

**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

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Claim No. IRQ-II-148

Decision No. IRQ-II-289

Counsel for Claimant:

Anthony Onorato, Esq.
FisherBroyles, LLP

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held him hostage in violation of international law from August to October 1990. Because he has established that Iraq held him hostage for 70 days, he is entitled to an award of \$500,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was a United States citizen living in Kuwait when Iraq invaded Kuwait on August 2, 1990. He asserts that, beginning with the invasion and for approximately 10 weeks thereafter, he was “held hostage in Kuwait by Iraq and its military forces” According to Claimant, he was confined first to his family’s own residence in Messilah, Kuwait, and then to his parents’ house next door, and spent approximately one day in Baghdad when he attempted to obtain travel documents to

escape to Jordan. Claimant alleges that he flew out of Iraq on October 10, 1990, on an evacuation flight out of Kuwait organized by the U.S. government.

Although Claimant was not among them, many of the U.S. nationals in Iraq and Kuwait at the time of the 1990-91 Iraqi occupation of Kuwait sued Iraq (and others) in federal court for, among other things, hostage-taking.¹ Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.² The Agreement, which entered into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004, including claims of personal injury caused by hostage-taking.³ Exercising its authority to distribute money from the settlement funds, the U.S. Department of State provided compensation to numerous individuals whose claims were covered by the Agreement, including some whom Iraq had allegedly taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait.

Under the International Claims Settlement Act of 1949 ("ICSA"), the Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission.⁴ The Secretary has delegated that authority to the State Department's Legal Adviser, who, by letter dated October 7, 2014, referred three categories of claims to this Commission for adjudication and certification.⁵ This was the State Department's second referral of claims to the Commission under the Claims

¹ See, e.g., *Hill v. Republic of Iraq*, 175 F. Supp. 2d 36 (D.D.C. 2001); *Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (D.D.C. 2006).

² See *Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement").

³ See *id.* Art. III(1)(a)(ii).

⁴ See 22 U.S.C. § 1623(a)(1)(C) (2012).

⁵ See *Letter dated October 7, 2014, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission* ("2014 Referral" or "October 2014 Referral").

Settlement Agreement, the first having been by letter dated November 14, 2012 (“2012 Referral” or “November 2012 Referral”).⁶

One category of claims from the 2014 Referral is applicable here. That category, known as Category A, consists of

claims by U.S. nationals for hostage-taking¹ by Iraq² in violation of international law prior to October 7, 2004, provided that the claimant was not a plaintiff in pending litigation against Iraq for hostage taking³ at the time of the entry into force of the Claims Settlement Agreement and has not received compensation under the Claims Settlement Agreement from the U.S. Department of State. . . .

¹ For purposes of this referral, hostage-taking would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

² For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

³ For purposes of this category, pending litigation against Iraq for hostage taking refers to the following matters: *Acree v. Iraq*, D.D.C. 02-cv-00632 and 06-cv-00723, *Hill v. Iraq*, D.D.C. 99-cv-03346, *Vine v. Iraq*, D.D.C. 01-cv-02674; *Seyam (Islamic Society of Wichita) v. Iraq*, D.D.C. 03-cv-00888; *Simon v. Iraq*, D.D.C. 03-cv-00691.

2014 Referral at ¶ 3.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICSA and the 2014 Referral.⁷

⁶ Although the November 2012 Referral involved claims of U.S. nationals who were held hostage or unlawfully detained by Iraq, it did not involve hostage-taking claims *per se*. Rather, it consisted of certain claimants who had *already received* compensation under the Claims Settlement Agreement from the State Department for their hostage-taking claims, and it authorized the Commission to award additional compensation to those claimants, provided they could show, among other things, that they suffered a “serious personal injury” during their detention. The 2012 Referral expressly noted that the “payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.” 2012 Referral, *supra*, n.3.

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

On October 23, 2015, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of his claim.

