had a clear policy of assassinating dissidents at home and abroad. Iran has been linked to the assassination of leaders from the following Iranian dissident groups: the Kurdish Democratic Party of Iran, the National Council of Resistance, the Mujaheddin, NAMIR, and the Flag of Freedom. Tr. at 22-25 (Boroumand); Tr. at 147-149 (Clawson); Tr. at 98 (Ganji) (stating that practically all of a list of 70 major leaders of the Iranian resistance outside Iran had been assassinated by Iran). The effect of these assassinations has been to inhibit the activities of these and other Iranian resistance groups. Tr. at 149 (Clawson).
16. Iran's involvement in the assassination of political dissidents waned in the later years of the Khomeini regime. Tr. at 145 (Clawson). However, beginning in 1989, with the end of the Iran-Iraq war and the appointment of Rafsanjani as President of Iran, "there was a whole rash of assassinations of dissidents abroad" and "a period of stepped-up Iranian-

sponsored terrorism in general.” *Id.* Dissidents were murdered in Austria, Switzerland, France, Germany, Iraq, Turkey and the United States. *Id.* at 145-46.

17. In 1990, Dr. Cyrus Elahi, a leader of the Flag of Freedom group, an Iranian dissident organization based in France was assassinated in France. Tr. at 82-83 (Ganji), Tr. at 25 (Boroumand). *See also Elahi*, 124 F. Supp. 2d at 105 (finding Elahi’s death “was an act of assassination undertaken and directed by agents of defendant MOIS at the behest of . . . Islamic Republic of Iran”); Exhibits 49-50 (French court documents finding Iran responsible for Elahi’s death); Tr. at 128 (Boedels). In 1991, Dr. Abdol Raman Boroumand, a co-founder of NAMIR, was assassinated in France. Tr. at 15-16, 30 (Boroumand). Judge Jean-Louis Bruguiere, a French judge, found the Iranian government responsible for this killing as well. *Id.* at 36. A *Fatwa* had been issued on Mr. Boroumand’s life. *Id.* at 34. The official newspapers in Iran, in announcing Dr. Abdol Raman Boroumand’s death, labeled him a “corrupter on earth.” *Id.* at 33.
18. Dr. Bakhtiar was living under a heavy security presence twenty-four hours a day in France at this time. Tr. at 26 (Boroumand). After the attempted assassination in 1980, French special police began providing security for Dr. Bakhtiar. Tr. at 90 (Ganji); Tr. at 27 (Boroumand). A police truck with policemen was stationed outside his home, and the basement of his house was turned into guard quarters where four special police from the French riot squad lived. Tr. at 90 (Ganji); Tr. at 213 (France Rafii). Dr. Bakhtiar restricted his excursions outside his home, and when he did leave his house he was taken out in armored cars. Tr. at 26 (Boroumand). His son, Guy Bakhtiar, was a French policeman and was in charge of security for Dr. Bakhtiar. Before anyone, including his

own family, could visit Dr. Bakhtiar, they had to submit to a search and present a passport which was kept by the police until the visitor left. Tr. at 208 (France Rafii).

19. On August 6, 1991, Guy Bakhtiar left Paris on a two day trip. Tr. at 213 (France Rafii). At around 5:00 pm, Dr. Bakhtiar received an expected visit from Farydoun Boyerahmadi, a member of NAMIR and a close associate. Exhibit 68 at 2-3 (Translation of Judge Bruguiere's Report in the Bakhtiar Murder Case). Boyerahmadi was accompanied by Mohammad Azadi and Ali Vakili Rad. *Id.* Dr. Bakhtiar had never met Azadi nor Rad. *Id.* at 2. Boyerahmadi has been found to have been an Iranian agent who successfully infiltrated NAMIR. Tr. at 104 (Ganji). He and the two other men murdered Dr. Bakhtiar and his assistant, Foroush Katibeh, using two kitchen knives. Exhibit 68 at 1; Exhibit 70 at 6 (Translation of the Statement of the Prosecution in the Chapour Bakhtiar Trial); Tr. at 183 (K. Rafii). It is clear that the murderers took efforts to mutilate Dr. Bakhtiar's body.⁴ Exhibit 68 at 1; Tr. at 105 (Ganji) (stating that Dr. Bakhtiar's murder "was the most savage that we have seen outside of" Iran); Tr. at 39 (Boroumand). Despite the fact French police were stationed in the house for Dr. Bakhtiar's protection, that the lights and television in the house remained on, and that groceries were left waiting outside his door, Dr. Bakhtiar's murder was not discovered until August 8, 1991, two days after his death. Exhibit 68 at 2; Tr. at 213 (France Rafii). The murder was only discovered upon Guy Bakhtiar's return from his trip. Tr. at 214 (France Rafii).

⁴ The Court heard testimony that mutilation of the corpse is a trait of Iran-ordered killings. This practice is meant to frighten other dissidents. Tr. at 106 (Ganji). The butchery involved is also meant "to insult [the victim]. What they aim at, not only the life of a dissident, but also its dignity." Tr. at 39 (Boroumand).

