UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ROBIN SHAHINI,

Plaintiff,

v.

ISLAMIC REPUBLIC OF IRAN, et al.,

Defendants.

Civil Action No. 1:18-cv-01619 (CJN)

MEMORANDUM OPINION

Robin Shahini, a U.S. citizen of Iranian descent, traveled to Iran in May 2016 to visit his ailing mother and other relatives. *See* Mem. of Proposed Findings of Fact & Conclusions of Law ("Mem."), ECF. No. 37-2, at 3. A few days before he was scheduled to return to the United States, he was detained by members of Iran's Islamic Revolutionary Guard Corps. *Id.* During his 249 days in captivity, Shahini was subjected to abhorrent psychological and physical abuse and torture while his captors attempted to coerce a confession that he was a CIA spy. *See* Compl. ¶¶ 6–21, ECF No. 1.

Shahini sued the Islamic Republic of Iran under the state-sponsored terrorism exception of the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. §§ 1330, 1602 *et seq.* *See* Compl. ¶¶ 22–45. He served Iran by diplomatic channels, 28 U.S.C. § 1608(a)(4), and Iran subsequently failed to appear, *id.* § 1608(d). Shahini therefore now moves for default judgment as to liability and damages. *See generally* Mot. for Def. J. ("Mot."), ECF No. 37-1. The Court grants his motion with respect to his FSIA claims and awards him $24,763,696 in total damages.

Shahini also sued several individuals alleging violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* *See* Compl. ¶¶ 46–54. These

individuals also failed to appear, and Shahini includes these claims in his motion for default judgment. *See* Mem. at 22. The Court denies Shahini's Motion with respect to the RICO claims and dismisses those claims for lack of standing.

I. Procedural History

In his Complaint, Shahini alleges that Iran was responsible for his hostage taking and torture under the state-sponsored terrorism exception of the FSIA and asserts four causes of action against Iran: assault, battery, intentional infliction of emotional distress, and false imprisonment. Compl. ¶¶ 34–45. He also claims that several individual defendants—including members of the Revolutionary Guard and other high-ranking Iranian officials—conspired to commit racketeering activity in violation of RICO. *Id.* ¶¶ 46–54.

Shahini served Iran through the Department of State's diplomatic channels pursuant to 28 U.S.C. § 1608(a)(4). *See* ECF No. 28. The diplomatic notes were served on April 28, 2019. *Id.* Iran thus had until June 27, 2019, to respond to the Complaint, *see* 28 U.S.C. § 1608(d), but it failed to do so. The Clerk of the Court therefore entered default on Shahini's behalf, ECF No. 30, and Shahini then moved for entry of a default judgment. *See generally* Mot.; 28 U.S.C. § 1608(e). Pursuant to Court orders, Shahini also filed a supplemental motion for default judgment as to his RICO claims against the individual defendants, *see* ECF No. 43, and a supplemental memorandum that contained more evidence to support his motion for default judgment, *see* ECF No. 45 ("Suppl. Mem."). In the latter supplemental filing, Shahini identified three cases that he considers to be relevant to this action: *Hekmati v. Islamic Republic of Iran*, 278 F. Supp. 3d 145 (D.D.C. 2017); *Abedini v. Government of Islamic Republic of Iran*, 422 F. Supp. 3d 118 (D.D.C. 2019); and *Rezaian v. Islamic Republic of Iran*, 422 F. Supp. 3d 164 (D.D.C. 2019). *See* Suppl. Mem. at 3.

II. Facts

The FSIA does not permit the ministerial entry of a default judgment. Instead, the Court must evaluate the evidence to ensure that a plaintiff has "establish[ed] his claim[s] or right[s] to relief by evidence satisfactory to the [C]ourt." *See* 28 U.S.C. § 1608(e). "This requirement imposes a duty on FSIA courts to not simply accept a complaint's unsupported allegations as true, and obligates courts to inquire further before entering judgment against parties in default." Memorandum Op., *Encinas v. Islamic Republic of Iran*, No. 18-cv-02568, at 3 (D.D.C. Feb. 28, 2022) (quotation omitted).

The Court may look to various sources of evidence to satisfy this statutory obligation, including testimony, documents, and affidavits. *See id.* "And a FSIA court may take judicial notice of related proceedings and records in cases before the same court." *Id.* (quotation omitted). Here, Shahini relies on a declaration, medical records, an expert economic report, State Department reports and communications, press reports, and judicial notice of an expert report filed in a related proceeding. *See* Exs. A–I, ECF Nos. 37-3–11; Exs. J–S, ECF Nos. 45-1–14.

That expert report was filed in *Abedini v. Government of the Islamic Republic of Iran*, and provides Dr. Mehdi Khalaji's opinion on whether the plaintiff in that action, Saeed Abedini, was "illegally arrested, detained, and abused by the Government of Iran as part of an effort to extract concessions and other things of value from the United States," as well as whether Iran's treatment of Abedini violated Iranian law. *See* No. 18-cv-588, ECF No. 17-4, at 5 ("Khalaji Report"). The Khalaji report also includes information useful to understanding the allegations in this case, including regarding Iran's treatment of dual citizens, *id.*, and Shahini's detention, *id.* at 16. Shahini asks this Court to take judicial notice of the expert report. *See* Suppl. Mem. at 2–3.

