

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

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-II-384
	}	
	}	Decision No. IRQ-II-318
	}	
Against the Republic of Iraq	}	
	}	

Counsel for Claimant:

Anthony Onorato, Esq.
FisherBroyles, LLP

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held her hostage in violation of international law between August 1990 and February 1991. Because she has established that Iraq held her hostage for 27 days, she is entitled to an award of \$285,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was a four-month-old U.S. citizen living in Kuwait with her family when Iraq invaded the country on August 2, 1990. She asserts that, beginning with the invasion and for approximately six months thereafter, she was forced to hide in constant fear of being captured by Iraqi authorities. Claimant contends that she was released on February 26, 1991, after Kuwait was liberated by a U.S.-led coalition force.

Although Claimant was not among them, many of the U.S. nationals in Iraq and Kuwait at the time of the 1990-91 Iraqi occupation of Kuwait sued Iraq (and others) in

federal court for, among other things, hostage-taking.¹ Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.² The Agreement, which entered into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004, including claims of personal injury caused by hostage-taking.³ Exercising its authority to distribute money from the settlement funds, the U.S. Department of State provided compensation to numerous individuals whose claims were covered by the Agreement, including some whom Iraq had allegedly taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait.

Under the International Claims Settlement Act of 1949 ("ICSA"), the Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission.⁴ The Secretary has delegated that authority to the State Department's Legal Adviser, who, by letter dated October 7, 2014, referred three categories of claims to this Commission for adjudication and certification.⁵ This was the State Department's second referral of claims to the Commission under the Claims Settlement Agreement, the first having been by letter dated November 14, 2012 ("2012 Referral" or "November 2012 Referral").⁶

¹ See, e.g., *Hill v. Republic of Iraq*, 175 F. Supp. 2d 36 (D.D.C. 2001); *Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (D.D.C. 2006).

² See *Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement").

³ See *id.* Art. III(1)(a)(ii).

⁴ See 22 U.S.C. § 1623(a)(1)(C) (2012).

⁵ See *Letter dated October 7, 2014, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission* ("2014 Referral" or "October 2014 Referral").

⁶ Although the November 2012 Referral involved claims of U.S. nationals who were held hostage or unlawfully detained by Iraq, it did not involve hostage-taking claims *per se*. Rather, it consisted of certain claimants who had *already received* compensation under the Claims Settlement Agreement from the State Department for their hostage-taking claims, and it authorized the Commission to award additional

One category of claims from the 2014 Referral is applicable here. That category, known as Category A, consists of

claims by U.S. nationals for hostage-taking¹ by Iraq² in violation of international law prior to October 7, 2004, provided that the claimant was not a plaintiff in pending litigation against Iraq for hostage taking³ at the time of the entry into force of the Claims Settlement Agreement and has not received compensation under the Claims Settlement Agreement from the U.S. Department of State. . . .

¹ For purposes of this referral, hostage-taking would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

² For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

³ For purposes of this category, pending litigation against Iraq for hostage taking refers to the following matters: *Acree v. Iraq*, D.D.C. 02-cv-00632 and 06-cv-00723, *Hill v. Iraq*, D.D.C. 99-cv-03346, *Vine v. Iraq*, D.D.C. 01-cv-02674; *Seyam (Islamic Society of Wichita) v. Iraq*, D.D.C. 03-cv-00888; *Simon v. Iraq*, D.D.C. 03-cv-00691.

2014 Referral at ¶ 3.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICSA and the 2014 Referral.⁷

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.

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

On August 4, 2017, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of 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 Consular Report of Birth Abroad, which shows that she was a U.S. national at the time of the alleged hostage-taking (August 1990). She has also provided a copy of a recent U.S. passport, which expired in 2017 and establishes that she remained a U.S. national through the effective date of the Claims Settlement Agreement.

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.

No Pending Litigation

Additionally, Category A states that the claimant may not have been a plaintiff in any of the so-called Pending Litigation cases at the time of the entry into force of the Claims Settlement Agreement.¹⁰ Footnote 3 of the 2014 Referral specifically lists the Pending 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 Allegations

Claimant states that Iraq held her hostage from August 2, 1990, until February 26, 1991, a total of 209 days. On August 2, 1990, Claimant was four months old and living in Kuwait with her family when Iraq invaded the country. She asserts that she and her family hid in their apartment to avoid being captured by Iraqi forces, who had established a

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

checkpoint in front of their building. Claimant maintains that she was released on February 26, 1991, after a U.S.-led multilateral force liberated Kuwait. Claimant left Kuwait with her family on June 15, 1991.

