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-352
	Decision No. IRQ-II-178
Against the Republic of Iraq	

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq ("Iraq") alleging that Iraq held her hostage in violation of international law from August through December 1990. Because Claimant was not a U.S. national at the time, however, this Commission lacks jurisdiction over her claim. In other words, the Commission does not have the legal authority to decide whether Iraq held her hostage. For this reason, her claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was living in Iraq with her U.S. citizen husband when Iraq invaded Kuwait on August 2, 1990. She asserts that, beginning with the invasion and for approximately 18 weeks thereafter, she was forced to hide in homes that she and her husband rented in Baghdad and in a relative's home in Duhok, Iraq. Claimant alleges that she flew out of Iraq on December 13, 1990. She further alleges that, starting in 1994, she began to suffer severe emotional distress that included painful memories of the time she had been held hostage.

Although Claimant was not among them, many of the individuals 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] The Agreement defined "U.S. nationals" as "natural and juridical persons who were U.S. nationals at the time their claim arose and through the date of entry into force of this Agreement."[4]

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.[5] 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.[6] 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").[7]

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[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 id.* Art. I(2).

[5] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).

[6] *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").

[7] *See 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* ("2012

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

> claims by U.S. nationals for hostage-taking[1] by Iraq[2] in violation of international law prior to October 7, 2004, provided that the claimant was not a plaintiff in pending litigation against Iraq for hostage taking[3] at the time of the entry into force of the Claims Settlement Agreement and has not received compensation under the Claims Settlement Agreement from the U.S. Department of State. . . .
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> [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.
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> [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.
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> [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.[8]

Referral" or "Referral"). Although the November 2012 Referral involved claims of U.S. nationals who were held hostage or unlawfully detained by Iraq, it did not involve hostage-taking claims *per se*. Rather, it consisted of certain claimants who had *already received* compensation under the Claims Settlement Agreement from the State Department for their hostage-taking claims, and it authorized the Commission to award additional compensation to those claimants, provided they could show, among other things, that they suffered a "serious personal injury" during their detention. The 2012 Referral expressly noted that the "payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention." *Id.*

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

On May 9, 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

This Commission's authority to hear claims—known in the legal vernacular as its "jurisdiction"—is limited to the category of claims referred to it by the United States Department of State.[9] Here, therefore, we must look to the language of the "Category A" paragraph of the 2014 Referral to determine our jurisdiction. That language limits our jurisdiction to claims of (1) "U.S. nationals," provided that the claimant (2) was not a plaintiff in pending litigation against Iraq for hostage taking on May 22, 2011; and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral at ¶ 3.

This claim fails to satisfy the first requirement—that it be brought by a "U.S. national." The term "U.S. national" has a specific legal meaning in this context. When the Commission interprets terms such as "U.S. national," Congress has directed us to look first to "the provisions of the applicable claims agreement."[10] Here, that means we must turn first to the Claims Settlement Agreement. That Agreement expressly provides a definition of "U.S. nationals." Article I of the Agreement states that "[r]eference to 'U.S. nationals' shall mean natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry into force of this agreement."[11] As the Commission has recognized in its previous decisions, the U.S. nationality requirement thus means that

[9] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).
[10] 22 U.S.C. § 1623(a)(2) (2012).
[11] Claims Settlement Agreement, art. I(2) (emphasis added).

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.[12]

Claimant has submitted a naturalization certificate that indicates that she did not become a U.S. citizen until October 1993—over three years after she says she was detained in Iraq. Thus, she was not a U.S. national in 1990, which is when she alleges that Iraq held her hostage.[13] Claimant appears to contend, however, that she meets the U.S. nationality requirement because she seeks compensation only for emotional injuries that allegedly began in 1994 after she had been naturalized as a U.S. citizen but were nevertheless connected to her alleged detention in Iraq in 1990. This argument lacks merit. Even assuming Claimant suffered emotional injuries starting in 1994 and that those injuries were connected in some way to her alleged detention in Iraq, this would not establish that her claim arose at that time. To ascertain when a claim arose for the purpose of determining whether the claim satisfies the continuous nationality requirement, the relevant date is the date of the commission of the act that gave rise to the claimant's injuries.[14] Thus, for a hostage-taking claim, the relevant date is when the Claimant was taken hostage. Because Claimant asserts that Iraq took her hostage in 1990, her claim arose in 1990, even if she suffered emotional harm starting in 1994. Here, the evidence establishes that Claimant was not a U.S. citizen in 1990. She is thus not a "U.S. national" within the meaning of the Claims Settlement Agreement and 2014 Referral.

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[12] *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001(Proposed Decision), at 5-6 (2014).
[13] As the Commission has previously recognized, U.S. nationality can be acquired "only by birth or by naturalization under the process set by Congress." Claim No. LIB-I-044, Decision No. LIB-I-017 (Final Decision), at 7 (2011) (*citing Abou-Haidar v. Gonzalez*, 437 F.3d 206, 207 (1st Cir. 2006)).
[14] *See* Claim No. CZ-2-0576, CZ-2-0416 (Final Decision), at 2-3 (1984); Claim No. CN-2-017, Decision No. CN2-01, at 4; Claim No. W-6772, Decision No. W-16574 (Final Decision), at 2 (1966); Claim No. PO-1907, Decision No. PO-314 (Final Decision), at 3 (1962); Claim No. BUL-1,124, Decision No. BUL-75 (Final Decision), at 3 (1957); Claim No. IT-10,640, Decision No. IT-81 (Proposed Decision), at 2 (1957).

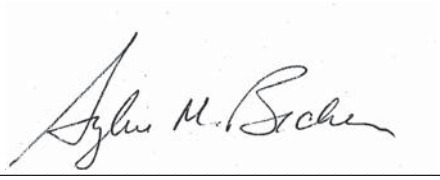
Therefore, the Commission is constrained to conclude that it has no jurisdiction to decide the present claim under the 2014 Referral. In other words, the Commission has no legal authority or power to decide whether Iraq took Claimant hostage. Accordingly, this claim must be and is hereby denied for lack of jurisdiction. The Commission makes no determinations about any other aspect of this claim.

Dated at Washington, DC, October 19, 2017
and entered as the Proposed Decision
of the Commission.

Anuj C. Desai, Commissioner

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

December 12, 2017



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).