

time, he was “prohibited from leaving Iraqi controlled territory and [was] otherwise detained as a hostage in Iraq and Kuwait by the Iraqi regime in violation of international law.” Claimant asserts that he finally flew out of Iraq on September 8, 1990, after the Iraqi government authorized female and minor U.S. nationals 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

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).

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

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.

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 "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.

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 Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements 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 ¶ 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. State Department-issued Consular Report of Birth Abroad of a Citizen of the United States of America, which shows that he was a U.S. national at the time of the alleged hostage-

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).

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

taking (August and September 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 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 February 2017 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.

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

Merits

Factual Allegations

Claimant states that Iraq held him hostage from August 2, 1990, until September 8, 1990, a total of 38 days. He alleges that he was living with his parents and sister in an apartment in Kuwait City when Iraq invaded Kuwait on August 2, 1990. Because of his age at the time, Claimant does not have any independent memories of his ordeal; however, he does describe his experience in a sworn statement, which is based on the sworn statements of his mother and father, which have also been submitted with his claim. Claimant states that, the morning of the invasion, his parents heard gunfire outside, and, “[f]earing for [their] safety, [they] remained confined to [their] apartment for the next two days” before Claimant, his mother, and his sister relocated to the U.S. Embassy. (His father remained at the hotel where he worked, adjacent to their apartment.)

Claimant states that they remained at the U.S. Embassy until approximately August 17, 1990, after which they moved to the private residence of a family friend in Jabrieh, Kuwait. Claimant further states that, according to his mother, they “remained in hiding at this home for approximately two weeks until the first days of September, when [Claimant’s] father learned of the regime’s order releasing American women and children.” A couple of days later, Claimant, his mother, and his sister boarded a bus that they believed to be taking them to the airport. Instead, they were taken to the hotel where Claimant’s father worked and “held there overnight under the supervision of Iraq guards.” The next day, they were placed on buses and driven to Baghdad. Upon arrival, they were taken to a local hotel, where, according to Claimant, “Iraqi authorities took [their] passports and detained [them] for the next few days.” They were finally “released and subsequently permitted” to board an evacuation flight to London on September 8,

1990, and from there continued on to Singapore, where they stayed with family members until Claimant's father was released in December.

Supporting Evidence

Claimant has supported his claim with, among other things, his own sworn declaration, dated February 17, 2017, in which he describes his ordeal in Kuwait and Iraq; sworn declarations from his mother and father, both dated March 8, 2002, submitted in one of the Pending Litigation cases and describing their family's experience during the Iraqi occupation of Kuwait and Claimant and his mother and sister's evacuation from Iraq; an excerpt from a book published in 1993 by the mother of the individual in whose home Claimant sought refuge around August 17, 1990, which specifically mentions Claimant's family staying in her son's house; a copy of an article published in a hospitality trade journal in May 1991, written by Claimant's father, which describes his family's ordeal in Kuwait and which notes both Claimant's move to his friend's house from the U.S. Embassy, as well as his journey to Baghdad with his mother and subsequent evacuation by air; a contemporaneous newspaper article that notes Claimant's presence in Kuwait during the occupation by Iraq; and a copy of Claimant's then-current passport, which contains, *inter alia*, a 1989 Kuwaiti entry stamp, an Iraqi immigration stamp, next to a handwritten date of September 8, 1990, and a London-Gatwick Airport entry stamp that appears to be dated September 9, 1990.¹¹ Claimant has also submitted copies of visa pages from the passports of other claimants in this program

¹¹ In his original Statement of Claim, Claimant asserted that he departed Iraq on September 12, 1990, a date also reflected in his mother's sworn declaration. The journal article, however, suggests that Claimant left Iraq no sooner than September 15, 1990. Commission staff pointed out this discrepancy in these dates in a letter to Claimant's counsel, and in March 2017, counsel responded, noting that the correct date of departure was, in fact, September 8, 1990, which was the date reflected in Claimant's February 2017 sworn statement, as well as the date reflected in Claimant's then-current passport.

containing the Iraqi immigration stamp, next to Iraqi visas and entry or exit stamps, as evidence of the stamp being from the Iraqi government.

