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BEFORE THE COMMITTEE ON THE JUDICIARY
OF THE HOUSE OF REPRESENTATIVES

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Mr. Chairman and members of the committee:

Thank you for affording me the opportunity to present my views regarding this important matter of justice for American victims of Iraqi terrorism. Those views have been shaped by more than two decades of experience litigating cases against foreign states under the Foreign Sovereign Immunities Act (the "FSIA"), both as an attorney in the Office of the Legal Adviser of the Department of State and in private practice.

Since 1999, I have been serving as lead counsel on behalf of George Charchalis and more than 400 other American victims in two lawsuits that have become known as *Hill v. Republic of Iraq* and *Vine v. Republic of Iraq*. As you have heard from Mr. Charchalis, these suits arose out of a decision Saddam Hussein made in August 1990 to detain all American citizens in Iraqi occupied territory for the avowed purpose of deterring the US and its coalition allies from taking military action to liberate Kuwait.

Like Mr. Charchalis, many of those Americans were rounded up and forcibly relocated to strategic sites, where they were detained for up to 130 days as "human shields" in inhumane conditions and subjected to cruel and degrading treatment. The others remained in hiding or were trapped inside diplomatic properties. All of the hostages lived each day in fear for their lives; many witnessed unimaginable atrocities; some were beaten, raped, tortured and/or subjected to mock executions.

For the first five years after their release, the former hostages had no means of obtaining justice because American law afforded terrorist countries like Iraq immunity from suit even when they tortured, kidnapped and otherwise terrorized American citizens. This, however, all changed in 1996 when Congress amended the FSIA to allow American victims of terrorism to seek redress against rogue nations.

Following the enactment of this amendment, more than 400 American victims of Saddam's "human shield" policy filed suit against Iraq. The claims of the 180 victims who filed earliest were all consolidated in the *Hill* case and the claims of the 240 victims who filed later were consolidated in the *Vine* case.

By mid-2002, all 180 of the plaintiffs in the *Hill* case had obtained judgments in their favor. The amount of these judgments totaled just over $94 million or about $500,000 per plaintiff on average, ranging from a high of $1.75 million to a low of $50,000.

In March 2003—literally on the eve of Operation Iraqi Freedom—President Bush issued an order directing that all of these judgments be paid in full from blocked Iraqi funds. At the same time it was authorizing payments to the *Hill* plaintiffs, however, the Bush Administration confiscated all of Iraq's remaining blocked assets—converting them to US assets and, thereby, placing them out of reach of any collection efforts. And, despite the *Vine* plaintiffs' request that the President reserve sufficient funds to satisfy any judgments they might obtain, the assets were subsequently transferred to the Coalition Authority in Iraq, where they were mostly squandered.

Acknowledging that its actions unfairly left the 240 *Vine* plaintiffs out in the cold, the Bush Administration gave numerous public assurances that their rights would be protected, promising, for example, to "make sure that people who secure judgments find some satisfaction." These assurance came from as high up as Secretary of State Colin Powell, who came to Capitol Hill to testify about the State Department's commitment to setting up a "victims of terrorism fund" to accomplish that goal.

For the next four years, however, the Bush Administration and its State Department did nothing to honor its promise to the victims—refusing even to meet with them or their representatives. Finally, in December 2007, Congress amended the FSIA to strip current and former terrorist states, including Libya and Iraq, of the immunities that protect their assets from attachment and execution. These amendments, which were passed as part of the National Defense Authorization Act, would have enabled the American victims of Saddam's brutality to obtain compensation from monies Iraq has deposited in US banks.

But that was not to be. Acting at the State Department's behest, President Bush vetoed the defense bill just before the New Year. The State Department tried to justify that veto on the specious argument that the new FSIA amendments would put "billions" of Iraqi dollars at risk—imperiling its reconstruction effort.

