

28 USC 1605: General exceptions to the jurisdictional immunity of a foreign state

Text contains those laws in effect on November 30, 2022

From Title 28-JUDICIARY AND JUDICIAL PROCEDURE

PART IV-JURISDICTION AND VENUE

CHAPTER 97-JURISDICTIONAL IMMUNITIES OF FOREIGN STATES

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§1605. General exceptions to the jurisdictional immunity of a foreign state

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case-

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to-

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That-

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained

by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

[(e), (f) Repealed. Pub. L. 110–181, div. A, title X, §1083(b)(1)(B), Jan. 28, 2008, 122 Stat. 341 .]

(g) LIMITATION ON DISCOVERY.-

(1) IN GENERAL.-(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for section 1605A or section 1605B, the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) SUNSET.-(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would-

- (i) create a serious threat of death or serious bodily injury to any person;
- (ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or
- (iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) EVALUATION OF EVIDENCE.-The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) BAR ON MOTIONS TO DISMISS.-A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

(5) CONSTRUCTION.-Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

(h) JURISDICTIONAL IMMUNITY FOR CERTAIN ART EXHIBITION ACTIVITIES.-

(1) IN GENERAL.-If-

(A) a work is imported into the United States from any foreign state pursuant to an agreement that provides for the temporary exhibition or display of such work entered into between a foreign state that is the owner or custodian of such work and the United States or one or more cultural or educational institutions within the United States;

- (B) the President, or the President's designee, has determined, in accordance with subsection (a) of Public Law 89–259 (22 U.S.C. 2459(a)), that such work is of cultural significance and the temporary exhibition or display of such work is in the national interest; and
- (C) the notice thereof has been published in accordance with subsection (a) of Public Law 89–259 (22 U.S.C. 2459(a)),

any activity in the United States of such foreign state, or of any carrier, that is associated with the temporary exhibition or display of such work shall not be considered to be commercial activity by such foreign state for purposes of subsection (a)(3).

(2) EXCEPTIONS.-

(A) **NAZI-ERA CLAIMS.**—Paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and—

- (i) the property at issue is the work described in paragraph (1);
- (ii) the action is based upon a claim that such work was taken in connection with the acts of a covered government during the covered period;
- (iii) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in section 1603(d); and
- (iv) a determination under clause (iii) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(B) **OTHER CULTURALLY SIGNIFICANT WORKS.**—In addition to cases exempted under subparagraph (A), paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and—

- (i) the property at issue is the work described in paragraph (1);
- (ii) the action is based upon a claim that such work was taken in connection with the acts of a foreign government as part of a systematic campaign of coercive confiscation or misappropriation of works from members of a targeted and vulnerable group;
- (iii) the taking occurred after 1900;
- (iv) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in section 1603(d); and
- (v) a determination under clause (iv) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(3) DEFINITIONS.—For purposes of this subsection—

(A) the term "work" means a work of art or other object of cultural significance;

(B) the term "covered government" means—

- (i) the Government of Germany during the covered period;
- (ii) any government in any area in Europe that was occupied by the military forces of the Government of Germany during the covered period;
- (iii) any government in Europe that was established with the assistance or cooperation of the Government of Germany during the covered period; and
- (iv) any government in Europe that was an ally of the Government of Germany during the covered period; and

(C) the term "covered period" means the period beginning on January 30, 1933, and ending on May 8, 1945.

(Added Pub. L. 94–583, §4(a), Oct. 21, 1976, 90 Stat. 2892 ; amended Pub. L. 100–640, §1, Nov. 9, 1988, 102 Stat. 3333 ; Pub. L. 100–669, §2, Nov. 16, 1988, 102 Stat. 3969 ; Pub. L. 101–650, title III, §325(b)(8), Dec. 1, 1990, 104 Stat. 5121 ; Pub. L. 104–132, title II, §221(a), Apr. 24, 1996, 110 Stat. 1241 ; Pub. L. 105–11, Apr. 25, 1997, 111 Stat. 22 ; Pub. L. 107–77, title VI, §626(c), Nov. 28, 2001, 115 Stat. 803 ; Pub. L. 107–117, div. B, §208, Jan. 10, 2002, 115 Stat. 2299 ; Pub. L. 109–304, §17(f)(2), Oct. 6, 2006, 120 Stat. 1708 ; Pub. L. 110–181, div. A, title X, §1083(b)(1), Jan. 28, 2008, 122 Stat. 341 ; Pub. L. 114–222, §3(b)(2), Sept. 28, 2016, 130 Stat. 853 ; Pub. L. 114–319, §2(a), Dec. 16, 2016, 130 Stat. 1618 .)

EDITORIAL NOTES

REFERENCES IN TEXT

Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure, referred to in subsec. (g)(4), are set out in the Appendix to this title.

AMENDMENTS

2016—Subsec. (g)(1)(A). Pub. L. 114–222 inserted "or section 1605B" after "but for section 1605A".

Subsec. (h). Pub. L. 114–319 added subsec. (h).

2008-Subsec. (a)(7). Pub. L. 110–181, §1083(b)(1)(A), struck out par. (7) which provided for lack of jurisdictional immunity in certain cases in which money damages were sought against a foreign state for personal injury or death caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act.

Subsecs. (e), (f). Pub. L. 110–181, §1083(b)(1)(B), struck out subsecs. (e) and (f) which defined "torture", "extrajudicial killing", "hostage taking", and "aircraft sabotage" and provided for a 10-year statute of limitations for actions brought under former subsec. (a)(7) of this section.

