

**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)

5 U.S.C. §552(d)(6)

Against the Republic of Iraq

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Claim No. IRQ-II-055

Decision No. IRQ-II-179

Counsel for Claimant:

Daniel Wolf, Esq.
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant Estate brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held the decedent, Richard William Iliff, hostage in violation of international law. Because Claimant Estate has established that Iraq held the decedent hostage for 123 days, it is entitled to an award of \$765,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Iliff was a United States citizen who was working in Baghdad when Iraq invaded Kuwait on August 2, 1990. The Estate asserts that after the invasion Mr. Iliff was detained by Iraqi forces and held as a “human shield” at different sites in Iraq, and that during this entire period, the Iraqi government in effect forcibly prevented Mr. Iliff (and other U.S. nationals) from leaving Kuwait and/or Iraq and did so with the express purpose of compelling the United States government to acquiesce to certain Iraqi government demands. Claimant Estate asserts that Mr. Iliff flew out of

Baghdad on December 2, 1990, after Muhammad Ali, a former American professional boxer and activist, negotiated his release with Iraqi officials. Mr. Iliff died on May 6, 2013.

Although neither Mr. Iliff nor the Claimant Estate was 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

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").

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

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.

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 “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.” *Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission*, at ¶3 n.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 ICSA and the 2014 Referral.⁷

On January 30, 2015, the Commission received from the Claimant Estate a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of its claim. By letter dated June 29, 2016, the Claimant Estate submitted additional evidence in support of its claim.

DISCUSSION

Standing

Claimant Estate has submitted a copy of Letters Testamentary, issued on June 21, 2016, by the Chancery Court for Williamson County, Tennessee, appointing Lora Janith Iliff as the personal representative for the estate of Richard William Iliff. Accordingly, the Commission concludes that ESTATE OF RICHARD WILLIAM ILIFF, DECEASED; LORA JANITH ILIFF, EXECUTOR, is the proper claimant in this claim.

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 at ¶ 3.

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

⁸ See 22 U.S.C. § 1623(a)(1)(C)(2012).

Nationality

This claims program is limited to claims of “U.S. nationals.” Here, that means the claim must have been held by 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 Because Mr. Iliff was living as of the date of the Claims Settlement Agreement, the Commission need only examine his nationality alone.¹⁰

Claimant Estate satisfies the nationality requirement. It has provided copies of Mr. Iliff’s U.S. passport valid from January 29, 1990, through January 28, 2000, a 2012 Tennessee voter identification card, and his Tennessee death certificate reporting the date of death as May 6, 2013. The Commission finds that this evidence establishes that Mr. Iliff was a U.S. national at the time of the alleged hostage-taking and 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 Claims Settlement Agreement.¹¹ Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Lora Janith Iliff, the Estate’s Executrix, has averred, and the pleadings in the cases cited in footnote 3 confirm, that neither Mr. Iliff nor the Estate were a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant Estate has also satisfied this element of its claim.

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

¹⁰ See, e.g., Claim No. LIB-II-180, Decision No. LIB-II-079, at 5 (2011).

¹¹ The Agreement entered into force on May 22, 2011. See Claims Settlement Agreement, art. IX.

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

The Claimant Estate also satisfies the final jurisdictional requirement. Lora Janith Iliff, the Estate's Executrix, has stated that neither the decedent nor the Estate have received any compensation under the Claims Settlement Agreement from the Department of State. Further, we have no evidence that the State Department has provided either of them any compensation under the Claims Settlement Agreement. Therefore, Claimant Estate meets this element of its 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 Estate states that Iraq held Mr. Iliff hostage from August 2, 1990, until December 2, 1990, a total of 123 days. Claimant Estate asserts that Mr. Iliff moved to Baghdad in February 1990 on an assignment for his employer and was residing there when Iraq invaded Kuwait on August 2, 1990. It further states that on August 28, 1990, Iraqi military personnel told Mr. Iliff that he would be held as a "guest of the Government of Iraq" and stripped him of his passport. During the next three months, Mr. Iliff was taken to different sites in Iraq—including the Mansour Melia Hotel in Baghdad, an oilfield in Kirkuk, and two gasoline refineries—where he was forced to serve as a "human shield" under armed Iraqi guard at all times. In some of these places of confinement, Claimant Estate describes Mr. Iliff as being kept in very difficult conditions and being given only minimal food. On November 29, 1990, Mr. Iliff was taken back to the Mansour Melia Hotel in Baghdad. There, he learned that he would be released with Mohammed Ali who, on a humanitarian mission in Iraq, had negotiated the release of a number of American

hostages. On December 2, 1990, Mr. Iliff and a number of other hostages departed Iraq on an evacuation flight bound for Amman, Jordan.