The French Investigation and Trial

20. The French judicial system is different from that of the United States. In France, Magistrate Judges are charged with investigating crimes. Tr. at 112 (Boedels). In cases involving terrorism, the Magistrate finds and examines witnesses and then gives an “interrogatory commission” to the police in order to discover who was responsible for the death. *Id.* at 113. At the end of the investigation, the Magistrate issues a judicial determination of the guilt or innocence of the accused, and sends the investigation file to the state attorney who prepares a report, called a *requisitoire*, ordering the Magistrate to send the file to a special section of the Court of Appeal, which at the time of the Bakhtiar case was called the *Chambre D’Accusation*. *Id.* at 117-19. If the three-judge *Chambre D’Accusation* panel agrees with the findings, the report is sent to the *Court of Assizes* which determines whether the “accusation” is to be dismissed or upheld and pronounces the sentence. Tr. 118-19 (Boedels). Attorneys representing the victim or the victim’s family have access to the investigation file and the opportunity to intervene in the case after the Magistrate has made his investigation. *Id.* at 114. If the attorney is not happy with the conclusions reached in the investigation, he may appeal the decision to the Court of Appeal. *Id.*
21. In the case of Dr. Bakhtiar’s murder, Judge Jean-Louis Bruguiere was the investigating Magistrate. Tr. at 113 (Boedels). Judge Bruguiere is the judge who handles terrorism cases in France. *Id.* He specializes in Iranian terrorism cases and also handled the Elahi and Boroumand murder investigations. *Id.* He is known to be accurate and thorough in his work, “even when inconvenient to the government’s concern.” Tr. at 153 (Clawson).

Judge Bruguiere's investigation concluded that Boyerahmadi, Rad and Azadi perpetrated the murder and that Iran was behind the assassination of Dr. Bakhtiar. Tr. at 118 (Boedels); Exhibit 68 at 14 (Translation of Judge Bruguiere's Report in the Bakhtiar Murder Case).

22. With regard to the Iranian connection to Dr. Bakhtiar's assassination, Judge Bruguiere found the following. On May 29, 1991, "in Teheran two passports were delivered to Vakili Rad and Azadi under the assumed names of Kamal Hosseini and Norian The Iranian public authorities in charge of passport delivery are either disorganized . . . or were acting in connivence [sic] with two of Mr. Bakhtiar's murderers. The second alternative shall be accepted, considering that in June and July 1991 some of the representatives of the Iranian High-Ranking Civil Service— businessmen and members of the Iranian Consular Staff— acted personally within the criminal conspiracy." Exhibit 68 at 15. In mid-June 1991, Hossein Sheik Attar, a member of the Iranian Telecommunication Civil Service, arranged via Seyed Hendi,⁵ to obtain business invitations for Rad and Azadi from the French company Syfax— a necessary requirement for the approval of their visas. *Id.* at 5, 15, 17. At the same time, Shoorideh Shirazi, an Iranian businessman and "VIP,"⁶ arranged for the entry of Nasser Ghasmi Nejad into

⁵ Magistrate Bruguiere found Hendi "was, if not a member of [Islamic Republic of Iran Broadcasting], at least part of the people who enjoyed a normal access to the work structure corresponding to the international department and the possibility to communicate with its Chairman and Managing Director in office and the French branch." Exhibit 68 at 24. The investigation found the private phone number of the Iranian Vice-Secretary of Security and the head of Iran's Department of Islamic Orientation in his electronic organizer. *Id.* at 26.

⁶ Shoorideh was found to have "acquaintances within the High-Ranking Civil Service of the State of Iran," and "was in contact with Iranian leaders." Exhibit 68 at 30.

Switzerland in order to facilitate the escape of the assassins. *Id.* at 15, 29. On July 16, 1991 “the State Department of the Islamic Republic of Iran delivered an assignment order to Zeynolabedine Sarhadi in order to have him reach Switzerland between July 21 and October 21, 1991.” *Id.* at 15. Sarhadi was found to be an “employee from the Iranian Department of State . . . and personally helped and assisted Ghasmi Nejad and Azadi.” *Id.* at 38. The French investigation also concluded that “the conspiracy kept functioning within [the Iranian Department of Telecommunications] during the period corresponding to that of the murderers’ escape.” *Id.* at 20. The “conspiracy of criminal purpose was organized according to a three-pole pattern: Department of Telecommunications–[Islamic Republic of Iran Broadcasting]–State Department.” *Id.* at 38. The report also states that the murderers received material support in Turkey prior to entering France to assassinate Dr. Bakhtiar, and that Iranian intelligence officials⁷ were involved in this aspect of the conspiracy. *Id.* at 40-41; Tr. at 103 (Ganji). This fact led Judge Brugiere to conclude that “the Iranian Intelligence contributed to the functioning of the criminal conspiracy indeed.” Ex. 68 at 40.