DISCUSSION

Jurisdiction

This Commission's authority to hear claims is limited to the category of claims referred to it by the United States Department of State.⁸ The Commission's jurisdiction under the "Category A" paragraph of the 2014 Referral is limited to claims for hostage-taking of (1) "U.S. nationals," provided that the claimant (2) was not a plaintiff in any litigation against Iraq for hostage taking pending on May 22, 2011 (the "Pending Litigation"), and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral ¶ 3.

Nationality

This claims program is limited to claims of "U.S. nationals." Here, that means a claimant must have been a national of the United States when the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force.⁹ Claimant satisfies the nationality requirement. He has provided a copy of his U.S. certificate of naturalization, dated March 15, 1985, and his cancelled U.S. passport, which show that he was a U.S. national at the time of the alleged hostage-taking (August to October of 1990). He has also provided a copy of each of his U.S. passports since then, which establish that he remained a U.S. national through the effective date of the Claims Settlement Agreement.

⁸ See 22 U.S.C. § 1623(a)(1)(C).

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

No Pending Litigation

Category A also states that the claimant may not have been a plaintiff in any of the so-called Pending Litigation cases at the time of the entry into force of the Claims Settlement Agreement.¹⁰ Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant has averred under oath in a 2015 declaration, and the pleadings in the cases cited in footnote 3 confirm, that he was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of his 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 he has “not previously received compensation from the U.S. Department of State under the United States-Iraq Settlement Agreement dated September 2, 2010.” Further, we have no evidence that the State Department has provided him any compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of his claim.

In summary, this claim is within the Commission’s jurisdiction pursuant to the 2014 Referral and is entitled to adjudication on the merits.

Merits

Factual Allegations

Claimant states that Iraq held him hostage from August 2, 1990 until October 10, 1990, a total of 70 days. He alleges that he, his wife, and their three daughters were living in Kuwait when Iraq invaded the country on August 2, 1990, and that, on that day,

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

they “woke to see tanks and soldiers surrounding [their] house.” They heard gunshots throughout the day and, concerned for their children’s safety, they went next door to Claimant’s parents’ house. Claimant alleges that Iraqi soldiers then moved into the garage of their home to use it as a base, and used a hotel next to their backyard as a “command point.” He estimates that there were about 100 soldiers in their garage and about 500 in the hotel, and that “[he and his family] were, literally, surrounded.”

Two days after the invasion, someone claiming to be from the U.S. Embassy contacted Claimant and his family and directed them to go to the Hyatt Regency. They were suspicious, however, and when Claimant’s wife called the embassy back, she was told they had issued no such order. Claimant states that they “learned that Saddam Hussein had arranged these calls to lure Americans into being captured.” Subsequently, “[s]oldiers began coming to [their] door to find out who was living there.” Terrified that they would be discovered, they “moved to [Claimant’s] parents’ house next door to try to get away from the soldiers who were occupying [their] garage.”

Claimant states that, while at his parents’ house, the “Iraqis kept coming to the door and told [his] father that if he was hiding Americans he would be arrested and punished.” Indeed, Claimant maintains that the “Iraqis were going door-to-door looking for Americans . . . and the Iraqi leadership had declared that anyone harboring or hiding Americans would be executed.” He describes one incident in which, after opening his garage door to investigate a commotion, “Iraqi soldiers came charging through the door into the house with their guns drawn.”

On September 12, 1990, after an August 28, 1990 announcement by Saddam Hussein that foreign national women and minors could leave the country, Claimant’s

wife and daughters were able to take an evacuation flight out of Kuwait.¹¹ Meanwhile, Claimant decided to attempt to escape across the Iraq-Jordan border using an expired Jordanian passport. On September 11, 1990, he and his sister took a taxi to Baghdad and went to the Jordanian embassy to see if it would be possible to obtain “any kind of travel document” given his expired Jordanian passport. The embassy was unable to assist him, and Claimant states that he and his sister “had to stay in Baghdad that night and then head back to Kuwait.”

