

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

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| In the Matter of the Claim of | } | |
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| 5 U.S.C. §552(b)(6) | } | Claim No. IRQ-II-319 |
| | } | |
| | } | Decision No. IRQ-II-212 |
| | } | |
| Against the Republic of Iraq | } | |
| | } | |

Counsel for Claimant:

Anthony Onorato, Esq.
FisherBroyles, LLP

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held her hostage in violation of international law in August 1990. Because she has established that Iraq held her hostage for 10 days, she is entitled to an award of \$200,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she and her husband along with their two children were living in Kuwait when Iraq invaded the country on August 2, 1990. She asserts that, beginning with the invasion and for approximately 10 days thereafter, she and her family were forced to hide in their residence and in the home of a relative, as Iraqi military personnel entered and took over their neighborhood. Claimant and her family stayed in their home for five days, after which they moved to a relative’s house. During this time, Iraqi soldiers periodically came to the house looking for Americans. On August 8, 1990, Claimant and her family decided they needed to leave Kuwait, and several hours later, they drove towards

Saudi Arabia in a car that was part of a convoy of vehicles carrying, among others, U.S. nationals seeking to escape from Kuwait. After spending several hours traveling through the Kuwaiti desert, Claimant and her family crossed the Kuwaiti-Saudi Arabian border on August 11, 1990.

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

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).

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.

2014 Referral at ¶ 3.

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 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.

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 October 27, 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. Certificate of Naturalization, dated July 1, 1988, and a copy of her cancelled U.S. passport, which shows that she was a U.S. national at the time of the alleged hostage-taking (August

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.

through December 1990). She has also provided a copy of each of her U.S. passports since then, which establish 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 must 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 an October 2015 declaration submitted with her 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 stated that she has “not previously received compensation from the U.S. Department of State under the United States-Iraq Settlement Agreement dated September 2, 2010.” Further, we have no evidence that the State Department has provided her any compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of her claim.

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

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 August 11, 1990, a total of 10 days. She alleges that she was living with her husband and two children in Ahmadi, Kuwait, when Iraq invaded the country on August 2, 1990. She states that Iraqi soldiers reached her neighborhood the next day, when she learned that “the city had been taken and the banks had been seized.” That night, Claimant alleges, she could “hear the commotion from the soldiers and tanks as they came into [their] area.” She states that they woke up the next morning “to find [their] neighborhood completely occupied[,]” with “tanks right out in front of [their] house.” They stayed in their house for five days, with only Claimant’s husband venturing outside.

Claimant alleges that on the sixth day of the occupation, she and her family attempted to meet her husband’s family elsewhere in the city, but they “were stopped and held for two hours while [Iraqi soldiers] checked [their] papers.” The Iraqi soldiers seized Claimant’s husband’s “papers,” and eventually stopped them from proceeding further, so they returned home. During this time, according to Claimant, Iraqi soldiers “were looting houses and taking the food.” She states that the “fear [she] felt was building to an unbearable point[,]” and she and her family “stayed barricaded in the bedroom because of the explosions and looting.” She also notes that they heard that “the Iraqis had taken Americans who worked with [her] husband at the oil company.”

Eventually, Claimant and her family decided to drive to a relative’s house in a different town, where they stayed for a few days. Claimant alleges that, while they were there, “Iraqi soldiers came to the house three or four times.” They “asked if there were any Americans in the house and [Claimant and her family] repeatedly told them ‘no.’” On

August 8, 1990, Claimant decided to attempt to flee Kuwait with some friends by land into Saudi Arabia. They began their journey a few hours later and eventually reached the border. However, Iraqi troops were there and ordered them to turn around.

Claimant alleges that they then tried to find another “exit point” across the desert. At one point, they stopped to rest, only to see that they were being chased by Iraqi troops. Claimant states that they sped towards the Saudi border and were able to reach it just before the Iraqi soldiers caught up with them. Thus, on August 11, 1990, Claimant and the other members of the convoy “were able to get across and into a refugee line to get papers from the Saudi officials.” After Claimant crossed into Saudi Arabia, she and the others drove to Riyadh, where they made travel arrangements, ultimately flying out of the country back home on August 19, 1990.

