

eventually crossed the Turkish-Iraqi border on August 27, 1990, as part of a convoy of vehicles carrying dependents of U.S. diplomatic personnel from Kuwait.

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 second referral of claims to the Commission under the Claims

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").

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.

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

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.

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

On October 7, 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 ¶ 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. She has provided a copy of her cancelled U.S. passport, which shows that she was a U.S. national at the time of the alleged hostage-taking (August 1990). She has also provided a copy of a recent U.S. passport, valid from June 2007 to June 2017, which establishes that she remained a U.S. national through the effective date of the Claims Settlement Agreement.

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 (2016).

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 September 2015 declaration, 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 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 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.

Merits

Factual Allegations

Claimant states that Iraq held her hostage from August 2, 1990, until August 27, 1990, a total of 26 days. She alleges that, when Iraq invaded Kuwait on August 2, 1990, she was living with her parents and sister in an apartment in Kuwait City, where her

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

father worked as an advisor for the U.S. Army at the U.S. Embassy in Kuwait.¹¹ Because of her age at the time, Claimant has no personal memories of her ordeal; however, she does describe her experience in a sworn statement, which is based on the sworn statements of her mother and father, which have also been submitted with his claim.

According to Claimant's mother, after they learned of the invasion on August 2, 1990, they packed their bags to prepare to leave, but "the fighting began before [they] were able to escape." The next morning, Claimant's father reported to the U.S. Embassy, and later, "Iraqi soldiers stormed into [their] apartment complex [Claimant's mother] was very frightened that they might assault or kill [her], or even worse, [her] children." On August 4, 1990, Claimant and her family moved to the U.S. Embassy compound after being instructed to do so. According to Claimant, they remained there until August 23, 1990, "when [they] were allowed to evacuate the Embassy and travel to Baghdad." Claimant states that "the Iraqi regime kept [them] in Baghdad for three days until August 26," when she and her mother and sister drove to the Turkish border with Iraq in a diplomatic convoy, although her father was required to stay behind in Baghdad.

Claimant's mother recalls how, "[a]t the Iraqi-Turkish border, Iraqi soldiers ordered [them] out of [their] vehicles and forced [them] to line up." She describes how she "feared that [they] would be denied [their] freedom or even executed" by the Iraqi soldiers; however, they were "merely counting" them. She states that "[i]n the early morning hours of August 27, [they] crossed the bridge into Turkey and Embassy personnel met [them] on the other side." For her part, Claimant states that they "did not gain [their] freedom until August 27, 1990 when [they] crossed the 'no man's land' that

¹¹ For further factual background regarding the Iraqi government's treatment of U.S. diplomats and other U.S. nationals employed by the U.S. government at the U.S. Embassy in Kuwait after the August 2, 1990 invasion, see Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 5-10 (2018).

separates Iraq from Turkey and entered Turkish controlled territory.” Her mother indicates that they arrived back in the United States two days later.

Supporting Evidence

Claimant has supported her claim with, among other things, a sworn declaration, dated September 25, 2015, in which she describes her ordeal in Kuwait and Iraq; a sworn statement from her mother, dated April 4, 2011, submitted in one of the Pending Litigation cases and describing her family’s experience during the Iraqi occupation of Kuwait and her evacuation with her children from Iraq; a sworn statement from Claimant’s father, dated June 17, 2013, also describing their experience in Kuwait and Iraq; a letter to Claimant’s father from the U.S. Department of State, dated October 18, 1993, confirming that Claimant and her mother and sister “were in hostage status in Kuwait/Iraq from August 2, 1990 until they crossed over the border from Iraq into Turkey on August 26, 1990” after “traveling in a convoy with Dependents of Foreign Service employees from the American Embassy in Kuwait[]”; and a copy of Claimant’s then-current passport, which contains, *inter alia*, a Kuwaiti entry stamp dated June 10, 1990, an Iraqi exit stamp dated August 26, 1990, a Turkish entry stamp dated August 27, 1990, a Turkish exit stamp dated August 28, 1990, and a U.S. entry stamp also dated August 28, 1990. Claimant has also provided several contemporaneous newspaper articles that specifically state that the convoy of Embassy dependents that left Baghdad on August 26, 1990, entered Turkey on August 27, 1990, and a declaration and contemporaneous journal entries of one of the other hostages who left Iraq as part of the same convoy.

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, 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.

Additionally, the Commission takes notice of Federal News Service transcriptions of press briefings by U.S. government officials, news articles, and publically available unclassified State Department documents that provide further information about Iraq's treatment of U.S. diplomatic personnel accredited to the U.S. Embassy in Kuwait and their dependents after the August 2, 1990 invasion.

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 under international law in this program, 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

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.

location or locations within Iraq or Kuwait, or prohibited the claimant from leaving Iraq and/or Kuwait.¹⁴ The legal standard we apply in this program applies equally to diplomatic personnel and their families.¹⁵

Application of Standard to this Claim

Claimant satisfies this standard for the period between August 2, 1990, and August 27, 1990. The evidence in the record establishes that she was in Kuwait on August 2, 1990, and that she left Iraq on August 27, 1990. Although the date of the Iraqi exit stamp on Claimant's passport is August 26, 1990, we have previously determined that the Iraqi authorities did not permit the diplomatic convoy to cross the border until some time on August 27, 1990.¹⁶ Since the evidence substantiates Claimant's factual assertions, we now apply the legal standard to her claim.

