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Congress of the United States

House of Representatives

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**STATEMENT OF THE HONORABLE CAROLYN B. MALONEY
MEMBER OF CONGRESS
HOUSE FOREIGN AFFAIRS COMMITTEE
HEARING ON HOLOCAUST RAIL VICTIMS
NOVEMBER 16, 2011**

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Chairman Ros-Lehtinen, Ranking Member Berman, and members of the Committee, I want to thank you for the opportunity and honor to be here today to discuss H.R. 1193, the Holocaust Rail Justice Act. Alongside Chairman Ros-Lehtinen, Ranking Member Berman, and so many others in the House and Senate, we have worked tirelessly for SNCF's victims to move this legislation forward since it was first introduced. I am pleased to report that this legislation now has broad and bipartisan support in the House, and with today's important hearing as the first step, I am very optimistic that this legislation will continue to move through the House and that Congress will provide SNCF's victims with their long awaited and much deserved day in court. I first introduced this legislation in 2003 after meeting with survivors of the Holocaust and the inhumane deportation on SNCF trains including Leo Bretholz and Mathilde Freund. Their stories were haunting and I could not ignore the injustice they have endured. In an effort to educate and pay true to "never forget," I have also introduced legislation, HR 1753, the Simon Wiesenthal Holocaust Education Assistance Act which provides grants to organizations to teach about the horrors of the Holocaust so they are never repeated

During World War II, more than 76,000 Jews and other "undesirables" were transported from France to Nazi death camps aboard trains operated by the ("SNCF"). Among those transported to death camps on SNCF trains were American airmen shot down over France. SNCF operated the trains as a commercial venture and were paid per head, per kilometer to deliver thousands to their ultimate deaths.

In the 66 years since the end of World War II, SNCF has never made restitution or reparations to its victims. Hundreds of known survivors and family members of those who have perished live in the United States today—although the number of living survivors is rapidly growing smaller—and litigation seeking to hold SNCF accountable for its actions during World War II went on for over ten years. SNCF has unfortunately succeeded in cloaking itself in the veil of foreign sovereign immunity and thus evaded jurisdiction in United States courts.

At the very same time as SNCF argued in United States courts that it was entitled to foreign sovereign immunity, the company was advancing the opposite argument in French administrative court in an effort to have a case dismissed. It is unconscionable that SNCF has successfully evaded accountability by arguing in the US that it is an instrumentality of the French government and thus entitled to sovereign immunity while at the same time arguing in France it was performing a private function (and not a government function). SNCF has avoided all accountability and now the Holocaust Rail Justice Act is the only remaining opportunity for the survivors to pursue justice.

HR 1193 would simply preclude, in this one limited instance, the defense of foreign sovereign immunity from being raised. As the facts make clear, this is not the type of situation foreign sovereign immunity was intended to cover.

In the 66 years since the end of World War II, SNCF has never provided any reparations or restitution to its victims and still, to this day, steadfastly refuses to do so. SNCF has never once denied its actions, but has simply contended that it can't be held responsible or accountable. As the members of this Committee know, many of these survivors don't have much time left. Regrettably, it appears SNCF's deliberate strategy is to run out the clock on these survivors.

Beginning in 2000, Holocaust survivors attempted to hold SNCF accountable for transporting them and their families toward the death camps on SNCF trains. However, SNCF has avoided accountability for war

crimes and crimes against humanity by arguing it is entitled to foreign sovereign immunity – based upon a law passed by Congress more than 30 years after the Holocaust – and has escaped jurisdiction in U.S. courts. Just last month, the U.S. Supreme Court declined to hear the only pending action against SNCF. What this means is that all cases against SNCF have been dismissed on jurisdictional grounds and SNCF's victims have never had their day in court. Now, more than ever, HR 1193, the Holocaust Rail Justice Act represents the only recourse for these survivors.

