

**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-116

Decision No. IRQ-II-276

Counsel for Claimant:

Daniel Wolf, Esq.
Law Office of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held him hostage in violation of international law from August to December 1990. Because he has established that Iraq held him hostage for 134 days, he is entitled to an award of \$820,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was a U.S. diplomat stationed at the U.S. Embassy in Kuwait when Iraq invaded the country on August 2, 1990. He asserts that, beginning with the invasion and for approximately 18 weeks thereafter, he was confined first to the Japanese Embassy in Kuwait, and then to the U.S. Embassy in Kuwait; he later traveled in a convoy to Baghdad, Iraq, where he remained confined to an apartment with several other Americans. Claimant alleges that, during this time, he was “held against [his] will as a hostage in Kuwait and Iraq . . . in violation of international law.” After the Iraqi

government authorized all foreign nationals remaining in Kuwait and Iraq to leave, Claimant flew from Baghdad to Frankfurt, Germany, on December 13, 1990, and continued on to the United States the following day.

In December 2001, a number of 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

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").

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

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." 2012 Referral, *supra*, 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 September 21, 2015, 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 ¶ 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. He has provided a copy of his cancelled U.S. passport, which shows that he was a U.S. national at the time of the alleged hostage-taking (August through December 1990). He has also provided a copy of his current U.S.

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).

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

passport, which establishes 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 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 under oath in a 2015 declaration, and the pleadings in the cases cited in footnote 3 confirm, that he was not a plaintiff in any of those Pending Litigation cases at the time of the entry into force of the Claims Settlement Agreement . 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 never “received any compensation under the [U.S.-Iraq] Claims Settlement Agreement from the Department of State.” 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.

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

Merits

Factual Allegations

Claimant states that Iraq held him hostage from August 2, 1990, until December 13, 1990, a total of 134 days. He alleges that he was one of the U.S. diplomats stationed at the U.S. Embassy in Kuwait when Iraq invaded the country on August 2, 1990.¹¹ He learned of the invasion by telephone early that morning, and later that day, “[a]t the Embassy’s instruction, [he] brought [his] family to the nearby Japanese Embassy,” where he “took refuge” with a number of other American citizens for the next two weeks. Claimant states that, during this time, he and the other Americans “hid in the basement remain[ing] [there] at all times so as not to alert Iraqi troops to [their] presence” Indeed, he “had received word from [the U.S.] Embassy that the Iraqi security forces had arrested a number of British military advisors along with their family members and [he] feared that [they] would meet the same fate if the Iraqis discovered [their] presence.”

Claimant alleges that, on August 15, 1990, officials at the U.S. Embassy instructed him to leave the Japanese Embassy and relocate to the U.S. Embassy compound, which he did. He and his family remained there for one week. Claimant asserts that they “were required to remain in the Embassy compound, as the Iraqi regime had begun to round up, arrest and detain any American citizens and other western nationals it could find.” He adds that on August 16, 1990, “the regime announced that all such nationals had to report to Iraqi authorities or face ‘unspecified difficulties’”

¹¹ For further factual background regarding the Iraqi government’s treatment of U.S. diplomats and other U.S. nationals employed by the U.S. government at the U.S. Embassy in Kuwait after the August 2, 1990 invasion, see Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 5-10 (2018).

Claimant states that the U.S. and Iraqi governments ultimately reached an agreement “under which the Iraqis agreed that [U.S. Government personnel and their dependents seeking refuge at the U.S. Embassy] would be allowed to evacuate the Embassy and given safe passage to Baghdad, where they were all to be issued exit visas and allowed to continue to Jordan.” Claimant was assigned to lead the 110-person convoy, which departed Kuwait City on August 23, 1990, and arrived in Baghdad early in the morning on August 24, 1990. After they arrived, however, they “learned that the Iraqi regime had reneged on its promise to allow [their] convoy through to Jordan[,]” and that they would not be allowed to depart until the U.S. Embassy in Kuwait shut down. Claimant states that the Iraqi government later allowed the women and children from the convoy (including Claimant’s wife and daughters) to continue on to Turkey, but the men would continue to be detained in Baghdad. This convoy left for Turkey on August 26, 1990. Claimant alleges that he was then held in Baghdad for the next 109 days, where he stayed in a single-family apartment with other American men.

