

111TH CONGRESS  
1ST SESSION

# H. R. 2241

To provide for the settlement of certain claims against Iraq by victims  
of torture and terrorism.

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IN THE HOUSE OF REPRESENTATIVES

MAY 4, 2009

Mr. SESTAK introduced the following bill; which was referred to the  
Committee on the Judiciary

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## A BILL

To provide for the settlement of certain claims against Iraq  
by victims of torture and terrorism.

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 “Equitable Compensa-  
5       tion for American Victims of Torture Act of 2009”.

6       **SEC. 2. JUSTICE FOR VICTIMS OF TORTURE AND TER-**  
7       **RORISM.**

8       (a) FINDINGS.—The Congress finds the following:

9               (1) During the Gulf War against Iraq in 1991,  
10       Americans serving in the United States Armed

1 Forces were captured, became Prisoners of War  
2 (POWs), and were subsequently tortured, beaten,  
3 starved, hooked to electrical shock devices, and sub-  
4 jected to other horrendous acts by Saddam Hus-  
5 sein's regime.

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

10 (3) Following the Iraqi invasion of Kuwait in  
11 August 1990, many United States citizens were de-  
12 tained by Iraq, beaten, subjected to cruel, inhumane  
13 and degrading treatment, confined under deplorable  
14 conditions, and used as "human shields" for the  
15 avowed purpose of preventing the United States and  
16 its coalition allies from using military force to lib-  
17 erate Kuwait.

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

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

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

6           (7) During the 1991 Gulf War, the Congress  
7           unanimously passed resolutions condemning the bru-  
8           tal treatment by the Government of Iraq of captured  
9           United States service members, demanding that the  
10          Government of Iraq abide by the Geneva Convention  
11          regarding the treatment of prisoners of war, and  
12          stating an intention to hold Iraq accountable for the  
13          torture of American POWs.

14          (8) In 1996, Congress passed an amendment to  
15          the Foreign Sovereign Immunities Act (FSIA) provi-  
16          sions of title 28, United States Code, so that torture  
17          victims like the American POWs and the American  
18          "human shield" victims from the Gulf War could  
19          seek compensation for their injuries from terrorist  
20          countries, including Iraq.

21          (9) On April 4, 2002, 17 Gulf War POWs and  
22          their families filed claims in the United States Dis-  
23          trict Court for the District of Columbia seeking com-  
24          pensation for damages related to their torture and  
25          abuse by the Government of Iraq. The POWs in-

1 included Colonel Clifford Acree, USMC (Ret.); Lieu-  
2 tenant Colonel Craig Berryman, USMC (Ret.);  
3 Former Staff Sergeant Troy Dunlap, U.S. Army;  
4 Colonel David Eberly, USAF (Ret.); Lieutenant  
5 Colonel Jeffrey D. Fox, USAF (Ret.); Chief War-  
6 rant Officer 5 Guy Hunter, USMC (Ret.); Sergeant  
7 David Lockett, U.S. Army; Colonel H. Michael Rob-  
8 erts, USAF; Colonel Russell Sanborn, USMC; Cap-  
9 tain Lawrence Randolph Slade, USN (Ret.); Major  
10 Joseph Small, USMC (Ret.); Staff Sergeant Daniel  
11 Stamaris, U.S. Army (Ret.); Lieutenant Colonel  
12 Richard Dale Storr, Air National Guard; Lieutenant  
13 Colonel Robert Sweet, USAF; Lieutenant Colonel  
14 Jeffrey Tice, USAF (Ret.); Former Lieutenant Rob-  
15 ert Wetzel, USN; and Former Commander Jeffrey  
16 Zaun, USN.

17 (10) In 2003, after the Government of Iraq re-  
18 peatedly refused to participate in arbitration on the  
19 damage claims, and after hearing evidence of how  
20 the former POWs had been repeatedly tortured, a  
21 judge awarded them a judgment for damages, stat-  
22 ing that “detering torture of POWs should be of  
23 the highest priority”.

24 (11) Despite this ruling, the POWs and their  
25 families have not received payment, and are unable

1 to further pursue their claims in United States  
2 courts because of the waiver that was granted for  
3 Iraq by the President under authority established in  
4 the National Defense Authorization Act for Fiscal  
5 Year 2008.

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

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

18 (14) On that same date, the President issued  
19 an Executive order confiscating all remaining  
20 blocked assets of Iraq and ordering them to be de-  
21 posited into the United States Treasury to be used  
22 for Iraq reconstruction.

23 (15) The claims of more than 200 United  
24 States citizens who, at the same time and in the  
25 same manner as the *Hill* plaintiffs, were held hos-

1       tage in territory occupied by Iraq are currently  
2       pending in a United States district court in the case  
3       of Vine v. Republic of Iraq.

4           (16) The plaintiffs in Vine v. Republic of Iraq  
5       have not been compensated and are unable to en-  
6       force any judgment they may obtain in United  
7       States courts because of the waiver that was granted  
8       for Iraq by the President under authority established  
9       in the National Defense Authorization Act for Fiscal  
10      Year 2008.

