



law.” Claimant asserts that she flew out of Kuwait on November 18, 1990, on an evacuation flight for women and children.

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.<sup>1</sup> Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> This was the State Department’s second referral of claims to the Commission under the Claims Settlement Agreement, the

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<sup>1</sup> 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).

<sup>2</sup> 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”).

<sup>3</sup> See *id.* Art. III(1)(a)(ii).

<sup>4</sup> See 22 U.S.C. § 1623(a)(1)(C) (2012).

<sup>5</sup> 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”).

first having been by letter dated November 14, 2012 (“2012 Referral” or “November 2012 Referral”).<sup>6</sup>

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-taking<sup>1</sup> by Iraq<sup>2</sup> 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 taking<sup>3</sup> 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. . . .

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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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<sup>6</sup> 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 Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission*, at ¶3 n.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.<sup>7</sup>

On October 22, 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 her claim.

## DISCUSSION

### Jurisdiction

This Commission's authority to hear claims is limited to the category of claims referred to it by the United States Department of State.<sup>8</sup> 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.<sup>9</sup> Claimant satisfies the nationality requirement. She has provided a copy of her cancelled U.S. passport, valid from 1987 to 1997, which shows that she was a U.S. national at the time of the alleged hostage-taking (August through November 1990). She has also

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

<sup>8</sup> See 22 U.S.C. § 1623(a)(1)(C).

<sup>9</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5 (2016).

provided a copy of her U.S. passport valid from 1996 to 2006, as well as a printout of her voter information from an online database, showing her registration to vote in North Carolina in July 1999 and her active U.S. voter status as of 2016. These documents establish that Claimant 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 Settlement Agreement.<sup>10</sup> Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant has averred under oath in a January 2015 declaration submitted with this claim, 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*

The Claimant also satisfies the final jurisdictional requirement. Claimant has stated 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 any 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.

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

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.<sup>11</sup> 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 on August 2, 1990, Iraqi forces began seizing and detaining U.S. nationals in Kuwait.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>

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.<sup>15</sup> In early September, the U.S. Embassy in Kuwait issued advisories informing U.S. nationals in Kuwait of Iraq's

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<sup>11</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 11, 22.

<sup>12</sup> See *id.* at 6.

<sup>13</sup> See *id.* at 7.

<sup>14</sup> See *id.* at 11.

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

new policy on the departure of women and children and advising them to contact the Embassy for details about the evacuation.<sup>16</sup> 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. government.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

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.

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<sup>16</sup> 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.

<sup>17</sup> 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.

<sup>18</sup> *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.

<sup>19</sup> *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.

nationals (including men, women, and children) in Kuwait.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> On November 15, 1990, the State 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.<sup>23</sup>

After the Iraqi government authorized the departure of all foreign nationals in Iraq and Kuwait on December 6, 1990,<sup>24</sup> 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.<sup>25</sup> 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

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

<sup>21</sup> See *id.*

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

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

<sup>24</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 12 (2016).

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

stay in Iraq.<sup>26</sup> 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.”<sup>27</sup>

On December 13, 1990, the last U.S. government chartered evacuation flight left Kuwait (via Baghdad).<sup>28</sup> 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 done.”<sup>29</sup> 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.<sup>30</sup>

#### *Factual Allegations*

Claimant states that Iraq held her hostage from August 2, 1990, until November 18, 1990, a total of 109 days. She alleges that she and her husband were living in an apartment in the Fahaheel area of Kuwait City when Iraq invaded Kuwait on August 2, 1990. She learned of the invasion when a neighbor came to her door and told her she had received a call from Claimant’s husband. Claimant states that, once her husband returned home, they went to a neighbor’s house to listen to the British Broadcasting Corporation (BBC) on the radio, and learned that “Saddam Hussein [had] threaten[ed] to turn Kuwait into a

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

<sup>27</sup> See *id.* at 1.

