

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

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-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 2, 2015, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting 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 U.S. passport valid from February 21, 1985, through February 20, 1995, and his currently valid 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 was a U.S. national at the time of the alleged hostage-taking and 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 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.

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. Claimant alleges that he had recently moved to Kuwait and was living there with his family when Iraq invaded Kuwait on August 2, 1990. He asserts that, beginning with the invasion and for approximately four months thereafter, he was held against his will as a hostage in Kuwait and Iraq in violation of international law. According to Claimant, he and his family first hid in their own home until August 7, 1990, then hid in the home of a family member until August 26, 1990, and then hid in an empty home owned by another family member. On December 6, 1990, the Iraqi government announced the release of all foreign nationals remaining in Iraq and Kuwait,¹¹ and Claimant states that on December 7, 1990, he received a telephone call from a U.S. Embassy official informing him that arrangements were being made for his and his family's evacuation. On December 9, 1990, Claimant and his family were picked up and driven to a military airport where they boarded a flight to Baghdad. After arriving in Baghdad, Claimant and his family stayed in the U.S. Ambassador's residence until they were evacuated on a flight for Germany on December 13, 1990. They flew from Germany to Maryland the next day.

Supporting Evidence

Claimant has supported his claim with, among other things, his own declaration, in which he describes his ordeal in Iraq; as well as his U.S. passport from that time which has a Kuwaiti visa issued May 21, 1990, a Kuwaiti entry stamp dated June 15, 1990, and an Iraqi exit stamp dated December 13, 1990. Claimant has also submitted two

¹¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 12.

contemporaneous newspaper articles that identify Claimant by name and describe his experiences in Kuwait and Iraq, and a travel document issued by the U.S. Embassy on behalf of Claimant's wife.

Additionally, Claimant has 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.¹² 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.¹³ A claimant can establish the first element of this standard by showing that the Iraqi government confined

¹² 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.

¹³ See *id.* at 17-20.

the claimant to a particular location or locations within Iraq or Kuwait, or prohibited the claimant from leaving Iraq and/or Kuwait.¹⁴

Application of Standard to this Claim

Claimant satisfies this standard for the period August 2, 1990, to December 13, 1990. The evidence in the record establishes that Claimant was in Kuwait on August 2, 1990, and that he left Iraq on December 13, 1990. 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 Iraq on August 2, 1990, and held him hostage for 134 days, until December 13, 1990, when he was able to take an evacuation flight from Iraq to Germany. 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.¹⁵ 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 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 Iraq following the invasion of Kuwait can be divided into three periods: (i) between the Iraqi invasion on August 2, 1990

¹⁴ See *id.* at 17.

¹⁵ See *id.* at 16-17.

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 December 6, 1990 announcement that all foreigners could leave Iraq and Kuwait;¹⁶ and (iii) from that December 6th announcement until Claimant's departure on December 13, 1990.¹⁷

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to his home in Kuwait. The Commission has previously determined that Iraq detained U.S. nationals who were in Kuwait and/or Iraq during this period by threatening them with immediate seizure and/or forcible detention.¹⁸ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁹ 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 attempted to leave the country.²⁰ For the purposes of the legal standard applicable here, putting Claimant in this situation in effect amounts to detention.²¹ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until he departed Iraq on December 13, 1990, the Iraqi government confined Claimant to Iraq, preventing him from leaving the country by the threat of force. As the Commission has previously held, starting on August 9, 1990, the

¹⁶ *See id.* at 12.

¹⁷ *See id.* at 20-21.

¹⁸ *See* Claim No. IRQ-II-281, Decision No. IRQ-II- 139, at 9-10; Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

¹⁹ *See* Claim No. IRQ-II-281, Decision No. IRQ-II- 139, at 9-10; Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²⁰ 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.

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

Iraqi government formally closed all borders under its control, forcibly prohibiting U.S. nationals from leaving. As of that date, Iraq formally prohibited Claimant from leaving the country, effectively detaining him within the borders of Iraq.²² For Claimant, this formal policy of prohibiting U.S. nationals from leaving Kuwait and Iraq lasted until December 6, 1990, when the Iraqi government announced that all foreigners could leave.²³ Because Iraq's previous releases of various categories of foreign nationals did not apply to Claimant,²⁴ this was the earliest date that he was legally authorized to leave Iraq.

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.²⁵ Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,²⁶ 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.²⁷

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 both September 1990 (after the release of female and minor U.S. nationals on

²² *See id.* at 22.

²³ *See id.* at 12.

²⁴ *See id.* at 11-12, 22 (discussing Iraq's August 28, 1990 release of U.S. nationals who were women or minors).

²⁵ *See id.* at 22; *see also* Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

²⁶ 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)).

²⁷ *See id.*

August 28, 1990) and December 1990 (after the release of all remaining U.S. nationals).²⁸ Here, the available evidence indicates that Claimant left Iraq at the first reasonable opportunity, on December 13, 1990. Therefore, 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: 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.²⁹ Both Iraqi President Saddam Hussein and the Speaker of Iraq's National Assembly Saadi Mahdi made clear that American nationals (as well as those from numerous other countries) would not be permitted to leave.³⁰ 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.³¹ Iraq itself stated that it sought three things from the United States government before it would release the detained U.S. nationals; it wanted the United States (i) not to attack Iraq, (ii) to withdraw its troops from

²⁸ See Claim No. IRQ-II-180, Decision No. IRQ-II-140, at 10-11 (2017); Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22.

²⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

³⁰ See *id.*

³¹ See *id.*

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

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. Iraq held 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 compensation in the amount of \$150,000 plus an additional \$5,000 for each day the claimant was in captivity.³⁴ 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 ICOSA.³⁵

³² See *id.* at 23-24.

³³ See George H. W. Bush, "These Innocent People . . . Are, In Fact, Hostages" in U.S. Dep't of State, *American Foreign Policy Current Documents 1990* 484 (Sherrill Brown Wells ed. 1991); see also 2014 Referral at ¶ 3; cf. United Nations S.C. Res. 674 (Oct. 29, 1990) (noting "actions by . . . Iraq authorities and occupying forces to take third-State nationals hostage" and demanding that Iraq "cease and desist" this practice).

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

³⁵ 22 U.S.C. §§ 1626-1627 (2012).

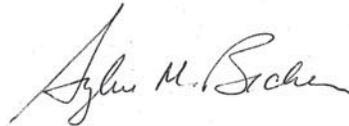
AWARD

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

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).