

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

FREDERICK BOYLE,

Plaintiff,

-against-

ROBERT W. WERNER, Director, Office of Foreign Assets Control of the United States Department of the Treasury, in his official capacity, JOHN W. SNOW, Secretary, United States Department of the Treasury, in his official capacity, OFFICE OF FOREIGN ASSETS CONTROL, UNITED STATES DEPARTMENT OF THE TREASURY, 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, Frederick Boyle, by 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 Constitution of the United States, the Administrative Procedures Act, the Religious Freedom Restoration Act, and 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 42 U.S.C. § 2000bb-1, by Rules 57 and 65 of the Federal Rules of Civil Procedure, by the Administrative Procedures Act, 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 Frederick Boyle (hereinafter "Reverend Boyle") is an ordained minister of the United Methodist Church and currently resides in Nyack, New York.
7. Defendant Robert W. Werner is the Director of the Office of Foreign Assets Control, United States Department of the Treasury, and is the ultimate authority at the Office of Foreign Assets Control with respect to the Iraqi Sanctions Regulations. Defendant Werner is sued in his official capacity.
8. Defendant John W. Snow is the Secretary of the United States Department of the Treasury and, in that capacity, has ultimate authority over the Office of Foreign Assets Control and the Iraqi Sanctions Regulations. Defendant Snow is sued in his official capacity.
9. Defendant Office of Foreign Assets Control, United States Department of the Treasury, is the agency which promulgated the Iraqi Sanctions Regulations and which has issued a final decision finding that Reverend Boyle violated those regulations and imposing a penalty upon him for that violation.

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, which is the agency authorized to collect penalties issued by the Office of Foreign Assets Control pursuant to the Iraq Sanctions Regulations. Defendant Gonzalez is sued in his official capacity.

## **FACTUAL ALLEGATIONS**

### **Background to the Iraqi Sanctions Regulations**

11. The Iraqi Sanctions Regulations (hereinafter “the Regulations”), currently codified at 31 C.F.R. Part 575, were promulgated by the Office of Foreign Assets Control (“OFAC”), United States Department of the Treasury, in January 1991 to punish the Government of Iraq financially for invading Kuwait and for ongoing and systematic violations of human rights within Iraq.
12. 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 to or within Iraq.”
13. 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.
14. The Regulations purportedly were promulgated pursuant to the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.* and underlying statutes and executive orders.

15. No statute or underlying 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 Reverend Boyle by OFAC.

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

16. Reverend Boyle, 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.

17. Reverend Boyle's opposition to the war is firmly rooted in his religious, moral, and political ideals, and is inseparable from his work, beliefs, and mission as an ordained minister of the United Methodist Church.

18. Reverend Boyle has spoken out and will continue to speak out publicly against U.S. military action in Iraq to convey this message to people of all faiths.

19. Whatever actions Reverend Boyle has taken, whether here or abroad with regard to this military action, were taken in his role as a spiritual leader, as a matter of individual conscience, and for humanitarian purposes.

**OFAC's Enforcement of the Iraqi Sanctions Regulations against Plaintiff**

20. On or around June 2, 2003, OFAC issued a Requirement to Furnish Information ("RFI") to Reverend Boyle pursuant to Section 501.602 of the Regulations, asserting that it had received information from press accounts that the Reverend had traveled to Iraq during February/March 2003 without authorization and in violation of the Regulations and relevant statutory authority under which they were promulgated. See Exhibit A, attached hereto.

