**FOREIGN CLAIMS SETTLEMENT COMMISSION**
**OF THE UNITED STATES**
**UNITED STATES DEPARTMENT OF JUSTICE**
**WASHINGTON, D.C. 20579**

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| In the Matter of the Claim of<br><br>5 U.S.C. §552(b)(6)<br><br>Against the Republic of Iraq | Claim No. IRQ-II-068<br><br>Decision No. IRQ-II-044 |

FINAL DECISION

Claimant objects to the Commission's Proposed Decision denying her hostage-taking claim against the Republic of Iraq ("Iraq"). The Proposed Decision denied her claim because she was not a U.S. national at the time of her alleged hostage taking, as required by the September 2010 U.S.-Iraq settlement agreement[1] and by the State Department letter referring claims arising out of that agreement to this Commission.[2] On objection, Claimant requests that the Commission reconsider its decision in light of the hardship she experienced in Kuwait and Iraq. She further states that the Claims Settlement Agreement "contradicts American Law as it ignores the benefits for the Parents of American Minor Citizens who [were] held hostages as in [Public] Law 101-513." After carefully considering Claimant's request, along with all of her arguments and evidence, we again

[1] *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").
[2] *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* ¶ 3 ("2014 Referral" or "October 2014 Referral").

deny Claimant's claim for the same reason stated in the Proposed Decision: Claimant was not a U.S. national at the time of the alleged hostage taking. We thus affirm the denial of this claim.

## BACKGROUND

Claimant brought this claim against Iraq alleging that Iraq held her hostage in Kuwait and Iraq in August and September 1990. She alleged that she and her family (including, among others, her six-year-old U.S. citizen niece) were in Kuwait when Iraq invaded the country on August 2, 1990. Claimant further alleged that, shortly after the invasion, she and her family were effectively forced to go to Baghdad, Iraq, and, once there, were taken to a local hotel where they were placed under armed guard and not permitted to leave. She alleged that they were finally able to escape into Jordan by bus on September 13, 1990. Claimant sought compensation for her hostage experience under Category A of the State Department's letter to the Commission establishing this program ("2014 Referral"), which consists of "claims by U.S. nationals for hostage-taking[] by Iraq[] in violation of international law prior to October 7, 2004 . . . ."[3]

The Commission denied the claim in a Proposed Decision entered on January 26, 2017 ("Proposed Decision").[4] In so doing, the Commission noted that, under the 2014 Referral, claimants must have been "U.S. nationals" to be eligible for compensation. The Commission further explained that, in order to determine the applicable law, the Commission was required under its authorizing statute to "look first to 'the provisions of the applicable claims agreement'"[5] Here, this meant that, in order to determine the precise

[3] *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* ¶ 3 ("2014 Referral" or "October 2014 Referral").
[4] *See* Claim No. IRQ-II-068, Decision No. IRQ-II-044 (2017) (Proposed Decision).
[5] *Id.* at 4 (citing 22 U.S.C. § 1623(a)(2) (2012)).

legal meaning of the term "U.S. national," the Commission had to look to the U.S.-Iraq Claims Settlement Agreement,[6] which defines "U.S. nationals" as "'natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry into force of this agreement.'"[7] The Proposed Decision held that Claimant did not satisfy that definition because she was not a U.S. national at the time her claim arose, which was in 1990.

On February 15, 2017, Claimant filed a timely notice of objection. She did not, however, request an oral hearing. Claimant subsequently submitted a letter, dated May 11, 2017. That letter stated, among other things, that the Claims Settlement Agreement "contradicts American law" because it "ignores" the benefits available to the parents of U.S. minors who were held hostage in Iraq and Kuwait under Public Law No. 101-513.[8] Claimant also noted that the U.S. State Department "acknowledged that we were hostages by giving us a letter[.]" Finally, Claimant requested that the Commission reconsider its denial of her claim in light of "the hardship [she and her family] went through . . . ."

As we explain below, we conclude that our determination in the Proposed Decision was correct: Claimant was not a U.S. national at the time of her alleged hostage-taking experience, and the Commission therefore lacks jurisdiction to adjudicate the merits of her claim under the 2014 Referral. Because we lack jurisdiction, we likewise have no authority to consider any hardship Claimant and her family may have gone through in deciding her claim. For this reason, her claim is denied.

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[6] *Id.*
[7] Proposed Decision at 5 (quoting Claims Settlement Agreement, *supra*, art. I(2) (emphasis added)).
[8] *See* Foreign Operations, Export Financing, and Related Programs Appropriations Act for 1991, Pub. L. No. 101-513, 104 Stat. 1979, 2064 (1990) (heading to section 599C entitled "Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon"); *see also* 5 U.S.C. § 5561 note (2012) ("Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon").

## DISCUSSION

Because Claimant has not requested an oral hearing,[9] her objection relies entirely on her May 11, 2017 letter. In that letter, Claimant asks the Commission to reconsider its Proposed Decision, which was based on the fact that Claimant was not a U.S. national at the time of the alleged hostage taking. Claimant does not dispute, however, that she was not a U.S. national at the time of the alleged hostage taking and has not provided any evidence that she was a U.S. national at the time. In fact, she has not provided any new documentary evidence at all.