23. Judge Brugiere’s report was sent to the *Chambre D’Accusation*, which agreed that Iran and its intelligence service were behind the assassination. Tr. at 119 (Boedels); *see also* Exhibit 68 (Translation of Judge Brugiere’s Report in the Bakhtiar Murder Case); Tr. at 32 (Boroumand). The report was then sent to the *Court of Assizes* which convicted three defendants of the murder in 1995. Tr. at 119 (Boedels); *see also* Exhibit 52:2 at 2

⁷ As stated in Part II ¶ 3, this Court has determined that MOIS is Iran’s intelligence service. *See also* Tr. at 141 (Clawson) (stating that in 1984 the Iranian intelligence service was formally made a Ministry and became known as MOIS).

(German Federal Public Prosecutor Jost's Preliminary Investigation of Ali Fallahijan) (stating that testimony was presented at the trial that two of the perpetrators of Dr. Bakhtiar's murder were members of the MOIS).

24. During the trial in the *Court of Assizes*, the judges heard testimony in the form of letters rogatory from Witness C, an Iranian official who defected and testified in a German case concerning an Iran-backed assassination which took place in 1992. Tr. at 115-16, 120 (Boedels).⁸ Witness C testified that "there was a special section within the Iranian government which was in charge of assassination [sic] of freedom fighter [sic]." *Id.* at 120. Mr. Jacques Boedels, attorney for the Bakhtiar family, conducted a telephonic interview with Witness C. *Id.* at 116. Mr. Boedels testified in this case that Witness C told him that the assassination of Dr. Bakhtiar was "organized by MOIS." *Id.* at 125-26.
25. The *Bundeskriminalamt*, or BKA, the German equivalent of the American Federal Bureau of Investigation, conducted an investigation of Iranian state-sponsored terrorism and issued a report with its findings. Tr. at 122 (Boedels); Exhibit 21 (Translation of BKA report: "Findings Regarding the Iranian State's Terrorism"). The BKA concluded that the assassination of Dr. Bakhtiar was ordered and organized by the Iranian government. Tr. at 123 (Boedels); Exhibit 21 at 4-5. The United States Department of State also concluded that Iran was responsible for Dr. Bakhtiar's assassination. Exhibit 3 at 30 (United States Department of State, *Patterns of Global Terrorism: 1991 (1992)*);⁹ Tr. at

⁸ A German court determined that the 1992 assassination in the Mykonos restaurant in Germany "was set in motion by Iran's rulers." Exhibit 52:3 (Translation of the Mykonos Verdict).

⁹ As stated in footnote 3, *supra*, *Patterns of Global Terrorism* is "probably the most . . . respected report from the U.S. government about terrorism." Tr. at 154 (Clawson).

156 (Clawson). Dr. Clawson testified that based on what he has read and researched “[t]here’s no doubt whatsoever” that MOIS and the Iranian government were responsible for the assassination of Dr. Bakhtiar. Tr. at 150 (Clawson).

III. CONCLUSIONS OF LAW

The Foreign Sovereign Immunities Act, 28 U.S.C. §1602 *et seq.* (“FSIA”) provides that federal courts lack subject matter jurisdiction to entertain claims against foreign states unless those claims fall into one of the exceptions provided in the Act. Section 1605(a)(7) provides:

A foreign state shall not be immune from jurisdiction of the courts of the United States or of the States in any case . . . in which money damages are sought against a foreign state for personal injury or death that was caused by an act of . . . extrajudicial killing . . . , or the provision of material support or resources . . . for such an act if such act or provision of material support is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employment, or agency

28 U.S.C. § 1605(a)(7). In addition, the foreign state defendant must be “designated as a state sponsor of terrorism” and either “the claimant [or] the victim [must be] a national of the United States . . . when the act upon which the claim is based occurred.” *Id.* §§ 1605(a)(7)(A)-(B). A note to Section 1605(a)(7), commonly referred to as the Flatow Amendment, *see Flatow v. Islamic Republic of Iran*, 999 F. Supp. 1, 12 (D.D.C. 1998), provides a cause of action over

[a]n official, employee, or agent of a foreign state designated as a state sponsor of terrorism . . . while acting within the scope of his or her office, employment, or agency . . . for money damages which may include economic damages, solatium, pain and suffering, and punitive damages if the acts were among those described in section 1605(a)(7).