I'd like to recognize two of the survivors we are honored to have with us today. Leo Bretholz, whose chilling testimony we will hear shortly, leapt from an SNCF train bound for Auschwitz when he was only 21 years old and managed, by the grace of God, to survive. Thank you, Leo, for your courage and for being here to tell your story. I'd also like to recognize another SNCF victim sitting behind me, Donald Shearer, and ask him to stand. Mr. Shearer, a former Technical Sergeant in the U.S. Air Force, was shot down over France on July 5, 1944. After being turned over to the Gestapo, he and 167 other Allied Airmen were transported not to a POW camp, but to Buchenwald, on SNCF trains. Mr. Shearer, especially as we sit here just after Veterans Day, I want to thank you for your service to our country and for your continued heroism, both during World War II and today. I would ask that the Committee enter into the record Mr. Shearer's Oral History Interview provided to the U.S. Air Force on June 29, 2007.

SNCF's claims that it was wholly coerced into participating in the Holocaust, and that it should not bear the responsibility for deporting tens of thousands of innocents, including over 11,000 children, toward their deaths, are negated by historical facts. SNCF tells a tortured and revisionist version of history. As we all know, and as SNCF should know, the "following orders" defense was dispensed with at Nuremberg. Independent studies and tribunals have determined that SNCF actively collaborated with the Nazis. The Bachelier Report commissioned by SNCF itself found that in the first meeting with the Nazis, it was agreed SNCF would retain control and responsibility for the trains, including the technical conditions of the deportations. SNCF alone decided to utilize cattle cars to transport victims and refused to provide provisions like food and water. In fact,

when Red Cross workers tried to give water to the victims, SNCF complained because it interfered with transport schedules. SNCF had a margin to maneuver and chose not to use that margin to reduce suffering and save lives.

SNCF billed quarterly for the deportations and even pursued payment for the deportations after the liberation of Paris and after any conceivable coercion “defense” would have been nullified. SNCF has never disgorged this blood money and now, some 66 years after the Holocaust ended, SNCF still refuses to fully admit its own past or accept responsibility for its actions. And that is why we are here today.

In the 66 years since the end of World War II, SNCF has never been held accountable, it has never paid any reparations to the thousands of men, women, and children who suffered or died aboard their trains, and its victims have never had their day in court. While many companies that participated in the Holocaust have taken responsibility for their actions, SNCF has failed to follow these examples and steadfastly refuses to provide reparations to its many victims. In fact, an SNCF representative recently went so far as to tell California Assemblyman Bob Blumenfield, who has been a champion for SNCF’s victims on the California state level, that “SNCF will never pay the survivors anything” and that SNCF would rather not do business in California than take any such actions.¹ SNCF's victims deserve better.

As France was an ally, there are no post-war treaties with France pertaining to reparations and no general funds involving the payment of reparations from France, as there are with other countries like Germany and Austria. Numerous German companies have accepted responsibility for their actions during the Holocaust and paid into a German fund. Austrian companies have also paid reparations. Following a law suit in the U.S., French banks have made restitution. A number of rail companies have either contributed directly to reparations funds established by their governments, or were themselves part of the governments and as such contributed to the government reparations programs that were established after the War in accordance with post-war treaties.

¹ See <http://holocaustrailvictims.org/wp-content/uploads/2011/02/Blumenfield-Letter-2-2-11.pdf>.

Although SNCF now argues that it is "covered" by existing French reparations or restitution programs, this is false. SNCF began claiming that existing French reparations or restitution programs should "cover" SNCF's victims only after it became interested in the multi-billion dollar U.S. high-speed rail market. In fact, in more than ten years of litigation in the United States and throughout extended litigation in French courts, SNCF never once suggested that existing French programs were applicable.

Because SNCF is a separate corporation under both French and U.S. law, it is inappropriate and misleading for SNCF to claim that it should be credited for any compensation that such French government programs might provide. Further, even if existing French government programs were relevant (which they are not), none specifically provides reparations for SNCF's horrific actions in the deportations. These French programs do not provide reparations to the overwhelming majority of the SNCF's victims, and SNCF has no connection with these programs.

