

112TH CONGRESS
1ST SESSION

H. R. 1193

To ensure that the courts of the United States may provide an impartial forum for claims brought by United States citizens and others against any railroad organized as a separate legal entity, arising from the deportation of United States citizens and others to Nazi concentration camps on trains owned or operated by such railroad, and by the heirs and survivors of such persons, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2011

Mrs. MALONEY (for herself, Ms. ROS-LEHTINEN, Mr. NADLER, Mr. DEUTCH, Mr. GUTIERREZ, Mr. HINCHEY, Mr. WEST, Mr. ACKERMAN, Mr. CUMMINGS, and Mr. VAN HOLLEN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To ensure that the courts of the United States may provide an impartial forum for claims brought by United States citizens and others against any railroad organized as a separate legal entity, arising from the deportation of United States citizens and others to Nazi concentration camps on trains owned or operated by such railroad, and by the heirs and survivors of such persons, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Holocaust Rail Justice
5 Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 Congress finds as follows:

8 (1) During World War II, more than 75,000
9 Jews and thousands of other persons were deported
10 from France to Nazi concentration camps, on trains
11 operated for profit by the Société Nationale des Che-
12 mins de fer Français (in this Act referred to as
13 “SNCF”), including deportations to Auschwitz and
14 Buchenwald. Numerous citizens and residents of the
15 United States were among those who were on the
16 trains or had relatives on the trains. United States
17 servicemen who were pilots shot down over France
18 were also among the persons deported on the SNCF
19 trains to Nazi concentration camps.

20 (2) United States citizens and others have
21 sought redress against SNCF by filing a class action
22 suit in the United States District Court for the
23 Eastern District of New York. The named plaintiffs
24 and class members include United States Army Air
25 Force pilots and United States citizens.

1 (3) The complaint filed alleges that SNCF, a
2 separate corporate entity that remained independent
3 during World War II, operated the deportation
4 trains for a profit, as ordinary commercial trans-
5 actions. SNCF remained under French civilian con-
6 trol throughout World War II and is alleged to have
7 collaborated willingly with the German Nazi regime.

8 (4) The complaint alleges that SNCF provided
9 the necessary rolling stock, scheduled the depar-
10 tures, and supplied the employees to operate the
11 trains bound for the concentration camps. SNCF al-
12 legedly charged an ordinary passenger coach fare for
13 the deportations, calculated per person and per kilo-
14 meter, and considered these trains as ordinary com-
15 mercial activities. The plaintiffs further contend that
16 SNCF herded as many people as possible into each
17 car, requiring passengers of all ages and sexes, in-
18 cluding the elderly and young children, to stand
19 throughout the trip of several days' duration, with
20 no provision for food or water and no sanitary facili-
21 ties. The complaint further alleges that SNCF
22 cleaned the trains after each trip, removing the
23 corpses of persons who perished during transit due
24 to the execrable conditions of the train cars. The
25 destination was in each case a camp in which the de-

1 portees were to be exterminated, worked to death, or
2 made to suffer terrible and inhuman conditions.

3 (5) The complaint contends that SNCF's ac-
4 tions violated the Principles of the Nuremberg Tri-
5 bunal, 1950, relating to crimes under international
6 law (earlier recognized by the Martens Clause of the
7 Hague Convention IV of 1907), and aided and abet-
8 ted the commission of war crimes and crimes against
9 humanity. SNCF has not denied its actions and has
10 never disgorged the money that it was paid for the
11 deportations or otherwise compensated the deportees
12 or their heirs.

13 (6) SNCF's records concerning the deportation
14 trains have not been made available to the plaintiffs,
15 and SNCF archives concerning its wartime activities
16 are not accessible to the general public.

17 (7) SNCF moved to dismiss the lawsuit on a
18 claim of sovereign immunity under the foreign sov-
19 ereign immunities provisions of title 28, United
20 States Code (28 U.S.C. 1330 and 1602 et seq.),
21 even though it is one of the 500 largest corporations
22 in the world, earns hundreds of millions of dollars
23 from its commercial activities in the United States,
24 and is not accorded sovereign immunity under the
25 laws of France. SNCF's motion to dismiss the law-

1 suit was granted by the United States District Court
2 for the Eastern District of New York. Plaintiffs ap-
3 pealed the decision, their appeal was granted, and
4 the case was remanded for further proceedings. Sub-
5 sequently, in light of *Republic of Austria v.*
6 *Altmann*, 541 U.S. 677 (2004), in November 2004,
7 on remand, the Court of Appeals for the Second Cir-
8 cuit recalled its prior mandate and determined that
9 SNCF was entitled to immunity and affirmed the
10 dismissal of the complaint. The Second Circuit stat-
11 ed that “the railroad’s conduct at the time lives on
12 in infamy” but concluded that “the evil actions of
13 the French national railroad’s former private mas-
14 ters in knowingly transporting thousands to death
15 camps during World War II are not susceptible to
16 legal redress in Federal court today.”.

17 (8) This lawsuit, which arises from the unique
18 historical facts of the deportation of persons to Nazi
19 concentration camps, presents issues of substantial
20 importance to citizens and veterans of the United
21 States. Many of those who have sought redress
22 against SNCF are elderly and would have difficulty
23 traveling outside the United States in order to pur-
24 sue their claims elsewhere. The courts of the United
25 States are and should be a proper forum for this

1 lawsuit. The Foreign Sovereign Immunities Act of
2 1976, which had not been enacted at the time of
3 SNCF's actions during World War II, was not in-
4 tended to bar suit against the SNCF.

5 **SEC. 3. ACCESS TO UNITED STATES COURTS FOR HOLO-**
6 **CAUST DEPORTEES.**

7 (a) JURISDICTION OF DISTRICT COURTS.—The
8 United States district courts shall have original jurisdic-
9 tion, without regard to the amount in controversy, of any
10 civil action for damages for personal injury or death
11 that—

12 (1) arose from the deportation of persons to
13 Nazi concentration camps during the period begin-
14 ning on January 1, 1942, and ending on December
15 31, 1944; and

16 (2) is brought by any such person, or any heir
17 or survivor of such person, against a railroad that—

18 (A) owned or operated the trains on which
19 the persons were so deported; and

20 (B) was organized as a separate legal enti-
21 ty at the time of the deportation, whether or
22 not any of the equity interest in the railroad
23 was owned by a foreign state.

24 (b) OTHER LAWS NOT APPLICABLE.—Sections 1330
25 and 1601 through 1611 of title 28, United States Code,

1 or any other law limiting the jurisdiction of the United
2 States courts, whether by statute or under common law,
3 shall not preclude any action under subsection (a).

4 (c) INAPPLICABILITY OF STATUTES OF LIMITA-
5 TION.—An action described in subsection (a) shall not be
6 barred by a defense that the time for bringing such action
7 has expired under a statute of limitations.

8 (d) APPLICABILITY.—This section shall apply to any
9 action pending on January 1, 2002, and to any action
10 commenced on or after that date.

11 **SEC. 4. REPORT TO CONGRESS.**

12 In furtherance of international education relating to
13 the Holocaust and in light of historic and continuing Anti-
14 Semitism in Europe and throughout the world, the Sec-
15 retary of State shall submit to the Congress, not later than
16 the date that is 1 year after the date of the enactment
17 of this Act, a report describing the extent to which the
18 public has access to records, including archived informa-
19 tion, of any railroad described in section 2(a)(2) with re-
20 spect to the deportation of persons to Nazi concentration
21 camps during the period beginning on January 1, 1942,
22 and ending on December 31, 1944, on trains owned or
23 operated by that railroad.

○