



eventually crossed the Turkey-Iraq border on August 27, 1990, as part of a convoy of vehicles carrying dependents of U.S. diplomatic personnel from Kuwait.

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

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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").

Settlement Agreement, the first having been by letter dated November 14, 2012 (“2012 Referral” or “November 2012 Referral”).<sup>6</sup>

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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<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 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.

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

On September 30, 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.<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 ¶ 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. He has provided a copy of his U.S. State Department-issued Consular Report of Birth Abroad of a Citizen of the United States of America, as well as a copy of his U.S. passport valid at the time of the incident, which show that he was a U.S. national at the time of the alleged hostage-taking (August 1990). He has also provided a copy of his current U.S. passport, which establishes that he 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).

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

*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 under oath in an August 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. 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.

Merits

*Factual Allegations*

Claimant states that Iraq held him hostage from August 2, 1990, until August 27, 1990, a total of 26 days. He alleges that he was living with his parents in an apartment in Mahboula, Kuwait, when Iraq invaded Kuwait on August 2, 1990. Because of his age at the time, Claimant has no memory of his ordeal; however, he does describe his

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

experience in a sworn statement based on the sworn statement of his father, which has also been submitted with his claim. Claimant's father states that, on the day of the invasion, he and his family could hear bombs exploding outside, and "[i]n the days that followed, Iraqi troops took up defensive positions across the street from [their] apartment and in the adjacent fields." He further notes that, on that first day, the U.S. Embassy advised all Americans "to remain where they were[,]" and he and his wife and the Claimant therefore "spent the next week in hiding in their apartment." He describes how, during this time, Iraqi troops harassed local residents, detaining some at unknown locations, while brutally beating others.

Claimant's father states that, shortly after the invasion, they learned that Iraqi soldiers "had begun to remove westerners from apartments in [their] neighborhood." Thus, around August 7, 1990, Claimant and his family attempted to escape Kuwait across the desert into Saudi Arabia, but they were turned back at the border by Iraqi authorities, who demanded they return home.

For his part, Claimant states that, following the invasion, he and his parents were "prohibited from leaving the country and hid in [their] apartment until August 10," when they moved to the U.S. Embassy compound, a fact confirmed by Claimant's father, who states that U.S. Embassy personnel "advised [them] to take refuge at the Embassy compound." Claimant states that they remained there until August 23, 1990. While he was there, his parents "reluctantly placed [him] in the custody of one of the diplomatic families that was planning to evacuate the compound and that the Iraqi regime had promised safe passage to Jordan by way of Iraq."

Claimant states that on August 23, 1990, he and the diplomatic personnel at the Embassy (including the couple who had taken custody of him) traveled to Baghdad in a

convoy, where they remained for three days until August 26, 1990, “when the women and children from the convoy were permitted to travel onward to Turkey.” Claimant states that he crossed the border into Turkey on August 27, 1990, and arrived back in the United States two days later.

*Supporting Evidence*

Claimant has supported his claim with, among other things, his own sworn declaration, dated August 29, 2015, in which he describes his ordeal in Kuwait and Iraq; sworn declarations from his father, dated November 12, 2001,<sup>11</sup> and June 23, 2018, describing his family’s experience during the Iraqi occupation of Kuwait, including his and his wife’s decision to place Claimant in the care of a couple leaving with the diplomatic convoy; a letter from the former Deputy Chief of Mission at the U.S. Embassy in Kuwait, dated January 19, 1992, verifying that Claimant’s parents had asked her to take Claimant with them in the convoy to Baghdad, and that Claimant did, in fact, leave with the convoy on August 23, 1990; a sworn statement, dated December 13, 2004, from one of the individuals who took custody of Claimant on the convoy to Baghdad and from there to Turkey;<sup>12</sup> a copy of that individual’s then-current U.S. passport, which contains, *inter alia*, a Kuwaiti diplomatic visa dated March 5, 1990, an Iraqi exit stamp dated August 26, 1990, a Turkish entry stamp dated August 27, 1990, and a Turkish exit stamp dated August 28, 1990; excerpts from a 1997 book about the Iraqi invasion, which specifically report that Claimant and his parents sought refuge in the U.S. Embassy in Kuwait City, and that Claimant traveled with a couple in the diplomatic convoy to Baghdad; a copy of Claimant’s then-current U.S. passport, which contains, *inter alia*, a Kuwaiti entry stamp dated July 22, 1990; and a copy of an August 29, 1990 *Washington*

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<sup>11</sup> This declaration was filed in support of the *Hill* litigation, in which Claimant’s father was a plaintiff.

<sup>12</sup> This declaration was filed in support of the *Vine* litigation.

