**FOREIGN CLAIMS SETTLEMENT COMMISSION**
**OF THE UNITED STATES**
**UNITED STATES DEPARTMENT OF JUSTICE**
**WASHINGTON, D.C. 20579**

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| In the Matter of the Claim of<br><br>5 U.S.C. §552(b)(6)<br><br>Against the Republic of Iraq | Claim No. IRQ-II-351<br><br>Decision No. IRQ-II-321 |

Counsel for Claimant: Anthony Onorato, Esq.
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PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq ("Iraq") alleging that Iraq held her hostage in violation of international law in August and September 1990. Because she has established that Iraq held her hostage for 44 days, she is entitled to an award of $370,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was a two-month old United States citizen living in Kuwait when Iraq invaded the country on August 2, 1990. She asserts that, beginning with the invasion and for approximately six weeks thereafter, she and her family were confined to their house as Iraqi troops overtook their neighborhood and searched for Americans. Claimant and her mother and siblings eventually boarded an evacuation flight to London via Baghdad on September 14, 1990.

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

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[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-taking[1] by Iraq[2] 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 taking[3] 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. . . .
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> [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.
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> [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.
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> [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]

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[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 March 29, 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 her 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. She has provided a copy of her U.S. State Department-issued Certification of Birth Abroad of a Citizen of the United States of America and a copy of her U.S. passport issued in December 1991 (also evidencing her birth in Kuwait in June 1990), which show that she was a U.S. national at the time of the alleged hostage-taking (August and September 1990). She has also provided copies of

[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 (2016).

each of her U.S. passports until the present date, which establish that she remained a U.S. national through the effective date of the Claims Settlement Agreement.[10]

*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.[11] Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant has averred under oath in a March 2017 declaration submitted with her claim, and the pleadings in the cases cited in footnote 3 confirm, that she was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of her 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 she 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 her any compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of her claim.

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

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[10] The validity periods for three of these passports overlap: one is valid from August 2012 to August 2022, another from July 2016 to July 2017, and another from June 2017 to June 2027. In a supplemental declaration submitted with her claim, Claimant explains that the first of these passports was stolen while traveling; the second was a one-year temporary passport, and the third was the replacement.

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

Merits

*Factual Allegations*

Claimant states that Iraq held her hostage from August 2, 1990, until September 14, 1990, a total of 44 days. She alleges that she was living with her parents and two siblings at her father's family's house in Al-Khaldiah, Kuwait, when Iraq invaded the country on August 2, 1990. Because of her age at the time, Claimant has no personal memory of her ordeal. She describe her experience in a sworn statement based on information told to her by her family and friends. Claimant states that, after the invasion began, "the phone lines were cut and [she and her family] huddled together in fear as the windows shook from gunfire and explosions." She describes how the "Iraqi military overtook [their] area," and that they were in particular danger because people in their neighborhood "knew [her] mother was American and the Iraqis were searching for Americans to take hostage, and were threatening to execute Kuwaitis who sheltered Americans."

On August 28, 1990, Iraqi President Saddam Hussein announced that foreign national women and minors could leave the country.[12] In response, between September 1, 1990 and September 23, 1990, the U.S. government organized several charter flights from Iraq and Kuwait to repatriate those released U.S. nationals wishing to return to the United States.[13] Accordingly, on September 14, 1990, Claimant and her mother and siblings got in a car that took them to a meeting point, where they boarded a bus for the airport and boarded an evacuation flight to Baghdad, which continued on to London that same day. They arrived in the United States on September 15, 1990.

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[12] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 11.
[13] *See id*. at 12-13.

