

**FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, D.C. 20579**

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In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Republic of Iraq  
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Claim No. IRQ-II-160

Decision No. IRQ-II-103

Counsel for Claimant:

Daniel Wolf, Esq.  
Law Office of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held her hostage in violation of international law in August and September 1990. Because she has established that Iraq held her hostage for 31 days, she is entitled to an award of \$305,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was a United States citizen working in Kuwait when Iraq invaded the country on August 2, 1990. She asserts that, beginning with the invasion and for approximately one month thereafter, she was forced to hide in the Kuwait International Hotel in constant fear of being captured by Iraqi authorities. She further claims that during this entire period, the Iraqi government in effect forcibly prevented her (and other U.S. nationals) from leaving Kuwait and/or Iraq and did so with the express purpose of compelling the United States government to acquiesce to certain Iraqi government

demands. Claimant asserts that she flew out of Kuwait (via Baghdad, Iraq) on September 2, 1990 after the Iraqi government authorized female and minor U.S. nationals to leave.

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

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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").

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”).<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 November 2, 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 U.S. passport valid from August 26, 1983 to August 25, 1993, which shows that she was a U.S.

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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)(2012).

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

national at the time of the alleged hostage-taking (August and September of 1990). She has also provided a copy of her current U.S. passport, which expires December 18, 2024 and establishes that she remained a U.S. national through the effective date of the Claims Settlement Agreement.

*No Pending Litigation*

Additionally, Category A states that the claimant may not have been a plaintiff in any of the so-called Pending Litigation cases at the time of the entry into force of the Claims Settlement Agreement.<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 her Statement of 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 Allegations*

Claimant states that Iraq held her hostage from August 2, 1990 until September 2, 1990, a total of 32 days. Claimant alleges that she was working in Kuwait when Iraq invaded the country on August 2, 1990. She alleges that after the invasion, she sequestered herself inside the Kuwait International Hotel “for fear of being arrested on account of [her] American citizenship.” Claimant asserts that she was in hiding in the hotel on September 1, 1990, when civil rights activist Jesse Jackson, who was staying in the hotel at the time, learned that she was there. Jackson had travelled to Kuwait after receiving permission from Iraqi president Saddam Hussein to bring back certain U.S. nationals—women, children, and men in poor health—on an evacuation flight to the United States that was scheduled to depart on September 1, 1990.

Claimant states that after Jackson learned of her presence in the hotel, he spent several hours negotiating with Iraqi authorities and that they eventually agreed to release her. Claimant further asserts that because of the protracted nature of these negotiations, she, Jackson, and the other U.S. nationals who had been released in Kuwait were delayed in getting to Baghdad to catch the evacuation flight (the “Jackson flight”), which was scheduled to depart Baghdad for Washington, D.C. (with layovers in Paris and London) on September 1, 1990. Claimant maintains that she flew from Kuwait City to Baghdad with Jackson and the other released U.S. nationals on September 2, 1990. Claimant’s counsel submits that she boarded the Jackson flight that same day, September 2, 1990, at approximately 2:30 a.m. Baghdad time.

*Supporting Evidence*

In support of her claim, Claimant's counsel has 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 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.

Claimant has also provided a number of documents that are specific to her claim, including her sworn Statement of Claim, which states that she "was prohibited from leaving Iraqi controlled territory" from August 2, 1990 "until September 1, 1990"; an article published on September 2, 1990 in *Newsday* that was appended to her Statement of Claim and that provides further information about the circumstances of her detention and alleged departure from Kuwait and Iraq; a copy of her U.S. passport, which contains an Iraqi exit stamp dated September 1, 1990; and a declaration in which she states that she flew from Kuwait City to Baghdad on September 2, 1990 prior to boarding the Jackson flight.

Claimant's counsel has submitted a declaration in which he states that Claimant was not permitted to board the Jackson flight until 2:30 a.m. on September 2, 1990 and a September 2, 1990 *New York Times* article that was appended to his declaration and that provides further information about Claimant's departure from Kuwait and Iraq. He has also provided a list containing flight designations and the departure dates of flights that were used to evacuate U.S. nationals and their family members from Iraq and Kuwait. That

list was appended to a December 18, 1990 memorandum that was sent to the U.S. Secretary of State by Elizabeth Tamposi, who was then the Assistant Secretary of State for Consular Affairs. As discussed further below, the documents submitted by Claimant and her counsel raise a factual question as to whether the Jackson flight departed on September 2, 1990, as Claimant contends in her declaration, or one day earlier, on September 1, 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>11</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>12</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>13</sup>

### *Application of Standard to this Claim*

Claimant satisfies this standard for the period August 2, 1990 to September 1, 1990. Although she alleges that she did not leave Iraqi-controlled territory until September 2, 1990, the evidence in the record establishes that the flight that she was on, the Jackson flight, left on September 1, 1990, the date of the Iraqi exit stamp on Claimant's passport.