(1) Armed Conflict: Claimant alleges that Iraq took her hostage in Kuwait on August 2, 1990, and held her hostage for 26 days, until August 27, 1990, when Iraqi officials allowed her 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.¹⁷ 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 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

¹⁴ See *id.* at 17.

¹⁵ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 12.

¹⁶ See Claim No. IRQ-II-129, Decision No. 260, at 9 (Proposed Decision).

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

explicit or implicit condition for his release. Claimant satisfies this standard for the 26-day period from August 2, 1990, to August 27, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, her time in Kuwait and Iraq following the Iraqi invasion can be divided into three periods: (i) between the Iraqi invasion on August 2, 1990, and the State Department's August 7, 1990 announcement recognizing that U.S. diplomats in Kuwait were in the same position as "private American citizens"; (ii) between that August 7, 1990 announcement and August 25, 1990, when Iraq's Ministry of Foreign Affairs informed State Department officials that the dependents of Americans who had diplomatic status in Kuwait could leave; and (iii) from the August 25, 1990, Iraqi Ministry of Foreign Affairs undertaking until Claimant exited Iraq on August 27, 1990.

From August 2, 1990, until August 7, 1990, Iraq prevented Claimant from leaving Kuwait. During this period, Iraq made no formal distinction between diplomatic personnel such as Claimant and other U.S. nationals, who, as we have previously recognized, were threatened with immediate seizure and forcible detention.¹⁸ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁹ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.²⁰ Claimant understandably would have had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being killed or forcibly detained if she and her family had left, first, their home, or

¹⁸ See *id.* at 21.

¹⁹ See *id.*

²⁰ See *id.*

subsequently, the U.S. Embassy in Kuwait.²¹ 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.²² Iraq thus detained Claimant from August 2, 1990, to August 7, 1990.

Between August 7, 1990, and August 25, 1990, Iraqi authorities adopted various policies that prevented Embassy staff members, Americans with diplomatic status in Kuwait, and their dependents, such as Claimant, from leaving Kuwait or Iraq.²³ As the Commission has previously recognized, Iraq did not extend assurances that the U.S. government believed to be sufficiently credible to allow Kuwait Embassy staff members and their dependents to depart until August 22, 1990.²⁴ Iraqi authorities subsequently reneged on those commitments on or around August 24, 1990, before adopting a policy that prohibited the departure of Kuwait Embassy staff and their dependents from Iraq and Kuwait as long as the U.S. Embassy in Kuwait remained open.²⁵

While the U.S. was able to negotiate the release of some diplomatic dependents, including Claimant, on or around August 25, 1990, Claimant's detention did not end on this date. As the Commission has previously recognized, a claimant's detention ends only on the date that he is released from the control of the person or entity that detained him.²⁶ Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant

²¹ 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.

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

²³ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 14.

²⁴ See *id.*

²⁵ See *id.* at 14-15.

²⁶ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22; *id.* at 22; see also Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

establishes control,²⁷ whereas a claimant who has a reasonable opportunity to leave the site of his or her captivity is deemed no longer to be under the perpetrator's control.²⁸

Under this standard, Claimant remained under Iraq's control until August 27, 1990, when Iraqi government officials eventually permitted her to leave Iraq. The available evidence indicates that Claimant left Iraq at the first reasonable opportunity, on the convoy that left Iraq on August 27, 1990. Because there is no evidence that Claimant remained voluntarily in Iraq at any time during this period, we conclude that she was under Iraq's control and thus detained from August 25, 1990, to August 27, 1990.

In sum, Iraq detained Claimant from August 2, 1990, until August 27, 1990.

(b) Threat: The Iraqi government threatened Embassy staff members, U.S. personnel with diplomatic status in Kuwait, and their dependents with continued detention. This included Claimant. Iraqi authorities made clear that Embassy staff members, U.S. personnel with diplomatic status in Kuwait, and their dependents would not be permitted to leave, notwithstanding Iraq's sporadic and unreliable statements to the contrary during Claimant's period of detention.²⁹ Claimant has thus established that Iraq threatened to continue to detain her.

(c) Third party coercion: The reason Iraq detained Claimant and the other diplomatic dependents and threatened her with continued detention was to compel the United States government to act in a certain way as an explicit and/or implicit condition for her release. Iraqi authorities informed the United States that before it would release Embassy staff members, U.S. personnel with diplomatic status in Kuwait, and

²⁷ Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22 (citing Claim No. LIB-II-183, Decision No. LIB-II-178, at 12 (Proposed Decision)).

²⁸ *See id.*

²⁹ *See* Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 16.

their dependents, it wanted the United States to close its embassy in Kuwait.³⁰ Indeed, at the time, 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 26 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 26 days Iraq held Claimant hostage, she is entitled to an award of \$280,000, which is \$150,000 plus (26 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 ICOSA.³³

³⁰ *See id.*

³¹ *See id.* at 16-17.

³² *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³³ 22 U.S.C. §§ 1626-1627 (2012).

AWARD

Claimant is entitled to an award in the amount of \$280,000.

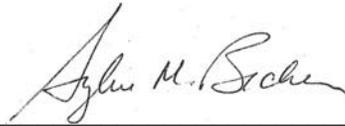
Dated at Washington, DC, May 10, 2018
and entered as the Proposed Decision
of the Commission.

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

July 10, 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).