

**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-142

Decision No. IRQ-II-331

Counsel for Claimant:

Anthony Onorato, Esq.
FisherBroyles, LLP

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held him hostage in violation of international law between August 1990 and February 1991. Because he has established that Iraq held him hostage for 25 days, he is entitled to an award of \$275,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was born a United States citizen in Kuwait on August 4, 1990, after Iraq invaded that country on August 2, 1990. He asserts that, beginning with the invasion and for approximately six months thereafter, he was forced to hide to avoid being captured by Iraqi authorities. Claimant contends that he was released on February 26, 1991, after Kuwait was liberated by a U.S.-led coalition force.

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 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 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

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 ICSCA and the 2014 Referral.⁷

On October 23, 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.

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.

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

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 Consular Report of Birth Abroad of a Citizen of the United States of America, 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 current U.S. passport, valid from September 2010 to September 2020, 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 must 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

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).

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 October 2015 declaration submitted with his claim, 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 previously received compensation from the U.S. Department of State under the United States-Iraq Settlement Agreement dated September 2, 2010.” 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 Backdrop to Claimant’s Allegations

Claimant’s hostage-taking claim is based on Iraq’s treatment of women and minors of U.S. nationality after the Iraqi government announced on August 28, 1990, that women and minors of foreign nationality could leave Iraq and Kuwait.¹¹ Accordingly, the factual backdrop to Claimant’s allegations—including an overview of State Department efforts to evacuate U.S. women and minors from Iraq and Kuwait following Iraq’s August 28 announcement—is provided below.

As the Commission has previously recognized, shortly after Iraq invaded Kuwait

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

¹¹ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 11, 22.

on August 2, 1990, Iraqi forces began seizing and detaining U.S. nationals in Kuwait.¹² Within days, the Iraqi military had sealed the border crossings and had set up check points on the roads leading out of Kuwait, making it nearly impossible for U.S. nationals (and those of several other countries) to leave.¹³ Throughout the crisis, the Iraqi government granted some groups of individuals permission to leave Iraq and Kuwait. In particular, Iraqi President Saddam Hussein made an announcement on August 28, 1990, authorizing women and minors of foreign nationality to leave Iraq and Kuwait.¹⁴

On August 29, 1990, Margaret Tutwiler, then Assistant Secretary of State for Public Affairs, stated that due to Iraq's change in policy regarding women and minors of foreign nationality, the State Department had started to make plans to evacuate several hundred women and children of U.S. nationality from Iraq and Kuwait.¹⁵ In early September, the U.S. Embassy in Kuwait issued advisories informing U.S. nationals in Kuwait of Iraq's new policy on the departure of women and children and advising them to contact the Embassy for details about the evacuation.¹⁶ From September 1, 1990, to September 22, 1990, State Department officials in Iraq and Kuwait assisted hundreds of women and children to depart on evacuation flights, many of which were chartered by the U.S.

¹² See *id.* at 6.

¹³ See *id.* at 7.

¹⁴ See *id.* at 11.

¹⁵ See *CB State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Aug. 29, 1990, at 2-3, Lexis.

¹⁶ See *CB Message from U.S. State Department to American Citizens in Kuwait as Broadcast Via Voice of America*, FEDERAL NEWS SERVICE, Sep. 6, 1990, at 1, Lexis; *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Sep. 11, 1990, at 1, Lexis; *CB State Department Regular Briefing*, FEDERAL NEWS SERVICE, Sep. 12, 1990, at 1-2, Lexis. These advisories, which were broadcast over radio channels operated by the British Broadcasting Corporation and Voice of America, stated that adult males "[remained] subject to detention and arrest." See *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Sep. 11, 1990, at 1, Lexis; *CB State Department Regular Briefing*, FEDERAL NEWS SERVICE, Sep. 12, 1990, at 1-2, Lexis. In addition to these radio communications, the U.S. Embassy maintained contact with U.S. nationals in Iraq and Kuwait via telephone and the warden system. See *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Aug. 20, 1990, at 1, Lexis; *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Aug. 22, 1990, at 1, Lexis.

