

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579**

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-II-067
	}	
	}	Decision No. IRQ-II-231
	}	
Against the Republic of Iraq	}	
	}	

Counsel for Claimant:

Daniel Wolf, Esq.
Law Office of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held him hostage in violation of international law in August 1990. Because he has established that Iraq held him hostage for 25 days, he is entitled to an award of \$275,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was an Iraqi-born U.S. citizen visiting Iraq when Iraq invaded Kuwait on August 2, 1990. He asserts that, beginning with the invasion and for approximately 25 days thereafter, he was confined first to a hotel in Baghdad, then to a relative’s house nearby. Claimant alleges that he flew out of Iraq on August 26, 1990, after the Iraqi government authorized him to leave.

Although Claimant was not among them, many of the U.S. nationals in Iraq and Kuwait at the time of the 1990-91 Iraqi occupation of Kuwait sued Iraq (and others) in

federal court for, among other things, hostage-taking.¹ Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.² The Agreement, which entered into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004, including claims of personal injury caused by hostage-taking.³ Exercising its authority to distribute money from the settlement funds, the U.S. Department of State provided compensation to numerous individuals whose claims were covered by the Agreement, including some whom Iraq had allegedly taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait.

Under the International Claims Settlement Act of 1949 ("ICSA"), the Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission.⁴ The Secretary has delegated that authority to the State Department's Legal Adviser, who, by letter dated October 7, 2014, referred three categories of claims to this Commission for adjudication and certification.⁵ This was the State Department's second referral of claims to the Commission under the Claims Settlement Agreement, the first having been by letter dated November 14, 2012 ("2012 Referral" or "November 2012 Referral").⁶

¹ See, e.g., *Hill v. Republic of Iraq*, 175 F. Supp. 2d 36 (D.D.C. 2001); *Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (D.D.C. 2006).

² See *Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement").

³ See *id.* Art. III(1)(a)(ii).

⁴ See 22 U.S.C. § 1623(a)(1)(C) (2012).

⁵ See *Letter dated October 7, 2014, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission* ("2014 Referral" or "October 2014 Referral").

⁶ Although the November 2012 Referral involved claims of U.S. nationals who were held hostage or unlawfully detained by Iraq, it did not involve hostage-taking claims *per se*. Rather, it consisted of certain claimants who had *already received* compensation under the Claims Settlement Agreement from the State Department for their hostage-taking claims, and it authorized the Commission to award additional compensation to those claimants, provided they could show, among other things, that they suffered a

One category of claims from the 2014 Referral is applicable here. That category, known as Category A, consists of

claims by U.S. nationals for hostage-taking¹ by Iraq² in violation of international law prior to October 7, 2004, provided that the claimant was not a plaintiff in pending litigation against Iraq for hostage taking³ at the time of the entry into force of the Claims Settlement Agreement and has not received compensation under the Claims Settlement Agreement from the U.S. Department of State. . . .

¹ For purposes of this referral, hostage-taking would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

² For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

³ For purposes of this category, pending litigation against Iraq for hostage taking refers to the following matters: *Acree v. Iraq*, D.D.C. 02-cv-00632 and 06-cv-00723, *Hill v. Iraq*, D.D.C. 99-cv-03346, *Vine v. Iraq*, D.D.C. 01-cv-02674; *Seyam (Islamic Society of Wichita) v. Iraq*, D.D.C. 03-cv-00888; *Simon v. Iraq*, D.D.C. 03-cv-00691.

2014 Referral at ¶ 3.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICSCA and the 2014 Referral.⁷

On June 10, 2015, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of his claim.

“serious personal injury” during their detention. The 2012 Referral expressly noted that the “payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.” 2012 Referral, *supra*, n.3.

⁷ *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).

DISCUSSION

Jurisdiction

This Commission's authority to hear claims is limited to the category of claims referred to it by the United States Department of State.⁸ The Commission's jurisdiction under the "Category A" paragraph of the 2014 Referral is limited to claims for hostage-taking of (1) "U.S. nationals," provided that the claimant (2) was not a plaintiff in any litigation against Iraq for hostage taking pending on May 22, 2011 (the "Pending Litigation"), and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral ¶ 3.

