

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

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 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*

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

On June 20, 2017, 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.

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).

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. Claimant has provided a copy of his birth certificate, which shows that he was a U.S. national at the time of the alleged hostage-taking (August 1990). He has also provided a copy of his current U.S. passport, which expires in 2027 and 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 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

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.

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

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 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

Claimant states that Iraq held him hostage from August 2, 1990, until October 18, 1990, a total of 78 days. Claimant asserts that, on August 2, 1990, he was eight years old and living with his family in Kuwait when Iraq invaded the country. On October 10, 1990, Claimant and his family traveled to Basra to board a U.S. evacuation flight that was scheduled to stop in Baghdad before leaving Iraq. Claimant asserts that once the plane landed in Baghdad, Iraqi soldiers seized him and his family. Claimant states that he left Iraq on October 18, 1990, after U.S. diplomats negotiated his release.¹¹

¹¹ For further factual background regarding the State Department efforts to evacuate U.S. women and minors from Iraq and Kuwait following Iraq’s August 28 announcement, see Claim No. IRQ-II-143, Decision No. IRQ-II-314 (Proposed Decision), at 5-9.

Supporting Evidence

Claimant has supported his claim with his Statement of Claim, a State Department letter dated June 30, 1992, that states that Claimant was in Kuwait from August 2, 1990, to October 18, 1990; a letter dated September 28, 2017, from a U.S. diplomat who was stationed at the U.S. Embassy in Kuwait in 1990 that states that Claimant and his family were detained and held in Iraq for several days after they boarded an evacuation flight; a pool pass for the U.S. Embassy in Kuwait issued to Claimant on December 19, 1989; a Kuwaiti laissez passer issued to his mother that was originally scheduled to expire on August 2, 1987, but was renewed twice: through August 2, 1988, and from that date to May 3, 1991; Claimant's parents' receipts for an Iraqi Airways flight that left Baghdad and arrived in Amman on October 18, 1990, and Jordanian passports that were issued to Claimant's parents at Salt, Jordan on October 22, 1990.

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.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

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.

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 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

(1) Armed Conflict: Claimant alleges that Iraq took him hostage in Kuwait on August 2, 1990, and held him hostage for 78 days, until October 18, 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.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. Although he alleges that Iraq held him hostage from August 2, 1990, until October 18, 1990, a total of 78 days, Claimant satisfies this standard only for the 27-day period from August 2, 1990, to August 28, 1990, and the nine day period from October 10, 1990, to October 18, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, his time in Kuwait following the Iraqi

¹³ See *id.* at 17-20.

¹⁴ See *id.* at 17.

¹⁵ See *id.* at 16-17.

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 Claimant's departure on October 18, 1990.¹⁶

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁷ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁸ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.¹⁹ 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.²⁰ 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.²¹ 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 him from leaving the country by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed Kuwait's borders,

¹⁶ *See id.* at 20-21.

¹⁷ *See id.* at 21.

¹⁸ *See id.*

¹⁹ *See id.*

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.

forcibly prohibiting U.S. nationals from leaving.²² 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.²³ 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.²⁴

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 of the person or entity that detained him.²⁵ In this regard, any attempt by Iraq "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 [Iraq's] control.²⁷

Claimant argues that he remained under Iraq's control after August 28, 1990, because of acts allegedly committed by the Iraqi government: his seizure by Iraqi authorities on October 10, 1990, on board an evacuation flight, his subsequent detention in Baghdad until his departure on October 18, 1990, and Iraq's practice of detaining Kuwaiti nationals after the August 28, 1990 release, which placed his mother, who held a Kuwaiti travel document, at risk of being detained had his family tried to leave earlier.

Claimant's account of his seizure by Iraqi forces in Baghdad on October 10, 1990, and his release on October 18, 1990, is substantiated by State Department records and

²² *See id.* at 21-22.

²³ *See id.* at 22.

²⁴ *See id.*

²⁵ *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).

²⁶ *See* 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.*

contemporaneous statements made by senior State Department officials. His physical seizure and subsequent custodial detention by Iraqi authorities constitute restrictions of movement sufficient to show that he remained under Iraq's control. He has thus established that he was detained between October 10, 1990, and October 18, 1990.