Claimant states that he returned to his parents’ house in Kuwait and “stayed there for the duration with the Iraqis camped next door in [his] house.” He notes that he “stayed home at all times, knowing that one mistake could mean death.” In addition to the constant bombing and military activity taking place in the vicinity, Claimant states that the “Iraqis came to the house every day or so, asking who was living there . . . I told them I was Jordanian.”

Claimant alleges that “during the first week of October, 1990, the U.S. Embassy called and told [him] to evacuate on October 10, 1990.” On that day, he went to a local hotel “with other Americans and Arab-Americans with American visas.” He notes that “this was the first evacuation of Arab-Americans [sic] men.” Claimant alleges that he then boarded a bus to Basra, Iraq, from there flew to Baghdad, and then boarded a plane to London-Gatwick Airport.

Supporting Evidence

Claimant has supported his claim with, among other things, two sworn declarations, dated October 17, 2015, and July 18, 2017, in which he describes his ordeal in Kuwait and Iraq; numerous contemporaneous news articles specifically referring to

¹¹ See Claim No. IRQ-II-149, Decision No. IRQ-II-162, at 7 (2017) (citing Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 11).

Claimant and his ordeal; a State of North Carolina Repatriation Processing Check Sheet evidencing Claimant's arrival in the United States on October 12, 1990; and a copy of Claimant's U.S. passport valid at the time of the Iraqi invasion, which contains, *inter alia*, a Kuwaiti entry stamp dated October 16, 1989; an Iraqi exit stamp dated October 10, 1990; a London-Gatwick entry stamp dated October 11, 1990; and a U.S. entry stamp dated October 12, 1990.

The Commission also takes notice of additional documents, submitted by other claimants in this Iraq Claims Program, 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 a lawsuit brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War.

Legal Standard

To make out a substantive claim under Category A of the 2014 Referral, a claimant must show that (1) Iraq was engaged in an armed conflict and (2) during that conflict, Iraq took the claimant hostage.¹² The Commission has previously held that, to establish a hostage-taking claim, 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

¹² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16. An estate claimant would of course need to make this showing as to its decedent.

doing any act as an explicit or implicit condition for the claimant's release.¹³ A claimant can establish the first element of this standard by showing that the Iraqi government confined the claimant to a particular location or locations within Iraq or Kuwait, or prohibited the claimant from leaving Iraq and/or Kuwait.¹⁴

Application of Standard to this Claim

(1) Armed Conflict: Claimant alleges that Iraq took him hostage in Iraq on August 2, 1990, and held him hostage for 70 days, until October 10, 1990, when he flew from Baghdad to London. 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.¹⁵ 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 him 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 satisfies this standard for the 70-day period from August 2, 1990, to October 10, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, his time in Iraq following the Iraqi invasion can be divided into two periods: (i) between the Iraqi invasion on August 2, 1990 and the Iraqi government's formal closing of the borders on August 9, 1990; and

¹³ See *id.* at 17-20.

¹⁴ See *id.* at 17.

¹⁵ See *id.* at 16-17.

(ii) from that August 9th formal closing of the borders until Claimant's departure on October 10, 1990.¹⁶

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant first to his own home in Messilah, Kuwait, then to his parents' home next door, by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁷ Although some foreign nationals did manage to leave Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁸ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.¹⁹ Claimant 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 made any attempt to leave the country.²⁰ The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Claimant in this situation in effect amounts to detention.²¹ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until he left Kuwait on October 10, 1990, the Iraqi government confined Claimant to Kuwait and Iraq, preventing him leaving these countries by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed all borders under its control, forcibly prohibiting U.S. nationals from leaving.²² As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving Kuwait and Iraq, effectively detaining him within the borders of

¹⁶ *See id.* at 20-21.

