

not shown she was a U.S. national at the time of the alleged hostage-taking.¹ On December 9, 2018, Claimant filed a notice of objection. On February 7, 2019, Claimant submitted copies of records from the Department of State that include applications for passports that were issued to her in 1979, 1984, and 1989.

DISCUSSION

This Commission’s authority to hear claims is limited to the category of claims referred to it by the United States Department of State.² 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.³ Claimant satisfies the nationality requirement. She has provided records from the U.S. Department of State that show that she was a U.S. national at the time of the alleged hostage-taking. She has also provided a copy of a current U.S. passport, which expires in 2024 and establishes that she remained a U.S. national through the effective date of the Claims Settlement Agreement.

¹ See Claim No. IRQ-II-353, Decision No. IRQ-II-307 (Proposed Decision), at 5-6 (2018).

² See 22 U.S.C. § 1623(a)(1)(C) (2012).

³ 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.⁴ 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 she was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of her claim.

*No Compensation under the Claims Settlement Agreement
from the Department of State*

Claimant also satisfies the final jurisdictional requirement. She states that she has not “received any compensation under the [Claims Settlement Agreement] from the Department of State.” Further, we have no evidence that the State Department has provided her compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of her 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 her hostage from August 2, 1990, until September 14, 1990, a total of 44 days. She alleges that she was 14 years old and living in Kuwait with her family at the time of the invasion. She states that she hid in her residence in constant

⁴ The Agreement entered into force on May 22, 2011. See Claims Settlement Agreement, art. IX.

fear of being detained by Iraqi authorities until September 14, 1990, when she was evacuated from Kuwait on a flight chartered by the U.S. government.

Supporting Evidence

Claimant has supported her claim with a news article that states that she, her mother, and her siblings flew to Charlotte, North Carolina on September 14, 1990, a registration record for a North Carolina school district that shows that Claimant enrolled in a local school on September 18, 1990, and a declaration that provides further information about her alleged detention and ultimate departure from Kuwait. The Commission also takes notice of her mother and siblings' U.S. passports, which contain Iraqi exit stamps dated September 14, 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.⁵ 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.⁶ 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.⁷

⁵ 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.

⁶ See *id.* at 17-20.

⁷ See *id.* at 17.

Application of Standard to this Claim

(1) Armed Conflict: Claimant alleges that Iraq took her hostage in Kuwait on August 2, 1990, and held her hostage for 44 days, until September 14, 1990. 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.⁸ 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 her and (b) threatened her 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 her release. Claimant satisfies this standard for the 44-day period from August 2, 1990, to September 14, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, her time in Kuwait following the Iraqi invasion can be divided into three 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 the August 28, 1990 announcement that women and minors could leave Iraq and Kuwait; and (iii) from that August 28th announcement until her departure on September 14, 1990.⁹

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to her residence in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁰ Although some foreign

⁸ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

⁹ See *id.* at 20-21.

¹⁰ See *id.* at 21.

nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.¹¹ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.¹² Claimant had, as the United Nations Compensation Commission has put it, a “manifestly well-founded fear” of being killed or forcibly detained if she had left her residence.¹³ 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.¹⁴ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until August 28, 1990, the Iraqi government confined Claimant to Kuwait, preventing her 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.¹⁵ As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving the country, effectively detaining her within the borders of Kuwait and Iraq.¹⁶ For Claimant, this formal policy of prohibiting U.S. nationals from leaving Iraq and Kuwait lasted until August 28, 1990, when the Iraqi government announced that all female and minor U.S. nationals could leave.¹⁷

Although Claimant may have been legally permitted to leave Iraq on August 28, 1990, her detention did not end on that date. As the Commission has previously recognized, a claimant’s detention ends only on the date that she is released from the

¹¹ *See id.*

¹² *See id.*

¹³ 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.

¹⁴ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

¹⁵ *See id.* at 21-22.

¹⁶ *See id.* at 22.

¹⁷ *See id.*

control of the person or entity that detained her.¹⁸ Any attempt “[by the perpetrator] to restrict [the] movements” of a claimant establishes control,¹⁹ 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.²⁰

Under this standard, Claimant remained under Iraq’s control until September 14, 1990. The Commission has recognized that Iraq imposed conditions on air travel that limited the ability of foreign nationals, including U.S. nationals, to leave Iraq and/or Kuwait immediately after the August 28, 1990 release announcement.²¹ Indeed, the available evidence indicates that Claimant left Kuwait at the first reasonable opportunity, on the September 14, 1990 evacuation flight. Because there is no evidence that Claimant remained voluntarily in Iraq at any time during this period, we conclude that she was under Iraq’s control and thus detained from August 28, 1990, to September 14, 1990.

In sum, Iraq thus detained Claimant from August 2, 1990, until September 14, 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.²² This included Claimant. 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.²³

¹⁸ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22; see also Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

¹⁹ 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)).

²⁰ See *id.*

²¹ See *id.*

²² See *id.* at 23.

²³ See *id.*

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. She has thus established that Iraq threatened to continue to detain her.

(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.²⁴ 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.²⁵ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.²⁶

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 44 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

²⁴ *See id.*

²⁵ *See id.* at 23-24.

²⁶ *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.²⁷ Therefore, for the 44 days Iraq held Claimant hostage, she is entitled to an award of \$370,000, which is \$150,000 plus (44 x \$5,000). This amount constitutes the entirety of the compensation to which she 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.²⁸

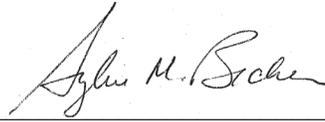
AWARD

Claimant is entitled to an award in the amount of \$370,000.

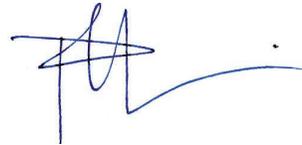
Dated at Washington, DC, February 28, 2019
and entered as the Proposed Decision
of the Commission.

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

August 20, 2019



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).

²⁷ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

²⁸ 22 U.S.C. §§ 1626-1627 (2012).