A. Judicial Notice of Evidence Produced in Prior Proceedings

"This Court may take judicial notice of facts 'not subject to reasonable dispute' if they are 'generally known within the [Court's] territorial jurisdiction' or 'can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.'" *Encinas*, *supra*, at 4 (quoting Fed. R. Evid. 201(b)). This rule permits taking "judicial notice of related proceedings and records in cases before the same court." *Fain v. Islamic Republic of Iran*, 856 F. Supp. 2d 109, 115 (D.D.C. 2012) (quotation omitted). "Because of the multiplicity of FSIA-related litigation, courts in this District have frequently taken judicial notice of earlier, related proceedings." *Id.*

As many judges on this Court have recognized, "evidentiary problems lurk when taking judicial notice of another court's factual findings in a different case." *Encinas*, *supra*, at 4. "Such findings are a court's attempt to determine what happened; they are not a first-hand account of the actual events." *Id.* "As such, they constitute hearsay, and thus are considered inadmissible." *Fain*, 856 F. Supp. 2d at 116.

But courts in FSIA actions "must be mindful that the statutory obligation found in [28 U.S.C.] § 1608(e) was not designed to impose the onerous burden of re-litigating key facts in related cases arising out of the same terrorist attack." *Rimkus v. Islamic Republic of Iran*, 750 F. Supp. 2d 163, 172 (D.D.C. 2010). And as Judge Lamberth concluded in *Rimkus*, "courts in FSIA litigation have adopted a middle-ground approach that permits courts in subsequent related cases to rely upon the evidence presented in earlier litigation—without necessitating the formality of having that evidence reproduced—to reach their own, independent findings of fact in the cases before them." *Id.* "This is permissible because the validity of judicial records is generally 'not subject to reasonable dispute,' and such records are perfectly capable of establishing the type and substance of evidence that was presented to earlier courts." *Id.* (citing Fed. R. Evid. 201(b)). The

Court agrees, and so will make its own findings of fact while relying on evidence presented in earlier, but related, cases. *See Encinas*, *supra*, at 4–5.

B. Findings of Fact

Based on the evidence presented to the Court and the expert evidence in the *Abedini* proceedings, the Court makes the following findings of fact.

Robin Shahini was born in Iran and emigrated to the United States in 2000. *See* Ex. J, ECF No. 45-1, at 1 ("Decl."). He was naturalized as a U.S. citizen in 2005. Compl. at ¶ 6. Shahini graduated from San Diego State University in May 2016 with a bachelor's degree in International Security & Conflict Resolution. Decl. at 1. He was also accepted into San Diego State's graduate program in Homeland Security. *Id.* After graduation, Shahini travelled to Iran to visit his ailing mother and other relatives. *Id.*; Compl. ¶ 9. He obtained authorization to travel to Iran from the Iranian Interests Section of the Pakistani Embassy in Washington, D.C., and traveled in compliance with the permission he was granted. Decl. at 1; Compl. at ¶ 10.

On July 11, 2016, nine days before he was scheduled to return to the United States, Shahini was stopped by members of Iran's Islamic Revolutionary Guard Corps. Decl. at 2; Compl. at ¶ 11.[1] Three cars surrounded his car, blocking him from driving away. Decl. at 2. Fifteen armed men pointed their weapons at Shahini and threatened to shoot him. *Id.* Shahini was then "assaulted, threatened, and blindfolded" while another group went to his mother's house and confiscated his computer and passport. *Id.* Shahini was forced into a vehicle and taken away. *Id.*

[1] The Revolutionary Guard is an official arm of Iranian government; it is designated in the Iranian Constitution and constituted to "defend the regime and its Islamic system of government from any threat, foreign or domestic." *See* Mem. at 10. The Guard has also been called Iran's "terror arm" by Congress. *See* Statement of Chairman Edward Royce, Iran on Notice Before the H. Comm. on Foreign Affairs 2, 115th Cong., Serial No. 115-5 (Feb. 16, 2017), https://www.govinfo.gov/content/pkg/CHRG-115hhrg24242/pdf/CHRG-115hhrg24242.pdf.

Shahini was initially taken to a house for approximately 16 days. *Id.* The first night, he was placed in solitary confinement in an unsanitary 5 ft x 8 ft cell. *Id.* at 2–3. Shahini spent the remainder of his time there in another solitary confinement cell with a high-powered light that prevented him from sleeping. *Id.* at 3. His captors did not tell him why he had been arrested or permit him to contact anyone, and provided him with very little food or drink. *Id.*

Shahini was then taken to Amir Abad Prison in Gorgon, Iran, where he was again placed in solitary confinement. *Id.* Following his questioning, Shahini was transferred to a quarantine section of the prison for about two weeks. *Id.* at 3–4. Prison officials instructed quarantined inmates not to speak to Shahini, but did not inform Shahini of the basis for his detention. *Id.* at 3. Some of the other inmates had communicable diseases such as hepatitis, HIV, and tuberculosis; all inmates shared the same sleeping, eating, and washing facilities. *Id.* at 3–4.

Shahini was then transferred to a section with primarily violent criminals. *Id.* at 4. There, his captors repeatedly referred to Shahini as a traitor, which caused an acrimonious and dangerous relationship between Shahini and the other inmates. *Id.* Some inmates threatened Shahini directly, and he "was in constant fear of being beaten or killed." *Id.* Small rooms with 18 beds were shared by 30–40 inmates, meaning many had to sleep on the floor in close quarters. *Id.* Each inmate was given two blankets, but no pillows, to survive in these rooms infested with ticks, mosquitos, and sand flies. *Id.* The bathrooms were filthy and lacked proper ventilation. *Id.* at 5.

