

**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)

Against the Republic of Iraq

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Claim No. IRQ-II-346

Decision No. IRQ-II-322

Counsel for Claimant:

William R. Stein, Esq.
Hughes Hubbard & Reed LLP

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held him hostage in violation of international law from August 1990 through October 1990. Because he has established that Iraq held him hostage for 27 days, he is entitled to an award of \$285,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was a three-year-old U.S. citizen living in Kuwait with his family when Iraq invaded the country on August 2, 1990. He asserts that, beginning with the invasion and for ten weeks thereafter, he was forced to hide in constant fear of being captured by Iraqi authorities. On October 10, 1990, Claimant traveled by bus to Basra, Iraq, where he boarded an evacuation flight to London (via Baghdad).

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 March 27, 2017, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of his claim.

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 a U.S. passport issued to him in 1987, which shows that he was a U.S. national at the time of the alleged hostage-taking (August 1990). He has also provided a copy of a recent U.S. passport, which expired in 2016 and establishes that he 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 he was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of his claim.

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

The Claimant also satisfies the final jurisdictional requirement. Claimant has stated that he has not “received any compensation under [the Claims Settlement Agreement] from the Department of State.” Further, we have no evidence that the State Department has provided him any compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of his claim.

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

Merits

Factual Allegations

Claimant states that Iraq held him hostage from August 2, 1990, until October 10, 1991, a total of 70 days. On August 2, 1990, Claimant was three years old and living in Kuwait with his family when Iraq invaded the country. He asserts that he and his family hid in their apartment to avoid being captured by Iraqi forces. He also claims that an

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

official from the U.S. Embassy in Kuwait contacted his mother in early September 1990 and told her to stay in her home until the Embassy could arrange for her and her family to evacuate. Claimant maintains that the Embassy contacted his mother again in late September 1990 to inform her that his family would be evacuated on October 10, 1990. On that date, Claimant and his family traveled by bus to Iraq, where they boarded an evacuation flight to London (via Baghdad).¹¹

Supporting Evidence

Claimant has supported his claim with a copy of his contemporaneous U.S. passport, which contains an Iraqi exit stamp dated October 10, 1990, and declarations from him and his mother that provide further information about his alleged detention and ultimate departure from Kuwait.

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.¹² The Commission has previously held that, to establish a

¹¹ For further factual background regarding the State Department efforts to evacuate U.S. women and minors from Iraq and Kuwait following Iraq's August 28 announcement, see Claim No. IRQ-II-143, Decision No. IRQ-II-314 (Proposed Decision), at 5-9.

¹² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16. An estate claimant would of course need to make this showing as to its decedent.

hostage-taking claim, a claimant must show that Iraq (a) seized or detained the claimant and (b) threatened the claimant with death, injury, or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for the claimant's release.¹³ 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.¹⁴

Application of Standard to this Claim

(1) Armed Conflict: Claimant alleges that Iraq took him hostage in Kuwait on August 2, 1990, and held him hostage for 70 days, until October 10, 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.¹⁵ Thus, Claimant satisfies this element of the standard.

(2) Hostage-taking: To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant must show that Iraq (a) seized or detained him and (b) threatened him with death, injury, or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for his release. Although he alleges that Iraq held him hostage from August 2, 1990, until October 10, 1990, a total of 70 days, Claimant satisfies this standard only for the 27-day period from August 2, 1990, to August 28, 1990.

¹³ See *id.* at 17-20.

¹⁴ See *id.* at 17.

¹⁵ See *id.* at 16-17.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, his time in Kuwait following the Iraqi invasion can be divided into three periods: (i) between the Iraqi invasion on August 2, 1990 and the Iraqi government's formal closing of the borders on August 9, 1990; (ii) from that August 9th formal closing of the borders until the August 28, 1990 announcement that women and minors could leave Iraq and Kuwait; and (iii) from that August 28th announcement until Claimant's departure on October 10, 1990.¹⁶

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to his residence in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁷ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁸ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.¹⁹ Claimant had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being killed or forcibly detained if he had left his residence.²⁰ 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.²¹ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

¹⁶ See *id.* at 20-21.

¹⁷ See *id.* at 21.

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ 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.