Supporting Evidence

Claimant Estate has supported its claim with a Statement of Claim signed by Lora Janith Iliff, Mr. Iliff's widow and the Executrix of his estate. It has also provided a copy of Mr. Iliff's U.S. passport valid from January 29, 1990 through January 28, 2000, which contains an Iraqi exit stamp that, although difficult to read, is next to an Iraqi exit visa that states it expires on December 9, 1990. Claimant Estate has also provided copies of three newspaper articles from December 1990 that identify Mr. Iliff by name and report that he was held hostage by Iraq and flew out of Iraq on a December 2, 1990 evacuation flight organized by Muhammad Ali. Claimant Estate has also provided original newspaper clippings from unidentified newspapers that also identify Mr. Iliff by name and report that he was held hostage by Iraq and flew out of Iraq on December 2, 1990, on the flight organized by Muhammad Ali. In addition, the Claimant Estate has submitted a letter from the U.S. State department dated December 9, 1992, that reports Mr. Iliff was in hostage status in Baghdad, Iraq and was held at various sites in Iraq until his departure from Baghdad with Mr. Ali's group on December 2, 1990.

Claimant Estate has also 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, affidavits submitted in a lawsuit brought by other U.S. nationals who were also in Kuwait or Iraq

during the First Gulf War, and several unclassified cables from the U.S. Department of State.

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.¹² 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 doing any act as an explicit or implicit condition for the claimant's release.¹³ 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.¹⁴

Application of Standard to this Claim

(1) Armed Conflict: Claimant Estate alleges that Iraq took Mr. Iliff hostage in Iraq on August 2, 1990, and held him hostage for 123 days, until December 2, 1990, when Iraqi officials allowed him to leave the country on an evacuation flight organized by Muhammad Ali. 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.¹⁵ Thus, Claimant Estate satisfies this element of the standard.

¹² 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.

¹³ See *id.* at 17-20.

¹⁴ See *id.* at 17.

¹⁵ See *id.* at 16-17.

(2) Hostage-taking: To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant Estate must show that Iraq (a) seized or detained Mr. Iliff 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 Estate satisfies this standard for the 123-day period from August 2, 1990, to December 2, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant Estate's allegations of Mr. Iliff having been detained, his time in Iraq following the Iraqi invasion of Kuwait can be divided into three periods: (i) between the invasion on August 2, 1990, and the Iraqi government's formal closing of the borders on August 9, 1990; (ii) from that August 9th formal closing of the borders until Iraq purportedly released him on or around November 29, 1990; and (iii) from that November 29, 1990, announcement until Mr. Iliff's departure on December 2, 1990.¹⁶

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Mr. Iliff within Iraq. The Commission has previously determined that Iraq detained U.S. nationals who were in Kuwait and/or Iraq during this period by threatening them with immediate seizure and/or forcible detention.¹⁷ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Mr. Iliff could not reasonably be expected to have escaped.¹⁸ Mr. Iliff presumably had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of

¹⁶ See *id.* at 20-21. While Claimant Estate alleges that Mr. Iliff was physically seized and held by force by Iraq during these periods, we need not decide that issue: as explained below, his presence in Kuwait and/or Iraq during this time is alone sufficient to establish that he was detained under the standard that applies here.

¹⁷ See Claim No. IRQ-II-281, Decision No. IRQ-II-139, at 9-10 (*citing* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21).

¹⁸ See Claim No. IRQ-II-281, Decision No. IRQ-II-139, at 10 n.23.

being killed or forcibly detained if he attempted to leave the country.¹⁹ For the purposes of the legal standard applicable here, putting Mr. Iliff in this situation in effect amounts to detention.²⁰ Iraq thus detained him from August 2, 1990, to August 9, 1990.

