

Union Calendar No. 545

110TH CONGRESS
2^D SESSION

H. R. 5167

[Report No. 110-844]

To amend the National Defense Authorization Act for Fiscal Year 2008
to remove the authority of the President to waive certain provisions.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 2008

Mr. BRALEY of Iowa (for himself, Mr. CONYERS, Mr. FRANK of Massachusetts, Mr. SESTAK, Mr. HARE, Ms. SUTTON, Mr. SARBANES, Mr. KAGEN, Ms. HIRONO, Ms. KILPATRICK, Mr. HALL of New York, Mr. WELCH of Vermont, Ms. SHEA-PORTER, Mr. WALZ of Minnesota, Mr. PERLMUTTER, Mr. GONZALEZ, Mr. CARNAHAN, Mr. COURTNEY, Mr. GEORGE MILLER of California, Mr. CUMMINGS, Mr. MURPHY of Connecticut, Ms. LEE, Ms. CASTOR, Ms. JACKSON-LEE of Texas, Mr. ELLISON, Mr. KENNEDY, Mr. JOHNSON of Georgia, Mr. MORAN of Virginia, and Ms. HOOLEY) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 15, 2008

Additional sponsors: Mr. HINCHEY, Ms. SCHAKOWSKY, Ms. WASSERMAN SCHULTZ, Mr. GRIJALVA, Mr. MCGOVERN, Ms. WOOLSEY, Mr. DAVIS of Illinois, Mr. ISSA, and Mr. GOODE

SEPTEMBER 15, 2008

Reported with amendments, committed to the Committee of the Whole House
on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]
[For text of introduced bill, see copy of bill as introduced on January 29, 2008]

A BILL

To amend the National Defense Authorization Act for Fiscal Year 2008 to remove the authority of the President to waive certain provisions.

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 “Justice for Victims of*
5 *Torture and Terrorism Act”.*

6 **SEC. 2. FINDINGS.**

7 *The Congress finds the following:*

8 (1) *During the Gulf War against Iraq in 1991,*
9 *Americans serving in the United States Armed Forces*
10 *were captured, became Prisoners of War (POWs), and*
11 *were subsequently tortured, beaten, starved, hooked to*
12 *electrical shock devices, and subjected to other horren-*
13 *dous acts by Saddam Hussein’s regime.*

14 (2) *CBS News reporter Bob Simon and camera-*
15 *man Roberto Alvarez were kidnapped while on as-*
16 *signment during the 1991 Gulf War and were held*
17 *and tortured, along with the American POWs.*

1 (3) *Following the Iraqi invasion of Kuwait in*
2 *August 1990, many United States citizens were de-*
3 *tained by Iraq, beaten, subjected to cruel, inhumane*
4 *and degrading treatment, confined under deplorable*
5 *conditions, and used as “human shields” for the*
6 *avowed purpose of preventing the United States and*
7 *its coalition allies from using military force to lib-*
8 *erate Kuwait.*

9 (4) *At the time these acts occurred, the Depart-*
10 *ment of State had classified Iraq as a state sponsor*
11 *of terrorism.*

12 (5) *The brave American POWs and American ci-*
13 *vilian hostages have suffered long-term physical, emo-*
14 *tional, and mental damage as a result of this brutal,*
15 *state-sponsored torture and terrorism.*

16 (6) *When the American POWs returned home*
17 *after the Gulf War ended, they were given a hero’s*
18 *welcome by then Secretary of Defense Dick Cheney,*
19 *who told them, “Your country is opening its arms to*
20 *greet you”.*

21 (7) *During the Gulf War, the Congress unani-*
22 *mously passed resolutions condemning the brutal*
23 *treatment by the Government of Iraq of captured*
24 *United States service members, demanding that the*
25 *Government of Iraq abide by the Geneva Convention*

1 *regarding the treatment of prisoners of war, and stat-*
2 *ing an intention to hold Iraq accountable for the tor-*
3 *ture of American POWs.*

4 (8) *In 1996, Congress passed an amendment to*
5 *the Foreign Sovereign Immunities Act (FSIA) provi-*
6 *sions of title 28, United States Code, so that torture*
7 *victims like the American POWs and the American*
8 *“human shield” victims from the Gulf War could seek*
9 *compensation for their injuries from terrorist coun-*
10 *tries, including Iraq.*

