

**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-203

Decision No. IRQ-II-265

Counsel for Claimant:

Daniel Wolf, Esq.
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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 26 days, she is entitled to an award of \$280,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was an eleven-year-old United States citizen living with her parents and two siblings in Kuwait when Iraq invaded the country on August 2, 1990. At the time, her father was Consul and First Secretary of the U.S. Embassy in Kuwait. She asserts that, beginning with the invasion and for approximately four weeks thereafter, Iraq prohibited her from leaving Kuwait and Iraq. She further maintains that she and her siblings and mother 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 Settlement Agreement, the

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").

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.

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 October 22, 2015, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting elements of her claim. By letters dated February 9, 2016, and August 17, 2016, Claimant submitted additional evidence in support 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 her U.S.

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.

passport valid from February 16, 1989 to February 15, 1994, 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 her currently valid U.S. passport, which 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 27, 1990, a total of 26 days. Claimant alleges that when Iraq invaded Kuwait on August 2, 1990, she was living in Kuwait with her two siblings and her mother and father, who was Consul and First Secretary of the U.S. Embassy.¹¹ She asserts that at the time of the invasion, she, her parents and her brother were at home, and that her father was immediately summoned to the U.S. Embassy. Claimant states that her sister was at a friend's house in downtown Kuwait City and it took four days before the friend's father managed to reunite Claimant and her sister. Claimant and her mother and siblings remained in their home until August 11, 1990, when they relocated to the U.S. Embassy.

On August 23, 1990, Claimant and her family departed for Baghdad in a convoy made up of Embassy staff members, U.S. personnel with diplomatic status in Kuwait, and their dependents.¹² Claimant further alleges that she was held in Iraq until August 26, 1990, when she and her mother and siblings left Baghdad in a vehicle that was part of a convoy carrying dependents of U.S. diplomatic personnel from Kuwait who sought to leave Iraq.¹³ Claimant states that the convoy arrived at the Iraqi border station prior to midnight. At that time, the Iraqi authorities collected the convoy members' passports and stamped them with Iraqi exit stamps bearing the date August 26, 1990. However, according to

¹¹ See Claim No. IRQ-II-201, Decision No. 263; Claim No. IRQ-II-202, Decision No. 264; Claim No. IRQ-II-233, Decision No. 267; Claim No. IRQ-II-257, Decision No. 266.

¹² For further factual background regarding the Iraqi government's treatment of Embassy staff members, U.S. personnel with diplomatic status in Kuwait, and their dependents after the August 2, 1990 invasion, see Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 5-10.

¹³ Iraqi officials required Claimant's father to remain in Baghdad. See Claim No. IRQ-II-233, Decision No. 267.

Claimant, the Iraqi authorities did not return the passports until approximately 2:00 a.m. on August 27, 1990, when they instructed the convoy members to pull their vehicles into a customs bay. The convoy waited there and was eventually informed that the Iraqi authorities would not allow three young men from the convoy to leave Iraq because Iraq considered them of military age. Thereafter, the remaining members of the convoy were permitted to proceed towards the border with Turkey. According to Claimant, as they approached the bridge that would take them across the border, armed Iraqi guards again stopped the convoy, ordered everyone to exit their vehicles, and lined them all up along the roadside. Only after counting the members of the convoy did the armed guards allow them to get back into their vehicles and to cross the border out of Iraq and into Turkey.

Supporting Evidence

Claimant has supported her claim with, among other things, her sworn Statement of Claim, her declaration, her mother's declaration, and her then-valid U.S. passport, which has an Iraqi exit stamp dated August 26, 1990, and what appears to be Turkish stamps dated August 27, 1990 and August 28, 1990. She has also provided three 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 Embassy staff members, U.S. personnel with diplomatic status 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.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

¹⁴ 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.

¹⁵ See *id.* at 17-20.

¹⁶ See *id.* at 17.

standard we apply in this program applies equally to diplomatic personnel and their families.¹⁷

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, 1990.¹⁸ 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 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.¹⁹ 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 explicit or implicit condition for her release. Claimant satisfies this standard for the 26-day period from August 2, 1990, to August 27, 1990.

¹⁷ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 12.

¹⁸ See Claim No. IRQ-II-129, Decision No. 260, at 9 (Proposed Decision).

¹⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, her time in Kuwait 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 those with U.S. diplomatic status 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; (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 Claimant and other U.S. nationals, who, as we have previously recognized, were threatened with immediate seizure and forcible detention during this period.²⁰ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant 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 Claimant understandably had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being killed or forcibly detained if she had left, first, her home, or, subsequently, the U.S. embassy in Kuwait.²³ The Commission has

²⁰ See *id.* at 21.

²¹ See *id.*

²² See *id.*

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.

previously recognized that for the purposes of the legal standard applicable here, putting Claimant in this situation in effect amounts to detention.²⁴ 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 and 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 Embassy staff members, Americans with diplomatic status in Kuwait, 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. government 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 she is released from the control of the person or entity that detained her.²⁸ Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant

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

establishes control,²⁹ 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.³⁰

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 thus 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.³¹ 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 them with continued detention was to compel the United States government to act in a certain way as an explicit and/or implicit condition for their release. Iraqi authorities informed the U.S. that before it would release Embassy staff members, U.S. personnel with diplomatic status in Kuwait, and their dependents, it

²⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22 (citing Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 12 (2012)).

³⁰ See *id.*

³¹ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 16.

wanted the United States to close its embassy in Kuwait.³² Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³³

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.³⁴ 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.³⁵

³² *See id.*

³³ *See id.* at 16-17.

³⁴ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁵ 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) (2018).