*Supporting Evidence*

Claimant has supported her claim with, among other things, two of her own sworn declarations, dated March 20, 2017, and November 27, 2018, in which she describes her ordeal in Kuwait and evacuation on September 14, 1990; a sworn declaration, dated February 23, 2017, from her aunt, who was in the United states at the time, verifying that Claimant was present in Kuwait during the dates alleged, adding that she called Claimant's mother via telephone the day of the invasion and was updated on her and her family's status by the U.S. State Department throughout their captivity; three contemporaneous news articles describing the situation in Iraq and Kuwait during the invasion which specifically mention Claimant and discuss her ordeal in detail; copies of photographs said to depict Claimant arriving home in the United States after her captivity in Kuwait, with handwritten notes on the back describing the scene and identifying the date as September 16, 1990; a 1991 letter from the Kuwaiti government concerning potential benefits for Kuwaitis affected by the invasion; and a copy of an uncompleted U.S. Government claim form for U.S. nationals against Iraq, attached to a February 1991 letter from the U.S. Treasury Department. The Commission notes that, while Claimant herself did not have a U.S. passport at the time of the incident, her parents and siblings did, and each of her siblings' passports includes an Iraqi exit stamp dated September 14, 1990, a London-Gatwick entry stamp dated September 14, 1990, and a U.S. entry stamp dated September 15, 1990.[14]

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

[14] *See* Claim No. IRQ-II-349, Decision No. IRQ-II-310 (2018); Claim No. IRQ-II-350, Decision No. IRQ-II-311 (2018). Both siblings, as well as Claimant's mother, received an award for the same length of time that Claimant alleges she was held hostage here.

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.[15] 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.[16] 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.[17]

*Application of Standard to this Claim*

(1) Armed Conflict: Claimant alleges that Iraq took her hostage in Kuwait on August 2, 1990 and held her hostage for 44 days, until September 14, 1990, when she was evacuated to the United States. In its first decision awarding compensation for hostage-

[15] *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.
[16] *See id.* at 17-20.
[17] *See id.* at 17.

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 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 her and (b) threatened her 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 her release. Claimant satisfies this standard for the 44-day period from August 2, 1990, to September 14, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, her 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 August 28, 1990 announcement that women and minors could leave Iraq and Kuwait; and (iii) from that August 28th announcement until Claimant's departure on September 14, 1990.[19]

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to her family's residence by threatening all U.S. nationals with immediate seizure and forcible detention.[20] Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.[21] Iraqi authorities were forcibly detaining

[18] *See id.* at 16-17.
[19] *See id.* at 20-21.
[20] *See id.* at 21.
[21] *See id.*

foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.[22] Claimant understandably had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being killed or forcibly detained if she and her family had made any attempt to leave the country.[23] 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.[24] Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until she departed Iraq on September 14, 1990, the Iraqi government confined Claimant to Kuwait, preventing her 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.[25] As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving the country, effectively detaining her within the borders of Kuwait and Iraq.[26] For Claimant, this formal policy of prohibiting U.S. nationals from leaving Kuwait and Iraq lasted until August 28, 1990, when the Iraqi government announced that all female and minor U.S. nationals could leave.[27]

Although Claimant may have been legally permitted to leave Kuwait on August 28, 1990, her detention did not end on that date. As the Commission has previously recognized, a claimant's detention ends only on the date that she is released from the

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[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.
[24] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.
[25] *See id.* at 21-22.
[26] *See id.* at 22.
[27] *See id.*

control of the person or entity that detained her.[28] Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,[29] 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.[30]

Under this standard, Claimant remained under Iraq's control until September 14, 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.[31] Indeed, the available evidence indicates that Claimant left Iraq at the first reasonable opportunity, on the September 14, 1990 evacuation flight that left Kuwait. Because there is no evidence that Claimant remained voluntarily in Kuwait and/or Iraq at any time during this period, we conclude that she was under Iraq's control and thus detained from August 28, 1990, to September 14, 1990.

In sum, Iraq thus detained Claimant from August 2, 1990, until September 14, 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.[32] 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)

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[28] *See id.* at 22; *see also* Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).
[29] 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)).
[30] *See id.*
[31] *See id*.
[32] *See id.* at 23.

would not have been permitted to leave.[33] Claimant has thus established that Iraq threatened to continue to detain her.

(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.[34] 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.[35] Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.[36]

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 44 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

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[33] *See id.*
[34] *See id.*
[35] *See id.* at 23-24.
[36] *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).

captivity.[37] Therefore, for the 44 days Iraq held Claimant hostage, she is entitled to an award of $370,000, which is $150,000 plus (44 x $5,000). This amount constitutes the entirety of the compensation to which Claimant 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.[38]

AWARD

Claimant is entitled to an award in the amount of $370,000.

Dated at Washington, DC, December 13, 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) (2018).

[37] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.
[38] 22 U.S.C. §§ 1626-1627 (2012).