

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 September 2, 2015, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together

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).

with exhibits supporting elements of her claim. By letter dated February 3, 2019, Claimant submitted additional material in support 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.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 her U.S. passport valid from April 23, 1990, to April 22, 1995, and her U.S. passport valid from June 28, 2010, to June 27, 2020. These documents show that Claimant was a U.S. national at the time of the alleged hostage-taking, and 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

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.

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 Litigation cases for purposes of the Referral. Claimant has averred, and the pleadings in the cases cited in footnote 3 confirm, that she was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of her claim.

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

The Claimant also satisfies the final jurisdictional requirement. Claimant has stated that she has not received compensation from the U.S. Department of State under the United States-Iraq Settlement Agreement dated September 2, 2010. Further, we have no evidence that the State Department has provided 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.

Merits

Factual Backdrop to Claimant's Allegations

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

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

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

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

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

¹² See *id.* at 6.

¹³ See *id.* at 7.

¹⁴ See *id.* at 11.

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

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

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

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

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

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

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

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

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

²¹ See *id.*

September 1990 but subsequently decided to leave.²² 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, 1990.²³

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

On December 13, 1990, the last U.S. government chartered evacuation flight left Kuwait (via Baghdad).²⁸ That same day, a State Department official stated that all

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

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

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

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

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

²⁷ See *id.* at 1.

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

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

Factual Allegations

Claimant states that Iraq held her hostage from August 2, 1990, until December 13, 1990, a total of 134 days. On August 2, 1990, Claimant was five years old and living with her two siblings and her parents in Salwa, Kuwait, when Iraq invaded the country. After the invasion, Claimant and her family hid in their apartment until August 7, 1990, when they relocated to Claimant’s aunt’s house in Jabriya. They stayed there until August 26, 1990, when they relocated to Claimant’s uncle’s house.

Claimant further states that on December 7, 1990, her family learned that the Iraq had ordered the release of all remaining American hostages, and that on December 9, 1990, she and her family were driven to a military airport in Jahra, where they boarded a flight to Baghdad. According to Claimant, upon their arrival in Baghdad, they were informed that Claimant’s mother would not be allowed to join them on the evacuation flight to Frankfurt because she was traveling on a Kuwaiti passport. They then stayed at the U.S. Ambassador’s residence in Baghdad for the few days it took the U.S. Embassy to obtain permission for Claimant’s mother to join the evacuation. The U.S. Embassy first issued Claimant’s mother an official U.S. travel document. According to the declaration

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

³⁰ See *id.*

submitted by Claimant's father, after Iraq refused to accept this document, the U.S. Embassy obtained an Iraqi passport for Claimant's mother and the family departed on a December 13, 1990, evacuation flight to Germany.

Supporting Evidence

Claimant has supported her claim with her own declaration, a declaration from her father, and 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. In addition, she has provided her U.S. passport valid from the time of the invasion, which has an Iraqi exit stamp date December 13, 1990. She has also referenced a document that is appended to her father's claim, a *U.S. Department of State Travel Document Issued in Lieu of a Passport* that was issued to her mother, and dated Dec. 9, 1990. Claimant has also referenced two newspaper articles appended to her father's claim, both of which identify Claimant's parents by name and provide further details about the family's experience in Kuwait and Iraq. She has additionally submitted State Department memorandum and cables, and a newspaper article, that discuss the September 1990 evacuation flights.

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, affidavits submitted

in a lawsuit brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War, and several unclassified cables from the U.S. Department of State.

The Commission also takes notice of Federal News Service transcriptions of press briefings by U.S. government officials, news articles, and publically available unclassified State Department documents that provide further information about Iraq's treatment of women and minors of foreign nationality after it authorized them to leave Iraq and Kuwait on August 28, 1990.

Legal Standard

To make out a substantive claim under Category A of the 2014 Referral, a claimant must show that (1) Iraq was engaged in an armed conflict and (2) during that conflict, Iraq took the claimant hostage.³¹ The Commission has previously held that, to establish a hostage-taking claim, a claimant must show that Iraq (a) seized or detained the claimant and (b) threatened the claimant with death, injury, or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for the claimant's release.³² A claimant can establish the first element of this standard by showing that the Iraqi government confined the claimant to a particular location or locations within Iraq or Kuwait, or prohibited the claimant from leaving Iraq and/or Kuwait.³³

Application of Standard to this Claim

(1) Armed Conflict: Claimant alleges that Iraq took her hostage in Kuwait on August 2, 1990, and held her hostage for 134 days, until December 13, 1990, which is the

³¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16. An estate claimant would of course need to make this showing as to its decedent.

³² See *id.* at 17-20.