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.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

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.

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 alleges that Iraq took him hostage in Kuwait on August 2, 1990, and held him hostage in Kuwait and Iraq for 38 days, until September 8, 1990, when Iraqi officials allowed him to leave Iraq. 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 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 38-day period from August 2, 1990, to September 8, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, his time in Kuwait following the Iraqi invasion can be divided into three periods: (i) between the Iraqi 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 August 28, 1990

¹⁴ See *id.* at 17.

¹⁵ See *id.* at 16-17.

announcement that women and minors could leave Iraq and Kuwait; and (iii) from that August 28th announcement until Claimant's departure on September 8, 1990.¹⁶

From August 2, 1990, until Iraq formally closed all borders under its control to foreign nationals on August 9, 1990, Iraq confined Claimant to his family's apartment and to the U.S. Embassy in Kuwait City by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁷ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁸ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.¹⁹ 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 and his family members had made any attempt to leave the country.²⁰ For the purposes of the legal standard applicable here, putting Claimant in this situation in effect amounts to detention.²¹ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until he flew from Baghdad to London on September 8, 1990, the Iraqi government confined Claimant to Kuwait and Iraq, preventing him from leaving by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed Kuwait's borders, forcibly prohibiting U.S. nationals from leaving.²² As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving,

¹⁶ *See id.* at 20-21. While Claimant alleges that he 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 id.* at 7, 21.

¹⁸ *See id.* at 21.

¹⁹ *See id.*

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 id.* at 7, 21-22.

effectively detaining him within the borders of Kuwait and Iraq.²³ For Claimant, this formal policy of prohibiting U.S. nationals from leaving Kuwait and Iraq lasted until August 28, 1990, when the Iraqi government announced that all female and minor U.S. nationals could leave.²⁴

Although Claimant may have been legally permitted to leave Kuwait on August 28, 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.²⁵ Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,²⁶ 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.²⁷

Under this standard, Claimant remained under Iraq's control until September 8, 1990. The Commission has recognized that Iraq imposed conditions on air travel that limited the ability of foreign nationals, including U.S. nationals, to leave Iraq and/or Kuwait immediately after the August 28, 1990 release announcement.²⁸ Indeed, the available evidence indicates that Claimant left Iraq at the first reasonable opportunity, on the September 8, 1990 evacuation flight that left Baghdad. Because there is no evidence that Claimant remained voluntarily in Kuwait or Iraq at any time during this period, we conclude that he was under Iraq's control and thus detained from August 28, 1990 to September 8, 1990.

²³ *See id.* at 22.

²⁴ *See id.*

²⁵ *See id.* at 22; *see also* Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

²⁶ 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)).

²⁷ *See id.*

²⁸ *See id.*

In sum, Iraq thus detained Claimant from August 2, 1990, until September 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.²⁹ 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.³⁰ Claimant has thus established that Iraq threatened to continue to detain him.³¹

(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.³² 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.³³ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁴

²⁹ See *id.* at 23.

³⁰ See *id.*

³¹ 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>.

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

³³ See *id.* at 23-24.

³⁴ 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

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 38 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.³⁵ Therefore, for the 38 days Iraq held Claimant hostage, he is entitled to an award of \$340,000, which is \$150,000 plus (38 x \$5,000). This amount 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.³⁶

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).

³⁵ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁶ 22 U.S.C. §§ 1626-1627 (2012).

AWARD

Claimant is entitled to an award in the amount of \$340,000.

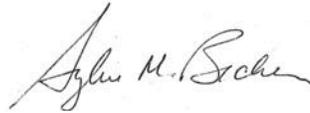
Dated at Washington, DC, February 23, 2018
and entered as the Proposed Decision
of the Commission.

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

April 11, 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).