

**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)	}	Claim No. IRQ-II-400
5 U.S.C. §552(b)(6)	}	
	}	Decision No. IRQ-II-308
	}	
Against the Republic of Iraq	}	

PROPOSED DECISION

Claimant Estate brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held the decedent, Fareed Saba, hostage in violation of international law in August and September 1990. Because it has established that Iraq held Mr. Saba hostage for 31 days, it is entitled to an award of \$305,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Saba was a seven-year-old United States citizen visiting his family in Iraq when Iraq invaded Kuwait on August 2, 1990. It asserts that, beginning with the invasion and for approximately one month thereafter, he was forced to hide in Iraq in constant fear of being captured by Iraqi authorities. Claimant Estate further claims that Mr. Saba flew out of Baghdad, Iraq on September 1, 1990, after the Iraqi government authorized female and minor U.S. nationals to leave. Mr. Saba died on May 25, 2014, at the age of 31.

Although Mr. Saba 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 July 9, 2018, 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

Claimant Estate has submitted Letters of Administration, issued on September 12, 2018, by the Circuit Court for Seminole County, Florida, appointing Rochelle L. Gates as personal representative of Mr. Saba's estate. Accordingly, the Commission concludes that ESTATE OF FAREED SABA, DECEASED; ROCHELLE L. GATES, 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 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

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.

Claimant Estate satisfies the nationality requirement. It has provided a copy of Mr. Saba's U.S. passport valid in 1990, which shows that he was a U.S. national at the time of the alleged hostage-taking. It has also provided records from the U.S. Department of State that show that Mr. Saba was issued a U.S. passport on March 8, 2005, and that the passport was valid for ten years. The Commission also takes notice of voter registration records from Florida, which show that Mr. Saba was registered to vote in that state on June 29, 2005. These records are sufficient to establish that Mr. Saba remained a U.S. national through the effective date of the Claims Settlement Agreement.

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. Ms. Gates 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 Estate has also satisfied this element of its claim.

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

Claimant Estate also satisfies the final jurisdictional requirement. Ms. Gates has stated that neither Mr. Saba nor his estate has "received compensation under the Claims Settlement Agreement from the U.S. Department of State." Further, we have no evidence

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

that the State Department has provided either 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. Saba hostage from August 2, 1990, until September 1, 1990, a total of 31 days. It alleges that he was seven years old and visiting Iraq with his family at the time of the invasion. On September 1, 1990, Mr. Saba and his family were evacuated from Iraq on a Lufthansa charter flight that flew from Baghdad to Frankfurt.

Supporting Evidence

Claimant Estate has supported its claim with, among other things, a copy of Mr. Saba's U.S. passport, which contains an Iraqi exit stamp dated September 1, 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

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.

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 Estate alleges that Iraq took Mr. Saba hostage in Iraq on August 2, 1990, and held him hostage for 31 days, until September 1, 1990, when 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.¹⁴ Thus, Claimant Estate satisfies this element of the standard.

(2) Hostage-taking: To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant Estate must show that Iraq (a) seized or detained Mr. Saba 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 31-day period from August 2, 1990, to September 1, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant Estate's allegation that Mr. Saba was detained, his time in Iraq 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

¹² See *id.* at 17-20.

¹³ See *id.* at 17.

¹⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

that August 9th formal closing of the borders until the August 28, 1990 announcement that women and minors could leave Iraq and Kuwait; and (iii) from that August 28th announcement until Mr. Saba's departure on September 1, 1990.¹⁵

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Mr. Saba within Iraq. The Commission has previously determined that Iraq detained U.S. nationals who were in Iraq during this period by threatening them with forcible detention.¹⁶ Although some foreign nationals did manage to leave Iraq during this period, Mr. Saba could not reasonably be expected to have escaped.¹⁷ Iraqi authorities were forcibly detaining and confining foreign nationals (including U.S. nationals) in Kuwait and Iraq, relocating many to Baghdad against their will.¹⁸ Mr. Saba would have understandably had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being forcibly detained if he attempted to leave the country.¹⁹ The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Mr. Saba in this situation in effect amounts to detention.²⁰ Iraq thus detained Mr. Saba from August 2, 1990, to August 9, 1990.