Claimant has failed, however, to show that Iraq had a policy of detaining women of Kuwaiti nationality who attempted to leave after the August 28, 1990 release. To support his claim, Claimant relies exclusively on the September 2017 letter from a diplomat accredited to the U.S. Embassy in Kuwait, which states that "Iraq was detaining Kuwaitis who tried to [leave]" after the August 28, 1990 announcement and suggests that Iraqi authorities detained Claimant's family in Baghdad in October for this reason. These assertions are inconsistent with news reports, which show that several Kuwaiti nationals were allowed to leave in September 1990 on U.S. government flights and that a Kuwaiti woman was allowed to depart on the October 10, 1990 flight.²⁸ They are also inconsistent with contemporaneous statements made by State Department officials. Margaret Tutwiler, then Assistant Secretary of State for Public Affairs, stated that the Iraqi authorities had not detained individuals on board an evacuation flight before the October 10 incident and did not provide U.S. diplomats in Baghdad with an explanation for Claimant's family's detention.²⁹ While Tutwiler acknowledged that Iraq had continued to detain adult males

²⁸ See Dan Fesperman and Tom Bowman, *Released American Hostages Come Home*, ST. PETERSBURG TIMES, Dec. 11, 1990, 1A (noting that a Kuwaiti-born woman and her two U.S. national children were evacuated soon after the invasion); Third Amended Compl. at 17-18, 28, *Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (D.D.C. 2006) (No. 1:01-cv-02674-HHK) (stating that the Kuwaiti-born woman and her two children departed on September 9, 1990); Valerie Meehan, *285 Gulf Evacuees Arrive in Baltimore*, Associated Press, Sept. 15, 1990, Lexis (noting that Kuwaiti citizens were among the foreign nationals who were evacuated on a U.S. chartered flight that left Kuwait and Iraq on September 14, 1990); Emery Jeffreys, *Kuwaiti Refugee Says She Lived in Terror of Soldiers*, UNITED PRESS INT'L, Oct. 12, 1990, Lexis (noting that a Kuwaiti woman and her four children were evacuated on October 10, 1990 flight).

²⁹ See *State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Oct. 11, 1990, Lexis, at 4. Other State Department officials also stated that Iraqi authorities had declined to give reasons for the detention. See *Briefing Briefer: Mark Dillen*, FEDERAL NEWS SERVICE, Oct. 12, 1990, at 1, Lexis; *State Dept-10/15/90 -1-*, FEDERAL NEWS SERVICE, Oct. 15, 1990, at 4, Lexis.

of U.S. and foreign nationality, she gave no indication that Iraq detained Claimant's family because of his mother's Kuwaiti travel document or in furtherance of any policy targeting Kuwaiti women for detention.³⁰ We therefore reject Claimant's contention that Iraq acted to restrict his movements and thus detained him between August 28, 1990, and October 10, 1990.³¹

In sum, Iraq detained Claimant from August 2, 1990, to August 28, 1990, and from October 10, 1990, to October 18, 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.³² 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 have been permitted to leave Kuwait and/or Iraq at that time.³³ 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.³⁴ Iraq itself stated that it sought three

³⁰ See *State Department Regular Briefing Briefer: Margaret Tutwiler*, FEDERAL NEWS SERVICE, Oct. 11, 1990, Lexis, at 3-4.

³¹ None of the other evidence in the record suggests that Iraq placed restrictions on Claimant's movements. Statements made by State Department officials indicate that women and children of U.S. nationality who remained in Kuwait after September 22, 1990, chose to stay in the country. See Claim No. IRQ-II-143, Decision No. IRQ-II-314 (Proposed Decision), at 7, 16. These communications also establish that the State Department chartered Claimant's flight, which departed on October 10, 1990, and another flight that left on November 18, 1990, to evacuate women and children who initially chose to stay in Kuwait during the mass evacuation in September 1990 but subsequently decided to leave. See *id.* at 7-8.

³² See *id.* at 23.

³³ See *id.*

³⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

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.³⁵ Indeed, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁶

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 36 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.³⁷ Therefore, for the 36 days Iraq held Claimant hostage, he is entitled to an award of \$330,000, which is \$150,000 plus (36 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.³⁸

³⁵ See *id.* at 23-24.

³⁶ 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).

³⁷ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁸ 22 U.S.C. §§ 1626-1627 (2012).

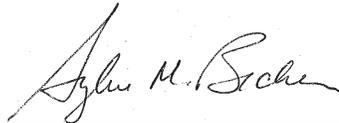
AWARD

Claimant is entitled to an award in the amount of \$330,000.

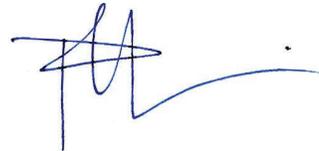
Dated at Washington, DC, February 28, 2019
and entered as the Proposed Decision
of the Commission.

**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).