Supporting Evidence

Claimant has supported her claim with, among other things, her own sworn declarations, dated October 21, 2015, and October 11, 2016, in which she describes her ordeal in Kuwait; a sworn declaration from someone else who was in the convoy that crossed into Saudi Arabia, and who attests that Claimant was in that convoy; a Spanish-language newspaper article (along with what she says is an English translation), published on August 14, 1990, describing Claimant’s experience in Kuwait and her escape across the border; and a copy of her U.S. passport valid at the time of the Iraqi invasion, which

contains, *inter alia*, a Saudi entrance stamp dated August 11, 1990, and a Saudi exit stamp dated August 19, 1990.¹¹

The Commission also takes notice of additional documents, submitted by other claimants in this Iraq Claims Program, that provide background about the broader geopolitical situation during the First Gulf War in 1990-91, 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 a lawsuit 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.¹² 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

¹¹ In a declaration filed with other claims in this program, counsel for those claims explains that the Kingdom of Saudi Arabia uses the Islamic Hijri calendar, rather than the Gregorian calendar used in the United States and most western nations. Thus, the Saudi entry stamp in Claimant's passport includes the date "١٤١١ محرم ٢٠" in Arabic script, which translates to the 20th day of the month of Muharram in the year 1411, which in turn corresponds to August 11, 1990, in the Gregorian calendar. Likewise, the Saudi exit stamp includes the date "١٤١١ محرم ٢٨" in Arabic script, which translates to the 28th date of the month of Muharram in the year 1411, which corresponds to August 19, 1990, in the Gregorian calendar. The Commission has confirmed these conversions with the Official Calendar of the Kingdom of Saudi Arabia, and they are consistent with counsel's explanation. *See Date Conversion*, Official Calendar of Kingdom of Saudi Arabia, <http://www.ummulqura.org.sa/Index.aspx> (last visited December 14, 2017). Unlike Saudi Arabia, entry and exit stamps from Kuwait, Iraq, and Jordan used the Gregorian calendar.

¹² *See id.* at 16. An estate claimant would of course need to make this showing as to its decedent.

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 her hostage in Kuwait on August 2, 1990 and held her hostage for 10 days, until August 11, 1990, when she escaped to Saudi Arabia. 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 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 10-day period from August 2, 1990, to August 11, 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 two periods: (i) between the Iraqi invasion on August 2, 1990, and the Iraqi government's formal closing of the borders on August 9, 1990; and (ii) from

¹³ See *id.* at 17-20.

¹⁴ See *id.* at 17.

¹⁵ See *id.* at 16-17.

that August 9th formal closing of the borders until she escaped to Saudi Arabia on August 11, 1990.¹⁶

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to her residence or to the residence of a relative 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 understandably had, as the United Nations Compensation Commission has put it, a “manifestly well-founded fear” of being killed or forcibly detained if she and her family had made any attempt to leave the country.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.

From August 9, 1990, until she crossed the Saudi-Kuwaiti border on August 11, 1990, the Iraqi government confined Claimant to Kuwait, preventing her from leaving the country by the threat of force. Starting on August 9, 1990, the Iraqi government formally closed Kuwait’s borders, forcibly prohibiting U.S. nationals from leaving.²² As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving the

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.

²² *See id.* at 21-22.

country, effectively detaining her within the borders of Kuwait and Iraq.²³ Claimant was subject to this formal policy of prohibiting U.S. nationals from leaving Iraq and Kuwait until August 11, 1990, when she and her family escaped to Saudi Arabia.²⁴

In sum, Iraq thus detained Claimant from August 2, 1990, until August 11, 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.²⁵ 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 the time that Claimant escaped to Saudi Arabia.²⁶ Claimant has thus established that Iraq threatened to continue to detain her.²⁷

(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.²⁸ 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

²³ See *id.* at 22.

²⁴ See *id.*

²⁵ See *id.* at 23.

²⁶ See *id.*

²⁷ 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>.

²⁸ See *id.*

Saudi Arabia; and/or (iii) to end the economic embargo imposed on Iraq.²⁹ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁰

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 10 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.³¹ Therefore, for the 10 days Iraq held Claimant hostage, she is entitled to an award of \$200,000, which is \$150,000 plus (10 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 ICSCA.³²

²⁹ See *id.* at 23-24.

³⁰ 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).

³¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³² 22 U.S.C. §§ 1626-1627 (2012).

AWARD

Claimant is entitled to an award in the amount of \$200,000.

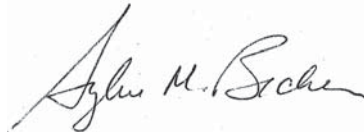
Dated at Washington, DC, December 14, 2017
and entered as the Proposed Decision
of the Commission.

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

January 19, 2018



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) (2017).