On December 6, 1990, the Iraqi government released all foreign nationals remaining in Iraq and Kuwait,¹² and on December 13, 1990, Claimant boarded a flight to Frankfurt, Germany, where he remained for one day before continuing on to the United States. Claimant notes that, following his experience, in January 1991, the U.S. Ambassador to Kuwait endorsed him for the Superior Honor Award “for [his] service in Kuwait and Iraq.” He received this award, which was signed by Secretary of State James Baker III, in February 1991.

¹² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 12.

Supporting Evidence

Claimant has supported his claim with, among other things, a sworn declaration, dated September 16, 2015, in which he describes his ordeal in Kuwait and Iraq; a contemporaneous news article describing the circumstances surrounding Claimant's alleged detention; a copy of Claimant's nomination form for the U.S. State Department Superior Honor Award, containing a detailed description of Claimant's actions from the time of the convoy to Baghdad and his evacuation in December 1990; and a copy of his U.S. passport valid at the time of the Iraqi invasion, which contains, *inter alia*, a Kuwaiti entry stamp dated July 13, 1990; and an Iraqi exit stamp dated December 13, 1990.

Claimant 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 two lawsuits brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War.

Additionally, the Commission 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 U.S. diplomatic personnel accredited to the U.S. Embassy in Kuwait and their dependents after the August 2, 1990 invasion.

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.¹³ The Commission has previously held that, to establish a hostage-taking claim under international law in this program, 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.¹⁴ 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.¹⁵ The legal standard we apply in this program applies equally to diplomatic personnel and their families.¹⁶

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 134 days, until December 13, 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.¹⁷ Thus, Claimant satisfies this element of the standard.

¹³ See *id.* at 16. An estate claimant would of course need to make this showing as to its decedent.

¹⁴ See *id.* at 17-20.

¹⁵ See *id.* at 17.

¹⁶ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 11.

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

(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. Claimant satisfies this standard for the 134-day period from August 2, 1990 to December 13, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, his time in Kuwait and Iraq following the Iraqi invasion can be divided into three periods: (i) between the Iraqi invasion on August 2, 1990, and the State Department's August 7, 1990 announcement recognizing that U.S. diplomats in Kuwait were in the same position as "private American citizens"; (ii) between that August 7, 1990 announcement and December 6, 1990—*i.e.*, the period during which Iraq expressly prevented diplomats and staff members of the U.S. Embassy in Kuwait from leaving Kuwait and Iraq; and (iii) from the December 6th announcement authorizing all remaining foreign nationals in Kuwait and Iraq to leave until Claimant's departure on December 13, 1990.¹⁸

From August 2, 1990, until August 7, 1990, Iraq prevented Claimant from leaving Kuwait. During this period, Iraq made no formal distinction between diplomatic personnel such as Claimant and other U.S. nationals, who, as we have previously recognized, were threatened with immediate seizure and forcible detention during this period.¹⁹ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.²⁰ Iraqi

¹⁸ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 12-13.

¹⁹ See *id.* at 14.

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

authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.²¹ Claimant 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 left the embassy.²² 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.²³ Iraq thus detained Claimant from August 2, 1990, to August 7, 1990.

Between August 7, 1990, and December 6, 1990, Iraqi authorities adopted various policies that prevented Claimant and other U.S. diplomats and embassy staff accredited to the Kuwait Embassy from leaving Kuwait or Iraq.²⁴ As the Commission has previously recognized, Iraq did not extend assurances that the U.S. government believed to be sufficiently credible to allow Kuwait Embassy staff members and their dependents to depart until August 22, 1990.²⁵ Iraqi authorities subsequently reneged on those commitments on or around August 24, 1990, before adopting a policy that prohibited the departure of Kuwait Embassy staff and their dependents from Iraq and Kuwait as long as the U.S. embassy in Kuwait remained open.²⁶ While the U.S. was able to negotiate the release of some dependents on or around August 25, 1990, Iraq refused to release any of the Kuwait embassy staff members who were confined in the Baghdad or Kuwait embassies until announcing the release of all foreign nationals on December 6, 1990.²⁷ Thus, for Claimant, the policy of prohibiting Kuwait Embassy staff members from

²¹ *See id.*

²² 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.

