

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

RYAN CLANCY,

Plaintiff,

-against-

OFFICE OF FOREIGN ASSETS CONTROL
OF THE UNITED STATES DEPARTMENT
OF THE TREASURY, JOHN W. SNOW,
Secretary, UNITED STATES DEPARTMENT
OF THE TREASURY, in his official capacity,
ROBERT W. WERNER, Director, OFFICE OF
FOREIGN ASSETS CONTROL, in his official
capacity, and ALBERTO R. GONZALES,
Attorney General, UNITED STATES
DEPARTMENT OF JUSTICE, in his official
capacity,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Plaintiff Ryan Clancy, by his attorneys and for his Complaint in the above-captioned matter, states as follows:

PRELIMINARY STATEMENT

1. This action challenges Defendants' actions under the Iraqi Sanctions Regulations because they violate Plaintiff's rights under the First and Fifth Amendments to the U.S. Constitution, exceed statutory authority, and violate international law.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and 5 U.S.C. § 702.

3. Plaintiff's claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, by the Administrative Procedures Act, 5 U.S.C. §§ 701-706, and by the general equitable powers of this Court.

4. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2412.

5. Venue in this district is proper under 28 U.S.C. § 1391(e)(3) because it is the district in which the plaintiff resides and no real property is involved in the action.

PARTIES

6. Plaintiff Ryan Clancy ("Clancy") is a small business owner (and former English teacher) who currently resides in Milwaukee, Wisconsin.

7. Defendant Office of Foreign Assets Control ("OFAC") is the agency that promulgated the Iraqi Sanctions Regulations, that has issued a final decision finding that Mr. Clancy violated those regulations, and that has imposed a penalty on him for that violation.

8. Defendant John W. Snow is the Secretary of the United States Department of the Treasury and has ultimate authority over OFAC and the Iraqi Sanctions Regulations.

9. Defendant Robert W. Werner is the Director of OFAC and is the ultimate authority at OFAC with respect to the Iraqi Sanctions Regulations.

10. Defendant Alberto R. Gonzales is the Attorney General of the United States and is the ultimate authority at the United States Department of Justice with respect to the collection of penalties issued by OFAC pursuant to the Iraq Sanctions Regulations.

FACTUAL ALLEGATIONS

Background to the Iraqi Sanctions Regulations

11. The Iraqi Sanctions Regulations (the “Regulations”), currently codified at 31 C.F.R. Part 575, were promulgated in January 1991 to punish the Government of Iraq financially for invading Kuwait and for its ongoing and systematic violations of human rights within Iraq. Iraq Sanctions Act of 1990 (“ISA”), H.R. 101st Cong. § 586A (1-7) (1990).

12. Section 575.205 of the Regulations prohibits in part, with certain narrow exceptions, the exporting of services from the United States “to any entity owned or controlled by the Government of Iraq”

13. Section 575.207 of the Regulations prohibits, with certain narrow exceptions, “any transaction relating to travel by any U.S. citizen . . . to Iraq, or to activities by any U.S. citizen . . . within Iraq” and the “unauthorized payment by a U.S. person of his or her own travel or living expenses while in Iraq.”

14. A violation of the Regulations is punishable by criminal penalties of up to 12 years in prison and \$1 million in fines, or both, and civil penalties of up to \$325,000 per violation.

15. The Regulations purportedly were promulgated pursuant to the International Emergency Economic Powers Act (“IEEPA”), 50 U.S.C. § 1701, *et seq.*, and underlying statutes and executive orders.

16. No statute or executive order authorizes the sweeping ban on travel by U.S. citizens to and within Iraq contained in the Regulations or the sanction imposed on Mr. Clancy by OFAC.

Plaintiff's Opposition to U.S. Military Action in Iraq

17. Mr. Clancy, a U.S. citizen, has opposed and continues to oppose what he views as the unnecessary and unlawful use of military force in Iraq and the death and suffering of thousands of innocent Iraqis, Americans, and others that it has caused.

