

**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-232

Decision No. IRQ-II-182

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, Robert Edward Martin, hostage in violation of international. Because Claimant Estate has established that Iraq held Mr. Martin hostage for 130 days, it is entitled to an award of \$800,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Martin was a United States citizen who was making a brief business trip to Kuwait when Iraq invaded the country on August 2, 1990. The Estate asserts that after the invasion Mr. Martin was detained by Iraqi forces at sites in Kuwait and Iraq, and that during this entire period, the Iraqi government in effect forcibly prevented Mr. Martin (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. After the Iraqi government authorized all foreign

nationals remaining in Iraq to leave, Mr. Martin flew out of Iraq on December 9, 1990. Mr. Martin died on May 7, 2012.

Although neither the Claimant Estate nor Mr. Martin were 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 October 23, 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 March 11, 2016, the Claimant Estate submitted additional evidence in support of its claim.

DISCUSSION

Standing

Claimant Estate has submitted a copy of a Letters of Authority For Personal Representative, issued on October 13, 2014, by the Oakland County, Michigan probate court, appointing Marlene J. Pesta as the personal representative for the estate of Robert Edward Martin. Accordingly, the Commission concludes that ESTATE OF ROBERT EDWARD MARTIN, DECEASED; MARLENE J. PESTA, 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

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).

Litigation”), and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral at ¶ 3.

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. Martin 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. Martin’s U.S. passport valid from February 5, 1986 through February 4, 1996, his U.S. passport valid from September 26, 1995 through September 25, 2005, his U.S. passport valid June 23, 2005 through June 22, 2015, and his Michigan death certificate reporting the date of death as May 7, 2012. The Commission finds that this evidence establishes that Mr. Martin 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. Claimant Estate has averred, and the pleadings in the cases cited in footnote 3 confirm, that neither it nor Mr. Martin were a

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.

plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant Estate has also satisfied this element of its claim.

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

The Claimant Estate also satisfies the final jurisdictional requirement. It has stated that neither it nor Mr. Martin 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 the Claimant Estate or Mr. Martin 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. Martin hostage from August 2, 1990, until December 9, 1990, a total of 130 days. The Claimant Estate has submitted affidavits from Claimant first wife, to whom he was married at the time he was held hostage, and from his widow. Mr. Martin's first wife states that on or about July 30, 1990, Mr. Martin traveled to Kuwait on a two-day business trip for his employer, an automotive company, and that after Iraq invaded Kuwait, Mr. Martin was taken from his hotel in Kuwait City to another part of Kuwait City, where he was held for an unknown period of time. She states that Mr. Martin was then held as a human shield in various sites in Kuwait and Iraq. She additionally states that Mr. Martin was subjected to difficult environmental conditions and sparse food, and that he contracted intestinal parasites from the contaminated food he was forced to consume. She further states that she went with a group to Iraq to ask the Iraqi

government to release the hostages, and was reunited with Mr. Martin in Baghdad on December 7, 1990. They were allowed to leave on a December 9, 1990 evacuation flight.

Supporting Evidence

Claimant Estate has supported its claim with a Statement of Claim signed by the estate's executor, and by affidavits submitted by Mr. Martin's first wife and his widow. It has also provided a copy of Mr. Martin's U.S. passport valid from February 5, 1986, through February 4, 1996, which contains a Kuwaiti entry visa from June 1990, and Kuwaiti entry stamps that, although difficult to read, clearly indicate they are also from 1990. The passport also contains an Iraqi exit stamp dated December 9, 1990. Claimant Estate has also provided two newspaper articles from December 1990 that identify Mr. Martin by name and report his experience as a hostage in Kuwait and Iraq. One of the articles also states that Mr. Martin was taken from his hotel and moved to another part of Kuwait City on August 18, 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. Martin hostage in Kuwait on August 2, 1990, and held him hostage for 130 days, until December 9, 1990, when Iraqi officials allowed him to leave the country. 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.