²³ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²⁴ *See* Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 14.

²⁵ *See id.*

²⁶ *See id.* at 14-15.

²⁷ *See id.* at 15.

leaving Iraq and Kuwait lasted until December 6, 1990, when the Iraqi government announced that all remaining foreign nationals in Kuwait and Iraq could leave.²⁸

Although Claimant may have been legally permitted to leave Iraq on December 6, 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.²⁹ Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,³⁰ 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.³¹

Under this standard, Claimant remained under Iraq's control until December 13, 1990. The Commission has previously held that Iraq imposed conditions on air travel that limited the ability of foreign nationals, including U.S. nationals, to leave Iraq and/or Kuwait in December 1990.³² Indeed, the available evidence indicates that Claimant left Iraq at the first reasonable opportunity after the December 6th announcement, on an evacuation flight that left Iraq on December 13, 1990. Because there is no evidence that he remained voluntarily in Iraq at any time during this period, we conclude that he was under Iraq's control and thus continued to be detained from December 6, 1990, to December 13, 1990.

In sum, Iraq detained Claimant from August 2, 1990, until December 13, 1990.

(b) Threat: The Iraqi government threatened Kuwait Embassy staff members, diplomats, and dependents with continued detention. This included Claimant.

²⁸ See *id.*

²⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22; *id.* at 22; see also Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

³⁰ Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22 (citing Claim No. LIB-II-183, Decision No. LIB-II-178, at 12 (Proposed Decision)).

³¹ See *id.*

³² See Claim No. IRQ-II-180, Decision No. IRQ-II-140, at 10-11 (2017).

Iraqi authorities made clear that Embassy staff members, diplomats, and dependents would not be permitted to leave, notwithstanding Iraq's sporadic and unreliable statements to the contrary during Claimant's period of detention.³³

In short, the Iraqi government made an unequivocal threat to continue to detain Kuwait Embassy staff members in Kuwait and Iraq. Claimant was a U.S. diplomat accredited to Kuwait at the time. Claimant has thus established that Iraq threatened to continue to detain him.

(c) Third party coercion: The reason Iraq detained Claimant and threatened him with continued detention was to compel the United States government to act in a certain way as an explicit and/or implicit condition for his release. Iraqi authorities informed the United States that before it would release detained diplomats, embassy personnel, and their dependents, it wanted the United States to close its embassy in Kuwait.³⁴ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁵

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 134 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

³³ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 16.

³⁴ See *id.*

³⁵ See *id.* at 16-17.

compensation in the amount of \$150,000 plus an additional \$5,000 for each day the claimant was in captivity.³⁶ Therefore, for the 134 days Iraq held Claimant hostage, he is entitled to an award of \$820,000, which is \$150,000 plus (134 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.³⁷

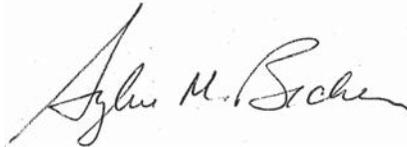
AWARD

Claimant is entitled to an award in the amount of \$820,000.

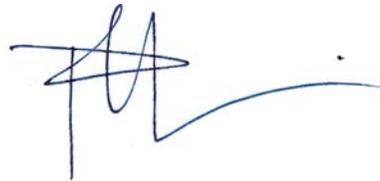
Dated at Washington, DC, July 10, 2018
and entered as the Proposed Decision
of the Commission.

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

August 13, 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).

³⁶ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁷ 22 U.S.C. §§ 1626-1627 (2012).