Nationality

This claims program is limited to claims of "U.S. nationals." Here, that means a claimant must have been a national of the United States when the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force.⁹ Claimant satisfies the nationality requirement. He has provided a copy of his U.S. certificate of naturalization, dated August 11, 1981, and his cancelled U.S. passport, which show that he was a U.S. national at the time of the alleged hostage-taking (August 1990). He has also provided a copy of his current U.S. passport, which establishes that he remained a U.S. national through the effective date of the Claims Settlement Agreement.

No Pending Litigation

Additionally, Category A states that the claimant may not have been a plaintiff in any of the so-called Pending Litigation cases at the time of the entry into force of the

⁸ See 22 U.S.C. § 1623(a)(1)(C).

⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

Claims Settlement Agreement.¹⁰ Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant has averred under oath in a 2016 declaration, and the pleadings in the cases cited in footnote 3 confirm, that he was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of his claim.

*No Compensation under the Claims Settlement Agreement
from the Department of State*

The Claimant also satisfies the final jurisdictional requirement. Claimant has stated that he has never “received any compensation under [the U.S.-Iraq Claims Settlement Agreement] from the Department of State.” Further, we have no evidence that the State Department has provided him any compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of his claim.

In summary, this claim is within the Commission’s jurisdiction pursuant to the 2014 Referral and is entitled to adjudication on the merits.

Merits

Factual Allegations

Claimant states that Iraq held him hostage from August 2, 1990 until August 26, 1990, a total of 25 days. He alleges that he was in Iraq visiting his father’s grave and preparing to build a headstone when Iraq invaded Kuwait on August 2, 1990. He learned of the invasion while at his hotel in Baghdad and “was informed that no foreign national was allowed to leave” He states that he became concerned due to his “Iraqi background and U.S. citizenship”

¹⁰ The Agreement entered into force on May 22, 2011. See Claims Settlement Agreement, art. IX.

Claimant further states that the next day, August 3, 1990, he was “taken to a nearby building by Iraqi security officers with a few other foreigners staying at the same hotel for questioning.” He claims that he was then “separated from the group and interrogated by three Iraqi security officers” who asked him questions about “why [he] was in Baghdad and what [he] had been doing since [his] arrival.” Claimant asserts that they warned him that if he “did not tell them the truth, [he] would not see [his] family again.” After about two hours, the interrogation ended, and Claimant returned to his hotel. He immediately checked out and “sought refuge at a relative’s house,” where he claims he spent the next three weeks.

Claimant asserts that around August 5, 1990, he went to the U.S. Embassy in Baghdad to register “in the hope that they could help [him] leave Iraq[,]” and was “advised . . . to be careful and to lay low while waiting for further instructions.” Eventually, on or about August 25, 1990, Claimant “heard rumors that the Iraqi authorities had authorized the departure of foreign nationals of Iraqi origin.” Claimant states that he then went to the Ministry of the Interior and was issued an exit visa, and on August 26, 1990, he flew from Baghdad to Jordan, and the next day, continued on to the United States.

Supporting Evidence

Claimant has supported his claim with, among other things, two sworn declarations, dated May 29, 2015, and November 26, 2016, in which he describes his ordeal in Iraq; numerous contemporaneous news articles noting Iraq’s practice of allowing American men of Arab origin to leave Iraq in the early weeks of the invasion, including prior to Iraq’s reported announcement on September 11, 1990, that Arab-born male U.S. citizens could leave; an August 12, 2015 sworn statement from W. Nathaniel

Howell, Ambassador to Kuwait at the time of the invasion, describing the experience of U.S. Embassy personnel in Kuwait City during the occupation by Iraq; and a copy of Claimant's U.S. passport valid at the time of the Iraqi invasion, which contains, *inter alia*, an Iraqi entry visa dated May 30, 1990, an Iraqi entry stamp dated July 5, 1990, an Iraqi exit visa dated August 25, 1990, an Iraqi exit stamp dated August 26, 1990, a Jordanian visa dated August 26, 1990, a Jordanian entry stamped dated August 26, 1990, and a Jordanian exit stamp dated August 27, 1990.