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<sup>11</sup> 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.

<sup>12</sup> See *id.* at 17-20.

<sup>13</sup> See *id.* at 17.

The evidence supporting this conclusion includes both the documents submitted by Claimant and other documents in the Commission's files that provide important relevant information.

The documents in the Commission's files fall into three categories. First, in several claims brought before the Commission in its first Iraq Claims Program (Claim Nos. IRQ-I-004, IRQ-I-005, IRQ-I-012, and IRQ-I-023)<sup>14</sup> claimants provided documents showing that the State Department compensated individuals on the Jackson flight based on a departure date of September 1, 1990. Second, claimants in this program (Claim Nos. IRQ-II-109,<sup>15</sup> IRQ-II-325, and IRQ-II-326) who appear to have been evacuated on the Jackson flight have also submitted statements alleging that they departed Iraq on September 1, 1990.

Third, contemporaneous news reports other than those that Claimant provided indicate that the Jackson flight left Baghdad on September 1, 1990. Wire service *United Press International* reported on September 1, 1990 that the evacuation flight was one of three flights "[to leave] Baghdad for freedom [on that date]".<sup>16</sup> In an article published on September 2, 1990, the *Associated Press* reported that Claimant's flight was one of three flights carrying women and children that departed Baghdad on September 1, 1990.<sup>17</sup> The *Sunday Times* also indicates that the Jackson flight left Baghdad on September 1, 1990: although it did not report a departure date or time for the flight, it noted that relatives of British nationals on Claimant's evacuation flight received telephone calls at 9:20 p.m.

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<sup>14</sup> Claimant's counsel represented all four of the claimants in those claims.

<sup>15</sup> Claimant's counsel represents the claimant in Claim No. IRQ-II-109.

<sup>16</sup> Ann Peters, *First Plane of Westerners Arrives in Germany*, UNITED PRESS INTERNATIONAL, Sept. 1, 1990.

<sup>17</sup> Terry Leonard, *Hundreds of Foreigners, Including Americans, Fly Out of Iraq*, ASSOCIATED PRESS, Sept. 2, 1990.

British time (which would have been 12:20 a.m. Baghdad time on September 2, 1990<sup>18</sup>) that the “airlift from Iraq was under way.”<sup>19</sup> The media reports are not all consistent on the precise date and time the Jackson flight left Baghdad. Some suggest that the plane departed on September 2, 1990, but two of these reports fail to state the actual departure time of the flight and the others are inconsistent with each other on that point.<sup>20</sup>

On the basis of these documents and the evidence Claimant has submitted, we conclude that she has not shown that the Jackson flight departed from Baghdad on September 2, 1990. Other than her declaration and that submitted by her counsel, Claimant has provided no evidence to substantiate her assertion that the Jackson flight departed Baghdad on September 2, 1990. The *Newsday* article Claimant submitted does not indicate what date the Jackson flight departed Baghdad. Moreover, contrary to Claimant’s

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<sup>18</sup> At the time of Claimant’s departure, Baghdad was in a time zone, Arabian Daylight Time (ADT), that was three hours ahead of British Summer Time (BST), which was the time zone that applied to the United Kingdom at the time. See Time and Date AS, Time Zone in Baghdad, Iraq (Bagdad), <http://www.timeanddate.com/time/zone/iraq/baghdad>; Time and Date AS, Time Zone in London, England, United Kingdom, <https://www.timeanddate.com/time/zone/uk/london>.

<sup>19</sup> Tim Rayment and Andrew Alderson, *Hostages on Flight to Freedom Touch Down in Safety - Iraq Invasion of Kuwait*, THE SUNDAY TIMES, Sept. 2, 1990.