government.¹⁷ On September 19, 1990, and again on September 20, 1990, Tutwiler announced that a flight departing on September 22, 1990, would “accommodate all Americans and the foreign-born members of their families who [had] been able to get permission to leave . . . and who [wished] to depart” from Iraq and Kuwait.¹⁸ She also stated that some U.S. nationals in Kuwait had decided to stay even though the State Department had made clear that it had no plans to schedule additional evacuation flights at that time.¹⁹

On September 24, 1990, Tutwiler reported that over 1,900 U.S. nationals and their family members had been evacuated from Iraq and Kuwait, leaving 600 to 700 U.S. nationals (including men, women, and children) in Kuwait.²⁰ While she refused to disclose the exact number of U.S. nationals who remained in Kuwait voluntarily, she acknowledged that the State Department would assist with travel arrangements for U.S. citizens in this category if they decided later to leave Iraq and/or Kuwait.²¹

On October 5, 1990, the State Department announced that it had scheduled an evacuation flight on October 10, 1990, for approximately 300 U.S. citizens, including many women and children who initially chose to stay in Kuwait during the mass evacuation in September 1990 but subsequently decided to leave.²² On November 15, 1990, the State

¹⁷ See Memorandum from Elizabeth M. Tamposi to Sec’y of State on American Citizens Evacuated from Iraq/Kuwait (Dec. 18, 1990) (on file with the Commission) [hereinafter “Tamposi Memorandum”]; *CB State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Sep. 11, 1990, at 1, Lexis; *CB State Department Regular Briefing*, FEDERAL NEWS SERVICE, Sep. 12, 1990, at 1, Lexis.

¹⁸ *CB (From the State Department)*, FEDERAL NEWS SERVICE, Sep. 19, 1990, at 1, Lexis; see *CB (CB State Department Regular Briefing Briefer: Margaret Tutwiler)*, FEDERAL NEWS SERVICE, Sep. 20, 1990, at 1, Lexis.

¹⁹ *CB (From the State Department)*, FEDERAL NEWS SERVICE, Sep. 19, 1990, at 1, 5, Lexis; see *CB State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Sep. 20, 1990, at 1, 3-4, Lexis.

²⁰ See *CB State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Sep. 24, 1990, at 1, Lexis.

²¹ See *id.*

²² See *State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Oct. 5, 1990, at 1, Lexis.

Department announced that it would evacuate another group of U.S. nationals in Kuwait and Iraq, comprised principally of “women and children who [had] been qualified to depart for some time, but [had] only recently decided to leave,” on a flight scheduled for November 18, 1990.²³

After the Iraqi government authorized the departure of all foreign nationals in Iraq and Kuwait on December 6, 1990,²⁴ the U.S. Embassies in Kuwait and Baghdad contacted the U.S. nationals remaining in both countries to inform them that the State Department had chartered evacuation flights for all U.S. nationals who wished to depart.²⁵ On December 11, 1990, the State Department disclosed that while the “overwhelming majority of those American citizens [had] chosen to leave,” 310 U.S. citizens (60 women, 215 children, and 35 adult males) had decided to stay in Kuwait and over 200 had decided to stay in Iraq.²⁶ Most of the U.S. citizens who chose to remain were dependents of “Iraqi, Kuwaiti, or other Arab heads of household who [had] decided not to leave” even though State Department officials “repeatedly urged [all U.S. nationals remaining in Iraq and Kuwait] to take advantage of opportunities to depart.”²⁷

On December 13, 1990, the last U.S. government chartered evacuation flight left Kuwait (via Baghdad).²⁸ That same day, a State Department official stated that all remaining U.S. citizens in Kuwait and Iraq who wished to depart had done so and “that every possible effort to contact and encourage Americans in Kuwait to depart [had] been

²³ See *State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Nov. 15, 1990, at 2, Lexis.

²⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 12.

²⁵ See *State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Dec. 10, 1990, at 1, Lexis.

²⁶ See *State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Dec. 11, 1990, at 1-2, Lexis.

²⁷ See *id.* at 1.

