

**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)

Against the Republic of Iraq

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Claim No. IRQ-II-242

Decision No. IRQ-II-304

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 the decedent, Benny C. Whitaker, hostage in violation of international law in August 1990. Because the Estate has established that Iraq held Mr. Whitaker hostage for two days, it is entitled to an award of \$160,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Whitaker was living in Kuwait when Iraq invaded the country on August 2, 1990. It asserts that, for two days, he “was prohibited from leaving Iraqi controlled territory and [was] otherwise detained as a hostage in Kuwait by the Iraqi regime in violation of international law.” According to the Estate, during this time, Mr. Whitaker was confined to his apartment as Iraqi military personnel gathered in the streets outside his complex. It further alleges that on August 3, 1990, Mr. Whitaker

and several other individuals escaped via land to Saudi Arabia. Mr. Whitaker died in February 2018.

Although neither Mr. Whitaker 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 23, 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 the elements of its claim.

DISCUSSION

Standing

As an initial matter, the Commission has reviewed the Letters of Temporary Administration, issued on July 26, 2018, by the County Court of Jones County, Texas, appointing Reppy Von Whitaker temporary administrator of Benny Whitaker's estate. Based on this review, the Commission finds that the ESTATE OF BENNY C. WHITAKER, DECEASED; REPPY VON WHITAKER, ADMINISTRATOR, 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 Litigation"), and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral at ¶ 3.

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).

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 Estate satisfies the nationality requirement. It has provided a copy of Mr. Whitaker’s U.S. passport valid from 1989 to 1999, which shows that he was a U.S. national at the time of the alleged hostage-taking (August 1990). Claimant Estate has also provided copies of official U.S. Government records, published between March 1999 and June 2011, confirming that Claimant did not lose his United States nationality during that time period. This evidence substantiates that Claimant was a U.S. national at the time of the alleged hostage-taking, and that he remained a U.S. national through the effective date of the Claims Settlement Agreement.

No Pending Litigation

Additionally, Category A states that the claimant must 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 Estate, through its administrator, has averred under oath in an April 2016 declaration, and the pleadings in the cases cited in footnote 3 confirm, that neither Mr. Whitaker nor his estate was a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant Estate has also satisfied this element of its claim.

⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5 (2016).

¹⁰ 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*

Claimant Estate also satisfies the final jurisdictional requirement. Reppy Von Whitaker, the administrator of Benny Whitaker's estate, has stated that the decedent never "receive[d] any compensation under the [Claims Settlement Agreement] from the Department of State." Further, we have no evidence that the State Department has provided the decedent or his estate 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 asserts that Iraq held Mr. Whitaker hostage for two days, from August 2, 1990, until August 3, 1990. It states that he was living in an apartment in Kuwait with his wife when Iraq invaded the country on August 2, 1990. According to declarations submitted by Mr. Whitaker's son, Reppy Von Whitaker, Mr. Whitaker learned of the invasion early in the morning on August 2, 1990. He saw "armed Iraqi military personnel on the streets outside their apartment complex, and heard the sounds of exploding bombs echoing in the distance." Mr. Whitaker was "[d]esperate to escape capture by the Iraqi security forces," so he and his wife decided to flee. The next day, on August 3, 1990, the Whitakers joined a convoy of vehicles headed for Saudi Arabia, which they described as "a very risky endeavor" That same day, August 3, 1990, "they reached Saudi Arabia undetected by the Iraqi authorities and were waved across the border and into safety."

Supporting Evidence

Claimant Estate has supported its claim with, among other things, two sworn statements from Reppy Von Whitaker, dated April 30, 2016, and August 4, 2018, describing his father's experience in Kuwait as told to him after his return to the United States; several contemporaneous news articles verifying the details of Mr. Whitaker's alleged hostage experience, and which confirm the date of his escape into Saudi Arabia; and a copy of Mr. Whitaker's then-valid U.S. passport, which contains *inter alia*, a Kuwaiti entry visa dated January 11, 1990, a Saudi entry stamp dated August 3, 1990, a Saudi exit stamp dated August 4, 1990,¹¹ and a U.S. entry stamp from Chicago, Illinois, dated August 5, 1990.

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 a lawsuit brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War.

¹¹ The passport is stamped with dates from the Islamic Hijri calendar used by the Kingdom of Saudi Arabia. For the purposes of this decision, the dates have been converted to the Gregorian calendar. *See* <http://www.ummulqura.org.sa/Index.aspx> (last visited October 25, 2018); Claim No. IRQ-II-170, Decision No. IRQ-II-159, at 7 & n.11 (2017) (explaining the conversion of dates from the Islamic Hijri calendar to the Gregorian calendar used by the United States, Kuwait, and Iraq at the time of the incident).

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 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 (or, in this case, the Claimant Estate's decedent) 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 Estate alleges that Iraq took Mr. Whitaker hostage in Kuwait on August 2, 1990, and held him hostage for two days, until August 3, 1990, when he escaped to Saudi Arabia. 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 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 the

¹² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16. In claims such as this that involve an estate claimant, this applies to the claimant's decedent.

¹³ See *id.* at 17-20.

¹⁴ See *id.* at 17.

¹⁵ See *id.* at 16-17.

decident 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 two-day period from August 2, 1990 to August 3, 1990.

(a) Detention/deprivation of freedom: From August 2, 1990, until he escaped to Saudi Arabia on August 3, 1990, Iraq confined Mr. Whitaker to 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, Mr. Whitaker 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 Mr. Whitaker 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.¹⁹ The Commission has previously recognized that for the purposes of the legal standard applicable here, putting a claimant in this situation in effect amounts to detention.²⁰ Iraq thus detained Mr. Whitaker from August 2, 1990, to August 3, 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.²¹ Both Iraqi President Saddam Hussein and the Speaker of Iraq’s National Assembly Saadi

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.

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

²¹ *See id.* at 23.

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 the time Mr. Whitaker escaped to Saudi Arabia.²² Claimant Estate has thus established that Iraq threatened to continue to detain Mr. Whitaker.

(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 explicit and/or implicit condition for their release.²³ 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.²⁴ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.²⁵

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. Iraq held Mr. Whitaker hostage in violation of international law for a period of two days, and his 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 compensation

²² *See id.*

²³ *See id.*

²⁴ *See id.* at 23-24.

²⁵ *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).

in the amount of \$150,000 plus an additional \$5,000 for each day the claimant was in captivity.²⁶ Therefore, for the two days Iraq held Mr. Whitaker hostage, his Estate is entitled to an award of \$160,000, which is \$150,000 plus (2 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.²⁷

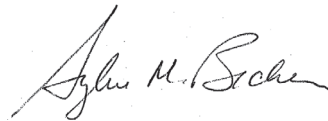
AWARD

Claimant Estate is entitled to an award in the amount of \$160,000.

Dated at Washington, DC, October 25, 2018
and entered as the Proposed Decision
of the Commission.

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

December 18, 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).

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

²⁷ 22 U.S.C. §§ 1626-1627 (2012).