28 U.S.C. § 1605 note; *see also Flatow*, 999 F. Supp. at 12-13 (examining the Flatow Amendment and determining that it “should be considered to relate back to the enactment of 28 U.S.C. § 1605(a)(7) as if they had been enacted as one provision, and the two provisions should

be construed together and in reference to one another”). The Flatow Amendment prohibits such actions, however, “if an official, employee, or agent of the United States, while acting within the scope of his or her office, employment, or agency would not be liable for such acts if carried out within the United States.” 28 U.S.C. § 1605 note.¹⁰

Taking all of these statutory requirements into account, Plaintiff, in order to “establish subject matter jurisdiction and state a claim pursuant to the FSIA,” must establish the following elements:

- (1) that personal injury or death resulted from an act of . . . extrajudicial killing; and
- (2) the act was either perpetrated by a foreign state directly or by a non-state actor which receives material support or resources from the foreign state defendant; and
- (3) the act or provision of material support or resources is engaged in by an agent, official, or employee of the foreign state while acting within the scope of his or her office, agency, or employment; and
- (4) that the foreign state be designated as a state sponsor of terrorism either at the time the incident complained of occurred or was later so designated as a result of such act; and
- (5) if the incident complained of occurred within the foreign state defendant’s territory, plaintiff has offered the defendants a reasonable opportunity to arbitrate the matter; and
- (6) either the plaintiff or the victim was a United States national at the time of the incident; and
- (7) similar conduct by United States agents, officials, or employees within the United States would be actionable.

¹⁰ Congress explicitly provided that this cause of action could be applied retroactively to events occurring prior to its passage in 1996. See Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 221(c) (“The amendments made by this subtitle shall apply to any cause of action arising before, on, or after the date of the enactment of this Act [Apr. 24, 1996].”); *Flatow*, 999 F. Supp. at 13 (“Although the application of statutes to pre-enactment conduct is traditionally disfavored, where Congress has expressly prescribed the statute’s proper reach, there is no need to resort to judicial default rules.”) (citations and internal quotation marks omitted). However, the FSIA permits actions to be brought pursuant to Section 1605(a)(7) only when “commenced not later than 10 years after the date on which the cause of action arose.” 28 U.S.C. § 1605(f). But “[a]ll principles of equitable tolling, including the period during which the foreign state was immune from suit . . . apply in calculating this limitation period.” *Id.* Since Dr. Bakhtiar was killed on August 6, 1991, and Plaintiff filed her suit on April 18, 2001, the Court finds this suit is not barred by the FSIA’s statute of limitations.

Elahi, 124 F. Supp. at 106-07. In making out her case, Plaintiff must establish her “claim or right to relief by evidence satisfactory to the court.” 28 U.S.C. § 1608(e). Although the “satisfactory” standard has been subject to various interpretations, *see Ungar v. Islamic Republic of Iran*, 211 F. Supp. 2d 91, 98 (D.D.C. 2002) (discussing the various standards applied in Section 1605(a)(7) cases), the Court accepts the *Ungar* determination “that the correct standard . . . is the standard for granting judgment as a matter of law under [Federal Rule of Civil Procedure] 50(a) – a legally sufficient evidentiary basis for a reasonable jury to find for plaintiff.” *Id.*

1. Extrajudicial Killing

Dr. Bakhtiar’s murder was an extrajudicial killing. The FSIA states that the term “extrajudicial killing” shall “have the meaning given [that term] in section 3 of the Torture Victim Protection Act of 1991.” 28 U.S.C. 1605(e)(1). That Act defines extrajudicial killing as “a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.” 28 U.S.C. § 1350 note.

Dr. Bakhtiar’s murder was a deliberate act. The evidence clearly shows that his death was meticulously planned and this plan was intentionally executed. Second, Dr. Bakhtiar’s murder was not authorized by “the judicial process contemplated by the statute.” *Elahi*, 124 F. Supp. 2d at 107. Lastly, it is clear that “[a] state violates international law if, as a matter of state policy, it practices, encourages, or condones . . . the murder or causing the disappearance of individuals.” Restatement (Third) of Foreign Relations Law of the United States § 702(c)

(2002); *see also Elahi*, 124 F. Supp. 2d at 107 (listing cases finding “assassination is ‘clearly contrary to the precepts of humanity as recognized in both national and international law’”). Therefore, Dr. Bakhtiar’s killing cannot be said to have been “lawfully carried out under the authority of a foreign nation.”

2. Foreign State Actor

The uncontroverted evidence in this case satisfies the Court that the assassination of Dr. Bakhtiar was done in furtherance of the policies of the Islamic Republic of Iran, initiated—at the very least— by a high-level Iranian official, facilitated by various organs of the Iranian government, and perpetrated by Iranian agents. The Court is also satisfied that Defendant MOIS was engaged in the assassination plot and its execution.¹¹ As the *Elahi* court noted in its decision regarding the assassination of Flag of Freedom leader Dr. Elahi, judges have found Iran liable in cases “where its involvement . . . in terrorist acts was much less direct and involved only the provision of support and resources to terrorist groups.” *Elahi*, 124 F. Supp. 2d at 108. In both this case and that of *Elahi*, the victims were specifically targeted for death by officials and agents of the Iranian government because of their views and the threat they were perceived to pose to the Iranian regime.¹²

3. State Sponsor of Terrorism

The FSIA requires that for a court to have jurisdiction to hear a case under Section

¹¹ The FSIA defines “foreign state” as including “a political subdivision of a foreign state or an agency or instrumentality of a foreign state.” 28 U.S.C. §§ 1602(a), (b). Therefore, MOIS is also liable under the FSIA. *See Elahi*, 124 F. Supp. 2d at 108 n.11.

