

**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)	}	Claim No. IRQ-II-389
	}	
	}	
Against the Republic of Iraq	}	Decision No. IRQ-II-333
	}	

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held him hostage in violation of international law in August and September 1990. Because he has established that Iraq held him hostage for 52 days, he is entitled to an award of \$410,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was a seven-week-old United States citizen living in Kuwait with his parents and brother when Iraq invaded the country on August 2, 1990. He asserts that, beginning with the invasion and for approximately seven weeks thereafter, he and his family were confined to their apartment and that “the Iraqi regime prevented [them] from leaving Kuwait and detained [them] in the country against [their] will.” He alleges that he flew out of Kuwait on September 22, 1990, after being informed of the U.S. Embassy of the opportunity to evacuate.

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 ICESA and the 2014 Referral.⁷

On August 22, 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.

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).

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 copies of his U.S. birth certificate and his cancelled U.S. passport, which show that he was a U.S. national at the time of the alleged hostage-taking (August and September of 1990). He has also provided copies of a more recent U.S. passport, valid from 1998 to 2003, and his current U.S. passport, which establish 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) (2012).

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 a December 2017 declaration submitted with this 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 “received any compensation under [the U.S.-Iraq Claims Settlement Agreement] from the Department of State.” Further, we have no evidence that the State Department has provided him any compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of his claim.

In summary, this claim is within the Commission’s jurisdiction pursuant to the 2014 Referral and is entitled to adjudication on the merits.

Merits

Factual Allegations

Claimant states that Iraq held him hostage from August 2, 1990, until September 22, 1990, a total of 52 days. He alleges that he, his parents, and his brother were living in an apartment in a suburb of Kuwait City when Iraq invaded Kuwait on August 2, 1990. Because of his age at the time, Claimant does not have any independent memories of his ordeal; however, he does describe his experience in a sworn statement based on what his parents have told him over the years. According to this statement, Claimant and his family “spent 8 weeks hiding inside of [their] apartment during the war[,]” and that they “never

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

left, because [they] feared that [they] would be taken into custody by Iraqi soldiers, because [he] was an American citizen.” Claimant states that his father later told him that “by the end of August 1990, Iraqi soldiers were going door-to-door searching for American citizens and other western nationals” Moreover, Claimant’s father later learned that “the Iraqi authorities had declared that they would execute any person found to be hiding a U.S. national from them.” His father states that, throughout their ordeal, the U.S. Embassy advised them to “stay in [their] apartment until they could arrange for [them] to safely exit Iraqi-controlled territory.”

On August 28, 1990, Iraqi President Saddam Hussein announced that foreign national women and minors could leave the country.¹¹ In response, between September 1, 1990 and September 23, 1990, the U.S. government organized several charter flights from Iraq and Kuwait to repatriate those released U.S. nationals wishing to return to the United States.¹² A few days before September 22, 1990, the U.S. Embassy called Claimant’s family to inform them of one more evacuation flight. According to Claimant, on that day, he and his family went to the Kuwait Airport and boarded an evacuation flight to Baghdad, where they received exit visas, and then continued on to London-Gatwick Airport. They stayed in England for one night, and flew to Raleigh, North Carolina, the next day.

Supporting Evidence

Claimant has supported his claim with, among other things, his own sworn declaration, dated December 9, 2017, in which he describes his ordeal in Kuwait; a sworn statement from his father, also dated December 9, 2017, confirming Claimant’s narrative and providing additional details of his family’s experience; a contemporaneous news article

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

¹² See *id.* at 12-13.

referencing Claimant's alleged evacuation flight and its expected arrival in Raleigh, North Carolina on September 23, 1990; and a copy of his U.S. passport valid at the time of the Iraqi invasion, which contains, *inter alia*, a Kuwaiti entry stamp dated July 26, 1990, an Iraqi exit stamp dated September 22, 1990, and a London-Gatwick entry stamp dated September 22, 1990.¹³

The Commission also takes notice of additional documents, submitted by other claimants 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, unclassified cables and a memorandum from the U.S. Department of State, and affidavits submitted in a lawsuit brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War.

