

**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-051
5 U.S.C. §552(b)(6)	}	
	}	Decision No. IRQ-II-076
	}	
Against the Republic of Iraq	}	
	}	

PROPOSED DECISION

Claimant Estate brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held the decedent, Adel Maher Odeh, hostage in violation of international law in August and September 1990. Because Claimant Estate has established that Iraq held the decedent hostage for 38 days, it is entitled to an award of \$340,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that the decedent was a two-year-old United States citizen living in Kuwait with his family when Iraq invaded the country on August 2, 1990. It asserts that, beginning with the invasion and for 38 days thereafter, the decedent and his family were forced to hide in their residence or in their relatives’ residence in constant fear of being captured by Iraqi authorities. Claimant Estate further asserts that during this entire period, the Iraqi government in effect forcibly prevented the decedent (and other U.S. nationals) from leaving Kuwait and/or Iraq. After the Iraqi government authorized female and minor U.S. nationals to leave, the decedent flew out of Kuwait (via Baghdad,

Iraq) on September 8, 1990. The decedent died in 2008 at the age of 20 of causes unrelated to the alleged hostage-taking.

Although the decedent 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

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").

Settlement Agreement, the first having been by letter dated November 14, 2012 (“2012 Referral” or “November 2012 Referral”).⁶

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

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 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.” 2012 Referral, *supra*, n.3.

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

On January 22, 2015, the Commission received from Claimant Estate a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of its claim.

DISCUSSION

Standing

Claimant Estate has submitted Letters of Administration, issued on October 18, 2016, by the Circuit Court for Lake County, Florida, appointing Maher M. Odeh as personal representative of the estate. Accordingly, the Commission concludes that ESTATE OF ADEL MAHER ODEH, DECEASED; MAHER M. ODEH, PERSONAL REPRESENTATIVE, is the proper claimant in this claim.

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 ¶ 3.

Nationality

This claims program is limited to claims of "U.S. nationals." Here, that means the claim must have been held by 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 Because the decedent, Mr. Odeh, died before May 22, 2011, this claim passed from him

⁸ See 22 U.S.C. § 1623(a)(1)(C).

⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

to his estate prior to May 22, 2011. In such circumstances, the estate must also be a U.S. national. For an estate to be viewed as a U.S. national requires that all of the estate's beneficiaries also be U.S. nationals. Thus, to satisfy the U.S. nationality requirement, Claimant Estate must show that Mr. Odeh was a U.S. national from the time of the alleged hostage-taking until he died and that all of the Estate's beneficiaries were U.S. nationals from Mr. Odeh's death until May 22, 2011.¹⁰

Claimant Estate satisfies the nationality requirement. It has provided evidence sufficient to show that the claim was held continuously by a U.S. national from August 2, 1990, which is the date that the alleged hostage-taking began, through the effective date of the Claims Settlement Agreement. From August 2, 1990 to August 17, 2008, the claim was held by the decedent. Claimant Estate has submitted a copy of the decedent's passport valid from June 30, 1988 to June 29, 1993, which shows that he was a U.S. national at the time of the alleged hostage-taking (August and September of 1990). Claimant Estate has also provided a copy of the decedent's most recent U.S. passport and a death certificate from the state of Florida, which indicates that he remained a U.S. national through the date of his death (August 17, 2008).

From August 17, 2008 to May 22, 2011, the claim was held in joint shares by Maher and Hana Al-Koor Odeh, who were identified as the beneficiaries of the decedent's estate in a court order issued by the Circuit Court for Lake County, Florida on December 14, 2016. Claimant Estate has submitted Mr. and Mrs. Odeh's recent U.S. passports, which establish that they were U.S. nationals from August 17, 2008, the date

¹⁰ See, e.g., Claim No. Y-0660, Decision No. Y-1171 (1954); Claim No. W-9801, Decision No. W-2107 (1965); Claim No. G-2154, Decision No. G-1955 (1981); and Claim No. ALB-338, Decision No. ALB-321 (2008).

of the decedent's death, through May 22, 2011, the effective date of the Claims Settlement Agreement. Thus, Claimant Estate has satisfied this element of its claim.

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.¹¹ Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Maher Odeh, Claimant Estate's personal representative, has averred, and the pleadings in the cases cited in footnote 3 confirm, that the decedent was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant Estate has also satisfied this element of its claim.

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

Claimant Estate also satisfies the final jurisdictional requirement. Maher Odeh, Claimant Estate's personal representative, has stated that Claimant Estate has "not received compensation under the [Claims Settlement Agreement] from the U.S. Department of State." Further, we have no evidence that the State Department has provided the decedent or his estate any compensation under the Claims Settlement Agreement. Therefore, Claimant Estate meets this element of its claim.

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

¹¹ The Agreement entered into force on May 22, 2011. See Claims Settlement Agreement, art. IX.

Merits

Factual Allegations

Claimant Estate states that Iraq held the decedent hostage from August 2, 1990 until September 8, 1990, a total of 38 days. Claimant Estate alleges that the decedent was two years old and living in Kuwait with his family when Iraq invaded the country on August 2, 1990. It alleges that after the invasion, the decedent and his family hid inside their residence and the residence of relatives in constant fear that Iraqi soldiers who patrolled their neighborhood and searched their apartment building would take them hostage.

The decedent remained sequestered in his family's residence or in the home of relatives for 38 days beginning with the invasion on August 2, 1990. Pursuant to Iraqi President Saddam Hussein's August 28, 1990 announcement that foreign national women and minors could leave the country, the decedent was formally permitted to go.¹² Between September 1, 1990 and September 23, 1990, the U.S. government organized several charter flights from Iraq and Kuwait to repatriate those released U.S. nationals wishing to return to the United States.¹³ On September 8, 1990, the decedent flew to Baghdad with his family on one of these U.S. chartered flights. They left Baghdad on another flight that same day, September 8, 1990, and flew to Charleston, South Carolina the next day.

