

**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-323
	}	
	}	Decision No. IRQ-II-244
	}	
Against the Republic of Iraq	}	
	}	

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 to December 1990. Because he has established that Iraq held him hostage for 134 days, he is entitled to an award of \$820,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was employed at the U.S. Embassy in Kuwait when Iraq invaded the country on August 2, 1990. He asserts that, beginning with the invasion and for approximately 18 weeks thereafter, Iraq confined him in Kuwait and Iraq. After the Iraqi government authorized all foreign nationals remaining in Kuwait and/or Iraq to leave, Claimant flew out of Baghdad, Iraq on December 13, 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 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 compensation to those claimants, provided they could show, among other things, that they suffered a "serious

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 ICSCA and the 2014 Referral.⁷

On December 6, 2016, 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.

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).

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 his U.S. passport valid in August 1990, which shows that he was a U.S. national at the time of the alleged hostage-taking (from August to December of 1990). He has also provided a copy of a recent U.S. passport, which expired in 2017 and establishes that he 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

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.

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

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 for having been held hostage in Kuwait and Iraq under the Claims Settlement Agreement from the U.S. 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 December 13, 1990, a total of 134 days. Claimant asserts that he was one of the U.S. diplomats stationed at the U.S. Embassy in Kuwait when Iraq invaded the country on August 2, 1990.¹¹ Claimant claims that he was among those in a convoy of staff and dependents that travelled from Kuwait to Baghdad on August 23, 1990. He further claims that he and other individuals on the convoy were then confined in Baghdad and not allowed to depart Iraq

¹¹ For further factual background regarding the Iraqi government’s treatment of U.S. diplomats and other U.S. nationals employed by the U.S. government at the U.S. Embassy in Kuwait after the August 2, 1990 invasion, see Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 5-10.

until December 13, 1990, when he left the country on an evacuation flight chartered by the U.S. government.

Supporting Evidence

Claimant has supported his claim with, among other things, his sworn Statement of Claim; a copy of his U.S. passport, which contains an Iraqi exit stamp dated December 13, 1990; a U.S. government travel authorization order dated August 7, 1990, that identifies him as an embassy officer and authorizes him to evacuate from Kuwait; a letter dated August 27, 1990, from the U.S. Embassy in Baghdad that identifies him as a U.S. diplomat; and two letters from State Department officials. The first letter is dated October 1, 1992, and states that Claimant was “in Kuwait and Baghdad from August 2, 1990, ... until December 13, 1990” and was evacuated from Baghdad on one of the U.S. government evacuation flights. The second letter is dated November 18, 2016, and states that Claimant was stationed at the U.S. Embassy in Kuwait at the time of the invasion, that he left Kuwait for Baghdad in a convoy of Embassy staff and dependents on August 23, 1990, and that he was evacuated from Baghdad on a flight that departed on December 13, 1990. Claimant has also submitted certificates identifying him as the recipient of two State Department awards for his service in Kuwait and Iraq after the invasion, and several other documents that refer to his presence in Kuwait and Iraq during the period that he alleges that he was confined.

The Commission 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 U.S. diplomatic personnel accredited to the U.S. Embassy in Kuwait and their dependents after the August 2, 1990 invasion. We also take notice of documents submitted by several

claimants in this 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 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.¹² The Commission has previously held that, to establish a hostage-taking claim under international law in this program, 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 The legal standard we apply in this program applies equally to diplomatic personnel and their families.¹⁵

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.

¹³ See *id.* at 17-20.

¹⁴ See *id.* at 17.

¹⁵ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 12.

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 134 days, until December 13, 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.¹⁶ 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. Claimant satisfies this standard for the 134-day period from August 2, 1990, to December 13, 1990.

(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 three periods: (i) between the Iraqi invasion on August 2, 1990, and the State Department's August 7, 1990 announcement recognizing that U.S. diplomats in Kuwait were in the same position as "private American citizens"; (ii) between that August 7, 1990 announcement and December 6, 1990—*i.e.*, the period during which Iraq expressly prevented diplomats and staff members of the U.S. Embassy in Kuwait from leaving Kuwait and Iraq; and (iii) from the December 6th announcement authorizing all

¹⁶ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

remaining foreign nationals in Kuwait and Iraq to leave until Claimant's departure on December 13, 1990.¹⁷

From August 2, 1990, until August 7, 1990, Iraq prevented Claimant from leaving Kuwait. During this period, Iraq made no formal distinction between Claimant and other U.S. nationals, who as we have previously recognized, were threatened with immediate seizure and forcible detention during this period.¹⁸ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁹ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.²⁰ Claimant understandably 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 the embassy.²¹ 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.²² Iraq thus detained Claimant from August 2, 1990, to August 7, 1990.

