

110TH CONGRESS
2^D SESSION

H. R. 5167

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 16, 2008

Received; read twice and referred to the Committee on Armed Services

AN ACT

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.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Justice for Victims
3 of Torture and Terrorism Act”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) During the Gulf War against Iraq in 1991,
7 Americans serving in the United States Armed
8 Forces were captured, became Prisoners of War
9 (POWs), and were subsequently tortured, beaten,
10 starved, hooked to electrical shock devices, and sub-
11 jected to other horrendous acts by Saddam Hus-
12 sein’s regime.

13 (2) CBS News reporter Bob Simon and cam-
14 eraman Roberto Alvarez were kidnapped while on
15 assignment during the 1991 Gulf War and were held
16 and tortured, along with the American POWs.

17 (3) Following the Iraqi invasion of Kuwait in
18 August 1990, many United States citizens were de-
19 tained by Iraq, beaten, subjected to cruel, inhumane
20 and degrading treatment, confined under deplorable
21 conditions, and used as “human shields” for the
22 avowed purpose of preventing the United States and
23 its coalition allies from using military force to lib-
24 erate Kuwait.

1 (4) At the time these acts occurred, the Depart-
2 ment of State had classified Iraq as a state sponsor
3 of terrorism.

4 (5) The brave American POWs and American
5 civilian hostages have suffered long-term physical,
6 emotional, and mental damage as a result of this
7 brutal, state-sponsored torture and terrorism.

8 (6) When the American POWs returned home
9 after the Gulf War ended, they were given a hero's
10 welcome by then Secretary of Defense Dick Cheney,
11 who told them, "Your country is opening its arms to
12 greet you".

13 (7) During the Gulf War, the Congress unani-
14 mously passed resolutions condemning the brutal
15 treatment by the Government of Iraq of captured
16 United States service members, demanding that the
17 Government of Iraq abide by the Geneva Convention
18 regarding the treatment of prisoners of war, and
19 stating an intention to hold Iraq accountable for the
20 torture of American POWs.

21 (8) In 1996, Congress passed an amendment to
22 the Foreign Sovereign Immunities Act (FSIA) provi-
23 sions of title 28, United States Code, so that torture
24 victims like the American POWs and the American
25 "human shield" victims from the Gulf War could

1 seek compensation for their injuries from terrorist
2 countries, including Iraq.

3 (9) On April 4, 2002, 17 Gulf War POWs and
4 their families filed claims in the United States Dis-
5 trict Court for the District of Columbia seeking com-
6 pensation for damages related to their torture and
7 abuse by the Government of Iraq. The POWs in-
8 cluded Colonel Clifford Acree, USMC (Ret.); Lieu-
9 tenant Colonel Craig Berryman, USMC (Ret.);
10 Former Staff Sergeant Troy Dunlap, US Army;
11 Colonel David Eberly, USAF (Ret.); Lieutenant
12 Colonel Jeffrey D. Fox, USAF (Ret.); Chief War-
13 rant Officer 5 Guy Hunter, USMC (Ret.); Sergeant
14 David Lockett, US Army; Colonel H. Michael Rob-
15 erts, USAF; Colonel Russell Sanborn, USMC; Cap-
16 tain Lawrence Randolph Slade, USN (Ret.); Major
17 Joseph Small, USMC (Ret.); Staff Sergeant Daniel
18 Stamaris, US Army (Ret.); Lieutenant Colonel Rich-
19 ard Dale Storr, Air National Guard; Lieutenant
20 Colonel Robert Sweet, USAF; Lieutenant Colonel
21 Jeffrey Tice, USAF (Ret.); Former Lieutenant Rob-
22 ert Wetzell, USN; and Former Commander Jeffrey
23 Zaun, USN.

24 (10) In 2003, after the Government of Iraq re-
25 peatedly refused to participate in arbitration on the

1 damage claims, and after hearing evidence of how
2 the former POWs had been repeatedly tortured, a
3 judge awarded them a judgment for damages, stat-
4 ing that “detering torture of POWs should be of
5 the highest priority”.

6 (11) Despite this ruling, the POWs and their
7 families have not received payment, and are unable
8 to further pursue their claims in United States
9 courts because of the waiver that was granted for
10 Iraq by the President under authority established in
11 the National Defense Authorization Act for Fiscal
12 Year 2008.

13 (12) In December 2001, after conducting an
14 evidentiary hearing, the United States district court
15 held, in *Hill v. Republic of Iraq*, that Iraq was liable
16 for having taken United States citizens hostage fol-
17 lowing the Iraqi invasion of Kuwait and subse-
18 quently awarded 180 of those former hostages and
19 their spouses a judgment for damages.

20 (13) On March 20, 2003, on the eve of Oper-
21 ation Iraqi Freedom, the President of the United
22 States directed that all of the judgments that had
23 been awarded in *Hill v. Republic of Iraq* be paid
24 from moneys held in blocked Iraqi accounts.

1 (14) On that same date, the President issued
2 an Executive Order confiscating all remaining
3 blocked assets of Iraq and ordering them to be de-
4 posited into the United States Treasury to be used
5 for Iraq reconstruction.