Supporting Evidence

Claimant Estate has supported its claim with, among other things, its sworn Statement of Claim, a copy of the decedent's passport, which contains an Iraqi exit stamp dated September 8, 1990, and a letter dated April 26, 1991 that the decedent's parents

¹² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 11.

¹³ See *id.* at 12-13.

wrote to a consular officer in the U.S. Department of State, which describes the circumstances of the decedent's alleged detention and ultimate departure from Kuwait. Claimant Estate has also provided an undated account of the decedent's family experience in Kuwait during that period, which was written by the decedent's mother; a letter dated May 22, 1991 from the U.S. Department of State, which accompanied benefits that the decedent's family received under a law providing benefits for U.S. nationals detained in Iraq and Kuwait and their family members; the decedent's family application for these payments; correspondence between the decedent's father and the U.S. Department of State concerning the departure of decedent, his mother, and his siblings from Kuwait; and correspondence between the U.S. Department of State and the decedent's mother and sister concerning claims that they had filed before the United Nations Compensation Commission.

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.¹⁴ 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.¹⁵ A claimant can establish the first element of this standard by showing that the Iraqi government

¹⁴ 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.

¹⁵ See *id.* at 17-20.

confined the claimant to a particular location or locations within Iraq or Kuwait, or prohibited the claimant from leaving Iraq and/or Kuwait.¹⁶

Application of Standard to this Claim

(1) Armed Conflict: Claimant Estate alleges that Iraq took the decedent hostage in Kuwait on August 2, 1990 and held him hostage for 38 days, until September 8, 1990, when Iraqi officials allowed him to leave Iraq. 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.¹⁷ 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 Estate must show that Iraq (a) seized or detained the decedent 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. Claimant Estate satisfies this standard for the 38-day period from August 2, 1990 to September 8, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant Estate's allegations, the decedent's 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 the decedent's departure on September 8, 1990.¹⁸

¹⁶ See *id.* at 17.

¹⁷ See *id.* at 16-17.

¹⁸ See *id.* at 20-21.

From August 2, 1990 until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined the decedent to his residence or to the residence of his relatives by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁹ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, the decedent could not reasonably be expected to have escaped.²⁰ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.²¹ The decedent and his family 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 residence.²² The Commission has previously recognized that for the purposes of the legal standard applicable here, putting the decedent and his family in this situation in effect amounts to detention.²³ Iraq thus detained the decedent from August 2, 1990 to August 9, 1990.

From August 9, 1990 until he departed from Baghdad on September 8, 1990, the Iraqi government confined the decedent to Kuwait (and, for a short time just before his release, the Baghdad airport), 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.²⁴ As the Commission has previously held, as of that date, Iraq prohibited the decedent from leaving the country,

¹⁹ See *id.* at 21.

²⁰ See *id.*

²¹ See *id.*

²² 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.

²³ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²⁴ See *id.* at 21-22.

effectively detaining him within the borders of Kuwait and Iraq.²⁵ For the decedent, 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.²⁶

Although the decedent may have been legally permitted to leave Kuwait on August 28, 1990, his detention did not 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.²⁷ Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,²⁸ 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.²⁹

Under this standard, the decedent remained under Iraq's control until September 8, 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.³⁰ Indeed, the available evidence indicates that the decedent left Iraq at the first reasonable opportunity, on the September 8, 1990 U.S. government-chartered flight that left Iraq. Because there is no evidence that the decedent remained voluntarily in Kuwait at any time during this period, we conclude that he was under Iraq's control and thus detained from August 28, 1990 to September 8, 1990.

²⁵ See *id.* at 22.

²⁶ See *id.*

²⁷ 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).

²⁸ 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)).

²⁹ See *id.*

³⁰ See *id.*

In sum, Iraq thus detained the decedent from August 2, 1990 until September 8, 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 This included the decedent.³² 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.³³

In short, the Iraqi government made unequivocal threats to continue to detain U.S. nationals in Kuwait and Iraq. The decedent was a U.S. national in Kuwait at the time. Claimant Estate 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.³⁴ Iraq itself stated that it sought three things from the United States government before it would release the detained U.S. nationals; it wanted the United States (i) not to attack Iraq, (ii) to withdraw its troops from Saudi Arabia; and/or (iii) to end the economic embargo imposed on

³¹ See *id.* at 23.

³² 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>.

³³ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

³⁴ See *id.*

Iraq.³⁵ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁶

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. Iraq held the decedent hostage in violation of international law for a period of 38 days, and Claimant Estate 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.³⁷ Therefore, for the 38 days Iraq held the decedent hostage, Claimant Estate is entitled to an award of \$340,000, which is \$150,000 plus (38 x \$5,000). This amount constitutes the entirety of the compensation to which Claimant Estate 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.³⁸

³⁵ See *id.* at 23-24.

³⁶ 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).

³⁷ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁸ 22 U.S.C. §§ 1626-1627 (2012).

AWARD

Claimant Estate is entitled to an award in the amount of \$340,000.

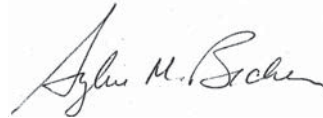
Dated at Washington, DC, March 23, 2017
and entered as the Proposed Decision
of the Commission.

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

April 26, 2017



Anuj C. Desai, Commissioner



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).