11 (9) *On April 4, 2002, 17 Gulf War POWs and*
12 *their families filed claims in the United States Dis-*
13 *trict Court for the District of Columbia seeking com-*
14 *penetration for damages related to their torture and*
15 *abuse by the Government of Iraq. The POWs included*
16 *Colonel Clifford Acree, USMC (Ret.); Lieutenant*
17 *Colonel Craig Berryman, USMC (Ret.); Former Staff*
18 *Sergeant Troy Dunlap, US Army; Colonel David*
19 *Eberly, USAF (Ret.); Lieutenant Colonel Jeffrey D.*
20 *Fox, USAF (Ret.); Chief Warrant Officer 5 Guy*
21 *Hunter, USMC (Ret.); Sergeant David Lockett, US*
22 *Army; Colonel H. Michael Roberts, USAF; Colonel*
23 *Russell Sanborn, USMC; Captain Lawrence Ran-*
24 *dolph Slade, USN (Ret.); Major Joseph Small, USMC*
25 *(Ret.); Staff Sergeant Daniel Stamaris, US Army*

1 *(Ret.); Lieutenant Colonel Richard Dale Storr, Air*
2 *National Guard; Lieutenant Colonel Robert Sweet,*
3 *USAF; Lieutenant Colonel Jeffrey Tice, USAF (Ret.);*
4 *Former Lieutenant Robert Wetzel, USN; and Former*
5 *Commander Jeffrey Zaun, USN.*

6 (10) *In 2003, after the Government of Iraq re-*
7 *peatedly refused to participate in arbitration on the*
8 *damage claims, and after hearing evidence of how the*
9 *former POWs had been repeatedly tortured, a judge*
10 *awarded them a judgment for damages, stating that*
11 *“deterring torture of POWs should be of the highest*
12 *priority”.*

13 (11) *Despite this ruling, the POWs and their*
14 *families have not received payment, and are unable*
15 *to further pursue their claims in United States courts*
16 *because of the waiver that was granted for Iraq by the*
17 *President under authority established in the National*
18 *Defense Authorization Act for Fiscal Year 2008.*

19 (12) *In December 2001, after conducting an evi-*
20 *dentiary hearing, the United States district court*
21 *held, in Hill v. Republic of Iraq, that Iraq was liable*
22 *for having taken United States citizens hostage fol-*
23 *lowing the Iraqi invasion of Kuwait and subsequently*
24 *awarded 180 of those former hostages and their*
25 *spouses a judgment for damages.*

1 (13) *On March 20, 2003, on the eve of Operation*
2 *Iraqi Freedom, the President of the United States di-*
3 *rected that all of the judgments that had been award-*
4 *ed in Hill v. Republic of Iraq be paid from moneys*
5 *held in blocked Iraqi accounts.*

6 (14) *On that same date, the President issued an*
7 *Executive order confiscating all remaining blocked as-*
8 *sets of Iraq and ordering them to be deposited into the*
9 *United States Treasury to be used for Iraq recon-*
10 *struction.*

11 (15) *The claims of more than 200 United States*
12 *citizens who, at the same time and in the same man-*
13 *ner as the Hill plaintiffs, were held hostage in terri-*
14 *tory occupied by Iraq are currently pending in a*
15 *United States district court in the case of Vine v. Re-*
16 *public of Iraq.*

17 (16) *The plaintiffs in Vine v. Republic of Iraq*
18 *have not been compensated and are unable to enforce*
19 *any judgment they may obtain in United States*
20 *courts because of the waiver that was granted for Iraq*
21 *by the President under authority established in the*
22 *National Defense Authorization Act for Fiscal Year*
23 *2008.*

24 (17) *Article 131 of the Third Geneva Convention*
25 *relative to the Treatment of Prisoners of War (August*

1 12, 1949) prohibits the United States as a party to
2 that treaty from absolving the Government of Iraq of
3 any liability incurred due to the torture of prisoners
4 of war, such as the American POWs referred to in
5 this section.

6 (18) The United States has a moral obligation to
7 protect its past, present, and future members of its
8 Armed Forces, and all United States citizens, from
9 torture and hostage-taking, and the Congress is com-
10 mitted to holding state sponsors of terrorism account-
11 able for such horrendous acts.