Supporting Evidence

Claimant has supported her claim with a declaration that describes the circumstances of her detention; a copy of her contemporaneous U.S. passport, which was issued on May 5, 1990, and contains a Kuwaiti exit stamp dated June 15, 1991; an immunization record from a private school in Kuwait that states she received the Hepatitis B vaccine on March 27, 1990, June 27, 1990, and September 27, 1990; a declaration from a Kuwaiti doctor who states that she lived in the same building as Claimant, vaccinated Claimant in Kuwait in September 1990, and saw Claimant and her family frequently during and after the occupation; and a letter dated February 20, 2001, from a Kuwait organization stating that it had employed Claimant's father until August 2, 1990, and that he resumed service on April 1, 1991, after the liberation.

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.¹¹ 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.¹² 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.¹³

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 209 days, until February 26, 1991, which is the date that she alleges a U.S.-led coalition force liberated 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.¹⁴ 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

¹¹ 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.

¹² See *id.* at 17-20.

¹³ See *id.* at 17.

¹⁴ See *id.* at 16-17.

hostage from August 2, 1990, until February 26, 1991, a total of 209 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 February 26, 1991.¹⁵

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to her residence in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁶ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁷ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.¹⁸ 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 residence.¹⁹ The Commission has previously recognized that for the purposes of the legal

¹⁵ See *id.* at 20-21.

¹⁶ See *id.* at 21.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ 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.

standard applicable here, putting Claimant in this situation in effect amounts to detention.²⁰ 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.²¹ 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.²² 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.²³

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 she is released from the control of the person or entity that detained her.²⁴ In this regard, any attempt by Iraq "to restrict [the] movements" of a claimant establishes control,²⁵ 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.²⁶

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

²⁰ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²¹ See *id.* at 21-22.

²² See *id.* at 22.

²³ See *id.*

²⁴ 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).

²⁵ 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)).

²⁶ See *id.*

by the Iraqi government: Claimant argues that due to the presence of Iraqi military forces in the vicinity of her apartment, it was not “safe” for her to attempt to leave prior to February 26, 1991—*i.e.*, the date Kuwait was officially liberated from Iraq.²⁷ Under the international law applicable to armed conflict, however, the mere presence of an occupying or belligerent force, including the establishment of a military checkpoint, is not sufficient to establish the injury of detention. We reject Claimant’s contention that Iraq acted to restrict her movements by virtue of its military’s presence in her neighborhood after August 28, 1990, and conclude that she has failed to establish that Iraq detained her after that date.

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.²⁸ 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.²⁹ 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.³⁰ Iraq itself stated that it sought three

²⁷ Claimant also argues that 1) her family had no access to a telephone and was thus unable to make communications necessary to arrange an evacuation and 2) they could not leave because they had no car. None of these arguments, however, involve an attempt *by Iraq* to restrict Claimant’s movements after August 28, 1990. We thus make no findings on these issues.

²⁸ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

²⁹ See *id.*

³⁰ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

things from the United States government before it would release the detained U.S. nationals; it wanted the United States (i) not to attack Iraq, (ii) to withdraw its troops from Saudi Arabia; and/or (iii) to end the economic embargo imposed on Iraq.³¹ Indeed, the U.S. government itself understood Iraq's actions to be hostage-taking.³²

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.³³ 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.³⁴

³¹ See *id.* at 23-24.

³² 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).

³³ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁴ 22 U.S.C. §§ 1626-1627 (2012).

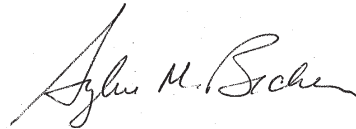
AWARD

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

Dated at Washington, DC, November 29, 2018
and entered as the Proposed Decision
of the Commission.

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

February, 4 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) (2017).

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

In the Matter of the Claim of	}	
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5 U.S.C. §552(b)(6)	}	Claim No. IRQ-II-384
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Against the Republic of Iraq	}	
	}	

Counsel for Claimant:

Anthony Onorato, Esq.
FisherBroyles, LLP

FINAL DECISION

Claimant objects to the Commission’s Proposed Decision concluding that Iraq held her hostage in Kuwait from August 2, 1990, to August 28, 1990, and awarding her \$285,000 for the 27 days that she was detained. On objection, Claimant contends that Iraq also held her hostage in Kuwait from August 29, 1990, to December 6, 1990. After considering Claimant’s arguments, we again conclude that she has failed to establish that Iraq detained her, and thus held her hostage, after August 28, 1990. We therefore affirm the conclusion in the Proposed Decision that Claimant is entitled to an award of \$285,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant brought this claim against Iraq alleging that Iraq held her hostage in Kuwait from August 2, 1990, to February 26, 1991. Claimant sought compensation for her hostage experience under Category A of the State Department’s letter to the Commission establishing this program, which consists of “claims by U.S. nationals for hostage-taking[]

by Iraq[] in violation of international law prior to October 7, 2004”¹ On November 29, 2018, the Commission issued a proposed decision (“Proposed Decision”) concluding that Iraq held Claimant hostage from August 2, 1990, to August, 28, 1990, the date that Iraq authorized women and children to leave Iraq and/or Kuwait.² The Commission further concluded that her claim did not satisfy the standard for hostage-taking between August 29, 1990, and February 26, 1991, because she failed to establish that Iraqi authorities detained her during this period.³ Thus, the Commission awarded Claimant \$285,000 for the 27 days that she was held in Kuwait by Iraq.⁴ The Commission reached the same decision in Claimant’s sister’s claim, which was based on an evidentiary record that was substantially similar to the record in Claimant’s claim.⁵ In its proposed decision in Claimant’s father’s claim, however, the Commission determined that he was detained and held hostage from August 2, 1990, to December 6, 1990.⁶

On December 21, 2018, Claimant filed a notice of objection arguing that the Commission erred in concluding that Iraq did not detain her between August 29, 1990, and December 6, 1990. Because she did not request an oral hearing, the Commission advised her by letter dated April 15, 2019, that her claim would be decided on the written record and requested that she submit any additional evidence in support of her objection no later than May 9, 2019. Pursuant to this letter, Claimant submitted a supplemental memorandum on May 9, 2019.

¹ 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 ¶ 3 (“2014 Referral” or “October 2014 Referral”).

² See Proposed Decision, *supra*, at 9-10.

³ See *id.* at 10.

⁴ See *id.* at 11-12.

⁵ See Claim No. IRQ-II-385, Decision No. IRQ-II-319, at 9-10.

⁶ See Claim No. IRQ-II-383, Decision No. IRQ-II-317, at 9-10.

DISCUSSION

To establish a hostage-taking claim under Category A of the 2014 Referral, 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.⁷ Thus, to prevail on objection, Claimant must show that she was seized or detained by Iraq from August 29, 1990, to December 6, 1990. Because Claimant was a minor covered by Iraq's August 28, 1990 announcement that authorized women and children of U.S. nationality to depart, she must show that she remained under Iraq's control to establish that she was detained after that date.⁸ In this regard, any attempt by Iraq "to restrict [the] movements" of a claimant establishes control,⁹ 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.¹⁰

On objection, Claimant contends that the Commission's determination that her father was detained through December 6, 1990, should apply equally to her claim because she was "subject to the same facts and circumstances" as him.¹¹ Claimant further states that this shared experience included "affirmative acts of detention and threats of physical harm" committed against them by Iraqi soldiers "on the basis of their suspected nationality"

⁷ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 17-20. The Commission has previously determined that 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. *See id.* at 17.

⁸ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22.

⁹ *Id.* (citing Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 12 (2012)).

¹⁰ *See id.*

¹¹ Claimant's Notice of Objection, at 11. The Commission's decision in Claimant's father's claim did not consider the facts and circumstances alleged here. The sole basis for the Commission's determination that Claimant's father was detained from August 2, 1990, to December 6, 1990, was Iraq's December 6, 1990 announcement authorizing all remaining U.S. nationals to leave, including adult males like Claimant's father, who had not been allowed to depart under previous releases, such as the August 28, 1990 release of women and children. *See* Claim No. IRQ-II-383, Decision No. IRQ-II-317, at 9-10.

on four different occasions after the invasion: 1) in late August, Iraqi soldiers entered Claimant's family's residence to search for U.S. nationals; 2) in September, Iraqi soldiers stopped Claimant and her mother at a military checkpoint in front of their apartment building and questioned them; 3) in October, Iraqi soldiers dragged Claimant's father down a flight of stairs in his apartment building, interrogated him for two hours, and asked if he knew "any foreign people—that is, Americans or Europeans"; and 4) in late November or early December, Iraqi soldiers entered Claimant's family's apartment for a third time to investigate a missile attack and departed after confirming that the missile was not launched from the apartment.¹² We address each of these contentions below.