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

18          (18) The United States has a moral obligation  
19      to protect its past, present, and future members of  
20      its Armed Forces, and all United States citizens,  
21      from torture and hostage-taking, and the Congress  
22      is committed to holding state sponsors of terrorism  
23      accountable for such horrendous acts.

24      (b) RESOLUTION OF CERTAIN CLAIMS AGAINST  
25      IRAQ.—

1           (1) ADEQUATE SETTLEMENT OF CERTAIN  
2       CASES.—Unless the claims in the cases referred to  
3       in paragraph (2) have been adequately settled before  
4       the end of the 30-day period beginning on the date  
5       of the enactment of this Act, then, upon the expira-  
6       tion of that 30-day period, the waiver authority  
7       granted to the President in section 1083(d) of the  
8       National Defense Authorization Act for Fiscal Year  
9       2008 (Public Law 110–181; 122 Stat. 343), and  
10      any waiver granted before the end of that 30-day pe-  
11      riod under such authority, shall terminate.

12           (2) CASES.—The cases referred to in paragraph  
13      (1) are cases numbered 99:00CV03346 (TPJ),  
14      1:01CV02674 (HHK), CIV.A. 02–632 (RWR) (July  
15      7, 2003), 1:03CV00691 (HHK), 1:03CV00888  
16      (HHK), and No. 03–0215 (JDB), in the United  
17      States District Court for the District of Columbia.

18           (3) ADEQUATE SETTLEMENT.—For purposes of  
19      paragraph (1), adequate settlement means payment  
20      by the Government of Iraq, or payment by a United  
21      States depository institution pursuant to an unquali-  
22      fied and unconditional guarantee made by such de-  
23      pository institution, of at least the following  
24      amounts to the following persons:

25           (A) To any person—

1 (i) whose claim in the applicable case  
2 referred to in paragraph (2) arose from an  
3 act of hostage taking or from being held in  
4 hostage status, and

5 (ii) who has not obtained a judgment  
6 on the claim before the date of the enact-  
7 ment of this Act,

8 \$150,000, plus \$6,000 for each day the person  
9 was held as a hostage, but in no event more  
10 than \$900,000.

11 (B) To any person—

12 (i) whose claim in the applicable case  
13 referred to in paragraph (2) arose from an  
14 act of hostage taking or from being held in  
15 hostage status,

16 (ii) who, while a hostage, was sub-  
17 jected to torture, and

18 (iii) who has not obtained a judgment  
19 on the claim before the date of the enact-  
20 ment of this Act,

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

23 (C) To a plaintiff in the applicable case re-  
24 ferred to in paragraph (2) who is the spouse or  
25 was at the time the claims arose, or child of



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

5 (D) To any person who, before the date of  
6 the enactment of this Act, obtained a judgment  
7 for compensatory damages in a case referred to  
8 in paragraph (2) (regardless of whether such  
9 judgment was subsequently vacated)—

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

14 (ii) if the amount of the judgment ex-  
15 ceeds \$1,000,000, one-third of the  
16 unsatisfied amount of such excess.

17 (4) DEFINITIONS.—In this section:

18 (A) HOSTAGE.—The term “hostage”  
19 means an individual in hostage status or an in-  
20 dividual seized or detained in the commission of  
21 an act of hostage taking.

22 (B) HOSTAGE STATUS.—The term “hos-  
23 tage status” has the meaning given that term  
24 in section 599C(d)(1) of the Foreign Oper-  
25 ations, Export Financing, and Related Pro-

grams Appropriations Act, 1991 (Public Law 101–513).

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

(D) PERSON.—The term “person” includes the legal representative of a claimant’s estate.

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

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

(G) UNITED STATES DEPOSITORY INSTITUTION.—The term “United States depository institution” means a depository institution organized under the laws of any State, the District of Columbia, or the United States, including a branch or agency of a foreign depository institution.

(c) ADDITIONAL PROVISIONS.—

1           (1) CONSTRUCTION OF APPROPRIATIONS ACT  
2       PROVISION.—Section 1503 of the Emergency War-  
3       time Supplemental Appropriations Act, 2003 (Public  
4       Law 108–11; 117 Stat. 579), and any exercise of  
5       authority by the President pursuant to such section  
6       1503, was never intended to and did not provide for  
7       the removal of jurisdiction over cases brought under  
8       section 1605(a)(7) of title 28, United States Code.

9           (2) CONSTRUCTION OF NDAA PROVISION.—Sec-  
10      tion 1083(d) of the National Defense Authorization  
11      Act for Fiscal Year 2008 (Public Law 110–181; 122  
12      Stat. 343), and any waiver exercised by the Presi-  
13      dent pursuant to such section 1083(d), was never in-  
14      tended to and did not provide for the removal of ju-  
15      risdiction over cases brought under section  
16      1605(a)(7) of title 28, United States Code.

17          (3) APPLICABILITY OF NDAA PROVISION.—Not-  
18      withstanding any other provision of law, section  
19      1083(c) of the National Defense Authorization Act  
20      for Fiscal Year 2008 (Public Law 110–181; 122  
21      Stat. 342) shall apply, beginning on the date of the  
22      enactment of this Act, to the cases referred to in  
23      subsection (b)(2) of this section, notwithstanding  
24      any waiver of that provision with respect to Iraq.

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