

**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-302
	}	Decision No. IRQ-II-297
Against the Republic of Iraq	}	

Counsel for Claimant: Daniel Wolf, Esq.
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant Estate brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held its decedent, William H. Hollingsworth Jr., hostage in violation of international law from August to October 1990. Because it has established that Iraq held its decedent hostage for 83 days, it is entitled to an award of \$565,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Hollingsworth was a United States citizen living with his wife in Kuwait when Iraq invaded the country on August 2, 1990. At the time, he was working for the U.S. State Department in Kuwait. Claimant Estate asserts that, beginning with the invasion, Iraq prohibited Mr. Hollingsworth from leaving Kuwait and Iraq until October 23, 1990. Mr. Hollingsworth died on December 26, 2007.

Although neither Mr. Hollingsworth nor Claimant Estate was 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 26, 2015, the Commission received from Claimant Estate a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting elements of its claim. By letters dated June 19, 2017, June 22, 2018, and July 23, 2018, Claimant Estate submitted additional evidence in support of its claim.

DISCUSSION

Standing

Claimant Estate has submitted a copy of Letters of Administration, issued on July 2, 2018, by the Probate Court of Madison, Alabama, stating that Peggy J. Kahlenbeck had been appointed Personal Representative for the estate of William H. Hollingsworth Jr. Accordingly, the Commission concludes that Estate Of William H. Hollingsworth Jr., Deceased; Peggy J. Kahlenbeck, Personal Representative, 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) (2012).

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 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. Hollingsworth, 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. Hollingsworth 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. Hollingsworth’s 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 December 26, 2007, the claim was held by the decedent. Claimant Estate has submitted copies of the decedent’s U.S. passport valid from August 31, 1988, to August 30, 1993, and his Alabama death certificate which states that the decedent was born in Georgia and died in Alabama on December 26, 2007. These documents substantiate the Claimant Estate’s assertion that the decedent was

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).

a U.S. national at the time of the alleged hostage-taking and remained a U.S. national through the date of his death in 2007.

From December 26, 2007, to May 22, 2011, the claim was held by the decedent's children, Peggy Kahlenbeck, William H. Hollingsworth, III, and Ronald L. Hollingsworth, who are identified as the sole heirs of the decedent's estate in the Order Granting Letters of Administration that was issued on July 2, 2018, by the Probate Court of Madison, Alabama. Claimant Estate has submitted copies of Peggy Kahlenbeck's U.S. passport valid from December 8, 2011, to December 7, 2021, which states she was born in Georgia; William H. Hollingsworth, III's U. S. Passport valid from April 15, 2013, to April 14, 2023, which states he was born in Georgia; and Ronald L. Hollingsworth's Alabama birth certificate and 2016 Mississippi voter registration card. These documents establish that Peggy Kahlenbeck, William H. Hollingsworth, III, and Ronald L. Hollingsworth were U.S. nationals from December 26, 2007, 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 has averred, and the pleadings in the cases cited in footnote 3 confirm, that neither it nor its decedent was a plaintiff in any of those Pending Litigation cases. The Commission thus finds that

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

Claimant Estate has also satisfied this element of its claim.

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

The Claimant Estate also satisfies the final jurisdictional requirement. Claimant Estate has stated that neither it nor its decedent 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 Claimant Estate or its decedent 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. Hollingsworth hostage from August 2, 1990, until October 23, 1990, a total of 83 days. Claimant Estate alleges that Mr. Hollingsworth was living with his wife in Kuwait, when Iraq invaded the country on August 2, 1990. At the time, he was working for the U.S. State Department in Kuwait.¹² Claimant Estate asserts that immediately after the invasion, Mr. Hollingsworth and his wife went to the Japanese Embassy, where they remained for approximately the next ten days. Then, on or about August 12, 1990, they relocated to the U.S. Embassy in Kuwait, where they remained for the next two weeks.

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.

On August 23, 1990, Mr. Hollingsworth and his wife departed for Baghdad in a convoy made up of Embassy staff members, U.S. personnel with diplomatic status in Kuwait, and their dependents. Claimant Estate further alleges that Mr. Hollingsworth's wife was held in Iraq until August 26, 1990, when she left Baghdad in a vehicle that was part of a convoy carrying dependents of U.S. diplomatic personnel from Kuwait which crossed into Turkey the next day. However, Mr. Hollingsworth was detained in Baghdad and remained confined to the U.S. Embassy compound until Iraq allowed him to leave on October 23, 1990, at which time he flew from Baghdad to Jordan.