12 **SEC. 3. RESOLUTION OF CERTAIN CLAIMS AGAINST IRAQ.**

13 (a) *RESOLUTION BY IRAQ OF CERTAIN CLAIMS.*—

14 (1) *IN GENERAL.*—Unless the President, before
15 the end of the 90-day period beginning on the date de-
16 scribed in paragraph (2)(A), certifies to the Congress
17 that the Government of Iraq has adequately settled the
18 claims in the cases referred to in subsection (b), then,
19 upon the expiration of that 90-day period, the waiver
20 authority granted to the President in section 1083(d)
21 of the National Defense Authorization Act for Fiscal
22 Year 2008 (Public Law 110–181; 122 Stat. 343), and
23 any waiver granted before the end of that 90-day pe-
24 riod under such authority, shall terminate.

25 (2) *DATE DESCRIBED.*—

1 (A) *IN GENERAL.*—*The date described in*
2 *this paragraph is—*

3 (i) *30 days after the date of the enact-*
4 *ment of this Act, unless the President has*
5 *certified to the Congress, before the end of*
6 *that 30-day period, that—*

7 (I) *the Government of Iraq has*
8 *not, before, on, or after the enactment*
9 *of this Act, compensated any foreign*
10 *persons or entities for claims or liabil-*
11 *ities incurred by or under the control*
12 *of the Saddam Hussein regime, includ-*
13 *ing, but not limited to, commercial or*
14 *financial claims, and claims for acts*
15 *against individuals similar to those de-*
16 *scribed in section 1605A(a)(1) of title*
17 *28, United States Code; or*

18 (II) *negotiations are ongoing with*
19 *the Government of Iraq to settle the*
20 *claims in the cases referred to in sub-*
21 *section (b), and the President believes*
22 *that those negotiations are being con-*
23 *ducted in good faith and could lead to*
24 *a satisfactory settlement of those*
25 *claims; or*

1 (ii) if a certification is made under
2 clause (i), the day after the date on which
3 that certification terminates or, if a subse-
4 quent certification is in effect under sub-
5 paragraph (B), the day after the date on
6 which the last such certification terminates.

7 (B) DURATION OF CERTIFICATIONS.—A cer-
8 tification under subclause (I) or (II) of subpara-
9 graph (A)(i) terminates 180 days after it is
10 made. The President may make subsequent cer-
11 tifications under subclause (I) or (II) of sub-
12 paragraph (A)(i) for periods of not more than
13 180 days each.

14 (b) CASES.—The cases referred to in subsection (a)(1)
15 are cases numbered 99:00CV03346 (TPJ), 1:01CV02674
16 (HHK), CIV.A. 02–632 (RWR) (July 7, 2003),
17 1:03CV00691 (HHK), and 1:03CV00888 (HHK), in the
18 United States District Court for the District of Columbia.

19 (c) ADEQUATE SETTLEMENT.—For purposes of sub-
20 section (a)(1), adequate settlement means payment by the
21 Government of Iraq of, or an unqualified and unconditional
22 guarantee made by a United States depository institution
23 to pay within 30 days after the end of the 90-day period
24 described in subsection (a)(1), at least the following
25 amounts to the following persons:

1 (1) *To any person—*

2 (A) *whose claim in the applicable case re-*
3 *ferred to in subsection (b) arose from an act of*
4 *hostage taking or from being held in hostage sta-*
5 *tus, and*

6 (B) *who has not obtained a judgment on the*
7 *claim before the date of the enactment of this*
8 *Act,*

9 *\$150,000, plus \$6,000 for each day the person was*
10 *held as a hostage, but in no event more than*
11 *\$900,000.*

12 (2) *To any person—*

13 (A) *whose claim in the applicable case re-*
14 *ferred to in subsection (b) arose from an act of*
15 *hostage taking or from being held in hostage sta-*
16 *tus,*

17 (B) *who, while a hostage, was subjected to*
18 *torture, and*

19 (C) *who has not obtained a judgment on the*
20 *claim before the date of the enactment of this*
21 *Act,*

22 *\$2,500,000, plus \$6,000 for each day the person was*
23 *held as a hostage.*