(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 the decedent 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

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.

any act as an explicit or implicit condition for his release. Claimant Estate satisfies this standard for the 130-day period from August 2, 1990, to December 9, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant Estate's allegations of its decedent having been detained, Mr. Martin's time in Kuwait and 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 the December 6, 1990 announcement that all foreigners could leave Iraq and Kuwait;¹⁶ and (iii) from that December 6th announcement until Mr. Martin's departure on December 9, 1990.¹⁷

From August 2, 1990, until Iraq formally closed the borders to foreign nationals on August 9, 1990, Iraq confined Mr. Martin to his hotel in Kuwait City. The Commission has previously determined that Iraq detained all U.S. nationals who were in in Kuwait and/or Iraq by threatening them with immediate seizure and/or forcible detention during this period.¹⁸ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Mr. Martin could not have reasonably been expected to escape.¹⁹ He 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 attempted to

¹⁶ *See id.* at 12.

¹⁷ *See id.* at 20-21. While Claimant Estate alleges that Mr. Martin 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.

¹⁸ *See id.* at 21.

¹⁹ *See id.* at 21.

leave the country.²⁰ For the purposes of the legal standard applicable here, putting Mr. Martin in this situation in effect amounts to detention.²¹ Iraq thus detained Mr. Martin from August 2, 1990, to August 9, 1990.

From August 9, 1990, until Mr. Martin departed Iraq on December 9, 1990, Iraq detained Mr. Martin in different locations in Kuwait and Iraq, preventing him from leaving the country. As the Commission has previously held, starting on August 9, 1990, the Iraqi government formally closed all borders under its control, forcibly prohibiting U.S. nationals from leaving.²² As of that date, Iraq formally prohibited Mr. Martin from leaving, effectively detaining him within the borders of Kuwait and Iraq.²³ For Mr. Martin, this formal policy of prohibiting U.S. nationals from leaving lasted until December 6, 1990, when the Iraqi government announced that all foreigners could leave Iraq and Kuwait.²⁴ Because Iraq's previous releases of various categories of foreign nationals did not apply to Mr. Martin,²⁵ this was the earliest date that he was legally authorized to leave Iraq.

Although Mr. Martin may have been legally permitted to leave Iraq on December 6, 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.²⁶ Any attempt "[by the perpetrator] to restrict

²⁰ 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.

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

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

²³ See *id.* at 22.

²⁴ See *id.* at 12.

²⁵ See *id.* at 11-12, 22 (discussing Iraq's August 28, 1990 release of U.S. nationals who were women or minors).

²⁶ 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).

[the] movements” of a claimant establishes control,²⁷ 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.²⁸

Under this standard, Mr. Martin remained under Iraq’s control until December 9, 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).²⁹ Indeed, the available evidence indicates that Mr. Martin left Iraq at the first reasonable opportunity, with his wife on the December 9, 1990 U.S. government-chartered flight that left Iraq. Because there is no evidence that Mr. Martin remained voluntarily in Iraq at any time during this period, we conclude that he was under Iraq’s control and thus continued to be detained from December 6, 1990, to December 9, 1990.

In sum, Iraq thus detained Mr. Martin from August 2, 1990, until December 9, 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.³⁰ This included Mr. Martin.³¹ Both Iraqi President Saddam Hussein and the Speaker of

²⁷ 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)).

²⁸ *See id.*

²⁹ *See* Claim No. IRQ-II-180, Decision No. IRQ-II-140, at 10-11; Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22.

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

³¹ 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

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.³²

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

(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.³³ 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.³⁴ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁵

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. Iraq held Mr. Martin hostage in violation of international law for a period of 130 days, and the Claimant Estate is thus entitled to compensation.

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

³² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

³³ See *id.*

³⁴ See *id.* at 23-24.

³⁵ 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.³⁶ Therefore, for the 130 days Iraq held Mr. Martin hostage, the Claimant Estate is entitled to an award of \$800,000, which is \$150,000 plus (130 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.³⁷

AWARD

Claimant Estate is entitled to an award in the amount of \$800,000.

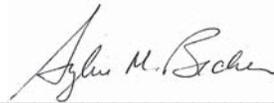
Dated at Washington, DC, October 19, 2017
and entered as the Proposed Decision
of the Commission.

**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).

³⁶ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁷ 22 U.S.C. §§ 1626-1627 (2012).