18. As a former Peace Corps volunteer, Mr. Clancy's opposition to the war is firmly rooted in his religious, moral, and political ideals.

19. Mr. Clancy has spoken out and will continue to speak out publicly against U.S. military action in Iraq.

20. Whatever actions Mr. Clancy has taken, whether here or abroad with regard to this military action, were taken in his role as a peace activist, as a matter of individual conscience, and for humanitarian purposes.

OFAC's Enforcement of the Iraqi Sanctions Regulations against Plaintiff

21. On or about August 7, 2003, Mr. Clancy received, by facsimile, a Case Referral Acknowledgement from the Department of the Treasury. The Acknowledgement indicated that the Department of the Treasury had referred Mr. Clancy's "case" to OFAC's Civil Penalties Division. See Exhibit A, attached hereto.

22. Mr. Clancy never received a Requirement to Furnish Information ("RFI") or any warning from OFAC.

23. On or about September 24, 2003, in an effort to better understand the Case Referral Acknowledgment, counsel for Mr. Clancy filed a Freedom of Information Act ("FOIA") request with the Department of the Treasury. That FOIA request seeks, among other things, all OFAC and Treasury records concerning Mr. Clancy; policies, procedures, and guidelines

concerning travel to Iraq; and, statistical information on individuals who allegedly traveled to Iraq in violation of the regulations.

24. The Department of the Treasury responded on October 7, 2003, indicating that it had received the FOIA request and that the “request will be answered as soon as possible.” As of the date of this Complaint, Mr. Clancy has received no further communications concerning his FOIA request.

25. On or about July 8, 2004, OFAC sent Mr. Clancy a Prepenalty Notice stating that it intended to issue a claim against him for a civil penalty in the amount of \$10,000 for “exportation of services to Iraq and [his] unauthorized travel-related transactions in Iraq.” See Exhibit B, attached hereto.

26. The Prepenalty Notice alleged that “On January 28, 2003, [Mr. Clancy] departed the United States with an ultimate destination to Baghdad, Iraq. The cost of the transportation totaled £700, including ground transportation between Amman, Jordan and Baghdad. [Mr. Clancy] arrived in Iraq on or around February 5, 2003, where [he] stayed in the Andalus Apartments, a hotel in Baghdad, and a food storage facility 30 to 40 minutes north of Baghdad. While in Iraq, [he] provided services by shielding Government of Iraq facilities from possible U.S. military action. [Mr. Clancy] returned to the United States on March 7, 2003.”

27. Mr. Clancy was given 30 days from the mailing of the Prepenalty Notice to make a written presentation to the Director of OFAC in response to the allegations.

28. The Prepenalty Notice stated that, in the event Mr. Clancy elected not to respond within 30 days of the mailing of said notice, OFAC “generally will issue a Penalty Notice . . . finding a violation and assessing a monetary penalty.”

29. The United States government may criminally prosecute an individual for willfully violating the Regulations, including for the violations alleged against Mr. Clancy.

30. The written presentation to OFAC constituted Mr. Clancy's only formal opportunity to respond to the allegations contained in the Prepenalty Notice before a sanction was imposed, and the Regulations do not provide for an oral hearing, a neutral decisionmaker, the opportunity to call or cross-examine witnesses, or the opportunity to seek discovery of materials or information from OFAC, including materials or information about OFAC's selective enforcement of the Regulations against those who have actively and publicly opposed U.S. military action in Iraq.

31. In determining a penalty assessment, OFAC considers and balances aggravating and mitigating factors, and it can increase or reduce the amount of a proposed penalty stated in the Prepenalty Notice based upon its evaluation of those factors, including by reducing said penalty up to and beyond 75 percent of the proposed amount. On information and belief, there is no limit to the amount OFAC may increase a proposed penalty based upon a finding of one or more aggravating factors.