¹² The Court’s finding on this element of the FSIA analysis also satisfies the third prong of the analysis, as it is clear the perpetrators were acting within the “scope of [their] office, agency or employment” with Iran.

1605(a)(7) the foreign state must have been “designated as a state sponsor of terrorism under section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)) or section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) at the time the act occurred” 28 U.S.C. § 1505(a)(7)(A). Both provisions require the Secretary of State to publish a list of countries that support terrorism. *See* 50 App. U.S.C. 2405(j); 22 U.S.C. 2371(a)-(b). The Court determines that Iran was designated as a state sponsor of terrorism in 1991, the year Dr. Bakhtiar was killed, as defined by the FSIA. *See* Exhibit 3 at 30 (United States Department of State, Patterns of Global Terrorism: 1991 (1992)); Exhibit 4 at 22 (United States Department of State, Patterns of Global Terrorism: 1992 (1993)).

4. United States National

The FSIA requires either the claimant or the victim to be “a national of the United States (as that term is defined in section 101(a)(22) of the Immigration and Nationality Act) when the act upon which the claim is based occurred.” 28 U.S.C. § 1605(a)(7)(B)(ii). “The term ‘national of the United States’” includes “citizen of the United States.” 8 U.S.C. § 1101(a)(22). Plaintiff has established that she was a United States national at the time of her father's death. Exhibit 54 (France Mokhateb Rafii Certificate of Naturalization, Feb. 21, 1999); Tr. at 209 (France Rafii). Therefore, Plaintiff was eligible to bring this claim under the FSIA.¹³

¹³ As the murder of Dr. Bakhtiar took place in France and not Iran, the fifth element of the FSIA analysis is not applicable to the present case. *See* 28 U.S.C. § 1605(a)(7)(B)(i). As for the seventh element of the analysis, that similar conduct by United States agents, officials or employees within the United States would be actionable, “[t]here can be no serious dispute that if officials or agents of the United States, while acting in their official capacities, arranged for and directed the assassination of a critic of the United States government, they would not be immune from civil suits” *Elahi*, 124 F. Supp. 2d at 108 n.14 (citing U.S. Const. amend. V; *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)).

IV. DAMAGES

The FSIA, under the Flatow amendment, explicitly provides damages for successful plaintiffs in suits brought under Section 1605(a)(7). 28 U.S.C. § 1605 note. Specifically, the Flatow amendment provides for “money damages which may include economic damages, solatium, pain, and suffering, and punitive damages if the acts were among those described in section 1605(a)(7). *Id.*”

A. Count I: Loss of Solatium

1. Legal Standard for Awarding Solatium Damages

Solatium is defined as “Compensation; esp., damages allowed for hurt feelings or grief, as distinguished from damages for physical injury.” Blacks Law Dictionary 1397 (7th ed. 1999). “Thus mental anguish, bereavement and grief resulting from the fact of decedent’s death constitutes the preponderant element of a claim for solatium.” *Flatow*, 999 F. Supp at 30; *see also id.* at 29-30 (discussing the solatium remedy in general). The Court finds Judge Lamberth’s description of the solatium analysis particularly insightful and helpful.

Spouses and relatives in direct lineal relationships are presumed to suffer damages for mental anguish. . . . Proof relies predominantly on the testimony of claimants, their close friends, and treating medical professionals, as appropriate. Obvious distress during testimony, or the claimant's inability to testify due to intense anguish is usually considered in fixing the amount for solatium. Testimony which describes a general feeling of permanent loss or change caused by decedent's absence has been considered a factor to be taken into account in awarding damages for solatium. Medical treatment for depression and related affective disorders is another strong indicator of mental anguish. The body may also react to the stress of anguish with pain or illness, particularly stomach and chest pain, and documentation of such disorders are germane to the calculation of solatium.

Courts have also recognized that in the long term, the sudden death of a loved one may manifest itself as “a deep inner feeling of pain and anguish often borne in silence.” Individuals can react very differently even under similar circumstances; while some sink into clinical depression and bitterness, others attempt to salvage something constructive

from their personal tragedy. Such constructive behavior should not be considered as mitigating solatium, but rather as an equally compensable reaction, one in which courage to face their own mental anguish prevails in order to survive, and in some circumstances, to benefit another.

A separate loss which is encompassed within solatium is the loss of decedent's society and comfort. . . . Many jurisdictions have now expanded recovery for loss of comfort and society to include all benefits which the claimant would have received had decedent lived. "Society" has evolved to include "a broad range of mutual benefits which 'each family member' receives from the other's continued existence, including love, affection, care, attention, companionship, comfort and protection."

The calculations for mental anguish and loss of society share some common considerations. First, the calculation should be based upon the anticipated duration of the injury. Claims for mental anguish belong to the claimants and should reflect anticipated persistence of mental anguish in excess of that which would have been experienced following decedent's natural death. When death results from terrorism, the fact of death and the cause of death can become inextricably intertwined, thus interfering with the prospects for anguish to diminish over time.