Claimant argues that the Commission failed to consider the benefits she claims were available to "Parents of American Minor Citizens" under Public Law No. 101-513, a 1990 statute that provided certain benefits to, among others, "United States nationals, or family members of United States nationals, who are in a hostage status in Iraq or Kuwait during the period beginning on August 2, 1990, and terminating on the date on which United States economic sanctions against Iraq are lifted . . . ."[10] Claimant further suggests that the Commission should not have relied on the Claims Settlement Agreement because it "contradicts" U.S. law by not taking into account the benefits available to her under Public Law No. 101-513. Claimant also points to a letter from the U.S. Department of State in which the Department allegedly "acknowledged" that she and her family were hostages.[11]

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[9] Under the Commission's regulations, "[i]f an objection [to a Proposed Decision] has . . . been filed, but no hearing requested, the Commission may, after due consideration thereof: (1) Issue a Final Decision affirming or modifying its Proposed Decision, (2) Issue an Amended Proposed Decision, or (3) On its own motion order hearing thereon, indicating whether for the taking of evidence on specified questions or for the hearing of oral arguments." 45 C.F.R. § 509.5(h) (2017).

[10] § 599C(d)(4)(A), 104 Stat. at 2065.

[11] Although Claimant does not appear to have attached the letter, other members of her family, when submitting their own claims, provided an April 7, 1993 letter from the State Department stating that they "were in hostage status beginning August 2, 1990," and noting that Claimant's sister and brother-in-law received hostage benefits under Public Law No. 101-513. This letter does not, however, reference Claimant.

The argument Claimant appears to be making about Public Law No. 101-513 is incorrect. Public Law No. 101-513 does not affect this Commission's jurisdiction in any way. Rather, as we explained in the Proposed Decision, the Commission's jurisdiction in this program comes from the Secretary of State, who has statutory authority under the International Claims Settlement Act of 1949 ("ICSA") to refer "a category of claims against a foreign government" to this Commission.[12] The Secretary delegated that authority to the State Department's Legal Adviser, who then referred the category of claims at issue here to the Commission via the 2014 Referral. One of the threshold requirements for hostage-taking claims in this program is that the claim be brought by a "U.S. national." As we noted in the Proposed Decision, the term "U.S. national" has a specific legal meaning that the Commission is bound to apply in deciding claims under the 2014 Referral. The ICSA requires the Commission first to "apply the … provisions of the applicable claims agreement . . . ."[13] Here, the "applicable claims agreement" is the U.S.-Iraq Claims Settlement Agreement. That agreement states that "[r]eference to 'U.S. nationals' shall mean natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry into force of this agreement."[14] Thus, applying the applicable provisions of the ICSA, the Commission's authorizing statute, the Commission must interpret the term "U.S. national" to mean a person who was a U.S. national at the time the claim arose. In this case, the claim arose in August 1990. It is undisputed that Claimant was not a U.S. national at that time. She therefore does not meet the jurisdictional requirement under Category A of the 2014 Referral that the claim be brought by a U.S. national.

[12] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).
[13] *Id.* § 1623(a)(2).
[14] Claims Settlement Agreement, art. I(2) (emphasis added).

Public Law No. 101-513 is not relevant to the Commission's jurisdiction or the requirement that a claimant have been a U.S. national at the time the claim arose. The beneficiaries of Public Law No. 101-513 included "family members of United States nationals" who were not themselves "United States nationals." Therefore, even though a "family member[] of [a] United States national[]" may have been eligible for benefits under Public Law No. 101-513, such a family member would not be eligible for compensation in the Commission's Iraq Claims Program unless he or she were also a "United States national" within the meaning of the Claims Settlement Agreement. In short, the relevant U.S. law is the Commission's own authorizing statute, the ICSA, which requires that a claimant in this program be a "United States national." Nothing in the Claims Settlement Agreement "contradict[s]" Public Law No. 101-513. The Claims Settlement Agreement defines "U.S. nationals," while Public Law No. 101-513, in contrast, provides benefits for a different group of individuals, including "family members of United States nationals." The fact that Public Law No. 101-513 granted benefits to family members of U.S. nationals has no bearing on *this* claims program, which is based on the 2014 Referral, which is in turn based on the Claims Settlement Agreement.

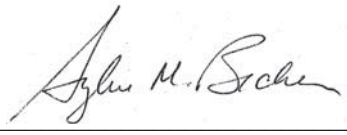
Finally, Claimant also appears to assert that the Commission should reconsider its decision because she experienced hardship during her ordeal in Kuwait and Iraq in 1990. Whatever hardship Claimant and her family may have faced during the Iraqi invasion and occupation of Kuwait, this does not give the Commission legal authority to decide the claim. Because the relevant law requires that Claimant have been a U.S. national at the time of the alleged hostage-taking, the degree of hardship Claimant suffered plays no role in the Commission's decision: The decision is based solely on the fact that Claimant was not a U.S. national at the time of the alleged hostage taking.