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

From August 9, 1990, until August 28, 1990, the Iraqi government confined Claimant to Kuwait, preventing him 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.²² As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving the country, effectively detaining him within the borders of Kuwait and Iraq.²³ 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.²⁴

Although Claimant may have been legally permitted to leave Kuwait on August 28, 1990, his detention did not necessarily end on that date. As the Commission has previously recognized, a claimant's detention ends only on the date that he is released from the control of the person or entity that detained him.²⁵ In this regard, any attempt by Iraq "to restrict [the] movements" of a claimant establishes control,²⁶ 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.²⁷

Here, Claimant has not alleged that the Iraqi government acted to restrict his movements after August 28, 1990.²⁸ Moreover, the evidence in the record does not suggest

²² See *id.* at 21-22.

²³ See *id.* at 22.

²⁴ See *id.*

²⁵ 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).

²⁶ 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)).

²⁷ See *id.*

²⁸ Claimant's mother has submitted a declaration that states that she and her family were not aware of any evacuation flight until they were contacted by a U.S. Embassy official in late September. This argument, however, does not address an attempt *by Iraq* to restrict Claimant's movements after August 28, 1990. We thus make no finding on this issue.

that Iraq placed any such restriction on his movements. Statements made by State Department officials indicate that women and children of U.S. nationality who remained in Kuwait after September 22, 1990, chose to stay in the country.²⁹ These communications establish that the State Department chartered Claimant's flight, which departed on October 10, 1990, and another flight that left on November 18, 1990, to evacuate women and children who initially chose to stay in Kuwait during the mass evacuation in September 1990 but subsequently decided to leave.³⁰ We thus conclude that Claimant has failed to establish that Iraq detained him after August 28, 1990.

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.³¹ Both Iraqi President Saddam Hussein and the Speaker of Iraq's National Assembly Saadi Mahdi made clear that American nationals (as well as those from numerous other countries) would not have been permitted to leave Kuwait and/or Iraq at that time.³² Claimant has thus established that Iraq threatened to continue to detain him.

(c) Third party coercion: The Commission has previously held that Iraq detained all U.S. nationals in Kuwait or Iraq at the time and threatened them with continued detention in order to compel the United States government to act in certain ways as an explicit and/or implicit condition for their release.³³ Iraq itself stated that it sought three

²⁹ See Claim No. IRQ-II-143, Decision No. IRQ-II-314 (Proposed Decision), at 7, 16.

³⁰ See *id.* at 7-8.

³¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

³² See *id.*

³³ 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.³⁴ Indeed, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁵

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.³⁶ Therefore, for the 27 days Iraq held Claimant hostage, he 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.³⁷

³⁴ See *id.* at 23-24.

³⁵ See George H. W. Bush, "These Innocent People . . . Are, In Fact, Hostages" in U.S. Dep't of State, *American Foreign Policy Current Documents 1990* 484 (Sherrill Brown Wells ed. 1991); see also 2014 Referral at ¶ 3; cf. United Nations S.C. Res. 674 (Oct. 29, 1990) (noting "actions by . . . Iraq authorities and occupying forces to take third-State nationals hostage" and demanding that Iraq "cease and desist" this practice).

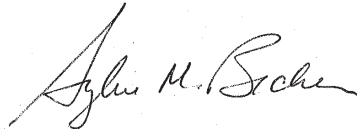
³⁶ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁷ 22 U.S.C. §§ 1626-1627 (2012).

AWARD

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

Dated at Washington, DC, December 13, 2018
and entered as the Proposed Decision
of the Commission.



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).

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Against the Republic of Iraq

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Counsel for Claimant:

William Stein, Esq.
Hughes Hubbard & Reed LLP

FINAL DECISION

Claimant objects to the Commission’s Proposed Decision concluding that Iraq held him hostage in Kuwait from August 2, 1990, to August 28, 1990, and awarding him \$285,000 for the 27 days that he was detained. On objection, Claimant contends that Iraq also held him hostage in Kuwait from August 29, 1990, to October 10, 1990. After considering Claimant’s arguments, we again conclude that he has failed to establish that Iraq detained him, and thus held him 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 him hostage in Kuwait from August 2, 1990, to October 10, 1990. Claimant sought compensation for his 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 To support his claim, Claimant submitted a copy of his contemporaneous U.S. passport, a sworn declaration, and his mother’s sworn declaration. 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 his claim did not satisfy the standard for hostage-taking between August 29, 1990, and October 10, 1990, because he failed to establish that Iraqi authorities detained him during this period.³ Thus, the Commission awarded Claimant \$285,000 for the 27 days that he was held in Kuwait by Iraq.⁴

On January 8, 2019, Claimant filed a notice of objection arguing that the Commission erred in concluding that Iraq did not detain him between August 29, 1990, and October 10, 1990. On May 9, 2019, Claimant submitted a supplemental memorandum (“Supp. Mem.”) with several exhibits including sworn declarations from a relative and a family friend, unclassified cables from the U.S. Embassy in Baghdad, and an eyewitness account of the Iraqi invasion and occupation published in 1991 in the *Journal of Palestine Studies*.

