

**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)	}	
5 U.S.C. §552(b)(6)	, }	Claim No. IRQ-II-233
	}	
	}	Decision No. IRQ-II-267
	}	
Against the Republic of Iraq	}	
	}	

Counsel for Claimant:

Daniel Wolf, Esq.
Law Office of Daniel Wolf

PROPOSED DECISION

Claimant Estate brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held its decedent, William Ambrose Colwell, hostage in violation of international law from August to November 1990. Because it has established that Iraq held its decedent hostage for 106 days, it is entitled to an award of \$680,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Colwell was working as Consul and First Secretary of the U.S. Embassy in Kuwait when Iraq invaded Kuwait on August 2, 1990. Mr. Colwell was immediately summoned to the U.S. Embassy, and stayed there until August 23, 1990, when he joined a diplomatic convoy that traveled to Iraq. He was then detained in Baghdad until Iraq allowed him to leave on November 15, 1990.

Although neither the Claimant Estate nor Mr. Colwell were 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.

On October 23, 2015, the Commission received from the Claimant Estate a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of its claim. By letters dated February 9, 2016 and August 3, 2016, the Claimant Estate submitted additional evidence in support of its claim.

DISCUSSION

Standing

Claimant Estate has submitted a copy of Letters Testamentary, issued on April 19, 2016, by the Jefferson County, New York, Surrogate's Court, stating that Luz Marina Colwell had been appointed fiduciary for the estate of William A. Colwell. Accordingly, the Commission concludes that Estate Of William Ambrose Colwell, Deceased; Luz Marina Colwell, Fiduciary, is the proper claimant in this claim.

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.

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).

Nationality

This claims program is limited to claims of “U.S. nationals.” Here, that means the claim must have been held by 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 Because Mr. Colwell was living as of the date of the Claims Settlement Agreement, he held the claim through that date and Claimant Estate thus need only establish that Mr. Colwell was a U.S. national over the relevant time period.¹⁰

Claimant Estate satisfies the nationality requirement. It has provided a copy of Mr. Colwell’s U.S. passport valid from November 21, 1986, to November 20, 1991, his U.S. State Department badge valid in 2013, and his 2013 New York State death certificate. This evidence establishes that Mr. Colwell was a U.S. national at the time of the alleged hostage-taking and 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.¹¹ Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant Estate’s fiduciary has averred under oath in the Statement of Claim, and the pleadings in the cases cited in footnote 3 confirm, that neither the Estate nor Mr. Colwell was a plaintiff in any of those Pending Litigation cases. Thus, Claimant Estate has also satisfied this element of its claim.

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

¹⁰ See, e.g., Claim No. LIB-II-180, Decision No. LIB-II-079, at 5 (2011).

¹¹ The Agreement entered into force on May 22, 2011. See Claims Settlement Agreement, art. IX.

*No Compensation under the Claims Settlement Agreement
from the Department of State*

The Claimant Estate also satisfies the final jurisdictional requirement. Claimant Estate's fiduciary has stated that neither the Estate nor Mr. Colwell has ever received any compensation under the Claims Settlement Agreement from the Department of State. Further, we have no evidence that the State Department has provided either the estate or Mr. Colwell any compensation under the Claims Settlement Agreement. Therefore, Claimant Estate meets this element of its 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 Estate states that Iraq held Mr. Colwell hostage from August 2, 1990, until November 15, 1990, a total of 106 days. Claimant Estate alleges that Mr. Colwell was working as Consul and First Secretary of the U.S. Embassy in Kuwait when Iraq invaded Kuwait on August 2, 1990. Mr. Colwell was immediately summoned to the U.S. Embassy and stayed there until August 23, 1990, when he joined a diplomatic convoy that traveled to Iraq. He was then detained in Baghdad until Iraq allowed him to leave on November 15, 1990.¹²

Supporting Evidence

Claimant Estate has supported its claim with, among other things, the sworn declaration of its fiduciary, Mr. Colwell's widow. It has also submitted Mr. Colwell's U.S. passport valid at the time of the 1990 Iraqi invasion, which contains a 1987 Kuwaiti

¹² 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).

entry visa, Kuwaiti entry stamps from 1990, an Iraqi exit stamp dated November 15, 1990, and a United States' entry stamp dated November 17, 1990. Claimant Estate has also submitted a transcript of a November 15, 1990 ABC News broadcast, which states that Mr. Colwell was released that day, "apparently [as] a favor to the former Attorney General Ramsey Clark, who had gone to Iraq to promote a nonmilitary solution." In addition, Claimant Estate has submitted a New York regional newspaper dated Friday, November 16, 1990, which reports that Mr. Colwell "had just arrived" in Jordan on Thursday, which would have been November 15, 1990. The article quotes Mr. Colwell's brother who states he believes Mr. Colwell was released because of his age.¹³

Claimant Estate 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.