32. Mr. Clancy feared that by responding to the allegations in the Prepenalty Notice he risked incriminating himself.

33. By letter dated August 4, 2004, Mr. Clancy, through counsel, requested that OFAC either grant him immunity from criminal prosecution (or agree to waive prosecution) for his alleged travel to and service in Iraq between January and March 2003 or, alternatively, that it stay the proceedings referenced in the Prepenalty Notice, including his time to respond to said notice, until 5 years from the date of his alleged infraction, when the applicable statute of limitations for a criminal prosecution would expire. See Exhibit C, attached hereto.

34. As of the date of this Complaint, OFAC has not formally responded to Mr. Clancy's August 4, 2004 request.

35. An informal response was made by Michael Neufeld of OFAC's Civil Enforcement Division, who telephonically informed Mr. Clancy's counsel that OFAC would not grant the request because it purportedly could not bind the Department of Justice.

36. On or about July 20, 2004, Mr. Clancy's counsel requested an extension of time to respond to the Prepenalty Notice, and OFAC granted an extension until August 16, 2004.

37. On or about August 11, 2004, Mr. Clancy's counsel requested a second extension of time to respond to the Prepenalty Notice, and OFAC granted a second extension until August 23, 2004.

38. On August 23, 2004, Mr. Clancy, by counsel, submitted to OFAC a Response to the Prepenalty Notice ("Response") asserting, among other things, that for purposes of the Response only he would accept as true the allegations that he departed the United States for Iraq on January 28, 2003 and that he returned to the United States on March 7, 2003; that he would neither admit nor deny OFAC's remaining factual allegations in the Prepenalty Notice; that he did not "export services" to Iraq; that the Regulations exceeded statutory authority; and that the Regulations violated the First and Fifth Amendments to the Constitution of the United States as well as international law. See Exhibit D, attached hereto.

39. On or about March 28, 2005, counsel for Mr. Clancy received OFAC's undated Penalty Notice, imposing a penalty upon Mr. Clancy for "unauthorized travel to Iraq and exportation of services [by] shielding a Government of Iraq ("GOI") infrastructure from possible U.S. military action" See Exhibit E, attached hereto.

40. OFAC reduced the penalty from \$10,000 to \$8,000, which it explained reflected a balance between the mitigating factor that the alleged violation was Mr. Clancy's "first offense on record at OFAC" and the aggravating factor that Mr. Clancy "had knowledge of the law with respect to the Iraq Sanctions and [he] willfully violated it."

41. The Penalty Notice stated that, if payment was not submitted to OFAC within 30 days of mailing of said Notice, interest, administrative charges, and late fees would then begin to accrue.

42. The Penalty Notice also stated that, pursuant to the Iraqi Sanctions Regulations, the penalty would be referred to the U.S. Department of Justice for collection if it was not paid within 30 days of the mailing of said Notice.

43. The Penalty Notice further stated that Mr. Clancy must furnish a taxpayer identification number/Social Security Number to OFAC, and that OFAC intends to use such number for the purposes of collecting and reporting on any delinquent penalty amount.

44. On information and belief, any delinquent penalty may be collected through the Treasury Offset Program, pursuant to which the U.S. Department of the Treasury offsets federal payments due by the federal government to a delinquent payee, including tax refunds and Social Security payments, to the extent legally allowable.

Selective Enforcement of the Regulations

45. On information and belief, OFAC has issued penalties against three other individuals for their alleged travel to Iraq in alleged violation of the Regulations, and those individuals all have actively and publicly opposed U.S. military action in Iraq.

46. On information and belief, OFAC has selectively issued penalties for alleged travel to Iraq based upon the degree to which individuals have spoken out publicly against U.S. military activity in Iraq.

CAUSES OF ACTION

First Cause of Action -- Deprivation of Property without Due Process -- Violation of the Fifth Amendment to the Constitution of the United States

47. Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

48. The Due Process Clause of the Fifth Amendment guarantees that an individual may not be deprived of his life, liberty, or property without due process of law. In order to deprive an individual of his property, the government must provide him with a hearing that is conducted at a meaningful time and in a meaningful manner.