<sup>20</sup> See Mark Souster, *Waldegrave Says More Women and Children May Be Out Soon - Iraq Invasion of Kuwait*, TIMES (London), Sept. 3, 1990 (stating that the plane “took off from Baghdad at 10 pm GMT on Saturday,” which would have been 2 a.m. on September 2, 1990 Baghdad time); Mark Fineman, *80 American Hostages Fly Out of Iraq; Families: Hundreds of Western Women Depart with Their Children. Husbands Are Left Behind. Baghdad Calls It a Humanitarian Airlift*, L.A. TIMES, Sept. 2, 1990, A1 (stating that “[t]he hostage release came after midnight”); Paul Fuller, *Hostage Britons Take-Off to Freedom*, PRESS ASSOCIATION, Sept. 1, 1990 (reporting that the British Foreign Office had stated that the plane had taken off at 9:50 p.m. British time on September 1, 1990, which would have been 12:50 a.m. on September 2, 1990 Baghdad time, “within minutes” of a “West German airliner,” after first reporting that the flight had departed at around 9 pm British time (midnight Baghdad time)); Edward Cody, *Baghdad; Men Still Detained; New Flight Delayed*, WASH. POST., Sept. 3, 1990, A1 (reporting that the Jackson flight departed Iraq on September 2, 1990 at “about the same time” as a Lufthansa flight). The Lufthansa flight that is referenced in the *Washington Post* and *Press Association* reports cited above appears to have departed at approximately 11:15 p.m. on September 1, 1990 given that the flight time was five hours and the arrival time was 2:15 a.m. local time, which would have been 4:15 a.m. Baghdad time. See Mark Fineman, *Bush, Gorbachev Will Meet in Helsinki To Discuss Persian Gulf, Other Issues; 550 Hostages Fly from Iraq to Freedom*, WASH. POST., Sept. 2, 1990, A1; Time and Date AS, Time Zone in Baghdad, Iraq (Baghdad), <http://www.timeanddate.com/time/zone/iraq/baghdad> (last visited February 9, 2017); Time and Date AS, Time Zone in Frankfurt, Hesse, Germany (Frankfurt am Main), <https://www.timeanddate.com/time/zone/germany/frankfurt> (last visited February 9, 2017).

contention that she traveled from Kuwait to Baghdad on September 2, 1990, the article states that Claimant “would not have gotten out” of Kuwait “yesterday,” which given the September 2, 1990 publication date, places her departure from Kuwait to Baghdad on September 1, 1990. The *New York Times* article appended to Claimant’s counsel’s declaration is equally unavailing. While the article states that the Jackson flight was waiting on the tarmac in Baghdad as midnight approached on Saturday (September 1, 1990), it does not report the precise departure time or state whether the flight departed before or after 12:00 a.m. on September 2, 1990.

In contrast, the list of flights appended to the State Department memorandum records the date of departure of the Jackson flight as September 1, 1990. Handwritten notes on the side of the page also indicate that the flight and another flight designated as the “Lufthansa Flight” departed Baghdad on September 1, 1990. The departure date that the State Department recorded for the Jackson flight is consistent with the other evidence in the record supporting a September 1st departure. As noted above, Claimant’s Iraqi exit stamp is dated September 1, 1990, and several news reports indicate that the flight departed on that date. Significantly, September 1, 1990 is also the date of departure that the State Department used to compensate other individuals who appear to have left Baghdad on the Jackson flight. The declarations of other claimants in this program who were evacuated on the Jackson flight provide further support for the conclusion that the flight departed on September 1, 1990. Given the consistency and quantity of this evidence, we find that Claimant’s declaration, and the declaration of her counsel—who has given no indication that he was present during the departure of the Jackson flight or otherwise has direct

knowledge of the time or date of the flight's departure—are not sufficient to establish that the flight departed Baghdad on September 2, 1990.

The Commission thus concludes that for the purpose of analyzing Claimant's allegation of being held hostage by Iraq, the Jackson flight departed from Baghdad on September 1, 1990.

(1) Armed Conflict: Claimant alleges that Iraq took her hostage in Kuwait on August 2, 1990 and held her hostage until Iraqi officials allowed her to leave Iraq on the Jackson flight. The Jackson flight left on September 1, 1990, which would mean that, if Claimant proves her hostage-taking allegation, Iraq held her hostage for 31 days, from August 2, 1990 to September 1, 1990. In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that during this entire period, Iraq was engaged in an armed conflict with Kuwait.<sup>21</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 for the 31-day period from August 2, 1990 to September 1, 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,

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<sup>21</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

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 1, 1990.<sup>22</sup>

From August 2, 1990 until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to the Kuwait International Hotel by threatening all U.S. nationals with immediate seizure and forcible detention.<sup>23</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>24</sup> Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.<sup>25</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 they had left their home.<sup>26</sup> 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.<sup>27</sup> Iraq thus detained Claimant from August 2, 1990 to August 9, 1990.