The nature of the relationship between the claimant and the decedent is another critical factor in the solatium analysis. If the relationship is strong and close, the likelihood that the claimant will suffer mental anguish and loss of society is substantially increased, particularly for intangibles such as companionship, love, affection, protection, and guidance. Numerous factors enter into this analysis, including: strong emotional ties between the claimant and the decedent; decedent's position in the family birth order relative to the claimant; the relative maturity or immaturity of the claimants; whether decedent habitually provided advice and solace to claimants; whether the claimant shared interests and pursuits with decedent; as well as decedent's achievements and plans for the future which would have affected claimants.

Finally, unlike lost wages, which can be calculated with a fair degree of mathematical certainty, solatium cannot be defined through models and variables. Courts have therefore refused to even attempt to factor in the present value of future mental anguish and loss of society. While economic losses can be reduced to present value with simple equations to establish the amount of an annuity established today which would have matched the decedent's ostensible income stream, the scope and uncertainty of human emotion renders such a calculation wholly inappropriate. This is the paradox of solatium; although no amount of money can alleviate the emotional impact of a child's or sibling's death, dollars are the only means available to do so.

Id. at 30-32 (citations omitted).

2. Court's Award of Solatium Damages

The testimony in this case has established that France Rafii had a close relationship with

her father. She and her father did not allow obstacles to keep them apart from each other. Growing up in Iran, she lived with her father even after her parents' divorce. After Dr. Bakhtiar was forced into hiding with the overthrow of the Shah, Ms. Rafii would risk her life to visit her father. Later, when she was settled in the United States and her father in France, she spent two months of the year with him in France and spoke with him once a week by telephone.

It is clear that despite the passage of over eleven years, Ms. Rafii still grieves for her father. Ms. Rafii, her son and her husband, all testified that she is a changed person since the death of her father. She testified she cries for her father every day. Although the details of the brutal manner in which Dr. Bakhtiar was killed and the "mutilation" performed on his body were carefully avoided by counsel, it is clear that this aspect of his death has added to the grief and horror of the Plaintiff. Furthermore, the fact that her father's death was a political assassination by the Islamic Republic of Iran means that the circumstances of his death are often carried in the press and difficult to avoid. Moreover, as Judge Lamberth noted in *Flatow*,

[e]ven where the death results from the most extreme forms of negligence, the primary visceral reaction is to the tragedy. This is not the case with deaths resulting from terrorist attacks, in which the tragedy itself is amplified by the malice which inspired the event. The malice associated with terrorist attacks transcends even that of premeditated murder. The intended audience of a terrorist attack is not limited to the families of those killed and wounded The terrorist's intent is to strike fear not only for one's own safety, but also for that of friends and family, and to manipulate that fear in order to achieve political objectives. Thus the character of the wrongful act itself increases the magnitude of the injury. It thus demands a corresponding increase in compensation for increased injury.

Id. at 30. The Court finds that this observation, made in the terrorism context, is equally relevant and applicable to the political assassination perpetrated in this case.

In fashioning Plaintiff's award, the Court is faced with the "paradox of solatium," and looks for guidance to the solatium awards of other courts in similar cases. In *Flatow*, the court

awarded each parent \$5,000,000, and each sister and brother \$2,500,000, in solatium for the death of Alisa Flatow which occurred in a terrorist attack. *Id.* at 32. In *Elahi*, the case with facts closest to the present matter, the court awarded \$5,000,000 to each brother of the assassinated Flag of Freedom leader Dr. Elahi. *Elahi* 124 F. Supp. 2d at 112. In *Eisenfeld*, the court awarded \$5,000,000 each to the parents, and \$2,500,000 to each sister of the two terrorist attack victims. *Eisenfeld*, 172 F. Supp. 2d at 9.

After considering the uncontroverted evidence of Defendants' actions and Plaintiff's subsequent grief, the Court awards Plaintiff France Rafii \$5 million in solatium.

B. Count II: Punitive Damages

1. Legal Standard for Awarding Punitive Damages

As noted above, punitive damage awards are available in actions brought pursuant to the Flatow Amendment. 28 U.S.C. § 1605(a)(7); 28 U.S.C. § 1605 note. Although punitive damages are available against a foreign state's agency or instrumentality, punitive damages are not available against a foreign state directly. 28 U.S.C. § 1606;¹⁴ *see also* Plaintiff's Pretrial Proposed Findings of Fact and Conclusions of Law ("Pl. Prop.") at 40. Plaintiff argues that Section 1606 "does not mean that punitive damages may not be awarded vicariously against a state sponsor of terrorism based upon the theory of *respondeat superior*. Pl. Prop. at 40.

Plaintiff's argument mirrors the reasoning of Judge Lamberth in *Flatow*:

¹⁴ Section 1606 provides: "As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages" 28 U.S.C. § 1606.

The FSIA is not intended to affect the substantive law of liability or the attribution of liability between co-defendants. Even if 28 U.S.C. § 1606 applies to causes of action brought directly against a foreign state pursuant to the state sponsored terrorism exception to immunity and the Flatow amendment, a foreign state sponsor of terrorism can still be indirectly liable for punitive damages under the principles of *respondeat superior* and vicarious liability.