49. OFAC has violated Mr. Clancy's rights under the Fifth Amendment to the U.S. Constitution because it has deprived him of his property by imposing a fine upon him pursuant to the Iraqi Sanctions Regulations without first providing him with the fundamental elements of due process, including an opportunity to conduct discovery, an oral hearing, an opportunity to call and cross-examine witnesses, and a neutral decisionmaker.

Second Cause of Action -- Privilege Against Self-Incrimination -- Violation of the Fifth Amendment to the Constitution of the United States

50. Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

51. The privilege against self-incrimination guaranteed by the Fifth Amendment to the Constitution of the United States provides that no individual shall be compelled in any criminal case to be a witness against himself, and it prohibits forcing an individual to surrender

his privilege against self-incrimination to assert another constitutional right, at least where that other constitutional right must be asserted in a proceeding that lacks adequate safeguards.

52. The Iraqi Sanctions Regulations violate the Fifth Amendment by requiring Mr. Clancy to choose between asserting his privilege against self-incrimination and exposing himself to criminal prosecution by contesting OFAC's allegations for violating those Regulations in an administrative proceeding that lacks adequate safeguards.

Third Cause of Action -- Government Action in Excess of Statutory Jurisdiction, Authority, or Limitation -- Violation of the Administrative Procedures Act

53. Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

54. The Iraqi Sanctions Regulations impose a sweeping ban on travel by U.S. citizens to and within Iraq, including travel that does not result in an economic benefit to the Government of Iraq or an Iraqi national. As there is no statutory authority for OFAC or any other Executive Branch agency to impose such a sweeping travel ban, the Regulations violate the Administrative Procedures Act because they are in excess of statutory jurisdiction, authority, or limitation.

Fourth Cause of Action -- Right To Travel -- Violation of the Fifth Amendment to the Constitution of the United States

55. Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

56. The Fifth Amendment protects the right of U.S. citizens to travel abroad. The Fifth Amendment prohibits restrictions on travel that sweep too broadly and indiscriminately across the liberty guaranteed by the Fifth Amendment. The Iraqi Sanctions Regulations violate the right to travel because they impose a *per se* ban on travel to Iraq, and they are not aimed at preventing the flow of currency to that country, which could be used against U.S. interests.

57. The Fifth Amendment to the Constitution of the United States also prohibits selective enforcement of travel restrictions to a foreign country based upon an individual's viewpoint. OFAC has violated the Fifth Amendment by selectively applying and enforcing the Iraqi Sanctions Regulations against individuals based upon their outspoken opposition to U.S. military action in Iraq.

Fifth Cause of Action -- Restrictions on Freedom of Speech, Expressive and Symbolic Conduct, and the Right to Receive Information and Ideas -- Violations of the First Amendment to the Constitution of the United States

58. Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

59. The First Amendment prohibits limitations on speech that are overbroad and that restrict constitutionally-permissible speech. By imposing a sweeping ban on travel to and within Iraq, the Iraqi Sanctions Regulations prohibit individuals from expressing an opinion of opposition to U.S. military policy in Iraq by and through travel to Iraq, and constitute an overbroad and impermissible restriction on the rights guaranteed by the First Amendment.

60. The First Amendment prohibits content-based restrictions on speech that are not narrowly tailored to meet a compelling government interest. The Iraqi Sanctions Regulations, on their face, constitute an impermissible content-based restriction on free speech because they impose a flat ban on travel by U.S. citizens to a particular foreign country, Iraq, and thus serve to prohibit lawful First Amendment activity with respect to an entire topic.

61. The First Amendment prohibits the government from discriminating against a speaker based upon his or her viewpoint. The Iraqi Sanctions Regulations, as applied, constitute impermissible viewpoint discrimination because they have been enforced selectively against

Plaintiff for allegedly traveling to Iraq based upon his outspoken public opposition to U.S. military action there.