One night Shahini was attacked on his way to the restroom. *Id.* His attackers (two inmates) told him that they had been sent by the Revolutionary Guard. *Id.* They attempted to strangle him, accusing Shahini of "being a spy and a collaborator [with] Satan's America." *Id.* (quotation marks omitted). Other prisoners helped Shahini break free and escape his attackers, but the two inmates continued to make threats on Shahini's life. *Id.*

The Revolutionary Guard later took Shahini back into their custody, holding him in a Guard safe house, where he was again held in solitary confinement for 16 days. *Id.* at 7. He was interrogated three to four times per day, deprived of sufficient food or water, and again suffered "constant fear of being beaten or murdered." *Id.* His "health continued to deteriorate." *Id.*

In particular, Shahini was frequently taken into a separate interrogation room for six- to eight-hour sessions where the Guards pressured him to sign a confession. *Id.* at 8. He was threatened with years of solitary confinement if he refused to sign. *Id.* Once, he was given a script to read for a video confession; the script "included a part in which [he] was to . . . repent to the Supreme Leader and ask for mercy." *Id.* He was also asked to implicate the CIA in political protests. *Id.* And he was told that if he confessed, he could be freed like prior hostages in exchange for an Iranian jailed in the U.S. or for ransom money. *Id.* at 13–14. Shahini refused to sign any confession or make any of these statements. *Id.* at 8, 13.

Shahini was eventually "formally charged by an Iranian court with espionage, collaboration with a hostile government, blasphemy, inciting the populace against the government, being a member of the opposition, propaganda against the government[,] and disrespecting the Supreme Leader." *Id.* at 7. He was returned to Amir Abad Prison before his first appearance before a "prosecutor judge." *Id.* at 8. The judge ordered two months temporary detention. *Id.* at 9. Although it was contrary to Iranian law, Shahini's lawyer was not allowed to be present or to communicate with Shahini. *Id.* This happened repeatedly; prison guards would bring Shahini to the court without advanced notice and without informing his attorney. *Id.*

Shahini suffered other kinds of cruel and inhumane treatment in the prison. Several times, Shahini was taken to a large, cold solitary confinement cell and shackled to the wall for hours. *Id.* at 12. Shahini was also denied proper or timely medical treatment while he was detained, resulting

in severe toothaches and respiratory difficulties. *Id.* at 9–10. Sometimes written orders from the infirmary were ignored because the Revolutionary Guard had ordered that he was not to receive treatment. *Id.* at 10. Once, Shahini was temporarily placed in a room reserved for prisoners about to be executed—"a very public mock execution." *Id.* at 10–11. As Shahini puts it, that room "is used exclusively to hold prisoners for no more than 24 hours prior to their execution," and therefore "[t]o enter this cell as an inmate means almost certain death." *Id.* at 10. He thought he would be executed imminently, but was released back to his normal cell the next afternoon. *Id.* at 11.

Seven months into his imprisonment, Shahini began a hunger strike with the goal to "either be granted [his] freedom or die trying." *Id.* at 12. The Revolutionary Guard tried several methods to stop Shahini—placing him in overheated rooms to speed up his dehydration, threatening to let other inmates rape him, and placing him in a cell block where drugs were readily available in hopes that Shahini would become addicted. *Id.* at 12–13. He finally ended his hunger strike when his family pleaded with him to stop. *Id.* at 13.

In March 2017, after nine months of detention, Shahini was able to pay bail. *Id.* at 14. "The Iranian government and [Revolutionary Guard] learned that [he] had been released and [he] was told they were furious, because they could not negotiate for [him] with the United States in exchange for an Iranian prisoner in jail in the United States or for money." *Id.* The Guard charged Shahini with a new offense and attempted to locate him. *Id.* Shahini moved from city to city to avoid detection; as he puts it, "the fright of knowing that [he] was being hunted was unbearable and at times worse than being in jail." *Id.* at 15.

Shahini decided his best option was to flee Iran, and hired a smuggler to guide him through the Zagros Mountains into Turkey. *Id.* The terrain was dangerous, and the Iranian border patrol posed a serious risk to Shahini's life. *Id.* Shahini also feared that the smuggler would take his

money and turn him into the authorities. *Id.* at 16. But after ten days, Shahini entered Turkey and was able to contact the U.S. Embassy. *Id.* He finally returned to the United States on August 25, 2017. *Id.*

In total, Shahini spent 249 days in detention and 141 on bail in Iran. *Id.* He was 48 years old when he was released. *See* Ex. I, ECF No. 37-11, at 4 ("Bunin Report"). He asserts various forms of continuing injuries, including the end of his engagement, his inability to again visit his mother or other relatives, and mental health issues. *Id.* He has also struggled to maintain continuous employment. *See generally* Bunin Report.

Shahini's treatment in Iran was not anomalous. "The Iranian government has a well-established practice and a well-documented history of arresting, detaining, and abusing or torturing dual Iranian-U.S. nationals for the purpose of extracting confessions and things of value from the United States government or its agents." Khalaji Report at 5. "This includes repeated illegal arrests, torture, denial of proper legal representation, and indefinite detention." *Id.* For this reason, other judges in this district have previously found Iran responsible for the hostage-taking and torture of dual citizens. *See, e.g.*, *Hekmati*, 278 F. Supp. 3d 145 (dual-national detained and tortured in Iran for 4.5 years); *Abedini*, 422 F. Supp. 3d 118 (dual-national detained and tortured by the IRGC for 3.5 years); and *Rezaian*, 422 F. Supp. 3d 164 (dual-national detained and tortured in Iran for 1.5 years). In many such cases, the Iranian hostages were freed by means of ransom payment and prisoner trade. *See, e.g.*, *Hekmati*, 278 F. Supp. 3d 145 (released in January 2016 in exchange for clemency for seven Iranians convicted in the United States); *Abedini*, 422 F. Supp. 3d 118 (same); and *Rezaian*, 422 F. Supp. 3d 164 (same).

III. Legal Standards

Courts are permitted to enter default judgments against parties who fail to appear before them. Fed. R. Civ. P. 55(b)(2). But as noted above, the "entry of a default judgment is not

automatic." *Mwani v. bin Laden*, 417 F.3d 1, 6 (D.C. Cir. 2005) (footnote omitted). The Court has the "affirmative obligation" to ensure that it has subject matter jurisdiction over the action and personal jurisdiction over the defendant. *See Sotloff v. Syrian Arab Republic*, 525 F. Supp. 3d 121, 133 (D.D.C. 2021) (quotation omitted).

