

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

James S. Vine, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Civ. Action No. 1:01CV02674 (HHK)
v.)	
)	
Republic of Iraq,)	
)	
Defendant.)	
)	

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PARTIAL SUMMARY JUDGMENT
AND/OR ADJUDICATION AS TO COMMON LIABILITY ISSUES**

Daniel Wolf (DC Bar No. 429697)
LAW OFFICES OF DANIEL WOLF
1220 N Street, NW, Suite PH2
Washington, D.C. 20005

Michael D. Lieder (DC Bar No. 444273)
SPRENGER & LANG PLLC
1614 Twentieth Street, N.W., Suite 500
Washington, D.C. 20009

Attorneys for Plaintiffs

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Plaintiffs submit this memorandum in support of their motion for partial summary judgment and/or adjudication as to liability issues that are common to all of them.

INTRODUCTION

In its decision denying Iraq's motion to dismiss, this Court ruled that, to the extent the plaintiffs are able to establish the truth of the allegations in the complaint, subject matter jurisdiction would exist over their state common law claims and Iraq would be liable to them on those claims. *Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (D.D.C. 2006). Following the issuance of that decision and the parties' submission of a joint case management report, this Court issued a scheduling order in which it bifurcated this case into two phases: (1) a liability phase at which it would determine the liability issues common to all plaintiffs; and (2) a plaintiff-specific damages phase at which it would determine each individual plaintiff's eligibility for relief and the amount of his or her damages. Order, filed April 6, 2007. Plaintiffs' present motion is addressed solely to the liability issues that are common to all plaintiffs.

As set forth below, the evidence—none of which Iraq is able to dispute—conclusively establishes that all of the material facts alleged in the complaint are true, including, in particular, the facts that:

- commencing on August 2, 1990, Iraq instituted a “human shield” policy under which all American citizens then present in Iraq and Kuwait were prohibited from leaving those countries;
- as a direct consequence of Iraq's “human shield” policy, American citizens then present in Iraq and Kuwait were detained within the boundaries of those countries and were denied freedom of movement within them by force or the threat of force; and
- the avowed purpose of Iraq's “human shield” policy was to compel the United States and other foreign states to abstain from using armed force or other coercive means to liberate Kuwait.

As this Court has already ruled, the existence of these facts establishes the applicability of the “hostage-taking” exception to sovereign immunity, 28 U.S.C. § 1605(a)(7). Furthermore, as the “essence” of hostage-taking is a “false imprisonment,” *Vine*, 459 F. Supp. 2d at 18, these facts likewise establish Iraq’s liability to plaintiffs for their common law claims of false imprisonment and for their wholly derivative claims for loss of consortium. Finally, the same facts establish Iraq’s liability on plaintiffs’ claims for intentional infliction of emotional distress because: (1) hostage-taking is, by its nature, extreme and outrageous conduct; and (2) emotional distress is an intended, natural and highly probable consequence of such conduct.

Plaintiffs are, therefore, entitled to a partial summary judgment and/or adjudication adjudging that Iraq shall be liable for false imprisonment to any of them who at the individual damages phase can establish that, during any period between August 2, 1990 and December 14, 1990, they were: (1) citizens of the United States; (2) physically present in Iraq and/or Kuwait; and (3) prohibited from leaving those countries by virtue of Iraq’s “human shield” policy. In addition, plaintiffs are entitled to a partial summary judgment and/or adjudication adjudging that Iraq shall be liable for loss of consortium to any of them who at the individual damages phase can establish that during the period between August 2, 1990 and December 14, 1990, they were the spouse of a citizen of the United States to whom Iraq is liable for false imprisonment. And, finally, plaintiffs are entitled to a partial summary judgment and/or adjudication adjudging that Iraq shall be liable for intentional infliction of emotional distress to any of them who at the individual liability stage can establish that they suffered severe emotional distress as a result of their or their loved ones having been falsely imprisoned in Iraq during the period between August 2, 1990 and December 14, 1990.

