

**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-120
	}	
	}	Decision No. IRQ-II-031
	}	
Against the Republic of Iraq	}	
	}	

Counsel for Claimant:

Daniel Wolf, Esq.
Law Office of Daniel Wolf

PROPOSED DECISION

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

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was an eleven-year-old United States citizen, who, along with her mother, brother and sister, was visiting her father in Kuwait, when Iraq invaded the country on August 2, 1990. Claimant asserts that, beginning with the invasion and for more than five weeks thereafter, she and her family were forced to hide and seek refuge in constant fear of being captured by Iraqi authorities. Claimant further asserts that during this entire period, the Iraqi government in effect forcibly prevented her and her family (and other U.S. nationals) from leaving Kuwait and/or Iraq and did so

with the express purpose of compelling the United States government to acquiesce to certain Iraqi government demands.

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

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).

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

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.

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 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.

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

On September 30, 2015, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of her claim.

DISCUSSION

Jurisdiction

This Commission's authority to hear claims is limited to the category of claims referred to it by the United States Department of State.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 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. She has provided a copy of her U.S.

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

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.

passport valid from June 29, 1989 to June 28, 1994, which shows that she was a U.S. national at the time of the alleged hostage-taking (August and September of 1990). She has also provided a copy of her current U.S. passport which thus establishes that she remained a U.S. national through the effective date of the Claims Settlement Agreement.

No Pending Litigation

Additionally, Category A states that the claimant may not have been a plaintiff in any of the so-called Pending Litigation cases at the time of the entry into force of the Claims Settlement Agreement.¹⁰ Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant has averred under oath in her Statement of Claim, and the pleadings in the cases cited in footnote 3 confirm, that she was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of her claim.

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

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

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

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

Merits

Factual Allegations

Claimant states that Iraq held her hostage from August 2, 1990 until September 8, 1990, a total of 38 days. Claimant states that, after Iraq invaded Kuwait on August 2, 1990, her family went to stay with friends of her father's in an area of Kuwait they thought would be safer. They returned to their house the next day and, a few days later, went to the Japanese Embassy, as Claimant's mother had Japanese citizenship. They stayed at the Japanese Embassy for the next two weeks. Claimant and her family then went home to get some belongings but were then stopped by Iraqi soldiers from returning to the Japanese Embassy. They therefore stayed with family friends until the end of August. Pursuant to Iraqi President Saddam Hussein's August 28, 1990 announcement that foreign national women and minors could leave the country, Claimant was formally permitted to go.¹¹ Claimant states that at some point around the end of August U.S. Embassy officials notified her father that the Iraqi authorities had announced the release of women and children who were U.S. citizens and that in order to leave they needed to get an Iraqi exit permit in Baghdad. In early September, they drove to Baghdad, but after crossing the border into Iraq, they were stopped by Iraqi security officers at a checkpoint in Basra and then taken to a police station, where they were detained for the day. Finally, the Iraqi authorities at the police station announced that they were to proceed together with approximately 15 other expatriate families in a convoy of vehicles to Baghdad under Iraqi military escort. Upon their arrival in Baghdad they were taken to the Al Monsour-Melia Hotel where they were kept for the next four days.

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

During this period, starting on September 1, 1990 and through September 23, 1990, the United States government organized several charter flights from Iraq and Kuwait to repatriate those released U.S. nationals wishing to return to the United States.¹² Claimant states that on or about September 7, 1990, Claimant's family received notice that Claimant and her mother, sister and brother could leave Iraq and return to the United States, but that they would have to leave Claimant's father behind. The family was subsequently moved to another hotel where they stayed until they went to the airport to board an evacuation flight on September 8, 1990. They flew first to Jordan, where they stayed for approximately 3 days and then on to London, where they stayed for approximately five days, before flying home to California.

Supporting Evidence

Claimant has supported her claim with her sworn Statement of Claim, and her declaration. Claimant has also provided a newspaper article from September 1990, which identifies Claimant by name and describes her hostage experience. She has further provided a copy of her former U.S. passport, which contains a September 8, 1990 stamp and a September 12, 1990 stamp.¹³ While the dates in the stamps are clear, it is difficult to make out which countries issued these stamps. However, they comport with Claimant's declaration regarding the date of her departure from Iraq, and the approximate dates of her departure from Jordan and arrival in England, as well as with the contemporaneous newspaper article she has submitted.

In addition, Claimant has submitted a number of documents that provide background about the broader geopolitical situation during the First Gulf War in 1990-91,

¹² See *id.* at 12-13.

¹³ There is additionally a clear stamp of entry to England for September 12, 1990.

including some that relate specifically to the circumstances faced by U.S. nationals in Iraq and Kuwait at the time. These documents include statements from U.S. and Iraqi officials, resolutions of the United Nations Security Council, newspaper articles, a report from Amnesty International on human rights violations committed by Iraq in 1990, unclassified cables and a memorandum from the U.S. Department of State, and affidavits submitted in two lawsuits brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War.

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 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 alleges that Iraq took her hostage in Kuwait on August 2, 1990 and held her hostage for 38 days, until September 8, 1990, when Iraqi

¹⁴ See *id.* at 16. An estate claimant would of course need to make this showing as to its decedent.

¹⁵ See *id.* at 17-20.

¹⁶ See *id.* at 17.

officials allowed her and her mother, brother and sister to leave. 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 must show that Iraq (a) seized or detained her and (b) threatened her with death, injury or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for her release. Claimant satisfies this standard for the 38-day period from August 2, 1990 to September 8, 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 departure on September 8, 1990.¹⁸

From August 2, 1990 until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to her father's home, the home of friends of her father's, and the Japanese Embassy, by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁹ Although some foreign nationals did manage to leave

¹⁷ See *id.* at 16-17.

¹⁸ See *id.* at 20-21.

¹⁹ See *id.* at 21.

Kuwait and/or Iraq during this period, Claimant 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 Claimant and her 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 where they were hiding and seeking refuge.²² The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Claimant and her family in this situation in effect amounts to detaining them.²³ Iraq thus detained Claimant from August 2, 1990 to August 9, 1990.

From August 9, 1990 until the August 28, 1990 announcement that women and minors could leave Iraq and Kuwait, the Iraqi government confined Claimant to Kuwait and Iraq, preventing her from leaving 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 all U.S. nationals from leaving the country, effectively detaining Claimant within the borders of Kuwait and Iraq.²⁵ For Claimant, this formal policy of prohibiting

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.

²⁵ *See id.* at 22.

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 Claimant may have been legally permitted to leave Kuwait on August 28, 1990, her detention did not end on that date. As the Commission has previously recognized, a claimant's detention ends only on the date that she is released from the control of the person or entity that detained her.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, Claimant 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. Indeed, as detailed above, the available evidence indicates that Claimant 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 Claimant remained voluntarily in Kuwait at any time during this period, and Claimant's attestation is that she in fact was restrained from leaving until September 8, 1990, we conclude that she was under Iraq's control and thus detained from August 28, 1990 to September 8, 1990.

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.*

In sum, Iraq thus detained Claimant 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.³⁰ This included Claimant.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 be permitted to leave.³²

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

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

³⁰ See *id.* at 23.

³¹ 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>.

³² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

³³ See *id.*

Iraq.³⁴ Indeed, at the time, 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 38 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 38 days Iraq held Claimant hostage, she 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 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 ICOSA.³⁷

AWARD

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. 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).

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

³⁷ 22 U.S.C. §§ 1626-1627 (2012).

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

Dated at Washington, DC, November 16, 2016
and entered as the Proposed Decision
of the Commission.

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

January 6, 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) (2015).