Flatow, 999 F. Supp. at 25-26; *see also id.* at 27 (concluding “that a foreign state sponsor of terrorism is jointly and severally liable for all damages assessed against co-defendant officials, agents, and employees) (internal citations omitted).

The Court does not agree with the Plaintiff’s conclusion. First, the Court notes that the clearest indication of Congressional intent that the FSIA was “not intended to affect the substantive law of liability” is Section 1606, which states: “the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances.” 28 U.S.C. § 1606; *see also First Nat’l City Bank v. Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 620 (1983) (“The House Report on the FSIA states: ‘The bill is not intended to affect the substantive law of liability. Nor is it intended to affect . . . the attribution of responsibility between or among entities of a foreign state; for example, whether the proper entity of a foreign state has been sued, or whether an entity sued is liable in whole or in part for the claimed wrong.’”). However, the language of Section 1606 qualifies this intention by stating immediately thereafter “*but* a foreign state . . . shall not be liable for punitive damages.” 28 U.S.C. § 1606 (emphasis added). Furthermore, the language of Section 1606 was amended in October 2000. *See* Pub. L. No. 106-386, § 2002(f)(2) (2000). The amendment repealed language added in 1998 (after the *Flatow* decision) which excepted from the prohibition on the award of punitive damages against a foreign state actions brought pursuant to 28 U.S.C. § 1605(a)(7). The most

recently amended version of Section 1606 holds plainly that “a foreign state . . . shall not be liable for punitive damages.” 28 U.S.C. § 1606. Given the clear language of the amended provision, and the intent of Congress evident in the language the amendment repealed in 2000, this Court determines that it lacks the authority to award punitive damages directly or indirectly against the Islamic Republic of Iran. The Court also notes that Judge Lamberth has recently reached the same conclusion. See *Weinstein v. Islamic Republic of Iran*, 184 F. Supp. 2d 13, 28 n.1 (2002) (“The plaintiffs also seek punitive damages against the Islamic Republic of Iran itself. As the Court noted in *Elahi*, however, punitive damages may not be awarded against the Islamic Republic of Iran because ‘Congress recently repealed legislation that would have permitted punitive damages against a foreign state in cases, such as this one, brought under 28 U.S.C. § 1605(a)(7).’ . . . The Court’s decision in *Eisenfeld* predated this statutory change. Thus, while the Court did award such damages in *Eisenfeld*, it cannot do so in the instant case.”); see also *Elahi*, 124 F. Supp. 2d at 114 n.17; *Surette v. Islamic Republic of Iran*, 2002 U.S. Dist. LEXIS 21188, *17 n.6 (D.D.C. Nov. 1, 2002); *Stethem v. Islamic Republic of Iran*, 201 F. Supp. 2d 78, 92 (D.D.C. 2002) (“Punitive damages may not be assessed against the Islamic Republic of Iran . . .”); *Wagner*, 172 F. Supp. 2d at 134 n.9 (D.D.C. 2001) (“Punitive damages may not be assessed against the Islamic Republic of Iran . . .”); *Polhill v. Islamic Republic of Iran*, 2001 U.S. Dist. LEXIS 15322, *17 n.5 (D.D.C. Aug. 23, 2001) (stating “the FSIA exempts a foreign state from liability for punitive damages”); but see *Mousa v. Islamic Republic of Iran*, 2001 U.S. Dist. LEXIS 24316, *35 (D.D.C. Sept. 19, 2001) (awarding plaintiff punitive damages against both Iran and MOIS).

“Punitive damages are damages . . . awarded against a person to punish him for his

outrageous conduct and to deter him and others like him from similar conduct in the future. . . .

Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant." Restatement (Second) of Torts § 908 (1979). By making the victim "more than whole," punitive damages strive to spare others "a similar injury." *Anderson*, 90 F. Supp. 2d at 114. In *Alejandre v. Cuba*, 996 F. Supp. 1239 (S.D. Fla. 1997), the court described the particular suitability of punitive damages in FSIA cases or under the Alien Tort Claims Act. Quoting *Filartiga v. Pena-Irala*, 577 F. Supp. 860 (E.D.N.Y. 1984), the court noted:

[P]unitive damages are designed not merely to teach a defendant not to repeat his conduct but to deter others from following his example. To accomplish that purpose the court must make clear the depth of international revulsion against torture and measure the award in accordance with the enormity of the offense.

Alejandre, 996 F. Supp. at 1251. Punitive damages have been awarded often in cases brought under the FSIA. A multiple of the amount of defendant's terrorism expenditures was used to assess punitive damages in the *Anderson* case against the MOIS, awarding "thrice the MOIS' maximum annual budget for terrorist activities, or \$300 million." *Anderson*, 99 F. Supp. 2d at 114. The *Elahi* court also awarded \$300 million in punitive damages against the MOIS. *Elahi*, 124 F. Supp 2d at 114; *see also Sutherland*, 151 F. Supp 2d at 53 (awarding \$300 million in punitive damages against MOIS); *Wagner*, 172 F. Supp 2d at 138 (awarding \$300 million in punitive damages against MOIS).