The alleged encounter in "late August 1990" cannot establish that Iraq detained Claimant after August 28, 1990, because Claimant concedes that she does "not recall" whether it occurred before or after August 28, 1990. It is therefore not relevant to our determination.¹³

Claimant's contention that Iraqi soldiers stopped and questioned her and her mother in September 1990 is also deficient because, as pointed out in the Proposed Decision, being questioned at a military checkpoint does not amount to a restriction of movement sufficient to establish detention.¹⁴ For the same reason, Claimant's allegation that soldiers entered her apartment in late November or early December and asked questions about a missile attack is also not sufficient to establish that she was detained.

With respect to the alleged October 1990 incident, Claimant argues that she had a reasonable fear of being detained at that time on the grounds that Iraqi soldiers "threatened

¹² Claimant's Notice of Objection, at 2, 8-9.

¹³ *Id.* at 7-8.

¹⁴ See Proposed Decision at 10 ("The mere presence of an occupying or belligerent force, including the establishment of a military checkpoint, is not sufficient to establish the injury of detention.").

[her] . . . because of the possibility [she was] American,” detained her father (a U.S. national), and “specifically [sought] to detain other Americans.”¹⁵ None of the evidence in the record, however, supports her assertion that the soldiers threatened her because of the possibility that she was a U.S. national or attempted to detain her because of her nationality. The only evidence that she has submitted to support this claim is her father’s declaration, in which he suggests that the soldiers targeted him because they were searching for U.S. nationals, and further states, as noted above, that they asked him if he “knew any foreign people—that is Americans or Europeans.” These assertions are not corroborated by other record evidence—including the statements submitted by Claimant, her sister, or their former doctor, who is the only non-interested party to provide testimony on Claimant’s behalf. Significantly, Claimant’s doctor’s declaration merely states that the soldiers “took” Claimant’s father from her apartment and that she was afraid that they would return and take her own husband as well. It does not support Claimant’s assertion that Iraqi soldiers approached her father because they suspected that he was a U.S. national and subsequently targeted her for the same reason. Claimant’s assertion that the soldiers sought to detain her because of her U.S. nationality is also inconsistent with contemporaneous statements made by State Department officials, who made clear that Iraq continued to allow women and children to depart Kuwait on evacuation flights in October and November, and that minors who, like Claimant, remained in Kuwait after the last evacuation flight departed in December 1990 had decided to stay despite having had many opportunities to leave, and in most cases, were dependents of Kuwaiti, Iraqi, or Arab nationals who had also decided not to leave.¹⁶ Thus, given the lack of evidence that shows

¹⁵ Claimant’s Notice of Objection, at 8.

¹⁶ See Claim No. IRQ-II-143, Decision No. IRQ-II-314, at 16.

that Iraqi soldiers threatened to detain Claimant in October 1990, and the availability of evidence suggesting that, to the contrary, she had many opportunities to depart after the August 28, 1990 announcement, she has failed to establish that Iraq restricted her movements, and thus detained her, after August 28, 1990.

Claimant argues that she is at least entitled to compensation for hostage-taking from August 29, 1990, to September 22, 1990, because she was subject to restrictions on air travel that prevented women and children from departing Kuwait immediately after the August 28, 1990 announcement.¹⁷ Because Claimant has not alleged that she attempted to fly out of Kuwait at that time or otherwise shown that she was delayed or prevented from departing because of these restrictions, she has not established that Iraq detained her as a result of the limits it imposed on air travel in August and September 1990. She therefore has failed to show that Iraq held her hostage after August 28, 1990, and that she is entitled to additional compensation beyond the \$285,000 she was awarded in the Proposed Decision.

The award entered in the Proposed Decision is hereby affirmed and will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSCA.¹⁸ This constitutes the Commission's final determination in this claim.

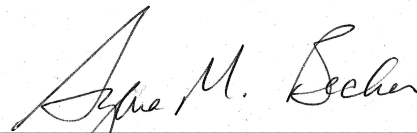
¹⁷ See Supplemental Submission in Support of Claimants' Consolidated Notice of Objection, at 3-4.

¹⁸ 22 U.S.C. §§ 1626-1627 (2012).

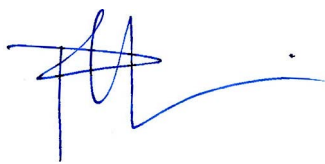
AWARD

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

Dated at Washington, DC, March 30, 2020
and entered as the Final Decision
of the Commission.

A handwritten signature in black ink, appearing to read "Sylvia M. Becker", written over a horizontal line.

Sylvia M. Becker, Commissioner

A handwritten signature in blue ink, appearing to read "Patrick Hovakimian", written over a horizontal line.

Patrick Hovakimian, Commissioner