

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-7138

September Term, 2018

FILED ON: MAY 21, 2019

RACHEL DEVORA SPRECHER FRAENKEL, INDIVIDUALLY, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF YAAKOV NAFTALI FRAENKEL, AND AS THE NATURAL GUARDIAN OF PLAINTIFFS A.H.H.F., A.L.F., N.E.F., AND S.R.F., ET AL.,
APPELLANTS

v.

IRANIAN MINISTRY OF INFORMATION AND SECURITY AND SYRIAN ARAB REPUBLIC, C/O FOREIGN MINISTER WALID AL-MUALEM, MINISTRY OF FOREIGN AFFAIRS,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:15-cv-01080)

Before: GARLAND, *Chief Judge*, and GRIFFITH and PILLARD, *Circuit Judges*.

J U D G M E N T

The court has considered this appeal on the record from the United States District Court for the District of Columbia, and on the briefs and oral arguments of the parties. The court has given the issues full consideration and has determined that they do not warrant a published opinion. *See* FED. R. APP. P. 36; D.C. CIR. R. 36(d). It is hereby

ORDERED AND ADJUDGED that the judgment of the District Court be **AFFIRMED**.

This appeal is governed by this circuit’s decision in the previous appeal of this case, *Fraenkel v. Islamic Republic of Iran*, 892 F.3d 348 (D.C. Cir. 2018). In *Fraenkel*, the court reversed the district court’s judgment regarding the amount of solatium damages that should be awarded to the plaintiffs for the kidnapping and killing of Naftali Fraenkel. “On remand,” the court instructed, “the District Court should apply the considerations outlined in” *Flatow*

v. Islamic Republic of Iran, 999 F. Supp. 1, 30-32 (D.D.C. 1998), when calculating the appropriate amounts of solatium damages. *Fraenkel*, 892 F.3d at 359.

On remand, the district court did as instructed. *See Fraenkel v. Islamic Rep. of Iran*, 316 F. Supp. 3d 284, 287-91 (D.D.C. 2018) (applying the *Flatow* considerations). The plaintiffs contend that the district court should have not only applied the considerations outlined in *Flatow* but also used the amount of solatium damages awarded in that case as a baseline, and then adjusted the award in this case upward or downward from that baseline. But that is not what the previous panel held. Indeed, the panel rejected that kind of approach, which plaintiffs argued in the last appeal by reference to another case decided by the same district judge who decided *Flatow*. *See Fraenkel*, 892 F.3d at 361 (“The Fraenkels maintain that . . . the court below was obligated to consider the[] amounts [in *Estate of Heiser v. Islamic Republic of Iran*, 466 F. Supp. 2d 229 (D.D.C. 2006), as] a ‘baseline’ from which [it] could vary only with reasoned justification. We disagree.”). Instead, the panel held that it was “obliged to leave it to the wise discretion of our judicial colleagues on the District Court to determine the damages that are due under the FSIA,” *id.* at 362, by applying “the considerations outlined in *Flatow*,” *id.* at 359 (emphasis added). Because the district court applied those considerations, it did not abuse its discretion in calculating the amount of solatium damages upon remand.

Pursuant to D.C. CIR. R. 36(d), this disposition will not be published. The Clerk is directed to withhold issuance of the mandate until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P 41(b); D.C. CIR. R. 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Michael C. McGrail

Deputy Clerk