Legal Standard

To make out a substantive claim under Category A of the 2014 Referral, a claimant must show that (1) Iraq was engaged in an armed conflict and (2) during that conflict, Iraq took the claimant hostage.¹⁴ The Commission has previously held that, to establish a

¹³ Claimant's passport also includes a U.S. entry stamp dated August 23, 1990, from Raleigh-Durham International Airport ("RDU"), which would seem to contradict his claim that he was held hostage in Kuwait and Iraq between August 2, 1990, and September 22, 1990. Claimant has indicated, however, that the month of the stamp was in error and that he actually entered the United States on September 23, 1990. The Commission finds this assertion credible. Significantly, the *day of the month* on the U.S. immigration stamp is consistent with Claimant's assertion of when he arrived, as is the port of entry, which is further corroborated by the contemporaneous news article, which Claimant asserts discusses his specific evacuation flight. In light of all the evidence, the Commission is persuaded that the date of the U.S. immigration stamp was in error, and that Claimant arrived in the United States on September 23, 1990, and not August 23, 1990.

¹⁴ 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.

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.¹⁵ 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.¹⁶

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 52 days, until September 22, 1990, when Iraqi officials allowed him to leave Kuwait. 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.¹⁷ Thus, Claimant satisfies this element of the standard.

(2) Hostage-taking: To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant must show that Iraq (a) seized or detained him and (b) threatened him with death, injury or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for his release. Claimant satisfies this standard for the 52-day period from August 2, 1990, to September 22, 1990.

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

¹⁵ See *id.* at 17-20.

¹⁶ See *id.* at 17.

¹⁷ 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 September 22, 1990.¹⁸

From August 2, 1990, until Iraq formally closed all borders under its control to foreign nationals on August 9, 1990, Iraq confined Claimant to his family's apartment by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁹ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.²⁰ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.²¹ Claimant understandably had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being killed or forcibly detained if he had made any attempt to leave the country.²² For the purposes of the legal standard applicable here, putting Claimant in this situation in effect amounts to detention.²³ Iraq thus detained Claimant from August 2, 1990 to August 9, 1990.

From August 9, 1990 until he flew from Kuwait to London on September 22, 1990, the Iraqi government confined Claimant to Kuwait (and, for a short time just before his release, the Baghdad airport), preventing him from leaving the country by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed Kuwait's borders,

¹⁸ *See id.* at 20-21.

¹⁹ *See id.* at 7, 21.

²⁰ *See id.* at 21.

²¹ *See id.*

²² 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.

²³ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

forcibly prohibiting U.S. nationals from leaving.²⁴ 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.²⁵ 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.²⁶

Although Claimant may have been legally permitted to leave Kuwait on August 28, 1990, his detention did not end on that date. As the Commission has previously recognized, a claimant's detention ends only on the date that he is released from the control of the person or entity that detained him.²⁷ Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,²⁸ 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.²⁹

Under this standard, Claimant remained under Iraq's control until September 22, 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.³⁰ Indeed, the available evidence indicates that Claimant left Kuwait at the first reasonable opportunity, on the September 22, 1990 U.S. government-chartered flight that left Kuwait. Because there is no evidence that Claimant remained voluntarily in Kuwait and/or Iraq at any time

²⁴ *See id.* at 21-22.

²⁵ *See id.* at 22.

²⁶ *See id.*

²⁷ *See id.*; *see also* Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

²⁸ 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)).

²⁹ *See id.* (citing Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012)).

³⁰ *See id.*

during this period, we conclude that he was under Iraq's control and thus detained from August 28, 1990 to September 22, 1990.

In sum, Iraq thus detained Claimant from August 2, 1990 until September 22, 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.³¹ 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.³² 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.³³ 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.³⁴ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁵

³¹ See *id.* at 23.

³² See *id.*

³³ See *id.*

³⁴ See *id.* at 23-24.

³⁵ 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).

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 52 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.³⁶ Therefore, for the 52 days Iraq held Claimant hostage, he is entitled to an award of \$410,000, which is \$150,000 plus (52 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.³⁷

³⁶ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁷ 22 U.S.C. §§ 1626-1627 (2012).

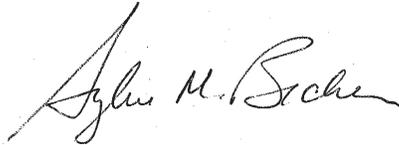
AWARD

Claimant is entitled to an award in the amount of \$410,000.

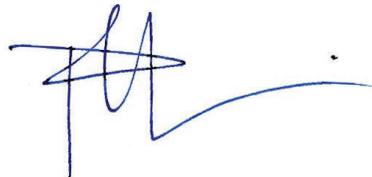
Dated at Washington, DC, February 28, 2019
and entered as the Proposed Decision
of the Commission.

**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).