## CONCLUSION

In sum, while we recognize the considerable suffering and hardship endured by Claimant during the Iraqi invasion and occupation of Kuwait, for the reasons discussed above and in the Proposed Decision, and based on the evidence and information submitted in this claim, the Commission concludes that the denial of this claim set forth in the Proposed Decision must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, May14, 2018
and entered as the Final Decision
of the Commission.

Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

**FOREIGN CLAIMS SETTLEMENT COMMISSION**
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| In the Matter of the Claim of | |
| 5 U.S.C. §552(b)(6) | Claim No. IRQ-II-068 |
| | Decision No. IRQ-II-044 |
| Against the Republic of Iraq | |

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 and September 1990. Because Claimant was not a U.S. national at the time, however, this Commission lacks jurisdiction over her claim. In other words, the Commission does not have the authority to consider the merits of her claim—that is, to decide whether Iraq held her hostage. For this reason, her claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was living in Kuwait when Iraq invaded the country on August 2, 1990. She claims that on that day, she received a phone call from her sister, who lived nearby, telling her that Iraqi army officers were in her house and were going to take away her daughter (i.e., Claimant's niece), who was a U.S. citizen. Claimant asserts that, shortly thereafter, she and her sister drove with a military convoy to Baghdad that was carrying the hostages, and, upon arriving in Baghdad, they were taken to a local hotel. The hotel was heavily guarded and Claimant and her family were not allowed to leave. She

alleges that at some point during their captivity, Claimant's brother-in-law was taken away by Iraqi security officials for questioning. She states that after about a month, on September 11, 1990, Iraqi military officials took Claimant and her family to the prison where her brother-in-law was being held and informed them that he would be released the next day. Claimant alleges that she crossed into Jordan by bus on September 13, 1990, although she does not explain the circumstances of her departure.

Although Claimant was not involved in the suit, many U.S. nationals who were 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] The Agreement defined "U.S. nationals" as "natural and juridical persons who were U.S. nationals at the time their claim arose and through the date of entry into force of this Agreement."[4]

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.[5] 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

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[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 id.* Art. I(2).
[5] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).

this Commission for adjudication and certification.[6] 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").[7]

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. . . .
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[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.

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[6] *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").

[7] *See 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* ("2012 Referral" or "Referral"). 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 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." *Id.*

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.[8]

On June 19, 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

This Commission's authority to hear claims—known in the legal vernacular as its "jurisdiction"—is limited to the category of claims referred to it by the United States Department of State.[9] Here, therefore, we must look to the language of the "Category A" paragraph of the 2014 Referral to determine our jurisdiction. That language limits our jurisdiction to claims of (1) "U.S. nationals," provided that the claimant (2) was not a plaintiff in pending litigation against Iraq for hostage taking on May 22, 2011; and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral ¶ 3.

This claim fails to satisfy the first requirement—that it be brought by a "U.S. national." The term "U.S. national" has a specific legal meaning in this context. When the Commission interprets terms such as "U.S. national," Congress has directed us to look first to "the provisions of the applicable claims agreement."[10] Here, that means we must turn first to the Claims Settlement Agreement. That Agreement expressly provides a definition of "U.S. nationals." Article I of the Agreement states that "[r]eference to 'U.S. nationals'

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[8] *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).
[9] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).
[10] 22 U.S.C. § 1623(a)(2) (2012).

shall mean natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry into force of this agreement."[11] As the Commission has recognized in its previous decisions, the U.S. nationality requirement thus means that 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.[12]

Claimant has failed to show that she was a U.S. national in 1990, when her claim arose. Indeed, the documents Claimant has submitted seem to establish conclusively that she was *not* a U.S. national when her claim arose. Claimant has submitted a Travel Document for Palestinian Refugees, issued by Lebanon (the date of issuance is unclear), which indicates that her nationality was Palestinian. Similarly, in her sworn statement, Claimant indicates that, at the time of the invasion of Kuwait, she was a "stateless Palestinian." Further, in her Statement of Claim, Claimant indicates that she was not naturalized as a U.S. citizen until January 26, 2006—over 25 years after she was allegedly detained in Kuwait and Iraq. Thus, the evidence establishes that Claimant was not a U.S. citizen when the claim arose and is thus not a "U.S. national" within the meaning of the Claims Settlement Agreement and 2014 Referral.

[11] Claims Settlement Agreement, art. I(2) (emphasis added).
[12] *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001(Proposed Decision), at 5-6 (2014).

Therefore, the Commission is constrained to conclude that it has no jurisdiction to decide the present claim under the 2014 Referral. In other words, the Commission has no authority or power to decide the merits of this claim. Accordingly, this claim must be and is hereby denied for lack of jurisdiction. The Commission makes no determinations about any other aspect of this claim.

Dated at Washington, DC, January 26, 2017
and entered as the Proposed Decision
of the Commission.

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).