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) Against the Republic of Iraq	Claim No. IRQ-II-176 Decision No. IRQ-II-237

Counsel for Claimant: Daniel Wolf, Esq.
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq ("Iraq") alleging that Iraq held her hostage in violation of international law in August 1990. Because she has established that Iraq held her hostage for 6 days, she is entitled to an award of $180,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was a three-year-old U.S. citizen living in Kuwait with her family when Iraq invaded the country on August 2, 1990. She asserts that, beginning with the invasion and for approximately six days thereafter, she and her family were forced to hide in constant fear of being captured by Iraqi authorities. She further claims that during this entire period, the Iraqi government in effect forcibly prevented her (and other U.S. nationals) from leaving Kuwait and did so with the express purpose of compelling the United States government to acquiesce to certain Iraqi government demands. On or around August 6, 1990, Claimant and her family drove towards Saudi Arabia in a car that was

part of a convoy of vehicles carrying, among others, foreign nationals seeking to escape from Kuwait. After spending several hours traveling through the Kuwaiti desert, Claimant crossed the Kuwaiti-Saudi border on August 7, 1990.

Although Claimant was not among them, many of the U.S. nationals in Iraq and Kuwait at the time of the 1990-91 Iraqi occupation of Kuwait sued Iraq (and others) in federal court for, among other things, hostage-taking.[1] Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.[2] The Agreement, which entered into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004, including claims of personal injury caused by hostage-taking.[3] Exercising its authority to distribute money from the settlement funds, the U.S. Department of State provided compensation to numerous individuals whose claims were covered by the Agreement, including some whom Iraq had allegedly taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait.

Under the International Claims Settlement Act of 1949 ("ICSA"), the Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission.[4] The Secretary has delegated that authority to the State Department's Legal Adviser, who, by letter dated October 7, 2014, referred three categories of claims to this Commission for adjudication and certification.[5] This was the State Department's

---

[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-taking[1] by Iraq[2] 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 taking[3] 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 November 2, 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 her 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. Claimant has provided a copy of a Consular Report of Birth Abroad issued by the U.S. Department of State, which shows that she was a U.S. national at the time of the alleged hostage-taking (August 1990). She has also

---

[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).
[9] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

provided a copy of a recent U.S. passport, which expired in August 2017 and establishes that she 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 she was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of her 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 she has not "received any compensation under the Claims Settlement Agreement from the Department of State." Further, we have no evidence that the State Department has provided her any compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of her 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 her hostage from August 2, 1990, until August 7, 1990, a total of six days. Claimant alleges that she was three years old and living in Kuwait with her family when Iraq invaded the country on August 2, 1990. She further alleges that she and her family attempted to escape to Saudi Arabia on the day of the invasion but were turned back at the Saudi border by Iraqi soldiers who instructed them to return to Kuwait City. They did so, and when there hid inside her grandmother's residence for approximately five days. On or around August 6, 1990, they again drove towards Saudi Arabia, this time as part of a convoy of vehicles carrying others seeking to escape from Kuwait. After spending several hours traveling through the Kuwaiti desert, Claimant and her family crossed the Kuwaiti-Saudi border on August 7, 1990.

Supporting Evidence

Claimant has supported her claim with, among other things, her sworn Statement of Claim and a copy of her mother's U.S. passport, which contains a Kuwaiti residency visa dated March 9, 1986, a Kuwaiti entry stamp dated February 7, 1990, Saudi entry and transit stamps dated August 7, 1990, a Saudi exit stamp dated August 8, 1990, a partially legible United Arab Emirates entry stamp that appears to have been issued on August 8, 1990,[11] and several Omani entry and exit stamps over the course of the nine months after August 7, 1990, several of which include adjacent handwritten annotations stating that she was accompanied by her husband at that time. These include a partially legible entry stamp that was issued on the ninth day of some month in 1990, a corresponding exit stamp dated

[11] In previous submissions to the Commission, Claimant's counsel has characterized this stamp as an entry stamp to the United Arab Emirates dated August 8, 1990, but now contends that the stamp was issued on August 9, 1990.

November 1, 1990, and several entry and exit stamps for Oman in November and December 1990, and February, March, and April of 1991. Claimant has also submitted a copy of some of the pages from her own Kuwaiti passport at the time, which contains a stamp of certification and attestation from the Kuwaiti Embassy in Dubai, United Arab Emirates, dated August 9, 1990, and a similar stamp from the Kuwaiti Embassy in Muscat, Oman, dated September 2, 1990; declarations from her and her mother that describe the circumstances of her alleged detention and ultimate departure from Kuwait; and three declarations from family friends that refer to her presence in Kuwait during the period of the alleged hostage taking. The first declaration is from a family friend who states that he escaped from Kuwait to Saudi Arabia in a convoy of cars that included a vehicle carrying Claimant and her family on August 7, 1990. The second declaration is from another friend, who claims that she spoke with Claimant's mother on the telephone soon after Claimant's mother and her children arrived in Oman on August 9, 1990, and that, during that conversation, Claimant's mother recounted the details of Claimant's family's escape from Kuwait and journey to Oman. The third declaration is from another family friend, who asserts that she was in Kuwait in the middle of June 1990, and visited Claimant and her family in their residence at that time. This friend has also submitted a copy of her U.S. passport valid in 1990, which contains a Kuwaiti entry visa that was issued on February 21, 1988, and an Iraqi exit stamp dated September 12, 1990.