*Post* article with a photograph purporting to show the woman in whose care Claimant was placed stepping off the plane with him back in the United States.<sup>13</sup> Claimant has also provided several contemporaneous newspaper articles that specifically state that the convoy of Embassy dependents that left Baghdad on August 26, 1990, entered Turkey on August 27, 1990. In addition, he has submitted a declaration and contemporaneous journal entries of one of the other hostages who left Iraq as part of the same convoy.

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.

#### *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>14</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

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<sup>13</sup> The caption underneath the photograph reads: "Some of the 47 exhausted dependents of U.S. Embassy personnel in Kuwait City leave airplane upon reaching Andrews Air Force Base yesterday evening after being forced to leave their relatives behind in Iraq or Kuwait." *Iraq Says It Will Release Women, Children*, Wash. Post, Aug. 29, 1990, at A1.

<sup>14</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.

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>15</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>16</sup>

*Application of Standard to this Claim*

Claimant satisfies this standard for the period between August 2, 1990, and August 27, 1990. The evidence in the record establishes that he was in Kuwait on August 2, 1990, and that he left Iraq on August 27, 1990. Although Claimant does not have an Iraqi exit stamp in his own passport,<sup>17</sup> and the date of the Iraqi exit stamp in the U.S. passport of the individual who brought Claimant across the border is August 26, 1990, we have previously determined that the Iraqi authorities did not permit the diplomatic convoy to cross the border until some time on August 27, 1990.<sup>18</sup> Since the evidence substantiates Claimant's factual assertions, we now apply the legal standard to his claim.

(1) Armed Conflict: Claimant alleges that Iraq took him hostage in Kuwait on August 2, 1990, and held him hostage in Kuwait and Iraq for 26 days, until August 27, 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.<sup>19</sup> Thus, Claimant satisfies this element of the standard.

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<sup>15</sup> See *id.* at 17-20.

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

<sup>17</sup> Claimant's father explains in his declaration that Claimant was endorsed as a dependent in the U.S. passport of the woman who brought Claimant with her across the border in order to avoid him being discovered as a dependent of "an American defense employee." For this reason, Claimant's own passport was not presented at the border and does not bear an Iraqi exit stamp.

<sup>18</sup> See Claim No. IRQ-II-129, Decision No. 260, at 9 (Proposed Decision).

<sup>19</sup> 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 26-day period from August 2, 1990, to August 27, 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 two 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 Claimant exited Iraq with the convoy of diplomatic dependents on August 27, 1990.

From August 2, 1990, until Iraq formally closed all borders under its control to foreign nationals on August 9, 1990, Iraq confined Claimant to his family's apartment by threatening all U.S. nationals with immediate seizure and forcible detention.<sup>20</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>21</sup> Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.<sup>22</sup> 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 and his parents had made any attempt to leave the country.<sup>23</sup> The

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

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

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

<sup>23</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.

Commission has previously recognized that for the purposes of the legal standard applicable here, putting Claimant in this situation in effect amounts to detention.<sup>24</sup> Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until he crossed the Iraqi border with Turkey on August 27, 1990, the Iraqi government confined Claimant to Kuwait and Iraq, preventing him from leaving 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>25</sup> As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving, effectively detaining him within the borders of Kuwait and Iraq.<sup>26</sup> For Claimant, this formal policy of prohibiting U.S. nationals from leaving Kuwait and Iraq lasted until August 27, 1990, when the Iraqi government permitted Claimant to cross the border into Turkey.<sup>27</sup>

In sum, Iraq detained Claimant from August 2, 1990, until August 27, 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>28</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

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<sup>24</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

<sup>25</sup> See *id.* at 7, 21-22.

<sup>26</sup> See *id.* at 22.

<sup>27</sup> Although the U.S. government was able to negotiate the release of some diplomatic dependents on or around August 25, 1990, including one of the individuals who accompanied Claimant from Kuwait to Baghdad, this release did not apply to Claimant, who was not a diplomatic dependent and who was only able to escape by being falsely presented as the child of a diplomat.

<sup>28</sup> See *id.* at 23.

countries) would not be permitted to leave.<sup>29</sup> Claimant 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.<sup>30</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>31</sup> Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.<sup>32</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 26 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

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<sup>29</sup> *See id.*

<sup>30</sup> *See id.*

<sup>31</sup> *See id.* at 23-24.

<sup>32</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).

claimant was in captivity.<sup>33</sup> Therefore, for the 26 days Iraq held Claimant hostage, he is entitled to an award of \$280,000, which is \$150,000 plus (26 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.<sup>34</sup>

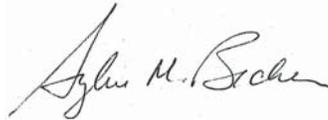
AWARD

Claimant is entitled to an award in the amount of \$280,000.

Dated at Washington, DC, September 18, 2018  
and entered as the Proposed Decision  
of the Commission.

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

**November 6, 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).

<sup>33</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

<sup>34</sup> 22 U.S.C. §§ 1626-1627 (2012).