6 (15) The claims of more than 200 United
7 States citizens who, at the same time and in the
8 same manner as the *Hill* plaintiffs, were held hos-
9 tage in territory occupied by Iraq are currently
10 pending in a United States district court in the case
11 of *Vine v. Republic of Iraq*.

12 (16) The plaintiffs in *Vine v. Republic of Iraq*
13 have not been compensated and are unable to en-
14 force any judgment they may obtain in United
15 States courts because of the waiver that was granted
16 for Iraq by the President under authority established
17 in the National Defense Authorization Act for Fiscal
18 Year 2008.

19 (17) Article 131 of the Third Geneva Conven-
20 tion relative to the Treatment of Prisoners of War
21 (August 12, 1949) prohibits the United States as a
22 party to that treaty from absolving the Government
23 of Iraq of any liability incurred due to the torture
24 of prisoners of war, such as the American POWs re-
25 ferred to in this section.

1 (18) The United States has a moral obligation
2 to protect its past, present, and future members of
3 its Armed Forces, and all United States citizens,
4 from torture and hostage-taking, and the Congress
5 is committed to holding state sponsors of terrorism
6 accountable for such horrendous acts.

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

8 (a) RESOLUTION BY IRAQ OF CERTAIN CLAIMS.—

9 (1) IN GENERAL.—Unless the President, before
10 the end of the 90-day period beginning on the date
11 described in paragraph (2)(A), certifies to the Con-
12 gress that the Government of Iraq has adequately
13 settled the claims in the cases referred to in sub-
14 section (b), then, upon the expiration of that 90-day
15 period, the waiver authority granted to the President
16 in section 1083(d) of the National Defense Author-
17 ization Act for Fiscal Year 2008 (Public Law 110-
18 181; 122 Stat. 343), and any waiver granted before
19 the end of that 90-day period under such authority,
20 shall terminate.

21 (2) DATE DESCRIBED.—

22 (A) IN GENERAL.—The date described in
23 this paragraph is—

24 (i) 30 days after the date of the en-
25 actment of this Act, unless the President

1 has certified to the Congress, before the
2 end of that 30-day period, that—

3 (I) the Government of Iraq has
4 not, before, on, or after the enactment
5 of this Act, compensated any foreign
6 persons or entities for claims or liabil-
7 ities incurred by or under the control
8 of the Saddam Hussein regime, in-
9 cluding, but not limited to, commer-
10 cial or financial claims, and claims for
11 acts against individuals similar to
12 those described in section
13 1605A(a)(1) of title 28, United States
14 Code; or

15 (II) negotiations are ongoing
16 with the Government of Iraq to settle
17 the claims in the cases referred to in
18 subsection (b), and the President be-
19 lieves that those negotiations are
20 being conducted in good faith and
21 could lead to a satisfactory settlement
22 of those claims; or

23 (ii) if a certification is made under
24 clause (i), the day after the date on which
25 that certification terminates or, if a subse-

1 quent certification is in effect under sub-
2 paragraph (B), the day after the date on
3 which the last such certification termi-
4 nates.

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

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

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

25 (1) To any person—

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

5 (B) who has not obtained a judgment on
6 the claim before the date of the enactment of
7 this Act,
8 \$150,000, plus \$6,000 for each day the person was
9 held as a hostage, but in no event more than
10 \$900,000.

11 (2) To any person—

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

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

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

21 \$2,500,000, plus \$6,000 for each day the person
22 was held as a hostage.

23 (3) To a plaintiff in the applicable case referred
24 to in subsection (b) who is the spouse or child of any
25 person who qualifies for receipt of payment under

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

4 (4) To any person who, before the date of the
5 enactment of this Act, obtained a judgment for com-
6 pensatory damages in a case referred to in sub-
7 section (b) (regardless of whether such judgment
8 was subsequently vacated)—

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

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

16 (d) ADDITIONAL CONDITION IN CASE OF GUAR-
17 ANTEE OF PAYMENT.—If the claims in the cases referred
18 to in subsection (b) are adequately settled for purposes
19 of subsection (a)(1) because of a guarantee of payment
20 by a depository institution within the 30-day period speci-
21 fied in subsection (c), and such payment is not made with-
22 in that 30-day period, then upon the expiration of that
23 30-day period, the waiver authority described in sub-
24 section (a)(1), and any waiver granted before the end of
25 that 30-day period under such authority, shall terminate.

1 (e) DEFINITIONS.—In this section:

2 (1) FOREIGN PERSON OR ENTITY.—The term
3 “foreign person or entity” means—

4 (A) an individual other than a national of
5 the United States; and

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

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

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

18 (4) HOSTAGE TAKING.—The term “hostage
19 taking” has the meaning given that term in section
20 1605A(h)(2) of title 28, United States Code.

21 (5) NATIONAL OF THE UNITED STATES.—The
22 term “national of the United States” has the mean-
23 ing given that term in section 1605A(h)(5) of title
24 28, United States Code.

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

5 (7) UNITED STATES.—The term “United
6 States” means the several States, the District of Co-
7 lumbia, and any commonwealth, territory, or posses-
8 sion of the United States.

9 (8) UNITED STATES DEPOSITORY INSTITU-
10 TION.—The term “United States depository institu-
11 tion” means a depository institution organized under
12 the laws of any State, the District of Columbia, or
13 the United States, including a branch or agency of
14 a foreign depository institution.

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

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

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