Additionally, Claimant has submitted a number of documents that provide background about the broader geopolitical situation during the First Gulf War in 1990-91, including some that relate specifically to the circumstances faced by U.S. nationals in Iraq and Kuwait at the time. These documents include statements from U.S. and Iraqi officials, resolutions of the United Nations Security Council, newspaper articles, a report from Amnesty International on human rights violations committed by Iraq in 1990, unclassified cables and a memorandum from the U.S. Department of State, and affidavits submitted in two lawsuits brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War.

Legal Standard

To make out a substantive claim under Category A of the 2014 Referral, a claimant must show that (1) Iraq was engaged in an armed conflict and (2) during that conflict, Iraq took the claimant hostage.¹¹ The Commission has previously held that, to establish a hostage-taking claim, a claimant must show that Iraq (a) seized or detained the claimant and (b) threatened the claimant with death, injury or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from

¹¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16. An estate claimant would of course need to make this showing as to its decedent.

doing any act as an explicit or implicit condition for the claimant's release.¹² A claimant can establish the first element of this standard by showing that the Iraqi government confined the claimant to a particular location or locations within Iraq or Kuwait, or prohibited the claimant from leaving Iraq and/or Kuwait.¹³

Application of Standard to this Claim

(1) Armed Conflict: Claimant alleges that Iraq took him hostage in Iraq on August 2, 1990, and held him hostage for 25 days, until August 26, 1990, when he flew from Baghdad to Jordan. In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that during this entire period, Iraq was engaged in an armed conflict with Kuwait.¹⁴ Thus, Claimant satisfies this element of the standard.

(2) Hostage-taking: To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant must show that Iraq (a) seized or detained him and (b) threatened him with death, injury or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for his release. Claimant satisfies this standard for the 25-day period from August 2, 1990, to August 26, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, his time in Iraq following the Iraqi invasion can be divided into two periods: (i) between the Iraqi invasion on August 2, 1990 and the Iraqi government's formal closing of the borders on August 9, 1990; and

¹² See *id.* at 17-20.

¹³ See *id.* at 17.

¹⁴ See *id.* at 16-17.

(ii) from that August 9th formal closing of the borders until Claimant's departure on August 26, 1990.¹⁵

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant first to his hotel in Baghdad, then to his relative's house. The Commission has previously determined that Iraq detained U.S. nationals who were in Iraq during this period by threatening them with forcible detention.¹⁶ Although some foreign nationals did manage to leave Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁷ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait and Iraq, relocating many to Baghdad against their will.¹⁸ Claimant understandably had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being killed or forcibly detained if he had made any attempt to leave the country.¹⁹ The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Claimant in this situation in effect amounts to detention.²⁰ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until he flew to Jordan on August 26, 1990, the Iraqi government confined Claimant to Iraq, preventing him from leaving the country by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed all borders under its control, forcibly prohibiting U.S. nationals from leaving.²¹ As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving

¹⁵ See *id.* at 20-21.

¹⁶ See Claim No. IRQ-II-281, Decision No. IRQ-II- 139, at 9-10.

¹⁷ See *id.* at 10 n.23.

¹⁸ See *id.* at 10.

¹⁹ Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US \$100,000 (Category "C" Claims), UN Doc. S/AC.26/1994/3 (1994), at 93.

²⁰ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²¹ See *id.* at 7, 21-22.

the country, effectively detaining him within the borders of Iraq.²² Claimant asserts that he had heard rumors around August 25, 1990, that Iraq had authorized the release of foreign nationals of Iraqi origin, and has presented evidence supporting this claim. Under the standard that applies here, however, it does not matter whether Claimant was allowed to leave for this reason or on other grounds.²³ Because the evidence suggests that Claimant remained subject to Iraq's policy of prohibiting U.S. nationals from leaving until he departed Iraq on August 26, 1990, and that he could not have reasonably left Iraq any earlier than he did,²⁴ Iraq effectively detained him within its borders until August 26, 1990, regardless of the reason he was ultimately allowed to leave.