²⁸ See *State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Dec. 13, 1990, at 15, Lexis; Tamposi Memorandum, at 4.

done.”²⁹ The State Department also advised U.S. citizens who sought to leave Kuwait after December 13, 1990, that the U.S. Embassies in Baghdad and Amman could assist with travel arrangements for daily commercial flights that Iraq had established between Kuwait City and Baghdad and between Baghdad and Amman.³⁰

Factual Allegations

Claimant states that Iraq held him hostage from August 4, 1990, until February 26, 1991, a total of 207 days. He alleges that his parents and one-year-old sister were living in Salmiya, Kuwait, when Iraq invaded the country on August 2, 1990. He states that he was born two days later on August 4, 1990, in a hospital where Claimant’s mother “was surrounded by Iraqi soldiers” Claimant states that, “[d]ue to unsanitary and unsafe conditions,” he and his mother went home after only 10 hours. At the time, according to Claimant, the invading Iraqi soldiers “were looking for Americans to use as human shields and, since [his] mother was from the United States and [his] sister and [he] were American, [they] were in constant risk of being identified as Americans and captured.” For this reason, Claimant and his family went to live with his paternal grandmother in Rabiya, Kuwait.

Claimant states that after the Iraqi invasion, his paternal uncle, who worked for the Kuwaiti Navy, was forcibly taken by Iraq to Baghdad, and that Claimant’s father made two trips to Iraq to try to find his brother. Claimant further states that, sometime before the end of October,

[M]y mother was contacted by the U.S. Embassy and notified about the evacuation. However, because my father was out of the country at the time as a result of the Iraqis having taken my uncle, and because my sister and I did not yet have U.S. passports and my family knew that the Iraqis were

²⁹ See *State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Dec. 13, 1990, at 1, Lexis.

³⁰ See *id.*

claiming children attempting to evacuate without papers, we could not leave Kuwait with the other Americans.

Subsequently, in late October 1990, Claimant and his family were “forced to flee again—this time to [his] grandfather’s home in Salwa.” He later learned that his “grandmother’s home was searched less than two weeks after [they] fled.”

Claimant and his family stayed at his grandfather’s house through February 1991. He states that, during this time, “[n]o one was able to leave the house because there was an Iraqi military presence on the street at all times and the house-to-house searches for Americans continued.” He contends that he was finally released on February 26, 1991, which is the date he asserts that a U.S.-led coalition force liberated Kuwait. Approximately four months later, in June 1991, Claimant and his family traveled to the United States to stay with his maternal grandparents in Iowa.

Claimant maintains that he and his family were not aware of the August 28, 1990 announcement authorizing women and children to leave Kuwait. He also argues that he could not have left Kuwait at that time because of the danger and resulting fear posed by the occupying Iraqi forces. In addition, he asserts he could not leave because he did not have a U.S. passport.

Supporting Evidence

Claimant has supported his claim with, among other things, his own sworn declaration, dated October 14, 2015, as well as copies of several contemporaneous newspaper articles, three of which identify Claimant by name and provide further details about his alleged detention in Kuwait (and a fourth from early in the occupation indicating that Claimant’s mother should have given birth to him around the time of the invasion). The Commission also takes notice of Federal News Service transcriptions of press briefings

by U.S. government officials, news articles, and publically available unclassified State Department documents that provide further information about Iraq's treatment of women and minors of foreign nationality after it authorized them to leave Iraq and Kuwait on August 28, 1990.

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.³¹ 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.³² 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.³³

Application of Standard to this Claim

(1) Armed Conflict: Claimant alleges that Iraq took him hostage in Kuwait on August 4, 1990 and held him hostage for 207 days, until February 26, 1991, which is the date that he alleges a U.S.-led coalition force liberated Kuwait. In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held

³¹ 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.

³² See *id.* at 17-20.

³³ See *id.* at 17.

that during this entire period, Iraq was engaged in an armed conflict with Kuwait.³⁴ 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. Although he alleges that Iraq held him hostage from August 4, 1990, until February 26, 1991, a total of 207 days, Claimant satisfies this standard only for the 25-day period from August 4, 1990, to August 28, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, his time in Kuwait following the Iraqi invasion can be divided into three periods: (i) between his birth on August 4, 1990, following the Iraqi invasion on August 2, 1990, and the Iraqi government's formal closing of the borders on August 9, 1990; (ii) from that August 9th formal closing of the borders until the August 28, 1990 announcement that women and minors could leave Iraq and Kuwait; and (iii) from that August 28th announcement until Claimant's alleged release on February 26, 1991.³⁵

From August 4, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to his grandmother's residence in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.³⁶ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant

³⁴ See *id.* at 16-17.