62. The First Amendment prohibits restrictions on expressive or symbolic conduct unless those restrictions are within the constitutional power of the U.S. government, further an important or substantial government interest that is unrelated to the suppression of free expression, and do not exceed that which is essential to the furtherance of that government interest. Travel to Iraq by U.S. citizens to express their opposition to U.S. military action in Iraq constitutes expressive or symbolic conduct that is protected by the First Amendment. The Iraqi Sanctions Regulations violate the First Amendment because, on their face and as applied to Plaintiff, they are not unrelated to the suppression of free expression and exceed that which is essential to the furtherance of a government interest.

63. The First Amendment protects a citizen's right to receive information and ideas, including the right to listen to and observe willing actors, and protects the free flow of information and ideas. The Iraqi Sanctions Regulations impermissibly restrict Plaintiff's and the public's right to receive information about Iraq, and the free flow of information about the implications and effects of U.S. military action in Iraq, by preventing U.S. citizens from traveling to and within Iraq to listen to and observe people in that country.

Sixth Cause of Action -- Right to Travel and Freedom of Movement -- Violation of International Law

64. Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

65. The International Covenant on Civil and Political Rights (ICCPR), to which the United States is a party, and customary international law protect the rights of individuals to travel to foreign countries. The Iraqi Sanctions Regulations violate the right to travel and to freedom of

movement under Article 12 of the ICCPR and under customary international law, because they constitute a sweeping ban on travel that is not necessary to protect national security, public order, health, or morale, or the rights and freedoms of others, and are not consistent with other rights recognized in the ICCPR.

Seventh Cause of Action -- Provision of Services in Violation of Iraqi Sanctions Regulations § 575.205 -- Administrative Error

66. Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

67. In imposing a penalty on Mr. Clancy, OFAC concluded that Mr. Clancy exported services to Iraq in violation of the Iraqi Sanctions Regulations § 575.205, which prohibits the exporting of services from the United States “to any entity owned or controlled by the Government of Iraq”

68. The only “finding” upon which OFAC rested its conclusion that Mr. Clancy violated § 575.205 was Mr. Clancy’s alleged stay at a Baghdad hotel and a “food storage facility 30 to 40 minutes north of Baghdad.”

69. Even assuming that these allegations were true, the conduct nonetheless does not constitute the provision of services to the Iraqi government as prohibited by § 575.205 and, as a consequence, OFAC’s conclusion that Mr. Clancy violated the section must be reversed.

Eighth Cause of Action -- Unlawful Delegation of Legislative Authority -- Violation of Separation of Powers Doctrine

70. Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.

71. To the extent that the Iraqi Sanctions Regulations do not exceed the statutory authority from Congress set forth in the IEEPA, 50 U.S.C. § 1701, *et seq.*, then the IEEPA itself

must constitute an unlawful delegation of legislative authority to the executive branch, in violation of the separation of powers doctrine.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare that the Iraqi Sanctions Regulations are unconstitutional under the First and Fifth Amendments to the U.S. Constitution.
2. Declare that the Iraqi Sanctions Regulations are in excess of statutory jurisdiction, authority, or limitation.
3. In the alternative, declare that IEEPA constitutes an unlawful delegation of legislative authority to the executive branch, in violation of the separation of powers doctrine.
4. Declare that the Iraqi Sanctions Regulations violate international law.
5. Permanently enjoin Defendants from enforcing the Iraqi Sanctions Regulations against Mr. Clancy for his alleged travel to and service in Iraq in 2003, including from collecting and/or enforcing any penalty imposed upon him pursuant to those Regulations.
6. Permanently enjoin Defendants from collecting and/or enforcing any penalty imposed upon Mr. Clancy based upon his failure to pay any penalty unlawfully imposed pursuant to the Iraqi Sanctions Regulations.
7. Reverse OFAC's Penalty on grounds that it made a material error of law in concluding that Mr. Clancy's alleged presence in a Baghdad hotel and at a food bank north of Baghdad was a violation of Iraqi Sanctions Regulations § 575.205.
8. Award Plaintiff fees and costs pursuant to 28 U.S.C. § 2412.

9. Grant such other and further relief as the Court deems just and proper.

Dated: May 26, 2005.

Respectfully submitted,

LA FOLLETTE GODFREY & KAHN

By:

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