In sum, Iraq detained Claimant from August 2, 1990, until August 26, 1990.

(b) Threat: In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission determined that the Iraqi government threatened U.S. nationals in Kuwait and Iraq numerous times with continued detention.²⁵ Both Iraqi President Saddam Hussein and the Speaker of Iraq's National Assembly Saadi Mahdi made clear that American nationals (as well as those from numerous other countries) would not be permitted to leave.²⁶ Claimant has thus established that Iraq threatened to continue to detain him.²⁷

²² See *id.* at 22.

²³ Claimant was born in Iraq, and the Commission has previously noted that Iraq purportedly released some U.S. national men of Arab origin or descent in early September. See Claim No. IRQ-II-117, Decision No. IRQ-II-102 (2017); Claim No. IRQ-II-328, Decision No. IRQ-II-081 (2017).

²⁴ See Claim No. IRQ-II-117, Decision No. IRQ-II-102, at 8-9 (noting that Margaret Tutwiler, who was Assistant Secretary of State for Public Affairs at that time, reported that on August 30, 1990, Iraq asked the chargé d'affaires of the U.S. Embassy in Baghdad to submit passports of, among others, Arab-born males holding U.S. citizenship but subsequently refused to grant exit visas to individuals in this category).

²⁵ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

²⁶ See *id.*

²⁷ While we determine that these statements apply to Claimant and other similarly situated U.S. nationals who were prevented from leaving Iraq or Kuwait after the invasion, we do not make any findings as to whether they also apply to U.S. nationals with diplomatic status: Iraqi officials made specific representations about the ability of diplomatic and consular staff members with U.S. nationality (and their relatives) to leave Iraq and Kuwait throughout the crisis. See *In Iraq: 'We Have A Problem' Iraq Holds*

(c) Third party coercion: The Commission has previously held that Iraq detained all U.S. nationals in Kuwait or Iraq at the time and threatened them with continued detention in order to compel the United States government to act in certain ways as an explicit and/or implicit condition for their release.²⁸ Iraq itself stated that it sought three things from the United States government before it would release the detained U.S. nationals; it wanted the United States (i) not to attack Iraq, (ii) to withdraw its troops from Saudi Arabia; and/or (iii) to end the economic embargo imposed on Iraq.²⁹ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁰

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. Iraq held Claimant hostage in violation of international law for a period of 25 days, and Claimant is thus entitled to compensation.

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation.

In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that successful claimants should be awarded compensation in the amount of \$150,000 plus an additional \$5,000 for each day the claimant was in captivity.³¹ Therefore, for the 25 days Iraq held Claimant hostage, he is entitled to an award of \$275,000, which is \$150,000 plus (25 x \$5,000). This amount

Fleeing U.S. Diplomats Staff from Kuwait Reaches Baghdad, But Can't Leave, PHILA. INQUIRER, Aug. 24, 1990, <https://perma.cc/B2YF-79AY>.

²⁸ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

²⁹ See *id.* at 23-24.

³⁰ See George H. W. Bush, "These Innocent People . . . Are, In Fact, Hostages" in U.S. Dep't of State, *American Foreign Policy Current Documents 1990* 484 (Sherrill Brown Wells ed. 1991); see also 2014 Referral at ¶ 3; cf. S.C. Res. 674 (Oct. 29, 1990) ("actions by . . . Iraq authorities and occupying forces to take third-State nationals hostage" and demanded that Iraq "cease and desist" this practice).

³¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

constitutes the entirety of the compensation to which Claimant is entitled under the Claims Settlement Agreement.

The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA.³²

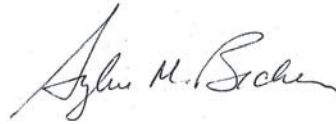
AWARD

Claimant is entitled to an award in the amount of \$275,000.

Dated at Washington, DC, February 23, 2018
and entered as the Proposed Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2017).

³² 22 U.S.C. §§ 1626-1627 (2012).