¹⁷ *See id.* at 21.

¹⁸ *See id.*

¹⁹ *See id.*

²⁰ 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.

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

²² *See id.* at 7, 21-22.

these countries.²³ Although Claimant notes that he departed Kuwait on the first evacuation flight of Arab-American men on October 10, 1990, suggesting that he may have been permitted to leave due to his Arab origin, it does not matter why Claimant was allowed to leave under the standard that applies here.²⁴ Because the evidence suggests that Claimant remained subject to Iraq's policy of prohibiting U.S. nationals from leaving until he departed Kuwait on October 10, 1990, and that he could not have reasonably left Kuwait or Iraq any earlier than he did,²⁵ Iraq effectively detained him within those countries' borders until October 10, 1990, regardless of the reason he was ultimately allowed to leave.

In sum, Iraq detained Claimant from August 2, 1990, until October 10, 1990.

(b) Threat: In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission determined that the Iraqi government threatened U.S. nationals in Kuwait and Iraq numerous times with continued detention.²⁶ Both Iraqi President Saddam Hussein and the Speaker of Iraq's National Assembly Saadi Mahdi made clear that American nationals (as well as those from numerous other countries) would not be permitted to leave.²⁷ Claimant has thus established that Iraq threatened to continue to detain him.

(c) Third party coercion: The Commission has previously held that Iraq detained all U.S. nationals in Kuwait or Iraq at the time and threatened them with

²³ See *id.* at 22.

²⁴ Claimant was born in Jordan, and the Commission has previously noted that Iraq purportedly released some U.S. national men of Arab origin or descent around this time. See Claim No. IRQ-II-117, Decision No. IRQ-II-102 (2017); Claim No. IRQ-II-328, Decision No. IRQ-II-081 (2017).

²⁵ See Claim No. IRQ-II-117, Decision No. IRQ-II-102, at 8-9 (noting that Margaret Tutwiler, who was Assistant Secretary of State for Public Affairs at that time, reported that on August 30, 1990, Iraq asked the chargé d'affaires of the U.S. Embassy in Baghdad to submit passports of, among others, Arab-born males holding U.S. citizenship but subsequently refused to grant exit visas to individuals in this category).

²⁶ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

²⁷ See *id.*

continued detention in order to compel the United States government to act in certain ways as an explicit and/or implicit condition for their release.²⁸ Iraq itself stated that it sought three things from the United States government before it would release the detained U.S. nationals; it wanted the United States (i) not to attack Iraq, (ii) to withdraw its troops from Saudi Arabia; and/or (iii) to end the economic embargo imposed on Iraq.²⁹ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁰

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 70 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.³¹ Therefore, for the 70 days Iraq held Claimant hostage, he is entitled to an award of \$500,000, which is \$150,000 plus (70 x \$5,000). This amount constitutes the entirety of the compensation to which Claimant is entitled under the Claims Settlement Agreement.

²⁸ *See id.* at 23.

²⁹ *See id.* at 23-24.

³⁰ *See* George H. W. Bush, "These Innocent People . . . Are, In Fact, Hostages" in U.S. Dep't of State, *American Foreign Policy Current Documents 1990* 484 (Sherrill Brown Wells ed. 1991); *see also* 2014 Referral at ¶ 3; *cf.* United Nations S.C. Res. 674 (Oct. 29, 1990) (noting "actions by . . . Iraq authorities and occupying forces to take third-State nationals hostage" and demanding that Iraq "cease and desist" this practice).

³¹ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

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.³²

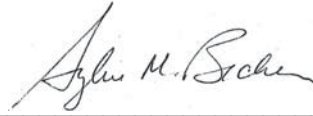
AWARD

Claimant is entitled to an award in the amount of \$500,000.

Dated at Washington, DC, August 9, 2018
and entered as the Proposed Decision
of the Commission.

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

October 15, 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 22 U.S.C. §§ 1626-1627 (2012).