On the basis of that gross exaggeration, the Bush administration managed to convince Congress to enact a compromise bill. Under that compromise, the President was given the authority to exempt Iraq from the newly enacted amendments to the FSIA in exchange for an Administration promise to use its best efforts to resolve the claims of American victims of Iraqi terrorism. Congress codified this compromise in a "sense of Congress" resolution in which it expressed its expectation that the Administration would act swiftly to fulfill its promise to the victims through state-to-state negotiations.

In reality, it took four more months before the Administration agreed to meet with the victims or their representatives. At that meeting, Administration officials made clear that they had come only to listen—not to make any proposals of their own. Ten days later, the State Department delivered us the Administration's response. They said that the Administration fully agreed that the former hostages all had valid claims for which Iraq was duty-bound to compensate them. As much as they would like to be helpful, however, they said that they would not raise the matter with Iraq because the present state of the bilateral relationship between the two countries made it pointless to do so.

In other words, they claimed that, despite the expenditure of hundreds of billions of dollars and the deaths of more than 3,000 American servicemen, the US does not have leverage with the Iraqi government at this time. Asked why this was not the right time and what would have to change before they felt they would be in a position to exert such leverage, the State Department simply said that there may never be a right time to raise this matter.

That the State Department has no intention of ever doing anything to vindicate the rights of Iraq's American victims has recently become apparent from news reports, which reveal a cynical effort by the Department to use their claims as a bargaining chip to extract unrelated concessions the Administration is seeking from Iraq. According to those reports, the US has told Iraq that it will continue to protect Iraqi assets from these and other claims only if Iraq agrees to enter into an "alliance" agreement, giving the U.S. long term basing rights in Iraq and affording U.S. servicemen and contractors immunity from Iraqi judicial process. The irony could not be greater. Having once had their physical selves held hostage by the Iraqi government to extract concessions from the United States, Iraq's former American victims are now having their claims held hostage by their own government so that it can extort concessions from the Iraqis.

The State Department's callous refusal to raise the victims' claims on the ground that, 18 years after their ordeal, the time is "not right" is unconscionable. It is the latest, and perhaps final, chapter in the story of the Department's abdication of its responsibility to American citizens who were abused, terrorized and tortured by Saddam Hussein during the First Iraq War.

As you have just heard from Mr. Charchalis, this story began when the Department advised those Americans that the Iraqi troop buildup along the Kuwait border was of no concern—thus sealing his fate and that of hundreds of others who ended up stranded in the middle of a war zone. Following their release, the Department had the opportunity to hold the Iraqi regime accountable by compensating the former hostages from frozen Iraqi funds on deposit in US banks. But it refused to do so. Then, when the victims tried to obtain justice by pursuing their claims in U.S. courts, the Department took every opportunity to obstruct them. Indeed, showing no shame, the Department and their allies within the Administration have gone so far as to impugn the patriotism of these American heroes by publicly stating that they were "jeopardizing our troops in the field" and handing "a propaganda victory" to our enemies in Iraq.

The only way the Bush administration's promise to the former hostages will ever be fulfilled is if Congress steps into the void. The Braley-Sestak proposal would do that by ensuring that they are afforded the same rights to pursue their claims in American courts as are all other victims of state-sponsored terrorism and without further interference by the State Department. At the same time, it gives Iraq the ability to limit its liability by settling the claims of the *Vine* plaintiffs for reasonable amounts based on a simplified version of the formula used to compensate the *Hill* plaintiffs, but under which the award for any single individual would be capped at no more than $900,000. As the claims of the *Vine* plaintiffs are identical to those of their fellow hostages who participated in the *Hill* case, there is no justification for the failure to treat them in similar fashion. Enactment of the Braley-Sestak will bring them the justice that they seek and that is so long overdue.

We who have been representing these American heroes in their quest for justice thank you and the Committee for its interest in this matter and look forward to working with you to enactment a statute that assures that these claims are paid, at reasonable amounts, by the party that is responsible and liable under international law.