

**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(p)(6)

Against the Republic of Iraq

}
}
}
}
}
}
}
}
}
}

Claim No. IRQ-II-229

Decision No. IRQ-II-283

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, Nicholas P. Lahoda, hostage in violation of international law from August to October 1990. Because it has established that Iraq held its decedent hostage for 85 days, it is entitled to an award of \$575,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Lahoda was a U.S. citizen with diplomatic status who was working for the U.S. Embassy in Kuwait when Iraq invaded Kuwait on August 2, 1990. Mr. Lahoda was at home with his (then) wife and daughter and was immediately summoned to the U.S. Embassy, where his wife and daughter subsequently joined him. They stayed there until August 23, 1990, when they joined a diplomatic convoy that traveled to Iraq. The decedent’s wife and daughter were able to leave Baghdad on August 26, 1990, and eventually cross the Turkish-Iraqi border on August

27, 1990, as part of a convoy of vehicles carrying dependents of U.S. diplomatic personnel from Kuwait. The decedent, however, was forced to remain in Iraq, until he escaped with others across the Turkish border on October 25, 1990.

Although neither the Claimant Estate nor Mr. Lahoda 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

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).

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 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.

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").

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, 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 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 May 27, 2016, and February 21, 2017, the Claimant Estate submitted additional evidence in support of its claim.

DISCUSSION

Standing

Claimant Estate has submitted a copy of Letters Testamentary, issued on November 9, 2015, by the Register of Wills of Susquehanna, Pennsylvania, stating that Barbara Peterlin had been appointed Executor for the estate of Nicholas P. Lahoda. Accordingly, the Commission concludes that Estate Of Nicholas P. Lahoda, Deceased; Barbara Peterlin, Executor, 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

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).

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 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 the decedent, Mr. Lahoda, died before May 22, 2011, this claim passed from him to his estate prior to May 22, 2011. In such circumstances, the estate must also be a U.S. national. For an estate to be viewed as a U.S. national requires that the estate’s beneficiaries also be U.S. nationals. Thus, to satisfy the U.S. nationality requirement, Claimant Estate must show that Mr. Lahoda was a U.S. national from the time of the alleged hostage-taking until he died and that the Estate’s beneficiaries were U.S. nationals from Mr. Lahoda death until May 22, 2011.¹⁰

Claimant Estate satisfies the nationality requirement. It has provided evidence sufficient to show that the claim was held continuously by a U.S. national from August 2, 1990, which is the date that the alleged hostage-taking began, through the effective date of the Claims Settlement Agreement. From August 2, 1990, to September 2, 2008, the claim was held by the decedent. Claimant Estate has submitted copies of the decedent’s Pennsylvania birth certificate, his U.S. passport valid from July 16, 1986, through July 15, 1991, and his Pennsylvania death certificate stating that the decedent died on September 2, 2008. These documents substantiate the Claimant Estate’s assertion that the decedent was a U.S. national at the time of the alleged hostage-taking (August

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

¹⁰ See, e.g., Claim No. IRQ-II-286, Decision No. IRQ-II- 257 (2018); Claim No. ALB-338, Decision No. ALB-321 (2008); Claim No. G-2154, Decision No. G-1955 (1981); Claim No. W-9801, Decision No. W-2107 (1965); and Claim No. Y-0660, Decision No. Y-1171 (1954).

through October of 1990) and remained a U.S. national through the date of his death in 2008.

From September 2, 2008, to May 22, 2011, the claim was held by Nancy Lahoda, the decedent's second wife, and his daughter Nicole Lahoda, who are identified as the sole heirs of the decedent's estate in the Petition for Grant of Letters that was filed with the Register of Wills of Susquehanna, Pennsylvania. Claimant Estate has submitted copies of Nancy Lahoda's New York birth certificate and her 2016 Pennsylvania voter registration card. It has additionally submitted copies of Nicole Lahoda's Virginia birth certificate and 2015 Pennsylvania voter registration card. These documents establish that Nancy Lahoda and Nicole Lahoda were U.S. nationals from September 2, 2008, the date of the decedent's death, through May 22, 2011, the effective date of the Claims Settlement Agreement. Thus, Claimant Estate has satisfied this element of its claim.

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 executor 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. Lahoda was a plaintiff in any of those Pending Litigation cases. Thus, Claimant Estate has also satisfied this element of its claim.