21. OFAC demanded that Reverend Boyle submit within 20 days of receiving the RFI a detailed written report concerning his alleged trip to Iraq, including: the specific dates and travel itinerary to, from, and within Iraq; the reason for his travel to Iraq; and a detailed itemization of all travel-related transactions in which he engaged in Iraq, as well as a copy of any travel-related receipts or records associated with those expenditures.
22. OFAC also demanded that if the Iraqi portion of Reverend Boyle's alleged trip was arranged for him by a travel agent or another person or organization, Reverend Boyle identify that person or organization by name and address and describe the services provided to him and any amounts paid by him or on his behalf for those services.
23. OFAC further informed Reverend Boyle that failure to respond to the RFI could result in the imposition of civil penalties against him.
24. Reverend Boyle feared that by responding to the RFI he risked incriminating himself and exposing himself to criminal prosecution, and that by not responding he risked incurring significant penalties.
25. By letter dated October 21, 2003, Reverend Boyle, through counsel, informed OFAC that he was refusing to respond to the RFI based upon the rights guaranteed to him by the Fifth Amendment to the Constitution of the United States. See Exhibit B, attached hereto.
26. On or around December 23, 2003, OFAC informed Reverend Boyle that it had received his letter dated October 21, 2003, and that, upon review of the matter, its

Enforcement Division had transferred his file internally to the Civil Penalties Division. See Exhibit C, attached hereto.

27. On or around June 22, 2004, OFAC sent Reverend Boyle 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 unauthorized travel-related transactions in Iraq.” See Exhibit D, attached hereto.
28. The Prepenalty Notice alleged that “On or about February 19, 2003, [Reverend Boyle] planned to join a group shielding the Government of Iraq facilities from possible U.S. military action. [Reverend Boyle] also engaged in travel-related transactions, expending currency for the purchase of food, lodging, transportation, and souvenirs. [Reverend Boyle] departed Iraq, returning to Amman, Jordan, on March 11, 2003.”
29. Reverend Boyle 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.
30. The Prepenalty Notice stated that in the event Reverend Boyle 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.”
31. The United States government may criminally prosecute an individual for willfully violating the Regulations, including for the violations alleged against Reverend Boyle.
32. The written presentation to OFAC constituted Reverend Boyle’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.

33. In determining a penalty assessment, OFAC considers and balances aggravating and mitigating factors, and 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 or beyond 75 per cent 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 an aggravating factor or aggravating factors.
34. On or around July 9, 2004, OFAC granted Reverend Boyle's request for an extension of time until August 5, 2004, to respond to the Prepenalty Notice. See Exhibit E, attached hereto.
35. By letter dated July 19, 2004, Reverend Boyle, through counsel, requested that OFAC either grant him immunity from criminal prosecution (or agree to waive prosecution) for his alleged travel to Iraq in February/March 2003 or, alternatively, that it stay the proceedings referenced in the Prepenalty Notice, including his time to respond to said notice, until April 2008, when the applicable statute of limitations for a criminal prosecution would expire. See Exhibit F, attached hereto.

36. On or around July 21, 2004, Michael Neufeld of OFAC's Civil Enforcement Division, telephonically informed Reverend Boyle's counsel that OFAC would neither agree to stay the proceedings nor inquire with the Department of Justice as to the possibility of granting the Reverend immunity from criminal prosecution (or agreeing to waive prosecution).
37. Reverend Boyle feared that by responding to the allegations in the Prepenalty Notice he risked incriminating himself.
38. On August 5, 2004, Reverend Boyle, by counsel, submitted to OFAC a Response to the Prepenalty Notice ("Response"), challenging the factual and legal basis for the proposed penalty and the validity of the Iraqi Sanctions Regulations. See Exhibit G, attached hereto.
39. The allegations in the Prepenalty Notice that Reverend Boyle engaged in unauthorized travel to and within Iraq contain material inaccuracies.
40. Reverend Boyle never intended to provide nor provided any services or assistance to the former Government of Iraq, and never served as a "human shield" in Iraq.
41. On or about March 17, 2005, OFAC sent to Reverend Boyle's counsel a Penalty Notice dated March 14, 2005, imposing a penalty upon Reverend Boyle for "unauthorized travel to Iraq and expenditures therein." See Exhibit H, attached hereto.
42. OFAC reduced the penalty from \$10,000 to \$6,700 because it was Reverend Boyle's "first offense on record at OFAC" and because Reverend Boyle submitted a written response to the Prepenalty Notice.

