

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 first having been by letter dated November 14, 2012 ("2012 Referral" or "November 2012 Referral").⁶

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").

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

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.

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

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.” *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.

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

On September 14, 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 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.⁹ Claimant satisfies the nationality requirement. He has provided a copy of his U.S. Certificate of Naturalization dated October 13, 1989, and his U.S. passport valid from February 5, 1990 to February 4, 2000, which shows that he was a U.S. national at the time of the alleged hostage-taking. He has also provided a copy of his currently valid U.S. passport, which establishes that he remained a U.S. national through the effective date of the Claims Settlement Agreement.

⁸ See 22 U.S.C. § 1623(a)(1)(C)(2012).

⁹ 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.¹⁰ 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 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 not received any compensation under the Claims Settlement Agreement from the U.S. 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

Although Claimant does not explicitly state the period he is asserting his claim covers, he seems to be alleging that Iraq held him hostage from August 2, 1990, until September 2, 1990, a total of 32 days. He alleges that he traveled to Iraq on July 19, 1990

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

His brother had previously traveled to Iraq to visit their sister.¹¹ After Iraq invaded Kuwait on August 2, 1990, Claimant and his brother could not leave Iraq, and they stayed in hiding, moving from place to place. While in hiding, they kept in frequent contact with the U.S. Embassy. Claimant states that the Iraqi government eventually allowed him and his brother to leave the country and they left Iraq by crossing the border into Jordan on September 2, 1990.

Supporting Evidence

Claimant has supported his claim with, among other things, his declaration and the declaration of his brother. He has also submitted a copy of his former U.S. passport, which contains an Iraqi entry visa issued on June 22, 1990 and valid for three months, a Jordanian entry stamp dated September 2, 1990, and a September 4, 1990 U.S. entry stamp. Claimant's claim is further substantiated by his brother's former U.S. passport which contains an Iraqi entry visa dated April 18, 1990, an Iraqi exit stamp dated September 2, 1990, and a Jordanian entry stamp also dated September 2, 1990.¹²

The Commission also takes notice of additional documents, submitted by other claimants in support of their claims in this Iraq Claims Program, that provide background about the broader geopolitical situation during the First Gulf War in 1990-91, including some that relate 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, affidavits submitted in a lawsuit brought by other U.S. nationals who were also in Kuwait or Iraq

¹¹ See Claim No. IRQ-II-104, Decision No. IRQ-II-190 (2017).

¹² *Id.*

during the First Gulf War, and several unclassified cables from the U.S. Department of State.

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, 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

Application of Standard to this Claim

(1) Armed Conflict: Claimant seems to allege that Iraq took him hostage in Iraq on August 2, 1990, when Iraq invaded Kuwait, and held him hostage for 32 days, until September 2, 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.¹⁶ Thus, Claimant satisfies this element of the standard.

¹³ 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.

¹⁴ See *id.* at 17-20.

¹⁵ See *id.* at 17.

¹⁶ 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 32-day period from August 2, 1990, to September 2, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, his time in 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's departure on September 2, 1990.¹⁷

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant within Iraq. The Commission has previously determined that Iraq detained U.S. nationals who were in Iraq during this period by threatening them with forcible detention.¹⁸ Although some foreign nationals did manage to leave Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁹ Iraqi authorities were forcibly detaining and confining foreign nationals (including U.S. nationals) in Kuwait and Iraq, relocating many to Baghdad against their will.²⁰ Claimant understandably had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being forcibly detained if he attempted to

¹⁷ See *id.* at 20-21.

¹⁸ See Claim No. IRQ-II-281, Decision No. IRQ-II-139, at 9-10.

¹⁹ See *id.* at 10 n.23.

²⁰ See *id.* at 10.

leave the country.²¹ 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.²² Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until he left Iraq on September 2, 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 Iraqi government formally closed Iraq's borders, forcibly prohibiting U.S. nationals from leaving.²³ As of that date, Iraq formally prohibited Claimant from leaving the country, effectively detaining him within the borders of Iraq.²⁴ Although Claimant does not explain why he was allowed to leave on September 2, 1990, it does not matter why Claimant was allowed to leave under the standard that applies here.²⁵ Because the evidence suggests that Claimant remained subject to Iraq's policy of prohibiting U.S. nationals from leaving until he departed Iraq on September 2, 1990, and that he could not have reasonably left Iraq any earlier than he did,²⁶ Iraq effectively detained him within its borders until September 2, 1990, regardless of the reason he was ultimately allowed to leave.

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

²¹ 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.

²² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²³ See *id.* at 7, 21-22.

²⁴ See *id.* at 22.

²⁵ Claimant was born in Iraq, and the Commission has previously noted that Iraq purportedly released some U.S. national men of Arab origin or descent around that time. See Claim No. IRQ-II-117, Decision No. IRQ-II-102 (2017); Claim No. IRQ-II-328, Decision No. IRQ-II-081 (2017).

²⁶ See Claim No. IRQ-II-117, Decision No. IRQ-II-102, at 8-9 (noting that Margaret Tutwiler, who was Assistant Secretary of State for Public Affairs at that time, reported that on August 30, 1990, Iraq asked the chargé d'affaires of the U.S. Embassy in Baghdad to submit passports of, among others, Arab-born males holding U.S. citizenship but subsequently refused to grant exit visas to individuals in this category).

(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.²⁷ This included Claimant.²⁸ 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.²⁹

In short, the Iraqi government made unequivocal threats to continue to detain U.S. nationals in Kuwait and Iraq. Claimant was a U.S. national in Iraq at the time. 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 and 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.³⁰ 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

²⁷ See *id.* at 23.

²⁸ While we determine that these statements apply to Claimant and other similarly situated U.S. nationals who were prevented from leaving Iraq or Kuwait after the invasion, we do not make any findings as to whether they also apply to U.S. nationals with diplomatic status: Iraqi officials made specific representations about the ability of diplomatic and consular staff members with U.S. nationality (and their relatives) to leave Iraq and Kuwait throughout the crisis. See *In Iraq: 'We Have A Problem' Iraq Holds Fleeing U.S. Diplomats Staff from Kuwait Reaches Baghdad, But Can't Leave*, PHILA. INQUIRER, Aug. 24, 1990, <https://perma.cc/B2YF-79AY>.

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

³⁰ See *id.*

Saudi Arabia; and/or (iii) to end the economic embargo imposed on Iraq.³¹ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³²

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 32 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.³³ Therefore, for the 32 days Iraq held Claimant hostage, he is entitled to an award of \$310,000, which is \$150,000 plus (32 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.³⁴

³¹ See *id.* at 23-24.

³² 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. S.C. Res. 674 (Oct. 29, 1990) ("actions by . . . Iraq authorities and occupying forces to take third-State nationals hostage" and demanded that Iraq "cease and desist" this practice).

³³ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁴ 22 U.S.C. §§ 1626-1627 (2012).

AWARD

Claimant is entitled to an award in the amount of \$310,000.

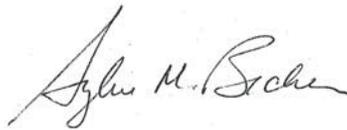
Dated at Washington, DC, November 16, 2017
and entered as the Proposed Decision
of the Commission.

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

January 16, 2018



Anuj C. Desai, Commissioner



Sylvia M. Becker, 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) (2016).