Additionally, "[w]hen default judgment is sought under the FSIA, a claimant must 'establish[] his claim or right to relief by evidence satisfactory to the court.'" *Warmbier v. Democratic People's Republic of Korea*, 356 F. Supp. 3d 30, 42 (D.D.C. 2018) (quoting 28 U.S.C. § 1608(e)). Because "Congress enacted the terrorism exception expressly to bring state sponsors of terrorism . . . to account for their repressive practices," *Han Kim v. Democratic People's Republic of Korea*, 774 F.3d 1044, 1048 (D.C. Cir. 2014), and the Court of Appeals has instructed that "courts have the authority—indeed . . . the obligation—to 'adjust evidentiary requirements to . . . differing situations,'" *id.* (quotation omitted), the standard of proof in FSIA default judgment actions is more lenient.

Therefore, "[i]n a FSIA default proceeding, a court can find that the evidence presented is satisfactory "when the plaintiff shows 'her claim has some factual basis,' . . . even if she might not have prevailed in a contested proceeding." *Sotloff*, 525 F. Supp. 3d at 134 (quoting *Owens v. Republic of Sudan*, 864 F.3d 751, 785 (D.C. Cir. 2017) (citations omitted)). "[U]ncontroverted factual allegations supported by admissible evidence may be taken as true," *id.*, and § 1608(e) "does not require a court to step into the shoes of the defaulting party and pursue every possible evidentiary challenge." *Owens*, 864 F.3d at 785. "And this discretion extends to the admission of expert testimony, often 'of crucial importance in terrorism cases . . . because firsthand evidence of terrorist activities is difficult, if not impossible, to obtain,' '[v]ictims of terrorist attacks . . . are often . . . unable to testify about their experiences,' and '[p]erpetrators of terrorism typically lie

beyond the reach of the courts and go to great lengths to avoid detection.'" *Sotloff*, 525 F. Supp. 3d at 134 (quoting *Owens*, 864 F.3d at 787).

IV. Conclusions of Law

Based on the above findings of fact, *see* Part II(B), the Court makes the following conclusions of law.

A. Iran is Liable Under the Terrorism Exception to the FSIA

1. The Court Has Jurisdiction Over This Action

The Court is satisfied that it has subject matter, original, and personal jurisdiction over this action. Because both original and personal jurisdiction turn on whether this Court has subject matter jurisdiction, the Court begins there.

a. Subject Matter Jurisdiction

The FSIA state-sponsored-terrorism exception provides federal courts with subject matter jurisdiction over cases "in which money damages are sought against a foreign state for personal injury or death that was caused by" certain acts of terrorism against U.S. nationals. 28 U.S.C. § 1605A(a)(1)–(2). Shahini must prove four elements to establish subject matter jurisdiction: (1) Iran "was designated a state sponsor of terrorism when the act of terrorism occurred and when this action was filed;" (2) Shahini was a U.S. national at the time of the acts of terrorism; (3) Shahini afforded Iran a reasonable chance to arbitrate his claims; and (4) Iran's actions qualify under the terrorism exception of the FSIA as defined in 28 U.S.C. § 1605A(a)(1). *See Sotloff*, 525 F. Supp. 3d at 134; 28 U.S.C. § 1605A(a)(1)–(2). Shahini has proven all four elements.

First, Iran was a designated state-sponsor of terrorism at all relevant times. The United States first designated Iran as a state-sponsor of terrorism in 1984. *See Rezaian*, 422 F. Supp. 3d at 175. The United States has continued to do so since, including during the time of the acts of terrorism against Shahini and when he filed this suit. *See* State Sponsors of Terrorism, U.S. Dep't

of State, https://www.state.gov/state-sponsors-of-terrorism/ (explaining that Iran was designated as a state sponsor of terrorism in 1984 and continues to be so designated).

Second, Shahini was a United States citizen at the relevant times, *see* Decl. at 1, and thus was a U.S. national within the meaning of the FSIA. *See* 28 U.S.C. § 1605A(h)(5); 8 U.S.C. § 1101(a)(22).

Third, Shahini offered to arbitrate his claims against Iran. "The FSIA does not require any particular form of offer to arbitrate, simply the extension of a reasonable opportunity." *Sotloff*, 525 F. Supp. 3d at 135 (quotations omitted). Shahini sent an offer to arbitrate, a translation of that letter in Farsi, and the summons, complaint, and notice of suit to the Iranian Ministry of Foreign Affairs. *See* ECF No. 28 at 1; *see also* Pl.'s Resp. to the Ct.'s Order ("Pl.'s Resp."), ECF No. 41, at 2–4. These actions fulfilled Shahini's duty to extend a "reasonable opportunity" to Iran to arbitrate.

Finally, Iran's actions qualify under the terrorism exception of the FSIA. *See* 28 U.S.C. § 1605A(a)(1). "The fourth element of subject-matter jurisdiction under the FSIA terrorism exception is that the plaintiff[] seek[s] [money] damages for personal injury or death caused by the foreign state's commission of at least one terrorist act enumerated in the statute, including 'torture, extrajudicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act.'" *Sotloff*, 525 F. Supp. 3d at 135 (quoting 28 U.S.C. § 1605A(a)(1)). Because Shahini seeks money damages, *see* 28 U.S.C. § 1605A(c) ("[money] damages may include economic damages, solatium, pain and suffering, and punitive damages"), and because he has demonstrated that he suffered hostage taking and torture at the hands of Iran, Shahini has carried his burden.

