

**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)

Against the Republic of Iraq

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Claim No. IRQ-II-198

Decision No. IRQ-II-254

Counsel for Claimant:

Daniel Wolf, Esq.
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held him hostage in violation of international law in August and September 1990. Because he has established that Iraq held him hostage for 34 days, he is entitled to an award of \$320,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was a seventeen-year-old United States citizen visiting Iraq with his family when Iraq invaded Kuwait on August 2, 1990. He asserts that after the invasion, he and his family hid in their hotel room until approximately August 18, 1990, when they took refuge at the U.S. Ambassador’s residence, and that during this time he was in constant fear of being captured by Iraqi authorities. He further claims that during this entire period, the Iraqi government in effect forcibly prevented him (and other U.S. nationals) from leaving Iraq and did so with the express purpose of compelling the United

States government to acquiesce to certain Iraqi government demands. Claimant asserts that he flew out of Baghdad, Iraq on September 4, 1990, after the Iraqi government authorized minor and female U.S. nationals to leave.

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.

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." 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.

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 October 22, 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 his claim. By letter dated December 16, 2015, Claimant provided additional evidence in support of his 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 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

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)(2012).

continuously thereafter until May 22, 2011, the date the Agreement entered into force.⁹ Claimant satisfies the nationality requirement. He has provided copies of his 1982 U.S. Certificate of Citizenship and his U.S. passport valid from May 21, 1990 to May 20, 1995, which shows that he was a U.S. national at the time of the alleged hostage-taking. He has also provided a copy of his current U.S. passport, valid from December 5, 2014 to December 4, 2024, which 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 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 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.

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.

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 September 4, 1990, a total of 34 days. Claimant states that he was a seventeen-year-old United States citizen visiting Iraq with his parents and younger brother when Iraq invaded Kuwait on August 2, 1990. He asserts that after the invasion, he and his family hid in their hotel room until approximately August 18, 1990, when they took refuge at the U.S. Ambassador's residence, and that during this time, he was in constant fear of being captured by Iraqi authorities. Claimant states that on September 4, 1990, he and his mother and brother flew out of Baghdad, Iraq, after the Iraqi government authorized minor and female U.S. nationals to leave.

Supporting Evidence

Claimant has supported his claim with his declaration, as well as a copy of his U.S. passport valid in 1990. That passport contains an Iraqi entry visa that appears to be dated June 19, 1990, and an Iraqi exit visa that appears to be dated September 2, 1990. There is a stamp directly on the exit visa that Claimant states is dated September 4, 1990; however, the stamp is unclear, and it is difficult to discern the stamp's date, if any. The passport does, however, have a clear entry stamp dated September 5, 1990, from the airport in Gatwick, England. Claimant has also submitted a copy of a regional U.S. newspaper article from November 1990, which identifies Claimant and his mother and brother by name, describes their experience in Iraq, and states that they were released in the "second airlift out of Iraq." Claimant's claim is also supported by the declaration of his mother in her

own claim, and a copy of her U.S. passport valid in 1990, which has an Iraqi entry visa that appears to have the same date as Claimant's (June 19, 1990), and an Iraqi exit visa that appears to have the same date as Claimant's (September 2, 1990), with an exit stamp directly on top of the visa that is very similar to that found in Claimant's passport, but the date of which appears more clearly to be September 4, 1990; an additional Iraqi exit stamp dated September 4, 1990; and a Gatwick, England entry stamp dated September 5, 1990.¹¹ Claimant's claim is further supported by the declaration of his brother in his own claim, and a copy of his U.S. passport valid in 1990, which also has an Iraqi entry visa that appears to have the same date as Claimant's (June 19, 1990), and an Iraqi exit visa that appears to have the same date as Claimant's (September 2, 1990), with an exit stamp directly on top of the visa that is very similar to that found in Claimant's passport; an additional Iraqi exit stamp dated September 4, 1990, and a Gatwick, England entry stamp dated September 5, 1990.¹²

Claimant has also submitted a number of documents 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, affidavits submitted in a lawsuit brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War, and several unclassified cables from the U.S. Department of State.