STATEMENT OF FACTS

On August 2, 1990, at the directive of its President, Saddam Hussein, Iraq's armed forces invaded Kuwait, expelled the existing Kuwaiti government, and seized control of the country. Immediately thereafter, Hussein issued an order forbidding American citizens and other foreign nationals located in both Kuwait and Iraq from leaving these countries. Plaintiffs' Statement of Facts Upon Which There is No Genuine Issue Nos. 1-2 & 5-6.¹ Pursuant to this directive, all American citizens in both Iraq and Kuwait were denied access to their passports, refused exit visas, and precluded from leaving by roadblocks and checkpoints on all routes leading out of Baghdad and Kuwait City. Undisputed Facts Nos. 3-4 & 7-8. Thus, began Iraq's "human shield" policy pursuant to which all citizens of the United States and other western countries were to be detained in Iraq and Kuwait as Hussein's "guests" until such time as Iraq would be able to secure a commitment from the United States to refrain from using armed force or other coercive means to liberate Kuwait.

Commencing on the day of the invasion itself, Iraqi military forces began taking American citizens and other western nationals into custody—confining them in military bases, detention facilities and hotels. Undisputed Facts Nos. 9-10. Within a week's time, approximately three-dozen American citizens had been apprehended in Kuwait and transported to Baghdad, where they were detained under armed guard at the Al Rasheed Hotel. *Id.* No. 11. Other American citizens working in industrial sites outside Baghdad were instructed not to leave those locations. *Id.* No. 12. Deeply concerned about the danger facing its citizens, the U.S. State Department advised them to lay low and to avoid going outside except when absolutely

¹ Citations to the facts set forth in Plaintiffs' Statement of Facts Upon Which There is No Genuine Issue [hereinafter referred to as "Undisputed Facts No. ___"] include each item of evidence listed in support of that fact.

necessary (*Id.* No. 13)—advice that was heeded by the large majority of Americans who remained in hiding throughout the duration of the crisis. Declaration of Morris Busby, executed June 27, 2007 (“Busby Decl.”), at ¶ 16.

In the confusion following the initial days of the crisis and before Iraqi security forces had been able to consolidate control over Kuwait and its borders, a number of American citizens managed to flee Kuwait by driving across the border into Saudi Arabia. Declaration of Daniel Wolf, executed June 29, 2007 (“Wolf Decl.”), Ex. 8. By the end of the occupation’s first week, however, the Iraqi military had secured all roads leading out of the country (Undisputed Facts No. 15). With all regular border crossings completely sealed off, the only possible means of escape left available was a dangerous trek across the open desert. Busby Decl. ¶ 15; Wolf Decl., Exs. 8 & 18. Only a few dared that trek—and with good reason. Iraq had ordered its security forces to shoot any western national who was seen attempting to flee Iraqi controlled territory (Undisputed Facts No. 14) and, in one case, a British national who did was shot dead while heading for the Saudi border. Wolf Decl., Exs. 18 & 22.

Two weeks after the invasion, on August 16, 1990, the Iraqi regime ordered its security forces to begin rounding up all American citizens in Kuwait and taking them into custody. Undisputed Facts No. 17. On that same day, the Iraqi authorities in Kuwait announced that all American and British citizens were to report to one of two Kuwait City hotels for their safety. *Id.* No. 16. Unwilling to trust Hussein and fearing a trap, the great majority of Americans disobeyed this order and, instead, either remained in the private residences in which they were already hiding or sought refuge at the U.S. Embassy in Kuwait. Busby Decl. ¶ 17.

At the same time that American citizens were being ordered to congregate in hotels in Kuwait, the three-dozen American citizens who were being detained at the Al Rasheed Hotel

were awakened in the dead of night and bused to a chemical plant in Al Qaim, where they were deployed as “human shields” to deter a coalition aerial bombardment. Undisputed Facts No. 19. One day later, on August 18, the U.S. Embassy in Baghdad received word that the Iraqi authorities were taking a “census” of all American citizens in Baghdad in preparation for their imminent arrest. *Id.* No. 20. Upon learning of this development and on the advice of the U.S. Embassy, more than 30 American citizens fled to the U.S. Ambassador’s residence, where they took sanctuary and waited out the crisis. *Id.* No. 21.