Supporting Evidence

Claimant Estate has supported its claim with, among other things, the declarations of the estate's personal representative, Mr. Hollingsworth's step-daughter, as well as the declaration of one of his sons. It has also submitted a *New York Times* article from August 19, 1990, that states Mr. Hollingsworth was being held in Kuwait. In addition, it has submitted a *Los Angeles Times* article from October 24, 1990, that states Mr. Hollingsworth was one of 14 Americans freed by Iraq and allowed to fly from Baghdad to Amman, Jordan, the previous day.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

¹³ According to the article, the 14 Americans included six from a list of 69 Americans who were in urgent need of medical care, two people who had critically ill relatives in the United States, and six people who were college-age students.

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.

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 Estate satisfies this standard for the period between August 2, 1990, and October 23, 1990. The evidence in the record establishes that Mr. Hollingsworth was in Kuwait on August 2, 1990, and that he left Iraq on October 23, 1990. Since the evidence substantiates Claimant Estate's factual assertions, we now apply the legal standard to its claim.

(1) Armed Conflict: Claimant Estate alleges that Iraq took Mr. Hollingsworth hostage in Kuwait on August 2, 1990, and held him hostage for 83 days, until 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.

(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 its decedent 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 83-day period from August 2, 1990, to October 23, 1990.

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

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

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

Kuwait 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. Hollingsworth's departure on October 23, 1990.¹⁹

From August 2, 1990, until August 7, 1990, Iraq prevented Mr. Hollingsworth from leaving Kuwait. During this period, Iraq made no formal distinction between individuals with diplomatic status, such as Mr. Hollingsworth, 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. Hollingsworth 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. Hollingsworth 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 Japanese embassy.²³ The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Mr. Hollingsworth in this situation in effect

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.

amounts to detention.²⁴ Iraq thus detained Mr. Hollingsworth from August 2, 1990, to August 7, 1990.

Between August 7, 1990, and October 23, 1990, Iraqi authorities adopted various policies that prevented Mr. Hollingsworth and other individuals with diplomatic status 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 U.S. citizens with diplomatic status 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 U.S. citizens with diplomatic status 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 of U.S. citizens with diplomatic status on or around August 25, 1990, Iraq refused to release most of U.S. citizens with diplomatic status 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. Hollingsworth was allowed to leave earlier, on October 23, 1990, as part of a group of 14 Americans that included six Americans who were in urgent need of medical care, two people who had critically ill relatives in the United States and six people who were college-age students. In sum, Iraq detained Mr. Hollingsworth from August 2, 1990, until October 23, 1990.

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.

(b) Threat: The Iraqi government threatened U.S. citizens with diplomatic status with continued detention. This included Mr. Hollingsworth. Iraqi authorities made clear that U.S. citizens with diplomatic status would not be permitted to leave, notwithstanding Iraq's sporadic and unreliable statements to the contrary during Mr. Hollingsworth's period of detention.²⁹

In short, the Iraqi government made an unequivocal threat to continue to detain U.S. citizens in Kuwait and Iraq and Claimant Estate has thus established that Iraq threatened to continue to detain Mr. Hollingsworth.

(c) Third party coercion: The reason Iraq detained Mr. Hollingsworth 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 U.S. citizens with diplomatic status, 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. Hollingsworth hostage in violation of international law for a period of 83 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.

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

³⁰ See *id.*

³¹ See *id.* at 16-17.

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 83 days Iraq held Claimant Estate's decedent hostage, it is entitled to an award of \$565,000, which is \$150,000 plus (83 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

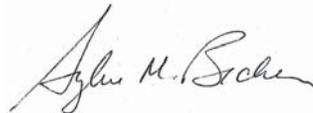
AWARD

Claimant Estate is entitled to an award in the amount of \$565,000.

Dated at Washington, DC, September 18, 2018
and entered as the Proposed Decision
of the Commission.

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

November 6, 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).