³⁵ See *id.* at 20-21.

³⁶ See *id.* at 21.

could not reasonably be expected to have escaped.³⁷ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.³⁸ Claimant 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 his residence.³⁹ 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.⁴⁰ Iraq thus detained Claimant from August 4, 1990, to August 9, 1990.

From August 9, 1990, until August 28, 1990, the Iraqi government confined Claimant to Kuwait, preventing him from leaving the country by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed Kuwait’s borders, forcibly prohibiting U.S. nationals from leaving.⁴¹ As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving the country, effectively detaining him within the borders of Kuwait and Iraq.⁴² For Claimant, this formal policy of prohibiting U.S. nationals from leaving Kuwait and Iraq lasted until August 28, 1990, when the Iraqi government announced that all female and minor U.S. nationals could leave.⁴³

Although Claimant may have been legally permitted to leave Kuwait on August 28, 1990, his detention did not necessarily 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

³⁷ *See id.*

³⁸ *See id.*

³⁹ 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.

⁴⁰ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

⁴¹ *See id.* at 21-22.

⁴² *See id.* at 22.

⁴³ *See id.*

of the person or entity that detained him.⁴⁴ In this regard, any attempt by Iraq “to restrict [the] movements” of a claimant establishes control,⁴⁵ whereas a claimant who has a reasonable opportunity to leave the site of his or her captivity is deemed no longer to be under [Iraq’s] control.⁴⁶

Here, while Claimant advances several reasons why he remained under Iraq’s control after August 28, 1990, only one of these reasons concerns acts allegedly committed by the Iraqi government: Claimant argues that due to several Iraqi military actions during the occupation of Kuwait it was not safe for him to attempt to leave his grandparents’ residences prior to February 26, 1991—*i.e.*, the date Kuwait was officially liberated from Iraq. Claimant’s primary contention in this regard is that Iraq continued its policy of seizing and detaining women and children of U.S. nationality even after the August 28, 1990 announcement and, thus, he reasonably feared that Iraq would have seized or detained him had he attempted to leave after that date. According to Claimant, the “Iraqi military actions restricted [him] and [his] family to the houses in Rabiya and Salwa in which they hid, and they had no reasonable opportunity to leave . . . until the Iraqi troops withdrew, relinquishing their control over the people who were detained in Kuwait under threat of injury, death, and/or capture.”⁴⁷

To support this argument, Claimant, through counsel, has submitted a memorandum which cites several sources showing that Iraq continued to detain foreign

⁴⁴ See *id.* at 22; see also Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

⁴⁵ 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)).

⁴⁶ See *id.*

⁴⁷ See Memorandum In Support of Claim IRQ-II-144 and Related Claims in Response to Commission Request for Information, dated September 14, 2016 (“Claimant Mem.”), at 31. Claimant also argues that he was not aware of the August 28, 1990 announcement or other announcements regarding the release and evacuation of U.S. nationals prior to February 29, 1991. This argument, however, does not involve an attempt by Iraq to restrict Claimant’s movements after August 28, 1990. We thus make no findings on this issue.

nationals after August 28, 1990. None of these sources, however, address whether Iraq had a policy of seizing and detaining *women or minors* of U.S. nationality after the August 28, 1990 announcement. They are thus not determinative here.

The only document cited by Claimant that specifically addresses the treatment of women or minors of U.S. nationality after August 28, 1990, is a December 7, 1990 *Washington Post* chronology of the Gulf War that states that on or around August 30, 1990, “[d]iplomats in Baghdad [said] Iraq will allow planes to pick up Western women and children only if the aircraft fly food and medicine into Iraq.”⁴⁸ While it is clear that Iraq imposed restrictions on air travel that prevented some women and minors from leaving Kuwait and Iraq immediately after August 28, 1990,⁴⁹ Claimant cites no evidence to suggest that Iraq, in practice, enforced the conditions noted in the August 30 account. To the contrary, Claimant’s contention in this regard directly contradicts contemporaneous statements and communications from State Department officials, none of which indicate that women or minors of U.S. nationality were prevented from leaving Iraq and/or Kuwait because Iraq imposed restrictions on air travel related to the import of food and medicine.⁵⁰

As noted above, statements made by senior State Department officials in September 1990 establish that, as a result of the August 28, 1990 announcement, the vast majority of

⁴⁸ Claimant Mem at 12.