Hostage Taking

The FSIA defines "hostage taking" by reference to Article 1 of the International Convention against the Taking of Hostages, which states:

> Any person who seizes or detains and threatens to kill, to injure[,] or to continue to detain another person . . . in order to compel a third party . . . to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offense of taking of hostages . . . .

28 U.S.C. § 1605A(h)(2); International Convention Against the Taking of Hostages art. 1, Dec. 17, 1979, 18 I.L.M. 1456, 1316 U.N.T.S. 205. Hostage taking has two elements: (1) abduction or detention and (2) the purpose of accomplishing the third-party compulsion described in the definition provided by the Convention. *See Sotloff*, 525 F. Supp. 3d at 135.

Shahini has satisfied both elements. The evidence submitted by Shahini, in particular his declaration and the Khalaji Report, show that he was detained by the Revolutionary Guard for 249 days. *See supra* at 9. Both the statements made by the Revolutionary Guard to Shahini, and Iran's pattern of abducting dual citizens to extract money and Iranian prisoners from the United States, show that a purpose of Shahini's detention was to extract either a prisoner exchange or a ransom from the United States. *See* Khalaji Report at 5; Decl. at 13–14. As Dr. Khalaji explains, "[d]ual Iranian-U.S. nationals are held to make political points against, obtain concessions from, and maintain leverage over the United States." Khalaji Report at 11; *see also id.* at 16 ("Based on my analysis of similar situations, I believe that [Shahini] has not been allowed to leave Iran so that the Iranian government can easily take him back into custody and use him for leverage in the same manner as it has used other dual nationals.").

Torture

The FSIA defines "torture" by reference to the Torture Victim Protection Act ("TVPA"). 28 U.S.C. § 1605A(h)(7). Under that statute,

> (1) the term "torture" means any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind; and
>
> (2) mental pain or suffering refers to prolonged mental harm caused by or resulting from—
>
> (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
>
> (B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
>
> (C) the threat of imminent death; or
>
> (D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.

Torture Victim Protection Act of 1991 § 3(b), Pub. L. No. 102-256, 106 Stat. 73 (1992), codified at 28 U.S.C. § 1350 (note). "To establish torture, the plaintiffs must also show that the conduct was sufficiently severe and purposeful." *Sotloff*, 525 F. Supp. 3d at 137; *see also Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 93 (D.C. Cir. 2002) (identifying two measures of what constitutes torture as (1) "the degree of pain and suffering that the alleged torturer intended to, and actually did, inflict upon the victim" and (2) the extent to which the "production of pain is purposive.").

Shahini has established that he was tortured by Iran. Credible evidence establishes that Shahini was subjected to prolonged periods of solitary confinement, Decl. at 2, 7, unsanitary living conditions, *id.* at 2–5, threats of rape and death, *id.* at 5, 12–13, a mock execution, *id.* at 10–11, and insufficient food, water, and medical care, *id.* at 3, 9–10. And credible evidence establishes that Shahini was subjected to these different forms of mistreatment to coerce a confession, to score political points, and to extract prisoners or a ransom from the United States. *Id.* at 8, 13; Khalaji Report at 5, 11, 16. This evidence is sufficient to show that Iran tortured Shahini at such a severe level and with sufficient purpose to meet the definition outlined in the TVPA.

The Court therefore has subject matter jurisdiction over this action.

b. Original Jurisdiction

"Under 28 U.S.C. § 1330, federal district courts have original jurisdiction over FSIA claims that are (1) nonjury civil actions (2) for claims seeking relief *in personam* (3) against a foreign state (4) when the foreign state is not entitled to immunity under 28 U.S.C. §§ 1605, 1606, 1607, or any applicable international agreement." *Encinas*, *supra*, at 17 (citing 28 U.S.C. § 1330(a)). Shahini has not sought a jury trial, *see generally* Compl.; the suit is brought against Iran in its capacity as a legal person, not against property; Iran is a foreign state; and Iran is not entitled to sovereign immunity because this action falls under the state-sponsored-terrorism exception in the FSIA. *See supra* Part IV(A)(1). The Court therefore has original jurisdiction.

c. Personal Jurisdiction

To impose judgment on a foreign state under the FSIA, the Court must also have personal jurisdiction. *Sotloff*, 525 F. Supp. 3d at 140. The Court has personal jurisdiction over Iran if (1) the Court has original jurisdiction under the FSIA; and (2) Iran was properly served under the FSIA. *See* 28 U.S.C. § 1330(b). Because Shahini "ha[s] already satisfied the first requirement, the Court turns to the second." *See Sotloff*, 525 F. Supp. 3d at 140.

The FSIA provides four methods of serving a foreign state, as well as the order in which plaintiffs must attempt them:

> (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.

28 U.S.C. § 1608(a). Because Iran does not have a special arrangement for service with Shahini and "Iran is not party to an international convention on service of judicial documents," *see Rezaian*, 422 F. Supp. 3d at 178 (quotations omitted), Shahini did not need to attempt service in accordance with sections 1608(a)(1) or (a)(2). *See Sotloff*, 525 F. Supp. 3d at 141. Shahini attempted service pursuant to section 1608(a)(3) in October 2018. *See* Pl.'s Resp. at 2. When service failed, Shahini served Iran by diplomatic note on April 28, 2019 under section 1608(a)(4). *See* ECF No. 28. "Although [Iran] refused to accept delivery, service was still proper." *See Sotloff*, 525 F. Supp. 3d at 141.

The Court therefore has personal jurisdiction over Iran under 28 U.S.C. § 1330(b).

