

**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

5 U.S.C. §552(b)(6)

Against the Republic of Iraq  
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Claim No. IRQ-II-365

Decision No. IRQ-II-323

Counsel for Claimant:

William R. Stein, Esq.  
Hughes Hubbard & Reed LLP

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held her hostage in violation of international law between August 1990 and October 1990. Because she has established that Iraq held her hostage for 27 days, she is entitled to an award of \$285,000.

**BACKGROUND AND BASIS OF THE PRESENT CLAIM**

Claimant alleges that she was a one-year-old U.S. citizen living in Kuwait with her family when Iraq invaded the country on August 2, 1990. She asserts that, beginning with the invasion and for 10 weeks thereafter, she was forced to hide in constant fear of being captured by Iraqi authorities. Claimant traveled to Basra, Iraq, on October 10, 1990, and boarded an evacuation flight that left for London (via Baghdad, Iraq) on the same date.

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.<sup>1</sup> Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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").<sup>6</sup>

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<sup>1</sup> 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).

<sup>2</sup> 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").

<sup>3</sup> See *id.* Art. III(1)(a)(ii).

<sup>4</sup> See 22 U.S.C. § 1623(a)(1)(C) (2012).

<sup>5</sup> 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").

<sup>6</sup> 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-taking<sup>1</sup> by Iraq<sup>2</sup> 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<sup>3</sup> 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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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.<sup>7</sup>

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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.

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

On April 17, 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.<sup>8</sup> 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.<sup>9</sup> Claimant satisfies the nationality requirement. Claimant has provided a copy of her U.S. passport valid in 1990, which shows that she was a U.S. national at the time of the alleged hostage-taking (August 1990). She has also provided a copy of her current U.S. passport, which expires in 2025 and establishes that she remained a U.S. national through the effective date of the Claims Settlement Agreement.

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<sup>8</sup> See 22 U.S.C. § 1623(a)(1)(C) (2012).

<sup>9</sup> 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.<sup>10</sup> 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 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 “received any compensation under [the Claims Settlement Agreement] from the Department of State.” 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.

Merits

*Factual Allegations*

Claimant states that Iraq held her hostage from August 2, 1990, until October 10, 1990, a total of 70 days. Claimant asserts that, on August 2, 1990, she was one year old and staying with her uncle and nanny in Kuwait while her parents and siblings were on vacation in Egypt. Claimant states that, on August 3, 1990, her parents and siblings

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

traveled to Jordan but were unable to contact her because telephone lines were not functioning. On August 15, 1990, Claimant's mother entered Iraq, where she remained for eight days before returning to Jordan. Claimant alleges that she was reunited with her family on September 30, 1990, after they traveled from Jordan to Kuwait by car. She further alleges that she continued to hide in Kuwait with her family until they were evacuated on October 10, 1990, on a U.S. government chartered evacuation flight that departed from Basra, Iraq.<sup>11</sup>

*Supporting Evidence*

Claimant has supported her claim with a copy of her U.S. passport that contains an Iraqi exit stamp dated October 10, 1990, declarations from her and her mother that provide more details about her detention and ultimate departure from Kuwait, and a copy of her mother's Jordanian passport, which contains a Kuwaiti exit stamp dated July 15, 1990, an Egyptian entry stamp with the same date, a partially legible Jordanian stamp dated August 3, 1990, an Iraqi entry stamp dated August 15, 1990, and a Jordanian exit stamp dated September 30, 1990.

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 women and minors of foreign nationality after it authorized them to leave Iraq and Kuwait on August 28, 1990.

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<sup>11</sup> For further factual background regarding the State Department efforts to evacuate U.S. women and minors from Iraq and Kuwait following Iraq's August 28 announcement, see Claim No. IRQ-II-143, Decision No. IRQ-II-314 (Proposed Decision), at 5-9.

*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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

*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 70 days, until October 10, 1990. 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.<sup>15</sup> 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

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<sup>12</sup> 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.

<sup>13</sup> See *id.* at 17-20.

<sup>14</sup> See *id.* at 17.

<sup>15</sup> See *id.* at 16-17.

party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for her release. Although she alleges that Iraq held her hostage from August 2, 1990, until October 10, 1990, a total of 70 days, Claimant satisfies this standard only for the 27-day period from August 2, 1990, to August 28, 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 October 10, 1990.<sup>16</sup>

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.<sup>17</sup> Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.<sup>18</sup> Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.<sup>19</sup> Claimant had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being killed or forcibly detained if she had left her residence.<sup>20</sup> The Commission has previously recognized that for the purposes of the legal standard applicable here,

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<sup>16</sup> *See id.* at 20-21.