¹³ According to his passport, the decedent was 64 years old at the time of his release.

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.¹⁴ 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.¹⁵ 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.¹⁶ The legal standard we apply in this program applies equally to diplomatic personnel and their families.¹⁷

Application of Standard to this Claim

(1) Armed Conflict: Claimant Estate alleges that Iraq took Mr. Colwell hostage in Kuwait on August 2, 1990, and held him hostage for 106 days, until November 15, 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.¹⁸ Thus, Claimant Estate satisfies this element of the standard.

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

¹⁵ See *id.* at 17-20.

¹⁶ See *id.* at 17.

¹⁷ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 11.

¹⁸ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

(2) Hostage-taking: To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant Estate must show that Iraq (a) seized or detained Mr. Colwell 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 Estate satisfies this standard for the 106-day period from August 2, 1990, to November 15, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant Estate's allegations of Mr. Colwell having been detained, Mr. Colwell's time in Kuwait and Iraq following the Iraqi invasion can be divided into two 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"; and (ii) between that August 7, 1990, announcement and Mr. Colwell's departure on November 15, 1990.¹⁹

From August 2, 1990, until August 7, 1990, Iraq prevented Mr. Colwell from leaving Kuwait. During this period, Iraq made no formal distinction between diplomatic personnel such as Mr. Colwell and other U.S. nationals, who, as we have previously recognized, were threatened with immediate seizure and forcible detention.²⁰ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Mr. Colwell could not reasonably be expected to have escaped.²¹ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.²² Mr. Colwell understandably had, as the United Nations

¹⁹ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 12-13.

²⁰ See *id.* at 14.

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

²² See *id.*

Compensation Commission has put it, a “manifestly well-founded fear” of being killed or forcibly detained if he had left the embassy.²³ The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Mr. Colwell in this situation in effect amounts to detention.²⁴ Iraq thus detained Mr. Colwell from August 2, 1990, to August 7, 1990.

Between August 7, 1990, and November 15, 1990, Iraqi authorities adopted various policies that prevented Mr. Colwell and other U.S. diplomats and embassy staff accredited to the Kuwait Embassy from leaving Kuwait or Iraq.²⁵ 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, 1990.²⁶ 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.²⁷ While the U.S. was able to negotiate the release of some dependents on or around August 25, 1990, Iraq refused to release most of the Kuwait Embassy staff members who were confined in the Baghdad or Kuwait embassies until announcing the release of all foreign nationals on December 6, 1990.²⁸ As discussed above, the evidence submitted indicates that Mr. Colwell was allowed to leave earlier, on November 15, 1990, as a goodwill gesture to

²³ 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.

²⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²⁵ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 14.

²⁶ See *id.*

²⁷ See *id.* at 14-15.

²⁸ See *id.* at 15.

former Attorney General Ramsey Clark, and that he might have been one of the two hostages released at that time because of his age. In sum, Iraq detained Mr. Colwell from August 2, 1990, until November 15, 1990.

(b) Threat: The Iraqi government threatened Kuwait Embassy staff members, diplomats, and dependents with continued detention. This included Mr. Colwell. Iraqi authorities made clear that Embassy staff members, diplomats, and dependents would not be permitted to leave, notwithstanding Iraq's sporadic and unreliable statements to the contrary during Mr. Colwell's period of detention.²⁹

In short, the Iraqi government made an unequivocal threat to continue to detain Kuwait Embassy staff members in Kuwait and Iraq. Mr. Colwell was a U.S. diplomat employed at the U.S. Embassy in Kuwait at the time. Claimant Estate has thus established that Iraq threatened to continue to detain Mr. Colwell.

(c) Third party coercion: The reason Iraq detained Mr. Colwell and threatened him with continued detention was to compel the United States government to act in a certain way as an explicit and/or implicit condition for his release. Iraqi authorities informed the United States that before it would release detained diplomats, embassy personnel, and 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 Mr. Colwell hostage in violation of international law for a period of 106 days, and Claimant Estate is thus entitled to compensation.

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

³⁰ See *id.*

³¹ See *id.* at 16-17.

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 106 days Iraq held Claimant Estate's decedent hostage, it is entitled to an award of \$680,000, which is \$150,000 plus (106 x \$5,000). This amount constitutes the entirety of the compensation to which Claimant Estate 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 \$680,000.

Dated at Washington, DC, May 10, 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**

July 10, 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) (2017).

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

³³ 22 U.S.C. §§ 1626-1627 (2012).