³³ See *id.* at 17.

date that she alleges she and her siblings and parents were able to leave Iraq on an evacuation flight organized by the United States. 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.³⁴ Thus, Claimant satisfies this element of the standard.

(2) Hostage-taking: To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant must show that Iraq (a) seized or detained 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. Although she alleges that Iraq held her hostage from August 2, 1990, until December 13, 1990, a total of 134 days, Claimant satisfies this standard only for the 27-day period from August 2, 1990, to August 28, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, her time in Kuwait following the Iraqi invasion can be divided into three periods: (i) between the Iraqi invasion on August 2, 1990 and the Iraqi government's formal closing of the borders on August 9, 1990; (ii) from that August 9th formal closing of the borders until the August 28, 1990 announcement that women and minors could leave Iraq and Kuwait; and (iii) from that August 28th announcement until Claimant's alleged release on December 13, 1990.³⁵

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to her family's home in Kuwait, and subsequently her aunt's home in Kuwait, by threatening all U.S. nationals with immediate seizure and

³⁴ See *id.* at 16-17.

³⁵ See *id.* at 20-21.

forcible detention.³⁶ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.³⁷ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.³⁸ Claimant had, as the United Nations Compensation Commission has put it, a “manifestly well-founded fear” of being killed or forcibly detained if she had left her family’s and her aunt’s residences.³⁹ The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Claimant in this situation in effect amounts to detention.⁴⁰ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until August 28, 1990, the Iraqi government confined Claimant to Kuwait, preventing her from leaving the country by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed Kuwait’s borders, forcibly prohibiting U.S. nationals from leaving.⁴¹ 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.⁴² 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.⁴³

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

³⁶ *See id.* at 21.

³⁷ *See id.*

³⁸ *See id.*

³⁹ Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US \$100,000 (Category “C” Claims), UN Doc. S/AC.26/1994/3 (1994), at 93.

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

⁴¹ *See id.* at 21-22.

⁴² *See id.* at 22.

⁴³ *See id.*

recognized, a claimant's detention ends only on the date that she is released from the control of the person or entity that detained her.⁴⁴ In this regard, any attempt by Iraq "to restrict [the] movements" of a claimant establishes control,⁴⁵ whereas a claimant who has a reasonable opportunity to leave the site of his or her captivity is deemed no longer to be under Iraq's control.⁴⁶

Here, Claimant argues that she remained under Iraq's control after August 28, 1990, because Iraqi authorities prevented her mother from leaving Kuwait and she and her siblings were otherwise too young to travel on their own. Claimant's primary contention in this regard is that, even though her parents learned of the August 28, 1990 announcement a few days after transferring to her uncle's house, her mother, a Kuwaiti citizen, was "unable to take advantage of [the August 28, 1990] order" because "Iraqi authorities were not willing to allow anyone to travel on a Kuwaiti passport, as they did not regard Kuwait as a separate country, but rather as just a province of Iraq." Claimant further states that, "[g]iven that I was just an infant at the time, the notion of me separating from my parents and evacuating without them was not an option so there was no choice other than for me to remain with them in Kuwait."

Claimant, however, has failed to show that Iraq had a policy of detaining women of Kuwaiti nationality who attempted to leave after the August 28, 1990 release. To the contrary, contemporaneous news reports indicate that Kuwaiti women (and in some cases their U.S. national family members) were evacuated from Kuwait on U.S. chartered

⁴⁴ 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).

⁴⁵ 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)).

⁴⁶ See *id.*

evacuation flights departing between September 1990 and December 1990.⁴⁷ Indeed, according to Claimant's own assertions, once Claimant's mother sought the help of U.S. Embassy staff, they were able to facilitate her acquisition of useable travel documents and she was able to evacuate within a few days. Claimant has provided no evidence that if her mother had tried to evacuate at the time of the August 28, 1990 announcement that she would have been prevented from doing so, or that the U.S. Embassy would not have been able to help her in the same manner that they helped her when she evacuated in December 1990.⁴⁸ As discussed above, statements made by senior State Department officials in September 1990 establish that, as a result of the August 28, 1990 announcement, the vast majority of U.S. nationals in Kuwait—including several hundred women and children—left on evacuation flights between September 1, 1990, and September 22, 1990.⁴⁹ These statements indicate that women and children of U.S. nationality who remained in Kuwait after September 22, 1990, chose to stay in the country.⁵⁰

⁴⁷ 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); and 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).