⁴⁹ For example, Iraq required U.S. nationals seeking to leave after the August 28 announcement to obtain exit visas, and otherwise required States seeking to repatriate their nationals to charter evacuation flights through its national carrier, Iraqi Airways. *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 12, 22.

⁵⁰ Similarly deficient is Claimant’s argument that he was unable to leave Kuwait because he did not have a U.S. passport and his family feared that the Iraqis “were claiming children attempting to evacuate without papers” As with his other contentions, Claimant has failed to cite any evidence that Iraq had a practice of seizing or detaining women or minors of U.S. nationality who sought to depart Kuwait without passports after August 28, 1990. To the contrary, the Commission has addressed numerous claims where the U.S. Embassy issued travel documents to U.S. citizens who did not have passports who wished to leave Kuwait. *See, e.g.*, Claim No. IRQ-II-214, Decision No. IRQ-II-150, at 6 (2017) (noting the claimant submitted “a Travel Document Issued in Lieu of a U.S. passport from the American Embassy in Baghdad, Iraq, which states that it was ‘given in lieu of a passport due to the unavailability of blank passports occurring at this Embassy during the events of early August in Iraq.’”)

U.S. nationals in Kuwait—including several hundred women and children—left on evacuation flights between September 1, 1990, and September 22, 1990.⁵¹ These statements indicate that women and children of U.S. nationality who remained in Kuwait after September 22, 1990, chose to stay in the country.

State Department communications also show that Iraq continued to allow women and children to leave on evacuation flights in October 1990, November 1990, and December 1990. According to Tutwiler and other State Department officials, the 285 women and children of U.S. nationality who, like Claimant, remained in Kuwait after the last U.S. government chartered evacuation flight departed on December 13, 1990, had decided to stay despite having had many opportunities to leave, and in most cases, were dependents of Kuwaiti, Iraqi, or Arab nationals who had also decided not to leave.⁵²

We conclude that Claimant has failed to establish that Iraq acted to restrict his movements after August 28, 1990. He has therefore failed to establish that Iraq detained him after August 28, 1990.

In sum, Iraq thus detained Claimant from August 4, 1990, to August 28, 1990.

(b) Threat: In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission determined that the Iraqi government threatened U.S. nationals in Kuwait and Iraq numerous times with continued detention.⁵³ 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

⁵¹ As such, Claimant's arguments notwithstanding, *see* Claimant Mem. 23-27, the situation in Kuwait as it related to women and minors after the August 28, 1990 announcement was different from the situation that prevailed prior to August 28, 1990, including from the period between August 2, 1990 and August 9, 1990.

⁵² We also reject Claimant's contention that he was detained by virtue of the continued "Iraqi military presence" in Kuwait after August 28, 1990. Under the international law applicable to armed conflict, neither the mere presence of an occupying force nor the persistence of an armed conflict between two countries is a sufficient ground for establishing the injury of detention.

⁵³ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

have been permitted to leave at that time.⁵⁴ Claimant has thus established that Iraq threatened to continue to detain him until August 28, 1990.

(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.⁵⁵ 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.⁵⁶ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.⁵⁷

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 25 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

⁵⁴ See *id.*

⁵⁵ See *id.*

⁵⁶ See *id.* at 23-24.

⁵⁷ 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).

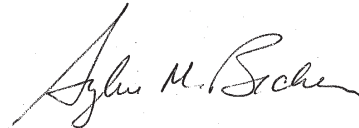
captivity.⁵⁸ Therefore, for the 25 days Iraq held Claimant hostage, he is entitled to an award of \$275,000, which is \$150,000 plus (25 x \$5,000). This amount constitutes the entirety of the compensation to which Claimant is entitled under the Claims Settlement Agreement.

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.⁵⁹

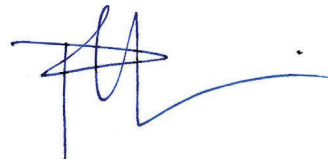
AWARD

Claimant is entitled to an award in the amount of \$275,000.

Dated at Washington, DC, February 28, 2019
and entered as the Proposed Decision
of the Commission.



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) (2018).

⁵⁸ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

⁵⁹ 22 U.S.C. §§ 1626-1627 (2012).