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

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

<sup>30</sup> See *id.*

‘graveyard’ if the United States attempted to intervene in the conflict.” Claimant further states that, given the troop presence in Kuwait and the threats they had just heard, “it became apparent that [they] were trapped in Kuwait.”

Claimant alleges that she and her husband “sequestered [themselves] inside [their] apartment for approximately five weeks.” Although she acknowledges that she learned of Iraq’s August 28, 1990 announcement releasing women and children on August 29, 1990, she did not attempt to leave at that time because, according to Claimant, she had heard media reports that only women *with* children were authorized to leave. Claimant states that, on September 8, 1990, she learned that American women without children were allowed to leave; she also heard on that day about an Iraqi law stating that anyone leaving Iraq (including Kuwait) without an exit visa (which claimant did not have and did not know how to obtain) would be jailed. Claimant therefore remained in her apartment, experiencing numerous harrowing incidents in the weeks that followed Iraq’s announcement. For example, Claimant describes how, on or about September 3, 1990, Iraqi troops opened fire in their vicinity, bullets crashing through their bedroom window. At that point, Claimant and her husband “were absolutely terrified and decided to leave [their] apartment for a safer location in the event Iraqi soldiers might begin searching the complex for Americans.”

On approximately September 9, 1990, Claimant and her husband moved to a different apartment that belonged to the relative of a family friend, where they remained for the next ten weeks. Claimant states that, during this time, she repeatedly witnessed Iraqi soldiers harass and detain civilians, and “[o]n a few occasions, Iraqi soldiers came to [their] door, forcing [them] to dash for the attic.” She further states that, during this time, she received no advance notice of any evacuation flights, except for a flight scheduled to

depart Kuwait on October 10, 1990, which she learned about on October 6, 1990, but which she states she “would not have had any way of getting on, as it was moved to Basra airport because the Iraqis had cleared the Kuwait airport.” Further, she “was unwilling to emerge from [their] apartment to seek the assistance of a stranger, given the risk that he or she might turn [Claimant’s husband] over to the Iraqi authorities and that [they] might be maltreated or killed.”

Claimant states that around November 14, 1990, she heard a report on the BBC about an evacuation flight for women and minors that would leave Kuwait City on November 18, 1990. According to Claimant, she and her husband decided that she must attempt to depart on the November 18 evacuation flight. Claimant states that, on that day, November 18, 1990, she and her husband “emerged from [their] apartment and, as luck would have it, [they] were immediately approached by the driver of a car-for-hire who agreed to take [them] to the airport.” She claims that, along the way, they were stopped four times at Iraqi checkpoints and interrogated at gunpoint. They eventually arrived at the airport and, leaving her husband behind, Claimant boarded a bus that took her and other evacuees into the desert, where they “boarded the awaiting aircraft at gunpoint.” About an hour later, the plane landed in Baghdad, and shortly thereafter left for London-Gatwick Airport, where the flight landed early in the morning on November 19, 1990.

*Supporting Evidence*

Claimant has supported her claim with, among other things, two sworn declarations, dated January 28, 2015, and December 12, 2017, in which she describes her experience in Kuwait; a sworn declaration from her husband, dated October 2, 2015,

verifying many of the details of Claimant's narrative;<sup>31</sup> a sworn declaration from Gale Rogers, the Consul at the U.S. Embassy in Kuwait at the time of the invasion, dated January 9, 2019, noting that during the "initial three weeks" of the evacuation flights in September 1990 the flights were "completely booked" and that some evacuees had to wait until the evacuation flight on September 22, 1990, to depart; and a copy of Claimant's U.S. passport valid at the time of the Iraqi invasion, which contains, *inter alia*, a Kuwaiti entry stamp dated July 9, 1990, an Iraqi exit stamp dated November 18, 1990, a London Gatwick entry stamp dated November 19, 1990, and a U.S. immigration entry stamp, also dated November 19, 1990.

