

**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-286
} }
} Decision No. IRQ-II-257
} }
Against the Republic of Iraq }

Counsel for Claimant: Daniel Wolf, Esq.
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant Estate brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held the decedent, Uwe Jahnke, hostage between August and December 1990 in violation of international law. Because Claimant Estate has established that Iraq held Mr. Jahnke hostage for 130 days, it is entitled to an award of \$800,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Jahnke was a United States citizen who was working in Kuwait when Iraq invaded Kuwait on August 2, 1990. The Estate asserts that after the invasion Mr. Jahnke was subsequently detained by Iraqi forces and held as a “human shield” until his eventual release on December 9, 1990, and that during this entire period, the Iraqi government in effect forcibly prevented him (and other U.S. nationals) from leaving Kuwait and Iraq and did so with the express purpose of compelling the United States government to acquiesce to certain Iraqi government demands. Mr. Jahnke died on August 18, 2001.

Although neither Mr. Jahnke nor the Claimant Estate was 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

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").

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.

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.

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 28, 2015, the Commission received from the Claimant Estate a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of its claim. By letters dated February 2, 2016, and February 2, 2018, the Claimant Estate submitted additional evidence in support of its claim.

DISCUSSION

Standing

Claimant Estate has submitted a copy of a Fiduciary's Probate Certificate, issued on October 14, 2015, by the Connecticut Court of Probate, stating that Susan L. Jahnke had been appointed administratrix for the estate of Uwe H. Jahnke. Accordingly, the Commission concludes that ESTATE OF UWE H. JAHNKE, DECEASED; SUSAN L. JAHNKE, ADMINISTRATRIX, is the proper claimant in this claim.

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

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).

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 the claim must have been held by 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 Because the decedent, Mr. Jahnke, died before May 22, 2011, this claim passed from him to his estate prior to May 22, 2011. In such circumstances, the estate must also be a U.S. national. For an estate to be viewed as a U.S. national requires that the estate’s beneficiaries also be U.S. nationals. Thus, to satisfy the U.S. nationality requirement, Claimant Estate must show that Mr. Jahnke was a U.S. national from the time of the alleged hostage-taking until he died and that the Estate’s beneficiaries were U.S. nationals from Mr. Jahnke death until May 22, 2011.¹⁰

Claimant Estate satisfies the nationality requirement. It has provided evidence sufficient to show that the claim was held continuously by a U.S. national from August 2, 1990, which is the date that the alleged hostage-taking began, through the effective date of the Claims Settlement Agreement. From August 2, 1990, to August 18, 2001, the claim was held by the decedent. Claimant Estate has submitted a copy of the decedent’s U.S. passport valid from January 7, 1979, through January 6, 1989, and a U.S. Department of State Report of Death of an American Citizen Abroad, issued on August 27, 2001, and stating that the decedent, a U.S. citizen, died on August 18, 2001. These documents show

⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

¹⁰ See, e.g., Claim No. Y-0660, Decision No. Y-1171 (1954); Claim No. W-9801, Decision No. W-2107 (1965); Claim No. G-2154, Decision No. G-1955 (1981); and Claim No. ALB-338, Decision No. ALB-321 (2008).

that the decedent was a U.S. national at the time of the alleged hostage-taking (August through December of 1990) and remained a U.S. national through the date of his death in 2001.

From August 18, 2001, to May 22, 2011, the claim was held by Susan L. Jahnke, the decedent's widow, and his children Stephen B.H. Jahnke, Catherine A. Jahnke, and Holly E. Jahnke, who are identified as the sole heirs of the decedent's estate in the Application Administration or Probate of Will form filed with, and that appears to have been approved by, the Connecticut Court of Probate.