To be clear, SNCF has never paid a cent in reparations to its victims and has never paid a cent into any existing French reparations programs. As Bet Tzedek, a leader in Holocaust reparations work, has made clear, "France has never provided restitution to the victims of the SNCF deportations."² SNCF's recent statements to the contrary are disingenuous and false. This legislation is necessary because there is absolutely no other recourse for these survivors and no other way for them to pursue justice; these survivors have simply fallen through the cracks.

It is not just SNCF's actions during the Holocaust that are so reprehensible, it is SNCF's continued refusal today, in 2011, to accept full responsibility that is most alarming. We are no longer simply talking about the sins of SNCF's fathers. Today's leaders of SNCF have made a conscious decision to spend millions of dollars to fight the survivors of the Holocaust, rather than to provide the reparations relief these victims so much deserve.

² See <http://holocaustrailvictims.org/wp-content/uploads/2010/10/Kamin-Letter-to-Kelly.pdf>.

In 2004, the Second Circuit noted that “the evil actions of the French national railroad’s former private masters in knowingly transporting thousands to death camps during World War II are not susceptible to legal redress in federal court today.”³ The Court was referring to the fact that the Foreign Sovereign Immunities Act deprived it from exercising jurisdiction over this suit. And that is why this legislation was introduced and why it must be passed.

This is simply not the type of situation foreign sovereign immunity was ever intended to cover, nor should it be. Although owned by France, SNCF is and was a separate, legally constituted corporation under both French and U.S. law. Further, SNCF has no immunity in France and had routinely been sued in U.S. courts before foreign sovereign immunity was determined by the Supreme Court – in an unrelated case – to be retroactive. SNCF earns millions of dollars from its commercial activities in the United States and is seeking to earn billions more in high-speed rail contracts in this country – funded through taxpayer dollars from some of the very same victims SNCF transported toward the death camps. SNCF cannot benefit from the commercial opportunities in this country while shielding itself from any accountability for its actions. This legislation would simply permit private individuals to have their day in U.S. court against a company ranked number 209 on this year’s Fortune 500 list.

SNCF has even undercut its own assertion that it should be entitled to immunity – while SNCF argues in U.S. courts that it is an arm of the French government to avoid jurisdiction, in French Administrative court SNCF was actually successful in having a case dismissed based on the opposite argument, that it was a private entity. It is unconscionable that SNCF has successfully escaped all accountability by advancing these contrary arguments. SNCF cannot have it both ways.

The Holocaust Rail Justice Act does not assign blame, does not find parties culpable, and does not mandate the payment of any reparations. It will not change any existing restitution or reparations agreements. The legislation simply provides victims the right to be heard and the opportunity to hold SNCF accountable in a

³ Abrams v. Societe Nationale des Chemins de Fer Francais, 389 F.3d 61, 64-65 (2d Cir. 2004).

court of law for the first time. We owe at least that to Mr. Bretholz, to Mr. Shearer, and to the countless other SNCF victims.

SNCF's role in the death and suffering of tens of thousands of innocent victims is an immeasurable failure of humanity. SNCF's refusal to fully acknowledge their culpability or take steps to make amends to their victims is a failure of morality. And SNCF's ability to evade legal accountability in U.S. courts is a failure of justice. By finally forcing SNCF out of the shadows, and by precluding SNCF from hiding behind foreign sovereign immunity, the Holocaust Rail Justice Act will finally provide some measure of justice.

While, with the help of Mr. Bretholz, Mr. Shearer, and the other survivors here today, we are upholding the solemn lesson of the Holocaust to never forget, we must go one step further and provide justice for SNCF's victims. I thank Chairman Ros-Lehtinen, Ranking Member Berman, and the rest of the Committee for holding this important hearing today and for bringing SNCF's victims one step closer to justice. I applaud the lawmakers who are joining me in this fight by supporting this critical legislation and I urge all of my colleagues to help us pass this legislation before it is too late for the survivors.