<sup>17</sup> *See id.* at 21.

<sup>18</sup> *See id.*

<sup>19</sup> *See id.*

<sup>20</sup> 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.



putting Claimant in this situation in effect amounts to detention.<sup>21</sup> Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until August 28, 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.<sup>22</sup> 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.<sup>23</sup> For Claimant, this formal policy of prohibiting U.S. nationals from leaving Iraq and Kuwait lasted until August 28, 1990, when the Iraqi government announced that all female and minor U.S. nationals could leave.<sup>24</sup>

Although Claimant may have been legally permitted to leave Kuwait on August 28, 1990, her detention did not necessarily 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 control of the person or entity that detained her.<sup>25</sup> In this regard, any attempt by Iraq "to restrict [the] movements" of a claimant establishes control,<sup>26</sup> 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.<sup>27</sup>

Here, while Claimant advances multiple reasons why she remained under Iraq's control after August 28, 1990, none of these reasons concern acts allegedly committed by

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<sup>21</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

<sup>22</sup> See *id.* at 21-22.

<sup>23</sup> See *id.* at 22.

<sup>24</sup> See *id.*

<sup>25</sup> 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).

<sup>26</sup> 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)).

<sup>27</sup> See *id.*

the Iraqi government.<sup>28</sup> Moreover, the evidence in the record does not suggest that Iraq placed any such restriction on her movements. Statements made by State Department officials indicate that Iraq allowed several hundred women and children of U.S. nationality to leave Kuwait on evacuation flights from September 1, 1990, to September 22, 1990, and that women and children who remained in the country after September 22 had chosen to stay.<sup>29</sup> These communications establish that the State Department chartered Claimant's flight, which departed on October 10, 1990, and another flight that left on November 18, 1990, to evacuate women and children who initially chose to stay in Kuwait during the mass evacuation in September 1990 but subsequently decided to leave.<sup>30</sup> We thus conclude that Claimant has failed to establish that Iraq detained her after August 28, 1990.

In sum, Iraq thus detained Claimant from August 2, 1990, to August 28, 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.<sup>31</sup> 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.<sup>32</sup> Claimant has thus established that Iraq threatened to continue to detain her.

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<sup>28</sup> Claimant's mother has submitted a declaration that states that she and her family were out of the country when Iraq invaded Kuwait and had no knowledge of Claimant's whereabouts. She also states that she was not able to contact Claimant's uncle, who was caring for her, or the U.S. Embassy in Kuwait to obtain information about evacuating. These arguments, however, do not address an attempt *by Iraq* to restrict Claimant's movements after August 28, 1990. We thus make no finding on these issues.

<sup>29</sup> See Claim No. IRQ-II-143, Decision No. IRQ-II-314 (Proposed Decision), at 6-7, 16.

<sup>30</sup> See *id.* at 7-8.

<sup>31</sup> See *id.* at 23.

<sup>32</sup> See *id.*

(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.<sup>33</sup> 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.<sup>34</sup> Indeed, the U.S. government itself understood Iraq's actions to be hostage-taking.<sup>35</sup>

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 27 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.<sup>36</sup> Therefore, for the 27 days Iraq held Claimant hostage, she is entitled to an award of \$285,000, which is \$150,000 plus (27 x \$5,000). This amount constitutes the

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<sup>33</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

<sup>34</sup> See *id.* at 23-24.

<sup>35</sup> 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).

<sup>36</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

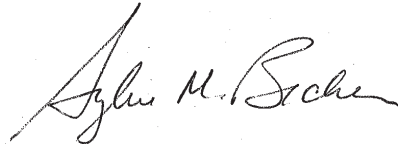
entirety of the compensation to which Claimant is entitled under the Claims Settlement Agreement.

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.<sup>37</sup>

AWARD

Claimant is entitled to an award in the amount of \$285,000.

Dated at Washington, DC, December 13, 2018  
and entered as the Proposed Decision  
of the Commission.



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Sylvia M. Becker, Commissioner



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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).

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<sup>37</sup> 22 U.S.C. §§ 1626-1627 (2012).