Additionally, Claimant has submitted a number of documents that provide background about the broader geopolitical situation during the First Gulf War in 1990-91, including some that relate specifically to the circumstances faced by U.S. nationals in Iraq and Kuwait at the time. These documents include statements from U.S. and Iraqi officials, resolutions of the United Nations Security Council, newspaper articles, a report from

Amnesty International on human rights violations committed by Iraq in 1990, unclassified cables and a memorandum from the U.S. Department of State, and affidavits submitted in two lawsuits brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War.

Legal Standard

To make out a substantive claim under Category A of the 2014 Referral, a claimant must show that (1) Iraq was engaged in an armed conflict and (2) during that conflict, Iraq took the claimant hostage.[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 alleges that Iraq took her hostage in Kuwait on August 2, 1990, and held her hostage for six days, until August 7, 1990, when she escaped to Saudi Arabia. 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.

---

[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 must show that Iraq (a) seized or detained her and (b) threatened her 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 her release. Claimant satisfies this standard for the six-day period from August 2, 1990, to August 7, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, the Commission must first determine whether Claimant has carried her burden to prove that she was in Kuwait for the period between August 2, 1990, and the date Claimant asserts that she escaped to Saudi Arabia—August 7, 1990.

Claimant has submitted evidence sufficient to establish that she was in Kuwait during this period. The documentary evidence establishes that Claimant's mother was in Kuwait from August 2, 1990, to August 7, 1990, and that Claimant was almost certainly with her mother on August 9, 1990, as well as in the weeks and months that followed. Combined with the fact that Claimant was three years old at the time, this documentary evidence strongly suggests that Claimant was with her mother during the period from August 2, 1990 to August 7, 1990, and was thus in Kuwait during this period. The documentary evidence in the record includes pages from Claimant's Kuwaiti passport showing that she was in Dubai, United Arab Emirates on August 9, 1990, and was in Muscat, Oman on September 2, 1990. It also includes her mother's U.S. passport establishing that her mother was in Kuwait from August 2, 1990, to August 7, 1990, when she entered Saudi Arabia.[16] Claimant's mother's passport also contains evidence that

[16] *See also* Claim No. IRQ-II-164, Decision No. IRQ-II-055.

Claimant's mother entered the United Arab Emirates on August 8, 1990, (and could plausibly have been in the United Arab Emirates on August 9, 1990)[17] and spent a great deal of time in Oman during the fall of 1990 (and thus could plausibly have been in Oman on September 2, 1990). Moreover, several of the Oman stamps indicate that Claimant's mother and father were together as they entered and left Oman, a fact that would suggest that Claimant, as a three-year old, was not likely to be elsewhere as her parents crossed international borders. Claimant's assertion that she was in Kuwait from August 2, 1990, to August 7, 1990, is also supported by the testimonial evidence in the record. This includes the declaration of a non-interested party in Kuwait at the time who testified that she saw Claimant and her family in Kuwait in June 1990.[18] It also includes the declaration of a second non-interested party who testified that he was in the convoy of cars with Claimant and her family as it escaped from Kuwait to Saudi Arabia on August 7, 1990. We thus conclude that Claimant has established that she was in Kuwait from August 2, 1990, to August 7, 1990. Claimant's time in Kuwait following the Iraqi invasion thus falls in the period between the Iraqi invasion on August 2, 1990, and the Iraqi government's formal closing of the borders on August 9, 1990.[19]

During this entire period, Iraq confined Claimant to Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.[20] Although some foreign nationals did manage to leave Kuwait and/or Iraq prior to August 7, 1990,[21] Claimant could

---

[17] It does not matter for our purposes here whether Claimant's mother's United Arab Emirates entry stamp was issued on August 8, 1990, or on August 9, 1990. Either date would support the conclusion that she was in that country on August 9, 1990, at the same time that Claimant's passport was stamped, and nothing in her passport indicates that she was elsewhere at that time.

[18] *See* Claim No. IRQ-II-066, Decision No. IRQ-II-230, at 9; *see also* Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* 317 (Cambridge University Press 2006) (1953).

[19] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 20-21.

[20] *See id.* at 21.

[21] *See* Elizabeth Thames, *American Couple Flee Amid Sounds of War*, SAN JOSE MERCURY NEWS, Aug. 4, 1990, at 16A.

not reasonably be expected to have escaped any earlier than she did.[22] Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.[23] Claimant and her family understandably had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being killed or forcibly detained if they had made any earlier attempt to leave the country.[24] Indeed, the facts suggest that they risked their lives to attempt to leave when they did. The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Claimant and her family in this situation in effect amounts to detention.[25] Iraq thus detained Claimant from August 2, 1990, to August 7, 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.[26] 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 have been permitted to leave Kuwait and/or Iraq at the time Claimant escaped from Kuwait.[27] Claimant has thus established that Iraq threatened to continue to detain her.[28]

---

[22] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.
[23] *See id.*
[24] 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.
[25] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.
[26] *See id.* at 23.
[27] *See id.*
[28] 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.

(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.[29] 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.[30] Indeed, the U.S. government itself understood Iraq's actions to be hostage-taking.[31]

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 six 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.[32] Therefore, for the six days Iraq held Claimant hostage, she is entitled to an award of $180,000, which is $150,000 plus (6 x $5,000). This amount constitutes the

[29] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.
[30] *See id.* at 23-24.
[31] *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).
[32] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

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.[33]

AWARD

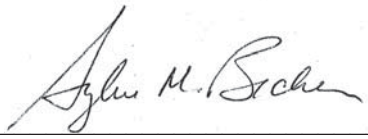
Claimant is entitled to an award in the amount of $180,000.

Dated at Washington, DC, March 22, 2018
and entered as the Proposed Decision
of the Commission.

Anuj C. Desai, Commissioner

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

May 1, 2018



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) (2018).

[33] 22 U.S.C. §§ 1626-1627 (2012).