Claimant Estate has submitted copies of Susan H. Jahnke's U.S. passport valid from July 20, 2009, to July 19, 2019, which states she was born in 1945 in New York. It has additionally submitted a copy of Stephen B.H. Jahnke's U.S. passport valid from January 7, 2010, to January 6, 2020, which states he was born in California in 1967. It has also submitted a copy of Catherine A. Jahnke's U.S. passport valid from June 21, 2012, to June 20, 2022, which states she was born in 1973 in New York. It has further submitted copies of Holly E. Jahnke's U.S. passports valid from February 23, 1989, to February 22, 1999, and from June 2, 2015, to June 1, 2025. These documents establish that Susan L. Jahnke, Stephen B.H. Jahnke, Catherine A. Jahnke, and Holly E. Jahnke were U.S. nationals from August 18, 2001, the date of the decedent's death, through May 22, 2011, the effective date of the Claims Settlement Agreement. Thus, Claimant Estate has satisfied this element of its claim.

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.¹¹ Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Ms. Jahnke, the Estate's Administratrix, has averred, and the pleadings in the cases cited in footnote 3 confirm, that neither the decedent nor the Estate was a plaintiff in any of the Pending Litigation cases. The Commission thus finds that Claimant Estate has also satisfied this element of its claim.

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

The Claimant Estate also satisfies the final jurisdictional requirement. Ms. Jahnke, the Estate's Administratrix, has stated that neither the decedent nor the Estate have received any compensation under the Claims Settlement Agreement from the Department of State. Further, we have no evidence that the State Department has provided either of them any compensation under the Claims Settlement Agreement. Therefore, Claimant Estate meets this element of its 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 Estate states that Iraq held Mr. Jahnke hostage from August 2, 1990, until December 9, 1990, a total of 130 days. Claimant Estate asserts that Mr. Jahnke was working in Kuwait when Iraq invaded on August 2, 1990. After the invasion he initially hid for two weeks in his apartment complex. He then relocated to an abandoned villa where he hid for the next two months, until October 21, 1990, when Iraqi soldiers took him into custody. He was then transported to Baghdad where he was kept for one or two days in

¹¹ The Agreement entered into force on May 22, 2011. *See* Claims Settlement Agreement, art. IX.

the Mansour Melia Hotel. Claimant Estate alleges that the decedent was then relocated to a production and storage facility approximately 35 miles southeast of Baghdad to serve as a “human shield” in order to deter an allied aerial bombardment. The decedent was kept there in sparse and challenging conditions. On December 1, 1990, Susan L. Jahnke, the decedent’s wife traveled to Iraq to try and visit him and arrange his release, and they were reunited on December 3, 1990. On December 9, 1990, the decedent was allowed to leave, and he and his wife flew from Iraq to Germany.

Supporting Evidence

Claimant Estate has supported its claim with a Statement of Claim and declarations signed by Susan L. Jahnke, Mr. Jahnke’s widow and the administratrix of his estate. It has also provided a number of newspaper articles that describe the decedent’s experiences in Kuwait and Iraq, including one article from February 1991 from a regional newspaper that states that Mr. Jahnke was released on December 9, 1990.

Claimant Estate 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.

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 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 Estate alleges that Iraq took Mr. Jahnke hostage in Iraq on August 2, 1990, and held him hostage for 130 days, until December 9, 1990, when Iraqi officials allowed him to leave the country. 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 Estate satisfies this element of the standard.

(2) Hostage-taking: To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant Estate must show that Iraq (a) seized or detained Mr. Jahnke

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 *id.* at 16-17.

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 Estate satisfies this standard for the 130-day period from August 2, 1990, to December 9, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant Estate's allegations of Mr. Jahnke having been detained, his time in Kuwait and Iraq following the Iraqi invasion of Kuwait can be divided into three periods: (i) between the 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 December 6, 1990, announcement that all foreigners could leave Iraq and Kuwait;¹⁶ and (iii) from that December 6th announcement until Mr. Jahnke's departure on December 9, 1990.¹⁷

From August 2, 1990, until Iraq formally closed its borders and Kuwait's borders to foreign nationals on August 9, 1990, Iraq confined Mr. Jahnke within Kuwait. The Commission has previously determined that Iraq detained U.S. nationals who were in Kuwait and/or Iraq during this period by threatening them with immediate seizure and/or forcible detention.¹⁸ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Mr. Jahnke could not reasonably be expected to have escaped.¹⁹ Mr. Jahnke presumably had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being killed or forcibly detained if he attempted to

¹⁶ See *id.* at 12.