On May 10, 2019, the Commission held an oral hearing. Claimant was represented by counsel, and he and his mother testified about his family’s experience in Kuwait during the Iraqi occupation. On June 7, 2019, Claimant submitted a supplemental sworn declaration from his mother.

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.

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.⁵ Thus, to prevail on objection, Claimant must show that he was seized or detained by Iraq from August 29, 1990, to October 10, 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, he must show that he remained under Iraq's control to establish that he was detained after this date.⁶ In this regard, any attempt by Iraq "to restrict [the] movements" of a claimant establishes control,⁷ 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.⁸

On objection, Claimant argues that "[a]t all times" after August 28, 1990, he "was confined to his apartment by the manifest well-founded fear . . . that he would be killed or forcibly detained if he left his home."⁹ Claimant asserts that his fear of being detained was "directly precipitated by the actions of Iraqi military personnel"¹⁰ in the Salmiya neighborhood where he resided and "persisted until his departure . . . on October 10th"¹¹ despite the August 28, 1990 announcement. He argues that, as a U.S. national living in

⁵ 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.

⁶ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22.

⁷ *Id.* (citing Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 12 (2012)).

⁸ *See id.*

⁹ Supp. Mem. at 2.

¹⁰ *Id.*

¹¹ Oral Hr'g at 18:24-18:35.

Salmiya, he was subject to special conditions not imposed on other U.S. nationals living elsewhere in Kuwait.¹² Iraqi soldiers conducting door to door searches for U.S. citizens “flooded” the neighborhood,¹³ took over his apartment building, and established checkpoints at which residents were required to present identification.¹⁴ Claimant also contends that he was detained because the Iraqi government enacted a resolution on August 24, 1990, that criminalized the hiding of foreigners¹⁵ and because Iraq “cut[] off communication channels,”¹⁶ thus preventing his family from contacting the U.S. Embassy about the evacuation flights that departed in September 1990.¹⁷

Claimant’s evidence is not sufficient to establish his principal argument on objection—that Iraq’s policy of seizing and detaining U.S. nationals remained in effect for residents of Salmiya, including *women and minors*, notwithstanding the August 28, 1990 announcement. To support this argument, Claimant relies exclusively on the statements of interested parties. These include sworn declarations from a relative and a family friend, who state that Iraqi soldiers conducted door to door searches for U.S. nationals in Claimant’s neighborhood, and his mother’s testimony that his family remained confined in their apartment out of fear that Iraqi soldiers would detain Claimant, a U.S. national with no other form of identification but his U.S. passport, at a military checkpoint.¹⁸

The testimonial evidence submitted by Claimant does not, however, support his contention that Iraqi soldiers in Salmiya continued to target *women and children* for detention after the August 28, 1990 release. The other documents that Claimant has

¹² See *id.* at 10:09-11:03.

¹³ Supp. Mem. at 5.

¹⁴ See Oral Hr’g at 13:27-15:09; Supp. Mem., at 5.

¹⁵ See Supp. Mem. at 3; Oral Hr’g at 17:12-17:28.

¹⁶ Supp. Mem. at 7; See Oral Hr’g at 15:10-17:12.