From August 9, 1990 until he departed Iraq on December 2, 1990, the Iraqi government confined Mr. Iliff to Iraq, preventing him from leaving the country by the threat of force. As the Commission has previously held, starting on August 9, 1990, the Iraqi government formally closed Iraq's borders, forcibly prohibiting U.S. nationals from leaving.²¹ As of that date, Iraq formally prohibited Mr. Iliff from leaving the country, effectively detaining him within the borders of Iraq.²² For Mr. Iliff, this formal policy of prohibiting U.S. nationals from leaving Iraq lasted until November 29, 1990, when the Iraqi government purportedly authorized his release. Because Iraq's previous releases of various categories of foreign nationals did not apply to Mr. Iliff,²³ this was the earliest date that he was legally authorized to leave Iraq.

Although Mr. Iliff may have been legally permitted to leave Iraq on or about November 29, 1990, his detention did not end on that date. As the Commission has previously recognized, a claimant's detention ends only on the date that he is released from the control of the person or entity that detained him.²⁴ Any attempt "[by the perpetrator]

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-281, Decision No. IRQ-II-139, at 10.

²¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 7, 21-22.

²² See *id.* at 22.

²³ See *id.* at 11-12, 22 (discussing Iraq's August 28, 1990 release of U.S. nationals who were women or minors).

²⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22; see also Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

to restrict [the] movements” of a claimant establishes control,²⁵ whereas a claimant who has a reasonable opportunity to leave the site of his or her captivity is deemed no longer to be under the perpetrator’s control.²⁶

Under this standard, Mr. Iliff remained under Iraq’s control until December 2, 1990. The Commission has previously held that Iraq imposed conditions on air travel that limited the ability of foreign nationals, including U.S. nationals, to leave Iraq and/or Kuwait in both September 1990 (after the release of female and minor U.S. nationals on August 28, 1990) and December 1990 (after the release of all remaining U.S. nationals).²⁷ Indeed, the available evidence indicates that Mr. Iliff left Iraq at the first reasonable opportunity, on the December 2, 1990 evacuation flight that left Iraq. Because there is no evidence that Mr. Iliff remained voluntarily in Iraq at any time during this period, we conclude that he was under Iraq’s control and thus detained from the date that Iraq purportedly released him (on or around November 29, 1990) to December 2, 1990.

In sum, Iraq thus detained Mr. Iliff from August 2, 1990, until December 2, 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.²⁸ This included Mr. Iliff.²⁹ Both Iraqi President Saddam Hussein and the Speaker of Iraq’s

²⁵ Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22 (citing Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 12 (2012)).

²⁶ *See id.*

²⁷ *See* Claim No. IRQ-II-180, Decision No. IRQ-II-140, at 10-11 (2017); Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22.

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

²⁹ While we determine that these statements apply to the decedent 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 Fleeing U.S. Diplomats*

National Assembly Saadi Mahdi made clear that American nationals (as well as those from numerous other countries) would not be permitted to leave.³⁰

In short, the Iraqi government made unequivocal threats to continue to detain U.S. nationals in Kuwait and Iraq. Mr. Iliff was a U.S. national in Iraq at the time. Claimant Estate has thus established that Iraq threatened to continue to detain Mr. Iliff.

(c) Third party coercion: The Commission has previously held that Iraq detained all U.S. nationals in Kuwait and 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.³¹ 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.³² Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³³

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. Iraq held Mr. Iliff hostage in violation of international law for a period of 123 days, and the Claimant Estate is thus entitled to compensation.

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

³⁰ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

³¹ See *id.*

³² See *id.* at 23-24.

³³ 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).

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.³⁴ Therefore, for the 123 days Iraq held Mr. Iliff hostage, he is entitled to an award of \$765,000, which is \$150,000 plus (123 x \$5,000). This amount constitutes the entirety of the compensation to which the Claimant Estate 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.³⁵

AWARD

Claimant Estate is entitled to an award in the amount of \$765,000.


Dated at Washington, DC, October 19, 2017
and entered as the Proposed Decision
of the Commission.

**This decision was entered as the
Commission's Final Decision
on**

December 12, 2017



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) (2016).

³⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁵ 22 U.S.C. §§ 1626-1627 (2012).