2. Liability

The FSIA creates a private right of action for victims of state-sponsored terrorism. 28 U.S.C. § 1605A(c). "The right of action requires a demonstration (1) that [the] victim suffered an act of torture, extrajudicial killing, aircraft sabotage, [or] hostage taking . . . ; (2) that the act was committed . . . by the foreign state or its agent; and that the act (3) caused (4) personal injury or death (5) for which the courts of the United States may maintain jurisdiction under this section for money damages." *Encinas*, *supra*, at 19 (quotations omitted). "The third and fourth prongs require [Shahini] to articulate a way to recover through the lens of civil-tort liability." *Id.* at 20.

"Having already concluded that the Court possesses subject-matter jurisdiction, little else is needed to show that [Shahini is] entitled to relief." *See Sotloff*, 525 F. Supp. 3d at 141 (citing 28 U.S.C. § 1605A(c)). As explained above, the evidence establishes that Shahini was the victim of hostage taking and torture at the hands of Iran and that the Court has jurisdiction, *see supra* Part IV(A)(1).

All that is left is whether Shahini has satisfied the third and fourth elements—which, again, are evaluated "through the lens of civil-tort liability." *Encinas*, *supra*, at 20. "The elements of causation and injury in the federal cause of action created by § 1605A require FSIA plaintiffs to prove a theory of liability which justifies holding the defendants culpable for the injuries that the plaintiffs allege to have suffered." *Fain*, 856 F. Supp. 2d at 122 (quotation omitted). "Based on the Circuit Court's guidance, District Courts in this jurisdiction 'rely on well-established principles of law, such as those found Restatement (Second) of Torts and other leading treatises, as well as those principles that have been adopted by the majority of state jurisdictions' to outline the boundaries of these theories of recovery." *Encinas*, *supra*, at 21–22 (quoting *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 61 (D.D.C. 2009)). Shahini asserts four

possible claims for relief: assault, battery, intentional infliction of emotional distress, and false imprisonment. *See* Compl. ¶¶ 34–45.

An assault occurs when a person "(a) 'acts intending to cause a harmful or offensive contact with the person . . . or an imminent apprehension of such a contact, and (b) the [person] is thereby put in such imminent apprehension.'" *Stansell v. Republic of Cuba*, 217 F. Supp. 3d 320, 343 (D.D.C. 2016) (quoting Restatement (Second) of Torts § 21). "By their very nature, torture and hostage taking subject the victim to 'imminent apprehension of harmful or offensive contact' at all times while in captivity." *Abedini*, 422 F. Supp. 3d at 132; *see also id.* at 132–33 ("Thus, hostages who are tortured or threatened withstand a continuous . . . tortious assault that infects every moment of their captivity." (quotation omitted) (alteration adopted)). "Given the facts recounted above," Iran is "plainly liable for assault." *See id.* at 133.

Battery occurs when "(1) 'acts [are] intend[ed] to cause a harmful or offensive contact with [a person] . . . or [cause] an imminent apprehension of such a contact, and (2) a harmful contact with [that person] directly or indirectly results.'" *Stansell*, 217 F. Supp. 3d at 342 (quoting Restatement (Second) of Torts § 13). "'Harmful contact' includes 'any physical impairment of the condition of another's body, or physical pain or illness.'" *Abedini*, 422 F. Supp. 3d at 133 (quoting Restatement (Second) of Torts § 15). "Acts of torture—like those [Shahini] endured—undeniably meet this bar." *See id.* Therefore, this Court "has little difficulty concluding that the IRGC repeatedly battered" Shahini, *see id.*, by, among other things, placing him in solitary confinement under a high-powered light for 16 days, *see* Decl. at 2–3, providing inadequate medical care, food, or drink, *id.* at 3, 7, 9–10, and shackling him to the wall for hours in a cold solitary confinement cell, *id.* at 12.

An actor is liable for intentional infliction of emotional distress if "by extreme and outrageous conduct [he] intentionally or recklessly causes severe emotional distress to another." Restatement (Second) of Torts § 46; *Abedini*, 422 F. Supp. 3d at 133. "Torture, by definition, involves 'extreme and outrageous' conduct." *Abedini*, 422 F. Supp. 3d at 133. Shahini certainly suffered severe emotional distress because of his hostage taking and torture. *See* Decl. at 7, 10–11. And "Iran's actions were intentional—indeed, they were an attempt to compel the U.S. to release Iranian prisoners," *see Abedini*, 422 F. Supp. 3d at 133; Khalaji Report at 5, 11, 16, and coerce a confession, *see* Decl. at 8. Therefore, Shahini has demonstrated that Iran can be held liable for intentional infliction of emotional distress.

Finally, false imprisonment occurs when "(a) [an actor] acts intending to confine a person within fixed boundaries, . . . (b) his act directly or indirectly results in such a confinement of the other, and (c) the victim is conscious of the confinement or is harmed by it." *Abedini*, 422 F. Supp. 3d at 133 (alterations adopted) (quoting Restatement (Second) of Torts § 35). Iran falsely imprisoned Shahini for 249 days. *See supra* at 9.

3. Damages

The FSIA expressly allows plaintiffs "to pursue 'economic damages' and those for 'pain and suffering.'" *Abedini*, 422 F. Supp. 3d at 136 (quoting 28 U.S.C. § 1605A(c)). "To obtain damages for an FSIA claim, 'a plaintiff must prove that the consequences of the defendants' acts were reasonably certain to occur, and [he] must prove the amount of damages by a reasonable estimate.'" *Id.* (quoting *Moradi v. Islamic Republic of Iran*, 77 F. Supp. 3d 57, 69 (D.D.C. 2015)). It is unquestionable that Iran's actions of hostage taking and torture were "reasonably certain" to injure Shahini. The Court therefore considers whether Shahini's proposed damages are reasonable estimates.

a. Pain and Suffering

As compensation for his pain and suffering, Shahini asks for $2,490,000 in pre-release damages, $1,057,500 for the time he spent on bail in hiding in Iran, and $10,000,000 in post-release damages.

