

Morgan Chase Bank (the “Banks”) to disregard valid and enforceable federal judgments which order the Banks to turn over funds in satisfaction of the judgments. In so doing, the Secretary has invoked an invalid presidential determination purporting to insulate the frozen assets of Iraq and other terrorist states from execution and attachment and, thereby, to deny relief to American victims on whose behalf a U.S. District Court has entered final judgments for compensatory damages. The Banks have expressed their intention to follow the Secretary’s advice. This case, thus, starkly presents the question: why is the U.S. Government preventing American victims of Iraqi hostage-taking from holding Saddam and his regime accountable for their crimes?

JURISDICTION AND VENUE

2. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331, as a civil action arising under the Constitution, laws, or treaties of the United States, and by 28 U.S.C. § 1346(a)(2), as a civil action against the United States founded upon the Constitution or regulation of an executive department. Supplemental jurisdiction is conferred on this Court by 28 U.S.C. § 1367(a) over all other claims that are so related to claims in the action within this Court’s original jurisdiction that they form part of the same case or controversy.

3. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) & (e) because: (1) a substantial part of the events or omissions giving rise to the claim occurred in this district, (2) a substantial part of the property that is the subject of the action is situated in this district, and (3) because at least one defendant in the action resides in this district.

THE PARTIES

4. Petitioner Jack Frazier is a U.S. citizen who permanently resides at 4136 Trimaran Place East, Lake Havasu, AZ 86406. In August of 1990, while residing in Iraq, he was taken hostage by Iraq and continued to be held hostage by Iraq until his release on October 27, 1990. Mr. Frazier is a judgment creditor of Iraq and Saddam in the amount of \$1,749,000.

5. Petitioner Paul Apostolos Eliopoulos is a U.S. citizen who permanently resides at 6404 Four Oaks Lane, Burke, VA 22015-4025. In August of 1990, while residing in Kuwait, he was taken hostage by Iraq and continued to be held hostage by Iraq until his release on or about December 9, 1990. Mr. Eliopoulos is a judgment creditor of Iraq and Saddam in the amount of \$1,160,000.

6. Petitioner Angela Eliopoulos is a U.S. citizen who permanently resides at 6404 Four Oaks Lane, Burke, VA 22015-4025. Angela Eliopoulos is, and was during the entire period of his detention in Iraq, the wife of Paul Apostolos Eliopoulos. Mrs. Eliopoulos is a judgment creditor of Iraq and Saddam in the amount of \$250,000.

7. Petitioner Virgil Maurice Graham is a U.S. citizen who permanently resides at 218 Sheffey Lane, Richmond, VA 23235. In August of 1990, while residing in Kuwait, he was taken hostage by Iraq and continued to be held hostage by Iraq until his release on or about December 9, 1990. Rev. Graham is a judgment creditor of Iraq and Saddam in the amount of \$1,150,000.

8. Petitioner Laurie Graham is a U.S. citizen who permanently resides at 218 Sheffey Lane, Richmond, VA 23235. In August of 1990, while residing in Kuwait, she was taken hostage by Iraq and continued to be held hostage by Iraq until her release on or about

September 15, 1990. Mrs. Graham is a judgment creditor of Iraq and Saddam in the amount of \$668,000.

9. Petitioner Peter Graham is a U.S. citizen who permanently resides at 3919 Cabot Place, Apt. No. 4, Richmond, VA 23233. In August of 1990, while residing in Kuwait, he was taken hostage by Iraq and continued to be held hostage by Iraq until his release on or about September 15, 1990. Peter Graham is a judgment creditor of Iraq and Saddam in the amount of \$418,000.

10. Petitioner Charles Joseph Kolb, III is a U.S. citizen who permanently resides at 950 Franklin Street, Apt. No. 59, San Francisco, CA 94109. In August of 1990, while residing in Iraq, he was taken hostage by Iraq and continued to be held hostage by Iraq until his release on or about December 9, 1990. Mr. Kolb is a judgment creditor of Iraq and Saddam in the amount of \$945,000.

11. Petitioner David Morris is a U.S. citizen who permanently resides in New Mexico and whose mailing address is P.O. Box 4040, Silver City, NM 88062. In August of 1990, while residing in Kuwait, he was taken hostage by Iraq and continued to be held hostage by Iraq until his release on or about December 9, 1990. Mr. Morris is a judgment creditor of Iraq and Saddam in the amount of \$896,000.

12. Petitioner Penelope Nabokov is a U.S. citizen who permanently resides at 2410 Fremont Avenue, Minneapolis, MN 55405. In August of 1990, while residing in Kuwait, she was taken hostage by Iraq and continued to be held hostage by Iraq until his release on or about August 14, 1990. Ms. Nabokov is a judgment creditor of Iraq and Saddam in the amount of \$136,000.

13. Petitioner Bill Rodebush is a U.S. citizen who permanently resides at Route 2, Box 383 A, McAlester, OK 74501. In August of 1990, while residing in Kuwait, he was taken hostage by Iraq and continued to be held hostage by Iraq until his release on or about December 9, 1990. Mr. Rodebush is a judgment creditor of Iraq and Saddam in the amount of \$900,000.