Claimant has also submitted copies of excerpts from her personal, handwritten journal extending from August 2, 1990, to November 18, 1990, which contains both a highly detailed account of Claimant's experience and her reasons for staying in Kuwait beyond the August 28, 1990 date that U.S. national women and children were formally authorized to depart. For example, in the entry for August 29, 1990, Claimant states that the "news today stated that [Saddam] Hussein said all women + children of any nationality are allowed to leave if they like[,]" although the "BBC said that this report had not been confirmed." That entry also refers to other reports that suggested that only women *with* children would be allowed to leave. On September 8, 1990, she expresses concern about a new Iraqi law that anyone leaving Iraqi without an exit visa would be jailed. Additionally, in numerous passages throughout her journal, Claimant expresses her desire to stay in Kuwait with her husband regardless of the opportunities she had to leave. Finally, on

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<sup>31</sup> The dates referenced in Claimant's declarations concerning certain incidents do vary slightly from those of her husband, however. These include the dates when bullets were shot into their apartment, when they relocated to the other apartment, and the date they learned of the November 18 evacuation flight. The various declarations, however, are consistent on the date of Claimant's departure and the basic facts concerning their experience in Kuwait during the dates alleged.

November 16, 1990, Claimant writes that she and her husband “decided that [she] will have to get to the airport on Sunday[,]” adding that “[o]ne of us has to get out because we will lose everything by the time the world decides to act . . . .” She also states that her neighbor noted that “it would be easy to catch a ride to the airport because people need the extra money.”

Claimant has also submitted a number of documents 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, affidavits submitted in a lawsuit brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War, and a decision in one of the Pending Litigation cases affirming the hostage claims of two plaintiffs and describing their experiences.

Finally, the Commission 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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup>

*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 109 days, until November 18, 1990, when Iraqi officials allowed her 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.<sup>35</sup> 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 only for the 27-day period from August 2, 1990, to August 28, 1990.

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<sup>32</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16 (2016). An estate claimant would of course need to make this showing as to its decedent.

<sup>33</sup> See *id.* at 17-20.

<sup>34</sup> See *id.* at 17.

<sup>35</sup> See *id.* at 16-17.

(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 Claimant's departure on November 18, 1990.<sup>36</sup>

From August 2, 1990, until Iraq formally closed all borders under its control to foreign nationals on August 9, 1990, Iraq confined Claimant to her apartment by threatening all U.S. nationals with immediate seizure and forcible detention.<sup>37</sup> Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.<sup>38</sup> Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.<sup>39</sup> Claimant understandably had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being killed or forcibly detained if she had made any attempt to leave the country.<sup>40</sup> For the purposes of the legal standard applicable here, putting Claimant in this situation in effect amounts to detention.<sup>41</sup> Iraq thus detained Claimant from August 2, 1990 to August 9, 1990.

From August 9, 1990 until the August 28, 1990 announcement that women and minors could leave Iraq and Kuwait, the Iraqi government confined Claimant to Kuwait,

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<sup>36</sup> See *id.* at 20-21.

<sup>37</sup> See *id.* at 7, 21.

<sup>38</sup> See *id.* at 21.

<sup>39</sup> See *id.*

<sup>40</sup> 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.

<sup>41</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

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.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup>

Although Claimant may have been legally permitted to leave Kuwait on August 28, 1990, her 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.<sup>45</sup> Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,<sup>46</sup> 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.<sup>47</sup>

Here, while Claimant advances several reasons why she 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 she had no way to get to the airport and no way to find someone willing to take her because of Iraq's decree mandating the death penalty for those found harboring or assisting American nationals.<sup>48</sup> While the

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<sup>42</sup> *See id.* at 21-22.

<sup>43</sup> *See id.* at 22.

<sup>44</sup> *See id.*

<sup>45</sup> *See id.* (citing Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012)).

<sup>46</sup> *Id.* (citing Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 12 (2012)).

<sup>47</sup> *See id.* (citing Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012)).