¹⁷ See *id.* at 20-21. While Claimant Estate alleges that Mr. Jahnke was physically seized and held by force by Iraq during these periods, we need not decide that issue: as explained below, his presence in Kuwait and/or Iraq during this time is alone sufficient to establish that he was detained under the standard that applies here.

¹⁸ See Claim No. IRQ-II-281, Decision No. IRQ-II-139, at 9-10 (citing Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21).

¹⁹ See Claim No. IRQ-II-281, Decision No. IRQ-II-139, at 10 n.23.

leave the country.²⁰ For the purposes of the legal standard applicable here, putting Mr. Jahnke in this situation in effect amounts to detention.²¹ Iraq thus detained him from August 2, 1990, to August 9, 1990.

From August 9, 1990, until he departed Iraq on December 9, 1990, the Iraqi government confined Mr. Jahnke to Kuwait and then Iraq, preventing him from leaving by the threat of force. As the Commission has previously held, starting on August 9, 1990, the Iraqi government formally closed Kuwait and Iraq's borders, forcibly prohibiting U.S. nationals from leaving.²² As of that date, Iraq formally prohibited Mr. Jahnke from leaving Kuwait and Iraq, effectively detaining him, first within the borders of Kuwait, and then within the borders of Iraq.²³ For Mr. Jahnke, this formal policy of prohibiting U.S. nationals from leaving Kuwait and Iraq lasted until December 6, 1990, when the Iraqi government announced that all foreigners could leave Iraq and Kuwait.²⁴ Because Iraq's previous releases of various categories of foreign nationals did not apply to Mr. Jahnke,²⁵ this was the earliest date that he was legally authorized to leave Iraq.

Although Mr. Jahnke may have been legally permitted to leave Iraq 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

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-281, Decision No. IRQ-II-139, at 10.

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

²³ See *id.* at 22.

²⁴ See *id.* at 12.

²⁵ See *id.* at 11-12, 22 (discussing Iraq's August 28, 1990 release of U.S. nationals who were women or minors).

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 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, Mr. Jahnke remained under Iraq’s control until December 9, 1990. The Commission has previously held that Iraq imposed conditions on air travel that limited the ability of foreign nationals, including U.S. nationals, to leave Iraq and/or Kuwait in both September 1990 (after the release of female and minor U.S. nationals on August 28, 1990) and December 1990 (after the release of all remaining U.S. nationals).²⁹ Indeed, the available evidence indicates that Mr. Jahnke left Iraq at the first reasonable opportunity, with his wife on the December 9, 1990 chartered flight that left Iraq. Because there is no evidence that Mr. Jahnke remained voluntarily in Iraq at any time during this period, we conclude that he was under Iraq’s control and thus continued to be detained from December 6, 1990, to December 9, 1990.

In sum, Iraq thus detained Mr. Jahnke from August 2, 1990, until December 9, 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

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)).

²⁸ *See id.*

²⁹ See Claim No. IRQ-II-180, Decision No. IRQ-II-140, at 10-11; Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22.

³⁰ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

This included Mr. Jahnke. 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. Mr. Jahnke was a U.S. national in Kuwait and Iraq at the time. Claimant Estate has thus established that Iraq threatened to continue to detain Mr. Jahnke.

(c) Third party coercion: The Commission has previously held that Iraq detained all U.S. nationals in Kuwait and 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 Mr. Jahnke hostage in violation of international law for a period of 130 days, and the Claimant Estate is thus entitled to compensation.

³¹ See *id.*

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).

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 130 days Iraq held Mr. Jahnke hostage, he is entitled to an award of \$800,000, which is \$150,000 plus (130 x \$5,000). This amount constitutes the entirety of the compensation to which the Claimant Estate 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 ICSA.³⁶

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 Estate is entitled to an award in the amount of \$800,000.

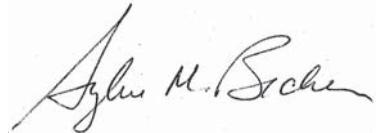
Dated at Washington, DC, April 11, 2018
and entered as the Proposed Decision
of the Commission.

**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).