

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 2nd day of October, two thousand nine.

PRESENT: PIERRE N. LEVAL,
REENA RAGGI,
Circuit Judges,
JOHN GLEESON,
*District Judge.**

HANA AHMED KARIM, RANJDAR MUSTAFA HASAN,
REBAR JAHUR ISMAIL, HERISH SAID ALI, KARZAN
SHERKO TOFIA, FARHAD M. MURASL, HERISH
HASSAN YOUSIF, on behalf of themselves and others
similarly situated, ZHEAR YOUSIF KAREEM,

Plaintiffs-Appellants,

v.

No. 08-5185-cv

AWB LIMITED, BNP PARIBAS, AWB (U.S.A) LIMITED,
COMMODITY SPECIALISTS COMPANY,

Defendants-Appellees.

* District Judge John Gleeson of the United States District Court for the Eastern District, sitting by designation.

APPEARING FOR APPELLANTS:

KEVIN P. RODDY, Wilentz, Goldman & Spitzer, P.A. (Daniel R. Lapinski and Pamela R. Gold-Zafra, Wilentz, Goldman & Spitzer, P.A., New York, New York, *on the brief*), Woodbridge, New Jersey.

Joshua D. Glatter, Gary M. Osen, Ari Ungar, and Ellyn Essig, Osen & Associates, LLC, Oradell, New Jersey.

James P. Bonner, Shalov, Stone, Bonner & Rocco LLP, New York, New York.

C. Tab Turner, Turner & Associates, P.A., North Little Rock, Arkansas.

Jay Nelkin, Nelkin & Nelkin P.C., Houston, Texas.

APPEARING FOR APPELLEES:

ROBERT H. BARON, Cravath, Swaine & Moore LLP (Timothy G. Cameron, *on the brief*), New York, New York, *for AWB Limited and AWB (U.S.A.) Limited*.

ROBERT S. BENNETT, Hogan & Hartson LLP (Alan Kriegel and Jennifer L. Spaziano, Skadden, Arps, Slate, Meagher & Flom LLP, Washington, D.C., *on the brief*), Washington, D.C., *for BNP Paribas*.

Elliot G. Sagor and Michael A. Weiss, Hogan & Hartson LLP, New York, New York, and Ty Cobb, *of counsel*, Hogan & Hartson LLP, Washington D.C., *for Commodity Specialists Company*.

Appeal from the United States District Court for the Southern District of New York
(Gerard E. Lynch, *Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment entered on October 9, 2008, is AFFIRMED.

Plaintiffs, on behalf of themselves and a putative class of Iraqi citizens who were among the intended beneficiaries of the United Nations Oil-for-Food Programme (“OFFP”), sued defendants under federal and state law for conspiring with the regime of Saddam Hussein to siphon money from the OFFP, thereby enriching the regime and depriving the plaintiff class of the full benefits of the OFFP.¹ Plaintiffs here appeal the dismissal of their complaint for lack of Article III standing, challenging the district court’s conclusion that the alleged injury was not sufficiently particularized or concrete to pass constitutional muster. We assume the parties’ familiarity with the facts and the record of prior proceedings, which we reference only as necessary to explain our decision.

We review de novo a district court’s dismissal of a complaint for lack of standing, “accepting as true all material allegations in the complaint and construing the complaint in favor of the complaining party.” Fuentes v. Bd. of Educ., 540 F.3d 145, 148 (2d Cir. 2008). To establish Article III standing, a plaintiff must show (1) “injury in fact,” (2) fairly traceable to the defendant’s alleged unlawful conduct, (3) that is likely to be redressed by the requested relief. See Friends of the Earth, Inc. v. Laidlaw Env’tl. Servs. (TOC), Inc., 528 U.S. 167,

¹ Plaintiffs alleged violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1962(c), (d), and 1964(c); the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq.; the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1 et seq.; and the common law of New York.

180-81 (2000). “To qualify as a constitutionally sufficient injury-in-fact, the asserted injury must be concrete and particularized as well as actual or imminent, not conjectural or hypothetical.” Kendall v. Employees Ret. Plan of Avon Prods., 561 F.3d 112, 118 (2d Cir. 2009) (internal quotation marks omitted); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

We affirm for substantially the reasons stated by the district court in its well-reasoned opinion. First, the alleged injuries were not particular to plaintiffs, but were suffered generally by the population of Iraq. See Lujan v. Defenders of Wildlife, 504 U.S. at 561 n.1 (“By particularized, we mean that the injury must affect the plaintiff in a personal and individual way.”). Such a grievance, “suffer[ed] in some indefinite way in common with people generally,” cannot demonstrate an injury-in-fact. DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 344 (2006) (internal quotation marks omitted).² Second, the allegation that the Hussein regime would have distributed more benefits to the Iraqi population in general, including plaintiffs, but for the alleged kickback scheme is “conjectural or hypothetical,” not “actual or imminent,” as required to show injury-in-fact. Lujan v. Defenders of Wildlife, 504 U.S. at 560. Indeed, as the district court observed, the fact that billions of dollars in oil proceeds remained unspent in the escrow accounts “suggests that something other than the

² Because we conclude that plaintiffs have not alleged a sufficiently particularized injury, we need not address their various arguments as to the nature of their purported property interest in OFFP escrow account funds or goods that might have been purchased therefrom.

escrow account balance was the constraint on the amount of humanitarian aid distributed by the Hussein regime.” Karim v. AWB Ltd., No. 06 Civ. 15400, 2008 WL 4450265, at *4 (S.D.N.Y. Sept. 30, 2008). Because plaintiffs have failed to allege an injury-in-fact that is fairly traceable to the defendants’ conduct, they lack standing to pursue their claim. The district court therefore correctly dismissed their complaint.³

Accordingly, the judgment of the district court is AFFIRMED.

FOR THE COURT:
CATHERINE O’HAGAN WOLFE, Clerk of Court

By: _____

³ In light of plaintiffs’ lack of Article III standing – “the threshold question in every federal case, determining the power of the court to entertain the suit,” Denney v. Deutsche Bank AG, 443 F.3d 253, 263 (2d Cir. 2006) (internal quotation marks omitted) – we need not address whether plaintiffs have RICO standing under 18 U.S.C. § 1964(c).