43. 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 begin to accrue after 30 days.
44. 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.
45. The Penalty Notice further stated that Reverend Boyle 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.
46. 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**

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

## 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**

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

50. 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.

51. The Iraqi Sanctions Regulations violate Reverend Boyle's rights under the Fifth Amendment to the U.S. Constitution because they have deprived Reverend Boyle of his property through the imposition of a fine without first providing him with the fundamental elements of due process, including a neutral decisionmaker, an oral hearing, an opportunity to call and cross-examine witnesses, and an opportunity to conduct discovery.

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

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

53. 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 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 which lacks adequate safeguards.

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

**Third Cause of Action -- Government Action that is in Excess of Statutory Jurisdiction, Authority, or Limitation and/or Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with Law -- Violations of the Administrative Procedures Act**

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

56. The Iraqi Sanctions Regulations impose a sweeping ban on travel by U.S. citizens to and within Iraq, including on travel that does not result in an economic benefit to the Government of Iraq or to an Iraqi national, and on transactions ordinarily incident to travel to or from Iraq. As there is no statutory authority for OFAC or the Executive Branch 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.

57. The Iraqi Sanctions Regulations have been enforced against Reverend Boyle based upon his public and outspoken opposition to U.S. military involvement in Iraq. OFAC's issuance of a Penalty Notice against Reverend Boyle based upon this opposition constitutes government action that is arbitrary, capricious, an

abuse of discretion, and/or otherwise not in accordance with law, in violation of the Administrative Procedures Act.

**Fourth Cause of Action -- Right To Travel -- Violation of the Fifth 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 Fifth Amendment to the Constitution of the United States protects the right of U.S. citizens to travel abroad. The Fifth Amendment prohibits restrictions on travel which sweep too broadly and indiscriminately across the liberty guaranteed by that Amendment. The Iraqi Sanctions Regulations violate the right to travel because they impose a *per se* ban on travel to a Iraq, lack sufficient foreign policy rationale, and/or are not aimed at preventing the flow of currency to that country which could be used against U.S. interests.
60. 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 -- Overbroad Restriction on Freedom of Speech, Content-Based Restriction on Freedom of Speech, Viewpoint Discrimination, Restriction on Expressive or Symbolic Conduct, and Restriction on the Right to Receive Information and Ideas from Willing Actors -- Violations of the First Amendment to the Constitution of the United States**

61. Plaintiff realleges and incorporates by reference each and every allegation contained in the previous paragraphs as if set forth fully herein.
62. The First Amendment to the Constitution of the United States prohibits limitations on speech that are overbroad and which substantially 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.
63. The First Amendment to the Constitution of the United States 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.
64. The First Amendment to the Constitution of the United States 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.

65. The First Amendment to the Constitution of the United States 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 and within Iraq by U.S. citizens to express their opposition to U.S. military action in that country 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.

66. The First Amendment to the Constitution of the United States 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 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 -- Impermissible Burden on the Exercise of Religion --  
Violation of the Religious Freedom Restoration Act**

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

68. The Religious Freedom Restoration Act prohibits the government from substantially burdening an individual's exercise of his religion unless it demonstrates that the application of the burden is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that interest. The Iraqi Sanctions Regulations impose a sweeping ban on travel to Iraq that includes travel undertaken for religious purposes. Because the Regulations substantially burden religious practice and are not in furtherance of a compelling governmental interest and/or are not narrowly tailored to achieve that interest, they violate the Religious Freedom Restoration Act.