"In hostage-taking cases, this district applies a per-diem formula—awarding $10,000 per day of captivity—to compensate for injuries sustained while imprisoned." *Abedini*, 422 F. Supp. 3d at 136. Because Shahini was imprisoned for 249 days, the Court awards him the requested $2,490,000 in pre-release damages.

There is no existing formula for the time Shahini spent on bail and in hiding from the Revolutionary Guard. He requests a rate of $7,500 per day, arguing that although his injuries were less severe during that period, he still suffered extreme restrictions on his liberty and was unable to get necessary medical care. *See* Suppl. Mem. at 8. The Court agrees, and therefore awards Shahini the requested $1,057,500 for the 141 days he spent in Iran on bail.

As for post-release damages, "[a]lthough no such formula exists for calculating [such] damages, awards granted to similarly situated plaintiffs in FSIA lawsuits help guide the Court through this delicate terrain." *Abedini*, 422 F. Supp. 3d at 137. "Central to determining the amount of these sums are 'the victim's age at the time of release (the length of time he will be experiencing pain and suffering) and the extent of the victim's long-term injuries (the level of pain and suffering).'" *Id.* (quoting *Hekmati*, 278 F. Supp. 3d at 164).

Shahini proposes an award of $10,000,000 in post-release damages because, he contends, his level of pain and suffering is comparable to the plaintiffs in *Rezaian* and *Hekmati*. Hekmati, who was 32 when he was released, received $10,000,000 for post-release pain and suffering following his 1,602-day captivity. *Hekmati*, 278 F. Supp. 3d at 163–64. Rezaian, who was 40

when he was released, received $10,000,000 for post-release pain and suffering following his 544-day captivity. *Rezaian*, 422 F. Supp. 3d at 180.

The Court does not think that Shahini's post-release damages should be quite as high as those awards. For one, Shahini was older at the time of his release than both. *See* Bunin Report at 1. Additionally, the facts of Shahini's imprisonment are relatively less gruesome than *Hekmati* and *Rezaian*. *See Hekmati*, 278 F. Supp. 3d at 150–54 (plaintiff was routinely beaten and whipped by guards, was repeatedly handcuffed into stress positions for several hours, and forced to take addictive sedatives); *Rezaian*, 422 F. Supp. 3d at 171–73 (plaintiff suffered extreme health problems while in prison and his interrogators threatened harm to his wife). But Shahini's injuries are more serious than those in other cases where the post-release award was $5,000,000. *See, e.g.*, *Moradi*, 77 F. Supp. 3d at 70 (awarding $5 million in post-release damages for 168-day imprisonment of a plaintiff who was 57 when released); *see also Wyatt v. Syrian Arab Republic*, 908 F. Supp. 2d 216, 231–32 (D.D.C. 2012) ($5 million in total pain and suffering damages for 21-day imprisonment). The Court awards Shahini $8,000,000 in post-release damages for his pain and suffering. Shahini's total pain and suffering damages therefore total $11,547,500.

b. Economic Damages

"Establishing a reasonable estimate of lost earnings through persuasive expert analysis supported by sound factual bases has been deemed sufficient." *Rezaian*, 422 F. Supp. 3d at 181. Shahini's expert, Royal A. Bunin, prepared an Economic Report on Shahini's "Loss of Earning Capacity and Fringe Benefits." *See generally* Bunin Report. Bunin has been working at an actuarial-economic consulting practice since 1983.

Bunin's report first details Shahini's educational background, work history, and pre-detention plans. In summary, Shahini graduated from San Diego State University with a bachelor's degree in International Security and Conflict Resolution in May 2016. *Id.* at 4. The

report details that, before his captivity, it was Shahini's plan to complete both master's and doctoral degrees and then obtain employment with the State Department. *Id.* at 5. Shahini did successfully complete his masters in Homeland Security in May 2019, but did so because he received accommodations from his professors who understood his difficult circumstances. *Id.* But because of cognitive and emotional issues resulting from treatment in Iran, he is unable to study for his PhD. *Id.*

To calculate past lost wages, Bunin assumed that Shahini would have finished his master's in May 2018 and obtained a government position as planned. *Id.* at 6. Bunin's calculations "allow[ed] 6–7 months for travel to visit relatives in Iran and to complete the required paperwork to obtain a government position" and therefore measured lost earnings from January 1, 2019, through the date the report was authored on November 29, 2020. *Id.* Bunin considered the GS pay scale, the San Diego GS locality increase, estimated inflation, expected income taxes, and Shahini's actual income during this period. *Id.* at 6–10. Bunin calculated that Shahini's past net lost earnings were $79,196. *Id.* at 10. Because Bunin calculated this figure using reasonable assumptions and conservative estimates, the Court adopts his reasoning and grants Shahini $79,196 in past economic loss.

For Shahini's future economic losses, Bunin looked to his pre-injury earning capacity, his current earning capacity, expected inflation, reasonable expectations of future growth along the GS pay scale, and income taxes. *Id.* at 11–13. From these data, Bunin provided a matrix of 12 possible outcomes that depended on Shahini's retirement age and whether he would have been promoted from GS-9 to GS-10 or 11. *See id.* at 14. The lowest estimate of future loss—if Shahini retired at 62 and was never promoted to GS-10 or 11—was $414,881. The highest estimate—if Shahini retired at 70 and was promoted to GS-11—was $818,869.