14. Petitioner Taleb N. Subh, is a U.S. citizen who permanently resides at 26720 Territorial Road, LeClaire, IA 52753. In August of 1990, while residing in Kuwait, he was taken hostage by Iraq and continued to be held hostage by Iraq until his release on or about September 7, 1990. Mr. Subh is a judgment creditor of Iraq and Saddam in the amount of \$670,000.

15. The names and addresses of the “additional petitioners” herein are set forth on Exhibit A attached hereto. Each additional petitioner was taken hostage by Iraq and then later either escaped or was released from custody. Each such petitioner is a judgment creditor of Iraq and Saddam in the amount indicated on Exhibit A.

16. Respondent the Secretary of the U.S. Department of the Treasury Paul H. O'Neill is a government officer, acting in his official capacity and under the color of legal authority on behalf of the United States government, within the meaning of 28 U.S.C. § 1391(e). Mr. O'Neill is named as a necessary and/or indispensable party pursuant to Fed. R. Civ. P. 19(a).

17. Upon information and belief, Respondent J.P. Morgan Chase Bank is a corporation duly organized and existing under the laws of Delaware and having its principal offices at 1211 Avenue of the Americas, New York, NY 10036.

18. Judgment Debtor Saddam Hussein is the President of Iraq with a residence located, upon information and belief, in Baghdad, Iraq, with agents for the purpose of service

located at 14 East 79th Street, New York, NY 10021, with the Permanent Representative of Iraq to the United Nations.

19. Judgment Debtor the Republic of Iraq is a sovereign state with headquarters based, upon information and belief, in Baghdad, Iraq, with agents for the purpose of service located at 14 East 79th Street, New York, NY 10021, with the Permanent Representative of Iraq to the United Nations.

GENERAL ALLEGATIONS

20. On December 15, 1999, a group of American citizens filed a complaint in the United States District Court for the District of Columbia against Iraq and Saddam for money damages resulting from acts of hostage taking and false imprisonment following the Iraqi invasion of the State of Kuwait on August 2, 1990. *Hill v. Republic of Iraq*, 175 F. Supp. 2d 36 (D.D.C. 2001). Jurisdiction was predicated upon the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 *et seq.* (“the FSIA”).

21. As neither Iraq nor Saddam ever appeared or otherwise defended the *Hill* action after having been properly served in accordance with 28 U.S.C. § 1608(a), the Clerk of the Court declared them in default on January 16, 2001.

22. On December 5, 2001, following an evidentiary hearing at which each of the original petitioners presented testimony in support of their claims, the U.S. District Court for the District of Columbia (per Judge Thomas Penfield Jackson) issued his Decision and Order. In that decision, the court found that each of the eleven original petitioners had established his or her right to relief by satisfactory evidence in accordance with 28 U.S.C. § 1608(e). In particular, the Court determined that the conduct upon which the claims of all of the plaintiffs were based

constituted hostage-taking as that term is used in the FSIA's state-sponsored terrorism exception to immunity, 28 U.S.C. § 1605(a)(7), and found that it had jurisdiction to hear those claims under that exception. *Hill*, 175 F. Supp. 2d at 46.

23. The court further found that defendants Iraq and Saddam were liable for hostage-taking and false imprisonment and awarded each of the eleven petitioners compensatory damages for pain and suffering arising out of their unlawful detention in amounts ranging from \$136,000 to \$1,749,000.

24. On December 5, 2001, the same day the court issued its Decision and Order in the *Hill* case, separate Judgments were entered in favor of the eleven original petitioners in this action. On June 28, 2002, the district court entered amended Judgments in favor of each of the eleven original petitioners in accordance with Fed. R. Civ. P. 54(b) – “*Nunc pro tunc* to 12/5/2001.” In August and September, 2002, the district court entered final Judgments in favor of each of the additional petitioners. The date of each additional petitioner's Judgment is indicated on Exhibit A. All of the Judgments, which are reflected in the transcripts of judgments, attached hereto as Exhibit B, are valid and enforceable “money judgments” within the meaning of N.Y. C.P.L.R. § 5201, totaling \$8,104,000.

25. Subsequently, on July 23, 2002 and July 29, 2002, ten of the original petitioners (all except petitioner Taleb Subh) filed certified copies of their Judgments with the Clerk of this Court and the Supreme Court of the State of New York, respectively. On August 22, 2002 and September 18, 2002, respectively, petitioner Taleb Subh filed certified copies of his Judgment with the Clerk of this Court and the Supreme Court of the State of New York. On or about October 23 or October 29, 2002, the additional petitioners filed certified copies of their

respective Judgments with the Clerk of this Court. On or about October 9 or November 4, 2002, the additional petitioners filed the related Transcript of Judgment with the Clerk of the New York State Supreme Court.