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 executor has stated that neither the Estate nor Mr. Lahoda 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. Lahoda 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 alleges that Mr. Lahoda was a U.S. citizen with diplomatic status who was working for the U.S. Embassy in Kuwait when Iraq invaded Kuwait on August 2, 1990. Mr. Lahoda was at home with his (then) wife and daughter and was immediately summoned to the U.S. Embassy, where his wife and daughter subsequently joined him. They stayed there until August 23, 1990, when they joined a diplomatic convoy that traveled to Iraq. The decedent's wife and daughter were able to leave Baghdad on August 26, 1990, and eventually cross the Turkish-Iraqi border on August 27, 1990, as part of a convoy of vehicles carrying dependents of U.S. diplomatic

personnel from Kuwait.¹² The decedent, however, was forced to remain in Iraq, until he escaped with others across the Turkish border on October 25, 1990.¹³

Supporting Evidence

Claimant Estate has supported its claim with, among other things, the sworn declarations of its executor, Mr. Lahoda's sister, and his then wife, discussing the events at issue. It has also submitted Mr. Lahoda's U.S. passport valid at the time of the 1990 Iraqi invasion, which contains a 1989 Kuwaiti entry visa, a Kuwaiti entry stamp from July 26, 1990, and a stamp on its back cover that states the bearer is abroad on a diplomatic assignment for the government of the United States of America. Claimant Estate has also submitted a 1995 Washington Post article that describes an escape from Iraq in the autumn of 1990. It has also submitted the declaration of two individual who are not related to any of the parties to this claim. The first declarant states he was with the decedent in Kuwait and Iraq and that he is aware that the decedent escaped in the fourth week of October. The second declarant states he was with the decedent in Kuwait and Iraq and that he and the decedent were part of a group that escaped on October 25, 1990. The Claimant Estate has also submitted a 2002 declaration that the second declarant filed in a federal district court that discusses the escape on October 25, 1990. In addition, the Claimant Estate has submitted a 1991 U.S. Department of State Meritorious Honor Award issued to the decedent for his service at the U.S. Embassy in Kuwait at the time of the Iraqi invasion of Kuwait on August 2, 1990. The Commission also takes note of the decedent's obituary published in a regional newspaper on September 9, 2008,

¹² See Claim No. IRQ-II-156, Decision No. IRQ-II-261, and Claim No. IRQ-II-168, Decision No. IRQ-II-262.

¹³ 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).

which states that the decedent “was taken hostage from the U.S. Embassy in Kuwait by Iraq” and that “[a]fter three months, he and four others escaped.”

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.

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

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

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. Lahoda hostage in Kuwait on August 2, 1990, and held him hostage for 85 days, until October 25, 1990, when he escaped across the Turkish border. 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.

(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. Lahoda 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 85-day period from August 2, 1990, to October 25, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant Estate's allegations of Mr. Lahoda having been detained, Mr. Lahoda's time in

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.

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. Lahoda's escape on October 25, 1990.¹⁹

From August 2, 1990, until August 7, 1990, Iraq prevented Mr. Lahoda from leaving Kuwait. During this period, Iraq made no formal distinction between diplomatic personnel such as Mr. Lahoda 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. Lahoda 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. Lahoda understandably had, as the United Nations 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. Lahoda in this situation in effect amounts to detention.²⁴ Iraq thus detained Mr. Lahoda from August 2, 1990, to August 7, 1990.

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.*

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.

Between August 7, 1990, and October 25, 1990, Iraqi authorities adopted various policies that prevented Mr. Lahoda 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 However, the evidence submitted substantiates the Claimant's Estate's assertion that Mr. Lahoda escaped on October 25, 1990. In sum, Iraq detained Mr. Lahoda from August 2, 1990, until he escaped on October 25, 1990.

(b) Threat: The Iraqi government threatened Kuwait Embassy staff members, diplomats, and dependents and other U.S. citizens with diplomatic status in Kuwait with continued detention. This included Mr. Lahoda. Iraqi authorities made clear that Embassy staff members, diplomats, and dependents and other U.S. citizens with diplomatic status in Kuwait would not be permitted to leave, notwithstanding Iraq's

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.

sporadic and unreliable statements to the contrary during Mr. Lahoda's period of detention.²⁹

In short, the Iraqi government made an unequivocal threat to continue to detain Kuwait Embassy staff members and other U.S. citizens with diplomatic status in Kuwait in Kuwait and Iraq. Mr. Lahoda was a U.S. citizen with diplomatic status who was working for the U.S. Embassy in Kuwait at the time. Claimant Estate has thus established that Iraq threatened to continue to detain Mr. Lahoda.

(c) Third party coercion: The reason Iraq detained Mr. Lahoda 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 other U.S. citizens with diplomatic status in Kuwait, 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. Lahoda hostage in violation of international law for a period of 85 days, and Claimant Estate 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

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

³⁰ See *id.*

³¹ See *id.* at 16-17.

compensation in the amount of \$150,000 plus an additional \$5,000 for each day the claimant was in captivity.³² Therefore, for the 85 days Iraq held Claimant Estate's decedent hostage, it is entitled to an award of \$575,000, which is \$150,000 plus (85 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

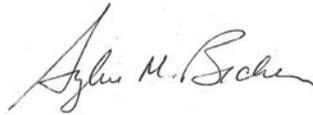
AWARD

Claimant Estate is entitled to an award in the amount of \$575,000.

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

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

August 13, 2018



Sylvia M. Becker, Commissioner



Patrick Hovakimian, 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).