**Seventh Cause of Action -- Impermissible Interference with Religious Practice --  
Violation of the Free Exercise Clause of the First Amendment to the Constitution of  
the United States**

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

70. The Free Exercise Clause of the First Amendment to the Constitution of the United States prohibits the government from impermissibly restricting or burdening an individual's free exercise of his religion. A law or regulation that burdens the free exercise of religion, in addition to implicating other constitutional protections, will violate the Free Exercise Clause unless it furthers a substantial governmental interest and/or is narrowly tailored to achieve that interest. Because the Iraqi Sanctions Regulations restrict Plaintiff's practice of his

religion, as well as implicating other constitutional protections such as his right to free speech under the First Amendment and his right to travel under the Fifth Amendment, and do not further a substantial government interest and/or are not narrowly tailored to achieve that interest, the Regulations violate the Free Exercise Clause.

71. The Free Exercise Clause prohibits the government from burdening religious practice through laws or regulations that are not neutral and/or generally applicable. The ban on travel to and within Iraq under the Iraqi Sanctions Regulations contains exceptions for certain forms of travel, including travel relating to journalistic activity by persons employed in such capacity by a newsgathering organization. Accordingly, because the ban on travel under the Iraqi Sanctions Regulations is not a neutral and/or generally applicable law, and is not justified by a substantial governmental interest and/or not narrowly tailored to achieve that interest, it impermissibly burdens religious practice in violation of the Free Exercise Clause.

**Eighth Cause of Action -- Impermissibly Broad Delegation of Congressional Power -  
- Violation of the Separation of Powers**

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

73. The Iraqi Sanctions Regulations were purportedly promulgated pursuant to the International Emergency Economic Powers Act, which authorizes measures, including certain restrictions on travel by U.S. citizens, if the President deems them necessary to deal with an unusual and extraordinary threat with respect to

which a national emergency has been declared. 50 U.S.C. § 1701 *et seq.* Because International Emergency Economic Powers Act does not provide any intelligible standard for restricting travel and grants the Executive Branch unrestrained freedom of choice in that regard, the Iraqi Sanctions Regulations are an impermissibly broad delegation of congressional power in violation of the separation of powers guaranteed by the Constitution of the United States.

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

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

75. 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 and a ban on travel that is not necessary to protect national security, public order, health, or moral, or the rights and freedoms of others, and that is not consistent with other rights recognized in the Covenant.

## **PRAYER FOR RELIEF**

WHEREFORE Plaintiff respectfully requests that this Court:

1. Declare that the Iraqi Sanctions Regulations violate the First and Fifth Amendments to the Constitution of the United States.
2. Declare that the Iraqi Sanctions Regulations violate the Administrative Procedures Act.
3. Declare that the Iraqi Sanctions Regulations violate the Religious Freedom Restoration Act.
4. Declare that the Iraqi Sanctions Regulations violate the Constitution of the United States because they are an impermissible delegation of congressional power.
5. Declare that the Iraqi Sanctions Regulations violate international law.
6. Permanently enjoin Defendants from employing the Iraqi Sanctions Regulations against Reverend Boyle for his alleged travel to Iraq in 2003, including from collecting and/or enforcing any penalty imposed upon him pursuant to those Regulations.
7. Permanently enjoin Defendants from collecting and/or enforcing any penalty upon Reverend Boyle based upon his failure to pay any penalty unlawfully imposed pursuant to the Iraqi Sanctions Regulations.
8. Alternatively, vacate OFAC's decision imposing a penalty on Plaintiff and remand to the agency with an order to stay any further proceedings against Plaintiff for his alleged unauthorized travel to Iraq until April 2008, when the

applicable statute of limitations for a criminal prosecution for that alleged travel will have expired.

9. Alternatively, vacate OFAC's decision imposing a penalty on Plaintiff and remand to the agency with an order to conduct a hearing based on Plaintiff's alleged unauthorized travel to Iraq that is consistent with the requirements of the Due Process Clause of the Fifth Amendment to the Constitution of the United States.
10. Award Plaintiff fees and costs pursuant to 28 U.S.C. § 2412.
11. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

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New York, New York

Dated: May 25, 2005