

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

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 ICSA and the 2014 Referral.⁷

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.

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

On October 23, 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. By letter dated January 7, 2016 Claimant submitted additional evidence in support of his claim.

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 at ¶ 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. passport valid from November 27, 1987 through November 26, 1997, which shows that he was a U.S. national at the time of the alleged hostage-taking. He has also provided a copy of his U.S. passport valid from November 9, 2007, through November 8, 2017, which establishes

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

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

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 Claims Settlement Agreement.¹⁰ Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant has averred, 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 not received any compensation under the Claims Settlement Agreement from the U.S. 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 8, 1990, a total of seven days. He alleges that he arrived in Baghdad on July 30, 1990, for a

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

business trip, and thereafter resided at the Al Rasheed Hotel in Baghdad. Claimant states that, after Iraq invaded Kuwait on August 2, 1990, he contacted officials at the U.S. Embassy in Iraq, who told him that they did not know when the airport in Baghdad, which had been closed to commercial flights, might reopen and that they did not know how he could leave the country. The Embassy officials advised Claimant to stay in his hotel and not go outside unless absolutely necessary. On August 8, 1990, Claimant hired a taxi to take him to Iraq's border crossing point with Jordan. At the border, the Iraqi immigration officials reviewed Claimant's passport and visa for a considerable amount of time before finally allowing him to cross the border. Claimant believes the immigration officials may have let him cross the border because he is of Arab descent and was speaking Arabic. Claimant then paid a bus driver \$800 to drive him across the border area and into Jordan. Claimant stayed overnight in Amman and then flew to Paris, France, and from there to Boston, Massachusetts.

Supporting Evidence

Claimant has supported his claim with his declaration and a copy of his former U.S. passport, which contains an Iraqi entry visa issued on June 6, 1990, an Iraqi entry stamp that is difficult to read, an Iraqi exit stamp dated August 8, 1990, and a Jordanian entry stamp dated August 8, 1990. Claimant has also provided an October 12, 1990 letter from a staff member of the U.S. House of Representatives' Committee on Foreign Affairs attaching a copy of a draft transcript of Claimant's September 25, 1990, testimony before that Committee regarding his experiences in Iraq, including an explicit statement that he "flew into Baghdad on July 30th." Additionally, Claimant has submitted two newspaper articles from August 1990, each of which identifies Claimant by name and states that he

arrived in Iraq shortly before Iraq's invasion of Kuwait and that he left Iraq on August 8, 1990.

Claimant 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.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 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

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.

¹² See *id.* at 17-20.

¹³ See *id.* at 17.

Application of Standard to this Claim

(1) Armed Conflict: Claimant alleges that Iraq took him hostage in Iraq on August 2, 1990, when Iraq invaded Kuwait, and held him hostage for 7 days, until August 8, 1990, when he escaped across Iraq's border with 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 7-day period from August 2, 1990, to August 8, 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 falls into the period between the Iraqi invasion on August 2, 1990, and the Iraqi government's formal closing of the borders on August 9, 1990.¹⁵

From August 2, 1990 until he crossed the Iraqi-Jordanian border on August 8, 1990, Iraq confined Claimant within Iraq by threatening all U.S. nationals with immediate detention and forcible detention.¹⁶ Although some foreign nationals did manage to leave Iraq during this period, Claimant could not reasonably be expected to have escaped earlier

¹⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

¹⁵ See *id.*

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

than he did.¹⁷ He understandably had, as the United Nations Compensation Commission has put it, a “manifestly well-founded fear” of being forcibly detained if he attempted to leave the country.¹⁸ 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.¹⁹ Iraq thus detained Claimant from August 2, 1990, until August 8, 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.²⁰ This included Claimant.²¹ 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.²²

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

(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

¹⁷ See *id.* at 10 n.23.

¹⁸ 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.

¹⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²⁰ See *id.* at 23.

²¹ 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 Fleeing U.S. Diplomats Staff from Kuwait Reaches Baghdad, But Can’t Leave*, PHILA. INQUIRER, Aug. 24, 1990, <https://perma.cc/B2YF-79AY>.

²² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

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.²³ 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.²⁴ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.²⁵

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 7 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.²⁶ Therefore, for the 7 days Iraq held Claimant hostage, he is entitled to an award of \$185,000, which is \$150,000 plus (7 x \$5,000). This amount constitutes the entirety of the compensation to which Claimant is entitled under the Claims Settlement Agreement.

²³ *See id.*

²⁴ *See id.* at 23-24.

²⁵ *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).

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

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.²⁷

AWARD

Claimant is entitled to an award in the amount of \$185,000.

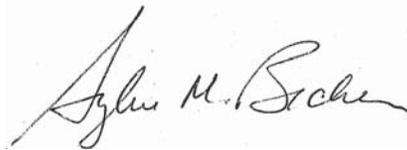
Dated at Washington, DC, January 25, 2018
and entered as the Proposed Decision
of the Commission.

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

March 5, 2018



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).

²⁷ 22 U.S.C. §§ 1626-1627 (2012).