The Court believes that something in the middle is more reasonable. The Court assumes that Shahini would retire at 65. *See, e.g.*, *Rezaian*, 422 F. Supp. 3d at 182. But the Court also thinks it reasonable to assume that Shahini would have been promoted to GS-10 after 5 years of service and GS-11 after 10. *See* Bunin Report at 12. The Court therefore adopts Bunin's corresponding calculation of $579,071 in future lost earning capacity. *Id.* at 14. For the same reasons, the Court adopts Bunin's calculation of $176,081 in fringe benefits, for a total future economic loss of $755,152. *Id.* at 18.

Shahini's total economic loss is therefore $834,348. Combined with his non-economic damages of $11,547,500, Shahini's total compensatory award is $12,381,848.

c. Punitive Damages

"The final category of damages at issue is punitive damages," which "are awarded not to compensate the victims, but to punish outrageous behavior and deter such outrageous conduct in the future." *Rezaian*, 422 F. Supp. 3d at 183 (quotations omitted). "Courts have repeatedly held, in section 1605A cases, that Iran's actions were outrageous, and imposed substantial punitive damages awards as a result." *Id.* And the Court agrees with previous decisions that "[h]olding a man hostage and torturing him to gain leverage in negotiations with the United States is outrageous, deserving of punishment, and surely in need of deterrence." *Id.*

Much harder than the question of *whether* to award punitive damages is the question of *how much*. "To calculate punitive damages awards in section 1605A cases, courts consider (1) the character of the defendants' act, (2) the nature and extent of harm to the plaintiffs that the defendants caused or intended to cause, (3) the need for deterrence, and (4) the wealth of the defendants." *Id.* (quotations omitted). But "[e]mployment of these factors has yielded several different methods of determining the ultimate award." *Id.* Some courts have multiplied the foreign state's annual expenditures on terrorism by a factor between three and five; others have awarded

each affected family a fixed amount of $150,000,000; and others have awarded punitive damages in an amount equal to the total compensatory damages. *See id.* (citing cases).

Shahini argues for an award of $150,000,000 in punitive damages. *See* Suppl. Mem. at 9–10. Shahini acknowledges that in *Hekmati* and *Abedini*, the courts awarded punitive damages based on the compensatory awards. *See id.* at 9. But he argues that this Court should follow *Rezaian*, *see id.* at 9–10, a case in which the Court awarded $150,000,000 because the plaintiffs "presented evidence showing that Iran arrested and detained [the plaintiff] to increase its bargaining leverage in ongoing negotiations with the United States" and thus the need for deterrence was "critical." *See Rezaian*, 422 F. Supp. 3d at 184. Shahini argues that the *Rezaian* approach is more appropriate here because he was taken hostage shortly after the plaintiffs in those cases were released in order to "re-stock" Iran's "inventory of American hostages, for the specific purpose of maintaining leverage against the United States." Suppl. Mem. at 9.

As explained above, Iran's actions against Shahini—while plainly abhorrent—were not as extreme as its treatment of Jason Rezaian. And this Court is not convinced by the distinction Shahini draws between *Rezaian*, on the one hand, and *Hekmati* and *Abedini*, on the other. The Court therefore grounds its punitive damages award on Shahini's compensatory damages and awards Shahini $12,381,848 in punitive damages. Thus, Shahini's total damages award against Iran is $24,763,696.

B. Shahini Lacks Standing To Bring Civil RICO Claims

Section 1962 of RICO enumerates several criminal offenses "involving the activities of organized criminal groups in relation to an enterprise." *See RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 329 (2016) (citing 18 U.S.C. § 1962(a)–(d)). But RICO also provides a private right of action for "[a]ny person injured in his business or property by reason of a violation of section 1962." 18 U.S.C. § 1964(c). By its plain language, section 1964(c) explicitly "cabin[s] RICO's

private cause of action to particular kinds of injury—excluding, for example, personal injuries." *RJR Nabisco*, 579 U.S. at 350. Therefore, for a private plaintiff to have standing to bring RICO claims, he must allege injuries to his business or property. *See id.* at 346.

Shahini does not have standing to assert a claim for civil damages under RICO because he fails to allege an "injur[y] in his business or property." *See* 18 U.S.C. § 1964(c). Shahini argues that he has alleged an injury to property because he has alleged economic loss—albeit economic loss that resulted from his personal injuries. *See* ECF No. 43 at 5. But his argument relies on a "more expansive view of 'business or property' taken by the Ninth Circuit," *see Aston v. Johnson & Johnson*, 248 F. Supp. 3d 43, 50 n.4 (D.D.C. 2017) (citing in *Diaz v. Gates*, 420 F.3d 897, 900 (9th Cir. 2005) (en banc) (per curiam)), a view that other judges in this district and several Courts of Appeals have rejected. *See, e.g.*, *id.*; *Burnett v. Al Baraka Inv. & Devel. Corp.*, 274 F. Supp. 2d 86, 101 (D.D.C. 2003); *Klayman v. Obama*, 125 F. Supp. 3d 67, 88 (D.D.C. 2015); *Evans v. City of Chicago*, 434 F.3d 916, 930 n.26 (7th Cir. 2006), *overruled on other grounds by Hill v. Tangherlini*, 724 F.3d 965 (7th Cir. 2013); *Bast v. Cohen, Dunn & Sinclair, PC*, 59 F.3d 492, 495 (4th Cir. 1995). The Court agrees with its colleagues and declines to adopt the expansive view articulated by the Ninth Circuit in *Diaz*. Because Shahini has not alleged an injury to his business or property, he does not have standing to bring his RICO claims.[2]

V. Conclusion

Shahini's motion for default judgment is GRANTED with respect to his FSIA claims and DENIED with respect to his RICO claims. And Shahini is awarded a total damages award of $24,763,696. An appropriate order will follow.

[2] It is also unclear whether Shahini properly served the individual RICO defendants. But because Shahini lacks standing to bring the claims, the Court will not address that issue here.

DATE: February 24, 2023

CARL J. NICHOLS
United States District Judge