26. In an effort to enforce the Judgments pursuant to Rule 69 of the Federal Rules of Civil Procedure and Article 52 of the New York Civil Practice Law & Rules, the ten original petitioners (all except petitioner Taleb Subh) issued Information Subpoenas with Restraining Notices to both the Bank of New York and J.P. Morgan Chase on or about August 1, 2002. The same ten petitioners caused Executions to be delivered to the Sheriff of the County of New York on or about August 6, 2002. These Executions have been returned by the Sheriff unsatisfied. On October 11, 2002, October 15, 2002 or November 7, 2002, the additional petitioners also duly served information subpoenas with restraining notices on JP Morgan Chase and Bank of New York.

27. Upon information and belief, following receipt of the Information Subpoenas and Restraining Notices served on or about August 1, 2002, officials at both the Bank of New York and J.P. Morgan Chase contacted officials in the U.S. Department of the Treasury. Upon further information and belief, those officials advised the Banks that it was the position of the Secretary that the Banks were not at liberty to release any assets in their possession belonging to Iraq to petitioners in satisfaction of their Judgments, because the funds had been frozen pursuant to Executive Order (Executive Order No. 12724 of Aug. 9, 1990, 55 Fed. Reg. 33089), issued pursuant to the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 *et seq.* (“IEEPA”), and, hence, were not subject to execution or attachment in aid of execution.

28. On August 28, Respondent J.P. Morgan Chase informed petitioners' counsel by letter that it maintained accounts in the name of Iraq, but that it was "prohibited from releasing any of these assets to pay any individual civil claims without a proper license."

29. On September 11, 2002, petitioners' counsel responded to J.P. Morgan Chase's letter, explaining that J.P. Morgan Chase's understanding that it could not turn over frozen assets of Iraq to satisfy petitioners' Judgments was mistaken. In particular, petitioners' counsel cited § 1610(f)(1) of the FSIA, which provides, in relevant part, that:

Notwithstanding any other provision of law. . . any property with respect to which financial transactions are prohibited or regulated pursuant to . . . sections 202 and 203 of [the IEEPA], or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality o[f] such state) claiming such property is not immune under section 1605(a)(7).

28 U.S.C. § 1610(f)(1)(A).

30. In its September 11, 2002 letter, petitioners' counsel acknowledged that, in Presidential Determination No. 01-03 of October 28, 2000, then President William J. Clinton had purported to waive § 1610(f)(1)(A) "in the interest of national security" by invoking his purported authority under § 1610(f)(3) of the FSIA. The letter, however, explained that § 1610(f)(3) did not, in fact, authorize President Clinton to make such a blanket waiver.

31. In support of their view that President Clinton's October 28, 2000 Determination is both invalid and unenforceable, petitioners' counsel cited a Congressional report, wherein the drafters of § 1610(f)(3) declared their intent that the national security waiver "not be exercised in a routine or blanket manner, but only where U.S. national security interests

would be implicated in taking action against particular blocked assets.” *Id.* The letter cited additional language from the report expressing the congressional view that “the attachment and execution of frozen assets to enforce judgments in cases under the Anti-Terrorism Act of 1996 is not by itself contrary to the national security interest.” To date, J.P. Morgan Chase has not turned over any funds belonging to Iraq and has not otherwise responded to the September 11 letter.

32. In early September 2002, an official of Bank of New York telephoned petitioners’ counsel. The official informed petitioners’ counsel that Bank of New York maintained accounts in the name of Iraq, but that it was taking the same position as JP Morgan Chase, that is, that the funds were blocked and that they could not be turned over to satisfy a judgment in favor of private litigants without a proper license issued by the Secretary of the Treasury.

33. Bank of New York and J.P. Morgan Chase are in possession or custody of monies or other assets owned by Iraq and Saddam that are sufficient, individually or collectively, to satisfy the Judgments.

34. Such monies or other assets are held in the name of the Judgment Creditors and/or their agencies or instrumentalities.

35. Upon information and belief, no other party or individual has served any prior execution requiring the seizure of property held for the benefit of Iraq and Saddam upon the Sheriff of the County of New York relating to the Judgments.

36. Upon information and belief, no adverse claimants have priority over petitioners with respect to the Judgments against Iraq and Saddam.

37. To date, no release of funds has been made on the Judgments by either of the Banks. The entire principal amount of the Judgments remains unsatisfied.

38. The Presidential Determination upon which the Banks' refusal to release turn over the funds is based violates §1601(f)(1) and (f)(3), is unauthorized by any other provision of law and is, therefore, invalid and *ultra vires*.

39. The non-release of funds in satisfaction of the Judgments is in contravention of N.Y. C.P.L.R. § 5225(b).

WHEREFORE, petitioners pray that the Court issue an injunctive order and writ of execution in the form attached hereto under Fed. R. Civ. P. 69 and N.Y. C.P.L.R. § 5225(b) directing respondent J.P. Morgan Chase to release funds from the accounts belonging to the Republic of Iraq or Saddam Hussein directly to petitioners in an amount that fully satisfies the Judgments with interest and Marshall's fees.

Dated: New York, New York
November 21, 2002

Respectfully submitted,

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