¹¹ See Claim No. IRQ-II-199, Decision No. IRQ-II-255.

¹² See Claim No. IRQ-II-200, Decision No. IRQ-II-256.

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.¹³ 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.¹⁴ 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.¹⁵

Application of Standard to this Claim

(1) Armed Conflict: Claimant alleges that Iraq took him hostage in Iraq on August 2, 1990, and held him hostage for 34 days, until September 4, 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

¹³ 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.

¹⁴ See *id.* at 17-20.

¹⁵ See *id.* at 17.

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

(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 34-day period from August 2, 1990, to September 4, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, his time in Iraq 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 4, 1990.¹⁷

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant within Iraq. The Commission has previously determined that Iraq detained U.S. nationals who were in Iraq during this period by threatening them with forcible detention.¹⁸ Although some foreign nationals did manage to leave Iraq during this period, Claimant could not reasonably be expected to have escaped.¹⁹ Iraqi authorities were forcibly detaining and confining foreign nationals (including U.S. nationals) in Kuwait and Iraq, 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 forcibly detained if he attempted to

¹⁷ See *id.* at 20-21.

¹⁸ See Claim No. IRQ-II-281, Decision No. IRQ-II-139, at 9-10.

¹⁹ See *id.* at 10 n.23.

²⁰ See *id.* at 10.

leave the country.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 9, 1990.

From August 9, 1990, until he flew from Baghdad to England on September 4, 1990, the Iraqi government confined Claimant to Iraq, preventing him from leaving the country by the threat of force. As the Commission has previously held, starting on August 9, 1990, the Iraqi government formally closed Iraq's borders, forcibly prohibiting U.S. nationals from leaving.²³ As of that date, Iraq formally prohibited Claimant from leaving the country, effectively detaining him within the borders of Iraq.²⁴ For Claimant, this formal policy of prohibiting U.S. nationals from leaving Iraq lasted until August 28, 1990, when the Iraqi government announced that all minor and female U.S. nationals could leave.²⁵

Although Claimant may have been legally permitted to leave Iraq 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.²⁶ Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,²⁷ whereas a claimant who has a reasonable

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-161, Decision No. IRQ-II-003, at 7, 21-22.

²⁴ See *id.* at 22.

²⁵ See *id.* at 21-22.

²⁶ 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).

²⁷ 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)).

opportunity to leave the site of his or her captivity is deemed no longer to be under the perpetrator's control.²⁸

Under this standard, Claimant remained under Iraq's control until September 4, 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.²⁹ Indeed, the available evidence indicates that Claimant left Iraq at the first reasonable opportunity, on the September 4, 1990 evacuation flight that left Iraq. Because there is no evidence that Claimant remained voluntarily in Iraq at any time during this period, we conclude that he was under Iraq's control and thus detained from August 28, 1990, to September 4, 1990.

In sum, Iraq thus detained Claimant from August 2, 1990, until September 4, 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. 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.³¹

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 Iraq at the time. Claimant has thus established that Iraq threatened to continue to detain him.

²⁸ *See id.*

²⁹ *See id.*

³⁰ *See id.* at 23.

³¹ *See id.* at 23.

(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.³² 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 Iraq.³³ Indeed, at 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 34 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 34 days Iraq held Claimant hostage, he is entitled to an award of \$320,000, which is \$150,000 plus (34 x \$5,000). This amount constitutes the

³² *See id.*

³³ *See id.* at 23-24.

³⁴ *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).

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

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.³⁶

AWARD

Claimant is entitled to an award in the amount of \$320,000.

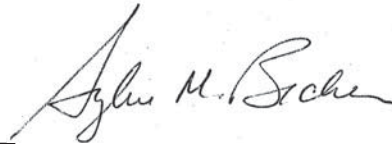
Dated at Washington, DC, April 11, 2018
and entered as the Proposed Decision
of the Commission.

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

July 10, 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).

³⁶ 22 U.S.C. §§ 1626-1627 (2012).