<sup>48</sup> Claimant offers several additional reasons for staying in Kuwait beyond the August 28, 1990 date that American women and children were formally authorized to depart. These reasons include that she was confused about the initial announcement; that she did not want to take the risk that her husband would be discovered if they had made arrangements for her to get to the airport; that she had difficulty learning about

Commission has recognized that Iraq imposed restrictions on air travel that prevented some women and minors from leaving Kuwait and Iraq immediately after August 28, 1990,<sup>49</sup> Claimant cites no evidence to suggest that Iraq's decree mandating the death penalty for those found assisting Americans applied to assisting foreign national women and children after August 28, 1990.

Moreover, the evidence in the record does not suggest that Iraq placed restrictions on Claimant's movements. To the contrary, statements made by State Department officials indicate that Iraq allowed several hundred women and children of U.S. nationality to leave Kuwait on evacuation flights from September 1, 1990, to September 22, 1990, and that women and children who remained in the country after September 22 had chosen to stay.<sup>50</sup> These communications also establish that the State Department chartered Claimant's flight, which departed on November 18, 1990, as well as an earlier flight that departed on October 10, 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.<sup>51</sup>

In the alternative, Claimant argues that, because the Commission has previously held in this claims program that other U.S. national women and children who departed on the last of the September 1990 evacuation flights (*i.e.*, the September 22 flight) left at the "first reasonable opportunity," then Claimant also must be regarded as having been

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the evacuation flights in advance due to limited phone access and news reports only from the Voice of America and a single television station; that she felt she could not get to the airport without her husband being discovered; and the thought of leaving her husband alone in Kuwait. Although Claimant attributes these circumstances to Iraq's actions during the occupation, they do not reflect an intentional effort by Iraq to restrict Claimant's movements after August 28, 1990. Indeed, as reported in numerous other decisions in this program, foreign national women and minors *were* able to leave Kuwait and/or Iraq after August 28 despite being subject to the same pressures and experiences as Claimant. We thus make no finding on these issues.

<sup>49</sup> 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.

<sup>50</sup> *See* Claim No. IRQ-II-143, Decision No. IRQ-II-314 (2018) (Proposed Decision), at 6-7, 16.

<sup>51</sup> *See id.* at 7-8.

afforded no reasonable opportunity to depart prior to that date. Additionally, citing the Rogers declaration, Claimant argues that all of the evacuation flights prior to September 22, 1990 were completely full, and therefore Claimant must at a minimum be considered to have been a hostage until that time.<sup>52</sup> These arguments, however, ignore the fact that Claimant apparently made no attempt leave on any of the September evacuation flights. Moreover, there is no factual proof for Claimant's assertion that she would not have been able to get on a plane before September 22, 1990. The affidavit from Consul Rogers in particular does not support this claim—it merely states that some of the flights leaving before September 22, 1990 became full and thus some women had to leave later than they wished. The more relevant point is that we have no evidence that Claimant would have taken the opportunity to leave on or before September 22, 1990.

Claimant's argument that she could not have left between September 23, 1990, and November 18, 1990, even if she wanted to, due to various restrictions on air travel is similarly deficient.<sup>53</sup> As noted above, the Department of State made clear that the September 22, 1990, evacuation flight would be able to accommodate all remaining Americans who had received permission to leave from Iraq and wished to do so.<sup>54</sup> In addition, Claimant's assertion that she could not take the October 10, 1990, evacuation flight because she could not reach Basra, Iraq, appears factually incorrect—statements from the Department of State and press reports from the time indicate that several hundred U.S nationals were able to travel to Basra by bus from Kuwait.<sup>55</sup> Likewise, Claimant's assertion that she was unable to leave Kuwait because she needed an exit visa and could

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<sup>52</sup> See Memorandum in Support of [Claim No. IRQ-II-204], dated February 2, 2019 (“Claimant Mem.”), at 6-7.