Subsec. (g)(1)(A). Pub. L. 110–181, §1083(b)(1)(C), substituted "but for section 1605A" for "but for subsection (a)(7)".

2006-Subsec. (d). Pub. L. 109–304 substituted "section 31301 of title 46" and "chapter 313 of title 46" for "the Ship Mortgage Act, 1920 (46 U.S.C. 911 and following)" and "that Act", respectively.

2002-Subsec. (a)(7)(A). Pub. L. 107–117 amended Pub. L. 107–77. See 2001 Amendment note below.

2001-Subsec. (a)(7)(A). Pub. L. 107–77, as amended by Pub. L. 107–117, inserted before semicolon "or the act is related to Case Number 1:00CV03110(EGS) in the United States District Court for the District of Columbia".

1997-Subsec. (a)(7)(B)(ii). Pub. L. 105–11 substituted "neither the claimant nor the victim was" for "the claimant or victim was not".

1996-Subsec. (a)(7). Pub. L. 104–132, §221(a)(1), added par. (7).

Subsecs. (e) to (g). Pub. L. 104–132, §221(a)(2), added subsecs. (e) to (g).

1990-Subsec. (a)(6). Pub. L. 101–650 substituted "state" for "State" after "foreign".

1988-Subsec. (a)(6). Pub. L. 100–669 added par. (6).

Subsec. (b). Pub. L. 100–702, §1(3), struck out at end "Whenever notice is delivered under subsection (b)(1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved: *Provided*, That a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b)(1) of this section."

Subsec. (b)(1). Pub. L. 100–640, §1(1), substituted "and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved" for "but such notice shall not be deemed to have been delivered, nor may it thereafter be delivered, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit-unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service of process of arrest shall be deemed to constitute valid delivery of such notice".

Subsec. (b)(2). Pub. L. 100–640, §1(2), substituted "paragraph (1) of this subsection" for "subsection (b)(1) of this section".

Subsecs. (c), (d). Pub. L. 100–702, §1(3), added subsecs. (c) and (d).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–319, §2(b), Dec. 16, 2016, 130 Stat. 1619, provided that: "The amendment made by this section [amending this section] shall apply to any civil action commenced on or after the date of the enactment of this Act [Dec. 16, 2016]."

Amendment by Pub. L. 114–222 applicable to any civil action pending on, or commenced on or after, Sept. 28, 2016, and arising out of an injury to a person, property, or business on or after Sept. 11, 2001, see section 7 of Pub. L. 114–222, set out as a note under section 2333 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF 2008 AMENDMENT

For applicability of amendments by Pub. L. 110–181 to pending cases, see section 1083(c) of Pub. L. 110–181, set out as an Effective Date note under section 1605A of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–11 provided that the amendment made by that Act was effective with respect to any cause of action arising before, on, or after Apr. 25, 1997.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104–132, [title II, §221\(c\)](#), [Apr. 24, 1996](#), 110 Stat. 1243 , provided that: "The amendments made by this subtitle [subtitle B (§221) of title II of Pub. L. 104–132, amending this section and section 1610 of this title] shall apply to any cause of action arising before, on, or after the date of the enactment of this Act [Apr. 24, 1996]."

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–640, [§3](#), [Nov. 9, 1988](#), 102 Stat. 3334 , provided that: "The amendments made by this Act [amending this section and section 1610 of this title] shall apply to actions commenced on or after the date of the enactment of this Act [Nov. 9, 1988]."

EFFECTIVE DATE

Section effective 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94–583, set out as a note under section 1602 of this title.

NOTIFICATION

Pub. L. 114–319, [§3](#), [Dec. 16, 2016](#), 130 Stat. 1620 , provided that: "The Secretary of State shall ensure that foreign states that apply for immunity under Public Law 89–259 (22 U.S.C. 2459) are appropriately notified of the text of this Act [amending this section and enacting provisions set out as notes under this section and section 1 of this title]."

CIVIL LIABILITY FOR ACTS OF STATE SPONSORED TERRORISM

Pub. L. 104–208, [div. A, title I, §101\(c\)](#) [[title V, §589](#)], [Sept. 30, 1996](#), 110 Stat. 3009–121 , [3009-172](#), provided that:

"(a) an [sic] official, employee, or agent of a foreign state designated as a state sponsor of terrorism designated [sic] under [former] section 6(j) of the Export Administration Act of 1979 [former 50 U.S.C. 4605(j)] while acting within the scope of his or her office, employment, or agency shall be liable to a United States national or the national's legal representative for personal injury or death caused by acts of that official, employee, or agent for which the courts of the United States may maintain jurisdiction under [former] section 1605(a)(7) of title 28, United States Code, for money damages which may include economic damages, solatium, pain, and suffering, and punitive damages if the acts were among those described in [former] section 1605(a)(7).

"(b) Provisions related to statute of limitations and limitations on discovery that would apply to an action brought under 28 U.S.C. 1605(f) and (g) shall also apply to actions brought under this section. No action shall be maintained under this action [sic] 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 USC 1608: Service; time to answer; default

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§1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services-and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state-

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made-

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

(Added Pub. L. 94–583, §4(a), Oct. 21, 1976, 90 Stat. 2894 .)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 90 days after Oct. 21, 1976, see section 8 of Pub. L. 94–583, set out as a note under section 1602 of this title.