From August 9, 1990, until he flew from Baghdad to Frankfurt on September 1, 1990, the Iraqi government confined Mr. Saba to Iraq, preventing him from leaving the country by the threat of force. As the Commission has previously held, starting on August

¹⁵ *See id.* at 20-21.

¹⁶ *See* Claim No. IRQ-II-281, Decision No. IRQ-II-139, at 9-10.

¹⁷ *See id.* at 10 n.23.

¹⁸ *See id.* at 10.

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.

9, 1990, the Iraqi government formally closed Iraq's borders, forcibly prohibiting U.S. nationals from leaving.²¹ As of that date, Iraq formally prohibited Mr. Saba from leaving the country, effectively detaining him within the borders of Iraq.²² For Mr. Saba, this formal policy of prohibiting U.S. nationals from leaving Iraq lasted until August 28, 1990, when the Iraqi government announced that all female and minor U.S. nationals could leave.²³

Although Mr. Saba may have been legally permitted to leave Iraq on August 28, 1990, his detention did not 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 Any attempt "[by the perpetrator] 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 the perpetrator's control.²⁶

Under this standard, Mr. Saba remained under Iraq's control until September 1, 1990. The Commission has recognized that Iraq imposed conditions on air travel that limited the ability of foreign nationals, including U.S. nationals, to leave Iraq and/or Kuwait immediately after the August 28, 1990 release announcement.²⁷ Indeed, the available evidence indicates that Mr. Saba left Iraq at the first reasonable opportunity, on the September 1, 1990 evacuation flight that left Iraq. Because there is no evidence that

²¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 7, 21-22.

²² See *id.* at 22.

²³ See *id.* at 21-22.

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 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.*

²⁷ See *id.*

Mr. Saba remained voluntarily in Iraq at any time during this period, we conclude that he was under Iraq's control and thus detained from August 28, 1990, to September 1, 1990.

In sum, Iraq thus detained Mr. Saba from August 2, 1990, until September 1, 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 This included Mr. Saba.²⁹ 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.³⁰

In short, the Iraqi government made unequivocal threats to continue to detain U.S. nationals in Kuwait and Iraq. Mr. Saba was a U.S. national in Iraq at the time. Claimant Estate 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 explicit and/or implicit condition for their release.³¹ 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

²⁸ See *id.* at 23.

²⁹ While we determine that these statements apply to Mr. Saba and other similarly situated U.S. nationals who were prevented from leaving Iraq or Kuwait after the invasion, we do not make any findings as to whether they also apply to U.S. nationals with diplomatic status: Iraqi officials made specific representations about the ability of diplomatic and consular staff members with U.S. nationality (and their relatives) to leave Iraq and Kuwait throughout the crisis. See *In Iraq: 'We Have A Problem' Iraq Holds Fleeing U.S. Diplomats Staff from Kuwait Reaches Baghdad, But Can't Leave*, PHILA. INQUIRER, Aug. 24, 1990, <https://perma.cc/B2YF-79AY>.

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

³¹ See *id.*

Saudi Arabia; and/or (iii) to end the economic embargo imposed on Iraq.³² Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³³

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. Iraq held Mr. Saba hostage in violation of international law for a period of 31 days, and Claimant Estate is thus entitled to compensation.

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation.

In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that successful claimants should be awarded compensation in the amount of \$150,000 plus an additional \$5,000 for each day the claimant was in captivity.³⁴ Therefore, for the 31 days Iraq held Mr. Saba hostage, Claimant Estate is entitled to an award of \$305,000, which is \$150,000 plus (31 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.³⁵

³² See *id.* at 23-24.

³³ 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).

³⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁵ 22 U.S.C. §§ 1626-1627 (2012).

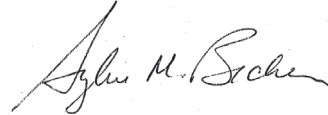
AWARD

Claimant Estate is entitled to an award in the amount of \$305,000.

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).