<sup>53</sup> See Claimant Mem. at 7-8.

<sup>54</sup> See Claim No. IRQ-II-143, Decision No. IRQ-II-314, *supra*, at 7.

<sup>55</sup> See *State Department Regular Briefing Briefer: Margeret Tutwiler*, FEDERAL NEWS SERVICE, Oct. 10, 1990, at 1, Lexis.

not obtain one is at odds with clear evidence that exit visas for American evacuees were, in fact, being processed planeside.<sup>56</sup>

Finally, Claimant asserts that her “personal and moral obligations” compelled her to remain with her husband in response to Iraq’s actions in Kuwait.<sup>57</sup> As support for this argument, she cites decisions from the Commission’s Second Libya Claims Program in which compensation was awarded to the crew members of a hijacked plane who, prior to escaping, stayed on the plane for a brief period to disable it so as to prevent further injury to passengers on board.<sup>58</sup> These claims are not analogous: In the Libya decisions, it was clear that the crew members would have been detained had they not escaped. Here, Claimant has presented no evidence that Iraq forced Claimant to remain in Kuwait after the August 28 decree by continuing to detain her husband. Indeed, many female claimants in this program left Iraq and Kuwait even while their husbands stayed behind.<sup>59</sup>

We thus conclude that Claimant has failed to establish that Iraq detained her after August 28, 1990.

In sum, Iraq thus detained Claimant from August 2, 1990 until 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.<sup>60</sup> Both Iraqi President Saddam Hussein and the Speaker of Iraq’s National Assembly Saadi

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<sup>56</sup> See *CB State Department Regular Briefing Briefer: Mark Dillen*, FEDERAL NEWS SERVICE, Sept. 6, 1990, at 2, Lexis;

<sup>57</sup> See Claimant Mem. at 11.

<sup>58</sup> See Claim No. LIB-II-006, Decision No. LIB-II-104 (2012) (Final Decision); Claim No. LIB-II-011, Decision No. LIB-II-105 (2012) (Final Decision).

<sup>59</sup> The State Department advised individuals who had been formally released to leave even if some of their family members had not received permission to depart. See *State Department Regular Briefing Briefer: Richard Boucher*, FEDERAL NEWS SERVICE, Dec. 11, 1990, at 1, Lexis.

<sup>60</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

Mahdi made clear that American nationals (as well as those from numerous other countries) would not be permitted to leave at that time.<sup>61</sup> Claimant has thus established that Iraq threatened to continue to detain her 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.<sup>62</sup> 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.<sup>63</sup> Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.<sup>64</sup>

Claimant has thus established that from August 2, 1990, through the August 28, 1990 announcement that women and minors could leave, Iraq detained Claimant in order to compel the United States government to act in certain ways as an explicit and/or implicit condition for her release.

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral for the period between August 2, 1990, and August 28, 1990. Iraq held Claimant hostage in violation of international law for a period of 27 days, and Claimant is thus entitled to compensation.

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<sup>61</sup> *See id.*

<sup>62</sup> *See id.*

<sup>63</sup> *See id.* at 23-24.

<sup>64</sup> *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).

## 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.<sup>65</sup> Therefore, for the 27 days Iraq held Claimant hostage, she is entitled to an award of \$285,000, which is \$150,000 plus (27 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.<sup>66</sup>

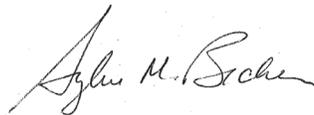
### AWARD

Claimant is entitled to an award in the amount of \$285,000.

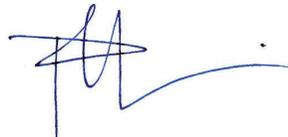
Dated at Washington, DC, February 28, 2019  
and entered as the Proposed Decision  
of the Commission.

**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).

<sup>65</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

<sup>66</sup> 22 U.S.C. §§ 1626-1627 (2012).