2. The Court's Award of Punitive Damages

Dr. Clawson testified that Iran spends between \$50 million and \$200 million a year just on its efforts to assassinate dissidents outside of Iran. Tr. at 165 (Clawson). He also testified that Iran's oil and natural gas reserves are conservatively valued at more than a trillion dollars. *Id.* at 164. Evidence was also presented that recent punitive damage awards in FSIA actions have attracted Iran's attention. *Id.* at 151. According to Dr. Clawson, these awards have been "frequently cited as evidence[] of the strong pressure that the United States was placing on Iran as a result of Iran's support for the international terrorism. And this has encouraged a vigorous debate inside Iran about what would be the appropriate Iranian policy towards the United States" and "whether Iran should support terrorism." *Id.* at 151, 153-54. Dr. Clawson believes that a punitive damage award "would serve the purposes for which the law has been enacted." *Id.* at 165.

Iran's systematic campaign to assassinate Iranian dissidents no matter where they are located "violates fundamental precepts of international law that are binding on all members of the world community." *Elahi*, 124 F. Supp. 2d at 114. It is clear that the goal and effect of the Iranian government's policy of assassination has been to quiet opposition.

[The assassinations have] made many dissidents very fearful. It's discouraged people from becoming involved in dissident organizations. And it's also made people in dissident organizations suspicious of others in those groups wondering whether they might be agents of the Iranian government. . . . It inhibits those who would write for these organizations, and it very much inhibits people who would speak at their public activities.

Tr. at 149 (Clawson). Other courts have found Iranian efforts to stifle dissent and open expression appropriate grounds for the imposition of punitive damages. *See Anderson*, 90 F. Supp. 2d at 114 ("Yet another reason to award punitive damages in this particular case is to

vindicate the interest of society-at-large in the collection and dissemination of complete and accurate information about world conflicts.”). Furthermore, in this case, the MOIS assassinated an individual whom the Court finds was an inspiration to those in the Iranian dissident community as well as to advocates of human rights around the world. Dr. Clawson testified that “Dr. Bakhtiar was by far the best known person in Iran of all those dissidents who have been killed, and he was also the person who was best known and most respected in the European country where he was killed.” Tr. at 149-50 (Clawson). Dr. Ladan Boroumand testified as to the significance of Dr. Bakhtiar’s life and death:

Dr. Bakhtiar was a person who was involved with the fight for democracy in his country from right after the Second World War, and it is for me very important to talk about because his killing had a tremendous political meaning. The man was literally tied to a prodemocracy movement in Iran that started in the middle of 19th Century, and he never failed his ideals. He was . . . a very humble person. He never boasted. I’m discovering a lot of information about this person that I never heard while he was alive. And I think when a regime like the Islamic Republic kills people like this, not only when they kill any of the dissidents, they want to show the dissidents and the other Iranian who may dare oppose them that they are nonentities. When they come to the West they kill us and they go away with impunity. They signify to us that we are nonentities. And that is why it’s so important, justice become such an important matter, not for the sake of justice, but also for the sake of democracy.

Bakhtiar was a person who ideologically was faithful to human being. He really believed in the dignity of human being and, you know, all his life was dedicated to that. . . . And he really believed in the parliamentary regime and the rights of, you know, every citizen to participate in the making of its destiny. . . .

It is not only to scare us out, it is also -- the regime wants to tell the Iranian people that you see this man was a pro western man. He loved western democracy. He loved western values. By the way, these are universal value and are not western values. We can kill him. Under the nose of the French police nothing happens, nothing happens to our relations. These regimes, western regimes that you love so much, are not democracies, these are just money-oriented people. They want contracts. We give them contracts and we get you guys. So keep quiet and content yourself with our tyranny.

Tr. at 64-65, 67-68 (Boroumand).

The Court concludes that an award of punitive damages in the amount of \$300 million

against the MOIS in punitive damages is both appropriate and necessary due to the outrageousness of its evil conduct both in this case and in the assassination of Iranian dissidents in general.

V. CONCLUSION

Based on the foregoing reasons, the Court finds that Plaintiff has met her burden of producing evidence to the satisfaction of this Court that Defendants were responsible for the extrajudicial death of her father, Dr. Chapour Bakhtiar, and therefore liable under the Flatow Amendment to the Foreign Sovereign Immunities Act. Defendants shall be jointly liable for the Court's award of \$5 million in solatium to Plaintiff. Defendant Iran Ministry of Information and Security shall be liable for \$300 million to Plaintiff in punitive damages.

The Clerk of the Court shall enter judgment accordingly. An Order accompanies these Findings of Fact and Conclusions of Law.

Entered on:

Dec. 2, 2002


COLLEEN KOLLAR-KOTELLY
United States District Judge