⁴⁸ Similarly, even assuming Claimant's mother could not travel, her assertion that she was too young to evacuate on her own is called into question by news reports and previous claims in this claims program, which indicate that children of similar age who could not travel with their parents were evacuated under the supervision of other adults. See, e.g., Claim No. IRQ-II-221, Decision No. 148 (2017); and Claim No. IRQ-II-223, Decision No. 149 (2017) (describing evacuation of two-year-old and three-year-old minors who were evacuated with family acquaintance on flight to England on September 12, 1990). See also *Hostage-Help Operation May Help Again*, GREENSBORO NEWS & REC., Sept. 15, 1990, B3 (noting that five children were, without the supervision of an adult known to them, on September 14, 1990 evacuation flight); and Edwin Chen, *250 Americans Back Home From Kuwait; Refugees: The Freedom Flight Lands in North Carolina, Ending Two Months of Terror in the Persian Gulf*, L. A. TIMES, Oct. 13, 1990, A13 (noting that two minors aged four and six were, without the supervision of an adult known to them, evacuated from Kuwait on the October 10, 1990 flight). Claimant cites no evidence of any attempt by Iraq that prevented her from evacuating from Kuwait in similar fashion.

⁴⁹ As such, the situation in Kuwait as it related to women and minors after the August 28, 1990 announcement was different from the situation that prevailed prior to August 28, 1990, including from the period between August 2, 1990 and August 9, 1990.

⁵⁰ In this regard the Commission takes note of a December 1990 newspaper article reporting the departure of Claimant's family, in which Claimant's mother is reported to have said that although she and her husband

We conclude that Claimant has failed to establish that Iraq acted to restrict her movements after August 28, 1990.⁵¹ She has therefore failed to establish that Iraq detained her after August 28, 1990.⁵²

In sum, Iraq thus detained Claimant from August 2, 1990, to August 28, 1990.

(b) Threat: In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission determined that the Iraqi government threatened U.S. nationals in Kuwait and Iraq numerous times with continued detention.⁵³ Both Iraqi President Saddam Hussein and the Speaker of Iraq's National Assembly Saadi Mahdi made clear that American nationals (as well as those from numerous other countries) would not have been permitted to leave Kuwait and/or Iraq at that time.⁵⁴ 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

had "wanted to remain" in Kuwait beyond even the December 1990 evacuation flights, they feared that their lives would be in danger once the U.S. diplomats left. *See, U.S. Diplomats Leave Kuwait Staff Left With 'The Flag Flying, Ambassador; Says*, ST. LOUIS POST-DISPATCH, Dec. 14, 1990, 1A.

⁵¹ We also note that under the international law applicable to armed conflict, neither the mere presence of an occupying force nor the persistence of an armed conflict between two countries is a sufficient ground for establishing the injury of detention.

⁵² 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 afforded no reasonable opportunity to depart prior to that date. Additionally, citing the Rogers affidavit, 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. These arguments, however, ignore the fact that Claimant made no attempt to leave on any of the September evacuation flights. Additionally, 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. Moreover, Claimant cites no evidence of any attempt *by Iraq* that prevented her from evacuating from Kuwait after the August 28, 1990 announcement.

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

⁵⁴ *See id.*

explicit and/or implicit condition for their release.⁵⁵ Iraq itself stated that it sought three things from the United States government before it would release the detained U.S. nationals; it wanted the United States (i) not to attack Iraq, (ii) to withdraw its troops from Saudi Arabia; and/or (iii) to end the economic embargo imposed on Iraq.⁵⁶ Indeed, the U.S. government itself understood Iraq's actions to be hostage-taking.⁵⁷

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. Iraq held Claimant hostage in violation of international law for a period of 27 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.⁵⁸ 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

⁵⁵ *See id.*

⁵⁶ *See id.* at 23-24.

⁵⁷ *See* George H. W. Bush, "These Innocent People . . . Are, In Fact, Hostages" in U.S. Dep't of State, *American Foreign Policy Current Documents 1990* 484 (Sherrill Brown Wells ed. 1991); *see also* 2014 Referral at ¶ 3; *cf.* United Nations S.C. Res. 674 (Oct. 29, 1990) (noting "actions by . . . Iraq authorities and occupying forces to take third-State nationals hostage" and demanding that Iraq "cease and desist" this practice).

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

entirety of the compensation to which Claimant is entitled under the Claims Settlement Agreement.

The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA.⁵⁹

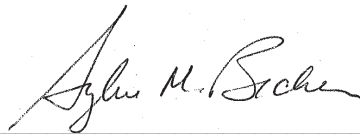
AWARD

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

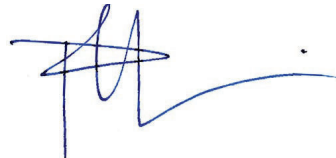
Dated at Washington, DC, February 28, 2019
and entered as the Proposed Decision
of the Commission.

**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).

⁵⁹ 22 U.S.C. §§ 1626-1627 (2012).