¹⁷ See *id.*

¹⁸ See Oral Hr’g at 17:10-17:53.

submitted are also unavailing: neither the cables from the U.S. Embassy in Baghdad nor the 1991 eyewitness account comment on Iraq's military presence in Salmiya or suggest, as Claimant's counsel argued at the oral hearing, that Iraqi authorities failed to consider the August 28, 1990 announcement when detaining U.S. nationals in Salmiya.¹⁹ Claimant's counsel's argument is further undermined by statements submitted by other claimants in this program, which show that similarly-situated women and/or children who resided in Salmiya left Kuwait on U.S. government chartered evacuation flights in September 1990.²⁰

Given the absence of evidence establishing that Iraq continued its policy of seizing and detaining women and/or children after the August 28, 1990 announcement, Claimant cannot establish that he remained confined, and thus detained, merely because Iraq enacted a resolution on August 24, 1990, criminalizing the hiding of foreigners. While the Commission has recognized that this measure made hiding more difficult for those U.S. nationals subject to arrest and/or detention,²¹ none of the evidence in the record suggests that Claimant was among the U.S. nationals in this category after the August 28, 1990 announcement. To the contrary, State Department communications indicate that Iraqi authorities allowed family members of U.S. nationals living in Kuwait to leave the country during the mass evacuation of U.S. women and minors in September 1990.²²

Claimant's evidence is also insufficient to establish that he remained confined, and was thus detained, because Iraq prevented him and his family from receiving information about evacuation flights from the State Department. Claimant's evidence on this point is contradictory and, in any event, does not show that his family was unable to contact the

¹⁹ See *id.* at 12:32-13:31.

²⁰ See Claim No. IRQ-II-095, Decision No. IRQ-II-119, at 1; Claim No. IRQ-II-125, Decision No. IRQ-II-120, at 1; Claim No. IRQ-II-329, Decision No. IRQ-II-082, at 1; Claim No. IRQ-II-330, Decision No. IRQ-II-083, at 1. Some of these claimants are represented by Claimant's counsel.

²¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 7-8.

²² See Claim No. IRQ-II-143, Decision No. IRQ-II-314, at 7.

State Department. To support his argument, Claimant initially sought to rely on his mother's sworn declaration, which states that the State Department called Claimant's family twice. Specifically, his mother states that in "early September," a State Department official called and told her "to stay inside [her] house until the U.S. government could arrange for [her family] to safely evacuate Kuwait." She alleges that in "late September," a Department official called again and informed her that the Department had arranged for her family to be evacuated on October 10. Claimant's mother further alleged that prior to this call, "[her] family was not aware of any evacuation flights arranged by the U.S. Government." At the oral hearing, however, Claimant's mother testified that these statements were not accurate. She asserted that the State Department had never called her, that *she* had contacted the State Department on three occasions in September 1990 using the telephone in her parents' apartment, and that a family friend had informed her that the U.S. government was evacuating U.S. nationals before she contacted the State Department for the final time in late September.²³ While Claimant's counsel acknowledged that, contrary to her original attestation, his mother was aware that the U.S. government was evacuating U.S. nationals at the time of her initial contact with the U.S. Embassy in early September, counsel argued that Claimant's mother would not have been able to contact the Embassy in any event because she did not have a telephone in her apartment and had to pass through several checkpoints to use the telephone in her parents' apartment with no guarantee that service would be available.²⁴ After being questioned on this point, however, Claimant's mother conceded that she had access to her parents' telephone during the entire period of Claimant's alleged detention but did not contact the Embassy simply because

²³ See Oral Hr'g at 35:18-37:11.

²⁴ See *id.* at 15:28-17:12.

“[she] did not think about calling.”²⁵

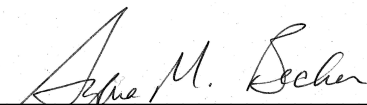
Claimant has thus failed to establish that he remained in Kuwait because Iraq restricted his movements, and therefore detained him, after August 28, 1990.

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 ICSA.²⁶ This constitutes the Commission’s final determination in this claim.


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.



Sylvia M. Becker, Commissioner



Patrick Hovakimian, Commissioner

²⁵ *Id.* at 37:18-37:50. Claimant’s counsel also suggested that Claimant’s mother was only following the advice of State Department officials, who allegedly told her that they had her contact information and would call her to arrange her family’s evacuation. Claimant’s mother stated, however, that she did not remember these conversations in great detail. *See id.* at 40:39-41:32. Claimant’s counsel’s contention is also inconsistent with the contemporaneous guidance issued by the Embassy, which repeatedly urged U.S. citizens and parents of U.S. citizens to contact the Embassy by phone to make arrangements for evacuation. *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, Lexis; *CB State Department Regular Briefing*, FEDERAL NEWS SERVICE, Sep. 12, 1990, Lexis.

²⁶ 22 U.S.C. §§ 1626-1627 (2012).