24 (3) *To a plaintiff in the applicable case referred*
25 *to in subsection (b) who is the spouse or child of any*

1 *person who qualifies for receipt of payment under*
2 *paragraph (1) or (2), one third of the amount that*
3 *such person qualifies for receipt under such para-*
4 *graph.*

5 *(4) To any person who, before the date of the en-*
6 *actment of this Act, obtained a judgment for compen-*
7 *satory damages in a case referred to in subsection (b)*
8 *(regardless of whether such judgment was subse-*
9 *quently vacated)—*

10 *(A) payment of the unsatisfied amount of*
11 *such judgment, in an amount that is the lesser*
12 *of \$1,000,000 or the unsatisfied amount of the*
13 *award; and*

14 *(B) if the amount of the judgment exceeds*
15 *\$1,000,000, one third of the unsatisfied amount*
16 *of such excess.*

17 *(d) ADDITIONAL CONDITION IN CASE OF GUARANTEE*
18 *OF PAYMENT.—If the claims in the cases referred to in sub-*
19 *section (b) are adequately settled for purposes of subsection*
20 *(a)(1) because of a guarantee of payment by a depository*
21 *institution within the 30-day period specified in subsection*
22 *(c), and such payment is not made within that 30-day pe-*
23 *riod, then upon the expiration of that 30-day period, the*
24 *waiver authority described in subsection (a)(1), and any*

1 *waiver granted before the end of that 30-day period under*
2 *such authority, shall terminate.*

3 *(e) DEFINITIONS.—In this section:*

4 *(1) FOREIGN PERSON OR ENTITY.—The term*
5 *“foreign person or entity” means—*

6 *(A) an individual other than a national of*
7 *the United States; and*

8 *(B) a person or entity, other than an indi-*
9 *vidual, that is organized under the laws of a*
10 *country other than the United States.*

11 *(2) HOSTAGE.—The term “hostage” means an*
12 *individual in hostage status or an individual seized*
13 *or detained in the commission of an act of hostage*
14 *taking.*

15 *(3) HOSTAGE STATUS.—The term “hostage sta-*
16 *tus” has the meaning given that term in section*
17 *599C(d)(1) of the Foreign Operations, Export Fi-*
18 *nancing, and Related Programs Appropriations Act,*
19 *1991 (Public Law 101–513).*

20 *(4) HOSTAGE TAKING.—The term “hostage tak-*
21 *ing” has the meaning given that term in section*
22 *1605A(h)(2) of title 28, United States Code.*

23 *(5) NATIONAL OF THE UNITED STATES.—The*
24 *term “national of the United States” has the meaning*

1 *given that term in section 1605A(h)(5) of title 28,*
2 *United States Code.*

3 (6) *TORTURE.*—*The term “torture” has the*
4 *meaning given that term in section 3 of the Torture*
5 *Victim Protection Act of 1991 (28 U.S.C. 1350 note).*

6 (7) *UNITED STATES.*—*The term “United States”*
7 *means the several States, the District of Columbia,*
8 *and any commonwealth, territory, or possession of the*
9 *United States.*

10 (8) *UNITED STATES DEPOSITORY INSTITUTION.*—
11 *The term “United States depository institution”*
12 *means a depository institution organized under the*
13 *laws of any State, the District of Columbia, or the*
14 *United States, including a branch or agency of a for-*
15 *ign depository institution.*

16 **SEC. 4. LIMITATION ON CERTAIN CLAIMS.**

17 *No funds of the United States Government may be used*
18 *to pay any claim—*

19 (1) *that is cognizable under section 1605A of*
20 *title 28, United States Code, as added by section 1083*
21 *of the National Defense Authorization Act for Fiscal*
22 *Year 2008, for money damages against Iraq for per-*
23 *sonal injury or death that was caused by acts com-*
24 *mitted by an official, officer, or employee of the Iraqi*
25 *Government under Saddam Hussein; and*

1 (2) *with respect to which the waiver authority*
2 *under section 1083(d) of the National Defense Author-*
3 *ization Act for Fiscal Year 2008 has been or may be*
4 *exercised.*

Amend the title so as to read: “A bill to terminate the authority of the President to waive, with regard to Iraq, certain provisions under the National Defense Authorization Act for Fiscal Year 2008 unless certain conditions are met.”.

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