From August 9, 1990 until she flew from Baghdad to Paris on September 1, 1990, the Iraqi government confined Claimant to Kuwait (and, for a short time just before her release, the Baghdad airport), preventing her from leaving the country by the threat of

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<sup>22</sup> See *id.* at 20-21.

<sup>23</sup> See *id.* at 21.

<sup>24</sup> See *id.*

<sup>25</sup> See *id.*

<sup>26</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>27</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

force. Starting on August 9, 1990, the Iraqi government formally closed Kuwait's borders, forcibly prohibiting U.S. nationals from leaving.<sup>28</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>29</sup> 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.<sup>30</sup>

Although Claimant may have been legally permitted to leave Kuwait on August 28, 1990, her detention did not end on that date. As the Commission has previously recognized, a claimant's detention ends only on the date that she is released from the control of the person or entity that detained her.<sup>31</sup> Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,<sup>32</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>33</sup>

Under this standard, Claimant remained under Iraq's control until September 1, 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.<sup>34</sup> Indeed, the available evidence indicates that Claimant left Iraq at the first reasonable opportunity, on the September 1, 1990 evacuation flight that left Iraq. Because there is no evidence that

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<sup>28</sup> *See id.* at 21-22.

<sup>29</sup> *See id.* at 22.

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

<sup>31</sup> *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).

<sup>32</sup> 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)).

<sup>33</sup> *See id.*

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

Claimant remained voluntarily in Kuwait at any time during this period, we conclude that she was under Iraq's control and thus detained from August 28, 1990 to September 1, 1990.

In sum, Iraq thus detained Claimant from August 2, 1990 until September 1, 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>35</sup> This included Claimant.<sup>36</sup> 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.<sup>37</sup>

In short, the Iraqi government made unequivocal threats to continue to detain U.S. nationals in Kuwait and Iraq. Claimant was a U.S. national in Kuwait at the time. Claimant has thus established that Iraq threatened to continue to detain her.

(c) Third party coercion: The Commission has previously held that Iraq detained all U.S. nationals in Kuwait or Iraq at the time and threatened them with continued detention in order to compel the United States government to act in certain ways as an explicit and/or implicit condition for their release.<sup>38</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

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<sup>35</sup> See *id.* at 23.

<sup>36</sup> While we determine that these statements apply to Claimant and other similarly situated U.S. nationals who were prevented from leaving Iraq or Kuwait after the invasion, we do not make any findings as to whether they also apply to U.S. nationals with diplomatic status: Iraqi officials made specific representations about the ability of diplomatic and consular staff members with U.S. nationality (and their relatives) to leave Iraq and Kuwait throughout the crisis. See *In Iraq: 'We Have A Problem' Iraq Holds Fleeing U.S. Diplomats Staff from Kuwait Reaches Baghdad, But Can't Leave*, PHILA. INQUIRER, Aug. 24, 1990, <https://perma.cc/B2YF-79AY>.

<sup>37</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

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

Saudi Arabia; and/or (iii) to end the economic embargo imposed on Iraq.<sup>39</sup> Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.<sup>40</sup>

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 31 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.<sup>41</sup> Therefore, for the 31 days Iraq held Claimant hostage, she is entitled to an award of \$305,000, which is \$150,000 plus (31 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>42</sup>

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<sup>39</sup> See *id.* at 23-24.

<sup>40</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. S.C. Res. 674 (Oct. 29, 1990) ("actions by . . . Iraq authorities and occupying forces to take third-State nationals hostage" and demanded that Iraq "cease and desist" this practice).

<sup>41</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

<sup>42</sup> 22 U.S.C. §§ 1626-1627 (2012).

AWARD

Claimant is entitled to an award in the amount of \$305,000.

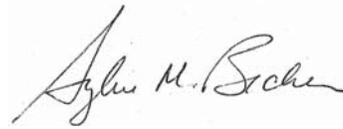
Dated at Washington, DC, April 27, 2017  
and entered as the Proposed Decision  
of the Commission.

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

**June 6, 2017**



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Anuj C. Desai, Commissioner



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Sylvia M. Becker, 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) (2016).