Between August 7, 1990, and December 6, 1990, Iraqi authorities adopted various policies that prevented Claimant and other U.S. diplomats and embassy staff accredited to the Kuwait Embassy from leaving Kuwait or Iraq.²³ As the Commission has previously recognized, Iraq did not extend assurances that the U.S. government believed to be sufficiently credible to allow Kuwait Embassy staff members and their dependents to

¹⁷ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 13-14.

¹⁸ See *id.* at 14.

¹⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²⁰ See *id.*

²¹ 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.

²² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²³ See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 14.

depart until August 22, 1990.²⁴ Iraqi authorities subsequently reneged on those commitments on or around August 24, 1990, before adopting a policy that prohibited the departure of Kuwait Embassy staff and their dependents from Iraq and Kuwait as long as the U.S. embassy in Kuwait remained open.²⁵ While the U.S. was able to negotiate the release of some dependents on or around August 25, 1990, Iraq refused to release any of the Kuwait embassy staff members who were confined in the Baghdad or Kuwait embassies until announcing the release of all foreign nationals on December 6, 1990.²⁶ Thus, for Claimant, the policy of prohibiting Kuwait Embassy staff members from leaving Iraq and Kuwait lasted until December 6, 1990, when the Iraqi government announced that all remaining foreign nationals in Kuwait and Iraq could leave.²⁷

Although Claimant may have been legally permitted to leave Kuwait on December 6, 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.²⁸ Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,²⁹ 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.³⁰

Under this standard, Claimant remained under Iraq's control until December 13, 1990. The Commission has previously held that Iraq imposed conditions on air travel that

²⁴ See *id.*

²⁵ See *id.* at 14-15.

²⁶ See *id.* at 15.

²⁷ See *id.*

²⁸ 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).

²⁹ 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)).

³⁰ See *id.*

limited the ability of foreign nationals, including U.S. nationals, to leave Iraq and/or Kuwait in December 1990.³¹ Indeed, the available evidence indicates that Claimant left Iraq at the first reasonable opportunity after the December 6th announcement, on the U.S. government-chartered flight that left Iraq on December 13, 1990. We thus conclude that he was under Iraq's control and thus detained from December 6, 1990, to December 13, 1990.

In sum, Iraq thus detained Claimant from August 2, 1990, until December 13, 1990.

(b) Threat: The Iraqi government threatened Kuwait Embassy staff members, diplomats, and dependents with continued detention. This included Claimant. Iraqi authorities made clear that Embassy staff members, diplomats, and dependents would not be permitted to leave, notwithstanding Iraq's sporadic and unreliable statements to the contrary during Claimant's period of detention.³²

In short, the Iraqi government made an unequivocal threat to continue to detain Kuwait Embassy staff members in Kuwait and Iraq. Claimant was a U.S. diplomat accredited to Kuwait at the time. Claimant has thus established that Iraq threatened to continue to detain him.

(c) Third party coercion: The reason Iraq detained Claimant and threatened him with continued detention was to compel the United States government to act in a certain way as an explicit and/or implicit condition for his release. Iraqi authorities informed the U.S. that before it would release detained diplomats, embassy personnel, and their dependents, it wanted the United States to close its embassy in Kuwait.³³ Indeed, at

³¹ See Claim No. IRQ-II-180, Decision No. IRQ-II-140, at 10-11.

³² See Claim No. IRQ-II-081, Decision No. IRQ-II-238, at 16.

³³ See *id.*

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

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 134 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.³⁵ Therefore, for the 134 days Iraq held Claimant hostage, he is entitled to an award of \$820,000, which is \$150,000 plus (134 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.³⁶

³⁴ See *id.* at 16-17.

³⁵ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁶ 22 U.S.C. §§ 1626-1627 (2012).

AWARD

Claimant is entitled to an award in the amount of \$820,000.

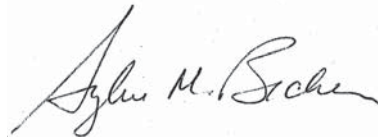
Dated at Washington, DC, March 22, 2018
and entered as the Proposed Decision
of the Commission.

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

May 1, 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) (2018).