Meanwhile, the Iraqi authorities in Baghdad unashamedly announced their intentions to the world. For instance, on August 17, the Speaker of Iraq’s parliament, Sadi Mahdi, declared that, “Iraq will play host to the citizens of the aggressor nations as long as Iraq remains threatened with aggressive war.” Undisputed Fact No. 40 (*see especially* Wolf Decl., Ex. 1.) Two days later, on August 19, Hussein himself announced that American and other western nationals would be permitted to leave only if President George H.W. Bush provided Iraq with a written pledge to pull American military forces out of Saudi Arabia, to lift the economic blockade that had been imposed upon Iraq, and to refrain from launching an armed attack. *Id.* (*see especially* Wolf Decl., Exs. 14 & 27). In attempting to justify his actions, Hussein stated that “averting death and starvation from American policy against Iraq, by preventing some citizens from traveling, is a gain for humanity as a whole,” and that their presence “at vital targets may prevent military aggression.” *Id.* The Bush administration refused to accept Hussein’s terms as “totally unacceptable” and demanded the unconditional release of all American citizens in Iraq and Kuwait. Busby Decl. ¶ 18.

The next day, in an address before the Annual Conference of the Veterans of Foreign Wars, in Baltimore, Maryland, President Bush acknowledged the reality of the situation facing the American citizens trapped in Iraq and Kuwait:

We've been reluctant to use the term "hostage". But when Saddam Hussein specifically offers to trade the freedoms of those citizens of many nations he holds against their will in return for concessions, there can be little doubt that whatever these innocent people are called, they are, in fact, hostages. And I want there to be no misunderstanding. I will hold the Government of Iraq responsible for the safety and well-being of American citizens held against their will.

Undisputed Facts No. 45 (*see especially* Wolf Decl., Ex. 1.)

President Bush's public statement that the American citizens who had been subjected to Iraq's "human shield" policy were "hostages" reflected the private view of his administration—a view that was shared by the Department of State and, indeed, by the entire counter-terrorism community in the United States, as well as by the U.N. Security Council. Undisputed Facts No. 45 (*see especially* Busby Decl. ¶¶ 19-20 and Wolf Decl., Ex. 33, at pp. 22-26). The basis for that view was that all of those American citizens who were trapped in Iraq and Kuwait—whether they were in the physical custody of Iraqi authorities or not—were being held against their will for the purpose of exacting concessions from the United States and its allies. *Id.* No. 45 (*see especially* Wolf Decl. Ex. 33, at pp. 24-25).

In the meantime, the Iraqi regime, deeming Kuwait to be the nineteenth province of Iraq, announced that foreign embassies in Kuwait lacked diplomatic status and ordered that those embassies and, in particular, the U.S. Embassy in Kuwait City, be shut down. Busby Decl. ¶ 21; Wolf Decl., Ex. 18. Subsequently, the U.S. State Department announced its intention to evacuate all non-essential government employees connected to that Embassy and their dependents, and began negotiating the terms of their departure with the provisional Iraqi government. Busby Decl. ¶ 21; Declaration of Joseph Wilson, executed on June 27, 2007

(“Wilson Decl.”) ¶ 13; Wolf Decl., Ex. 18. On August 23, after having been promised safe passage to Jordan via Baghdad, these officials and their dependents set out for Baghdad in a caravan of diplomatic vehicles—leaving behind a skeleton diplomatic staff and a few dozen frightened civilians. Undisputed Facts Nos. 24-25. Immediately after the evacuation, the Iraqi military fortified its positions around the perimeter of the Embassy, cut off water and electrical lines and prohibited anyone from entering or leaving the compound. *Id.* Nos. 22 & 23.

No sooner had the evacuees from the U.S. Embassy in Kuwait arrived in Baghdad than they were informed that only the women and children from their group were authorized to leave the country and that all adult males would be required to remain in Baghdad indefinitely. Undisputed Facts No. 26. A couple of days later, on August 26, the women and children embarked on what was to become a harrowing journey to the Turkish border of Iraq, which they crossed the next day. *Id.* No. 27.

With the public unveiling of Iraq’s “human shield” policy, the situation of American citizens still stranded in Iraq and Kuwait became increasingly desperate. Contemporaneous with that unveiling, Hussein ordered his security forces to carry out a systematic search for American citizens who were hiding in Iraq and Kuwait (Undisputed Facts Nos. 17, 18 & 20) and, about a week later, he issued an edict making the harboring of American citizens a crime punishable by death. *Id.* No. 29. In the weeks that followed, dozens of them were apprehended and transported to military installations and other strategic sites throughout Iraq and Kuwait. *Id.* Nos. 30-33. During the course of the crisis, more than 100 American citizens would end up being deployed at such locations as “human shields” to deter an allied aerial bombardment. *Id.* No. 33.

On August 28, Hussein announced the pending release of all female and child hostages. Undisputed Facts No. 34. At the same time, Hussein stated that all of the male hostages would

