

**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-383

Decision No. IRQ-II-317

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 between August 1990 and February 1991. Because he has established that Iraq held him hostage for 127 days, he is entitled to an award of \$785,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was a U.S. citizen living in Kuwait with his family when Iraq invaded the country on August 2, 1990. He asserts that, beginning with the invasion and for approximately six months thereafter, he was forced to hide in constant fear of being captured by Iraqi authorities. Claimant contends that he was released on February 26, 1991, after Kuwait was liberated by a U.S.-led coalition force.

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 first having been by letter dated November 14, 2012 ("2012 Referral" or "November 2012 Referral").⁶

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").

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

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

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.

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

On August 4, 2017, 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 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 his naturalization certificate, which shows that he was a U.S. national at the time of the alleged hostage-taking (August 1990). He has also provided a copy of a recent U.S. passport, which expired in 2017 and establishes 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) (2012).

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

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 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 “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 February 26, 1991, a total of 209 days. On August 2, 1990, Claimant was living in Kuwait with his family when Iraq invaded the country. He asserts that he and his family hid in their apartment to avoid being captured by Iraqi forces, who had established a checkpoint in

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

front of their building. Claimant maintains that he was released on February 26, 1991, after a U.S.-led multilateral force liberated Kuwait. Claimant left Kuwait with his family on June 15, 1991.

Supporting Evidence

Claimant has supported his claim with a declaration that describes the circumstances of his detention; a copy of his contemporaneous U.S. passport, which contains a Kuwaiti entry stamp dated August 18, 1989, and a Kuwaiti exit stamp dated June 15, 1991; an immunization record from a private school in Kuwait that states that his youngest daughter was administered the Hepatitis B vaccine on March 27, 1990, June 27, 1990, and September 27, 1990; a declaration from a Kuwaiti doctor who states that she lived in the same building as Claimant, vaccinated Claimant's daughter in Kuwait in September 1990, and saw Claimant and his family frequently during and after the occupation; and a letter dated February 20, 2001, from a Kuwait organization stating that it had employed him until August 2, 1990, and that he resumed service after the liberation on April 1, 1991.

The Commission also 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 foreign nationals after it authorized them to leave Iraq and Kuwait on December 6, 1990.

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.¹¹ 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 doing any act as an explicit or implicit condition for the claimant's release.¹² 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.¹³

Application of Standard to this Claim

(1) Armed Conflict: Claimant alleges that Iraq took him hostage in Kuwait on August 2, 1990, and held him hostage for 209 days, until February 26, 1991, which is the date that he alleges a U.S.-led coalition force liberated Kuwait. 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.¹⁴ 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. Although he alleges that Iraq held him hostage

¹¹ 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.

¹² See *id.* at 17-20.

¹³ See *id.* at 17.

¹⁴ See *id.* at 16-17.

from August 2, 1990, until February 26, 1991, a total of 209 days, Claimant satisfies this standard only for the 127-day period from August 2, 1990, to December 6, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, his time in Kuwait following the Iraqi invasion can be divided into three periods: (i) between the Iraqi invasion on August 2, 1990 and the Iraqi government's formal closing of the borders on August 9, 1990; (ii) from that August 9th formal closing of the borders until the December 6, 1990 announcement that all remaining foreign nationals could leave Iraq and Kuwait; and (iii) from that December 6th announcement until Claimant's alleged release on February 26, 1991.¹⁵

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to his residence in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁶ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁷ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.¹⁸ Claimant 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 his residence.¹⁹ The Commission has previously recognized that for the purposes of the legal

¹⁵ *See id.* at 20-21.

¹⁶ *See id.* at 21.

¹⁷ *See id.*

¹⁸ *See id.*

¹⁹ 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.

standard applicable here, putting Claimant in this situation in effect amounts to detention.²⁰ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until December 6, 1990, the Iraqi government confined Claimant to Kuwait, preventing him from leaving the country by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed Kuwait's borders, forcibly prohibiting U.S. nationals from leaving.²¹ As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving the country, effectively detaining him within the borders of Kuwait and Iraq.²² For Claimant, this formal policy of prohibiting U.S. nationals from leaving Iraq and Kuwait lasted until December 6, 1990, when the Iraqi government announced that all remaining foreign nationals could leave.²³

Although Claimant may have been legally permitted to leave Kuwait on December 6, 1990, his detention did not necessarily end on that date. As the Commission has previously recognized, a claimant's detention ends only on the date that he is released from the control of the person or entity that detained him.²⁴ In this regard, any attempt by Iraq "to restrict [the] movements" of a claimant establishes control,²⁵ whereas a claimant who has a reasonable opportunity to leave the site of his or her captivity is deemed no longer to be under [Iraq's] control.²⁶

Here, while Claimant advances several reasons why he remained under Iraq's control after December 6, 1990, only one of these reasons concerns acts allegedly

²⁰ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²¹ See *id.* at 21-22.

²² See *id.* at 22.

²³ See *id.*

²⁴ 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).

²⁵ 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)).

²⁶ See *id.*

committed by the Iraqi government: Claimant argues that due to the presence of Iraqi military forces in the vicinity of his apartment, it was not “safe” for him to attempt to leave prior to February 26, 1991—*i.e.*, the date Kuwait was officially liberated from Iraq.²⁷ Under the international law applicable to armed conflict, however, the mere presence of an occupying or belligerent force, including the establishment of a military checkpoint, is not sufficient to establish the injury of detention. We reject Claimant’s contention that Iraq acted to restrict his movements by virtue of its military’s presence in his neighborhood after December 6, 1990, and conclude that he has failed to establish that Iraq detained him after that date.

In sum, Iraq thus detained Claimant from August 2, 1990, to December 6, 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.²⁸ 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 have been permitted to leave Kuwait and/or Iraq at that time.²⁹ 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 continued detention in order to compel the United States government to act in certain ways as an

²⁷ Claimant also argues that he had no access to television or radio and could not leave because he was unaware of the December 6, 1990 announcement, a previous announcement applicable to women and children, and evacuation flights chartered by the U.S. government. This argument, however, does not address an attempt *by Iraq* to restrict Claimant’s movements after December 6, 1990. We thus make no findings on these issues.

²⁸ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

²⁹ See *id.*

explicit and/or implicit condition for their release.³⁰ 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.³¹ Indeed, the U.S. government itself understood Iraq's actions to be hostage-taking.³²

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 127 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.³³ Therefore, for the 127 days Iraq held Claimant hostage, he is entitled to an award of \$785,000, which is \$150,000 plus (127 x \$5,000). This amount constitutes the entirety of the compensation to which Claimant is entitled under the Claims Settlement Agreement.

³⁰ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

³¹ See *id.* at 23-24.

³² 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).

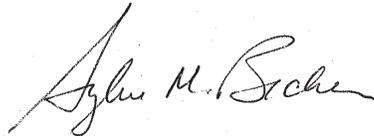
³³ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

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.³⁴

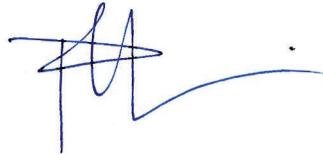
AWARD

Claimant is entitled to an award in the amount of \$785,000.

Dated at Washington, DC, November 29, 2018
and entered as the Proposed Decision
of the Commission.



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).

³⁴ 22 U.S.C. §§ 1626-1627 (2012).