

**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-108
	}	
	}	Decision No. IRQ-II-259
	}	
Against the Republic of Iraq	}	
	}	

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 her hostage in violation of international law in August 1990. Because she has established that Iraq held her hostage for 11 days, she is entitled to an award of \$205,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was a six-year-old U.S. citizen living in Kuwait with her family when Iraq invaded the country on August 2, 1990. She asserts that after the invasion, she and her family escaped from Kuwait on August 12, 1990, and traveled across Iraq. She further asserts that they crossed the Iraqi-Syrian border on August 13, 1990, before continuing on to Jordan. She also claims that during this entire period, the Iraqi government in effect forcibly prevented her (and other U.S. nationals) from leaving Kuwait and/or Iraq and did so with the express purpose of compelling the United States government to acquiesce to certain Iraqi government demands.

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

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 September 18, 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 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 her U.S. passport valid in August 1990, which shows that she was a U.S. national at the time of the alleged hostage-taking. She has also provided a copy of her current U.S. passport, which

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).

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

expires in January 2025 and establishes 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 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 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 “received any compensation under the Claims Settlement Agreement from the Department of State.” 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.

Merits

Factual Allegations

Claimant states that Iraq held her hostage from August 2, 1990, until August 13, 1990, a total of 12 days. Claimant alleges that she was six years old and living in Kuwait

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

with her family when Iraq invaded the country on August 2, 1990. She further alleges that she and her family escaped from Kuwait on August 12, 1990, and traveled across Iraq, where they remained until August 13, 1990, which is the date on which she asserts that she left Iraq and entered Syria. Claimant states that her family entered Jordan on or around August 14, 1990, and stayed in Amman until they flew to the United States (via Switzerland) in September 1990.

Supporting Evidence

Claimant has supported her claim with, among other things, a copy of her U.S. passport, which contains a U.S. entry stamp dated September 15, 1990; an undated letter from the U.S. Department of State listing benefits received by Claimant's father under a law providing benefits for U.S. nationals and their family members detained in Iraq and Kuwait; a State Department letter dated April 7, 1993, that states that Claimant and her family were in hostage status in Kuwait on August 2, 1990, and reportedly entered Switzerland in September 1990; a visitor visa for the U.K. that was issued to Claimant's mother in Amman on August 27, 1990; a voided air ticket issued to Claimant for a flight from Amman to London (via Zurich) that was scheduled for August 30, 1990; a letter dated February 11, 1992, written by Claimant's father that states that his family left Kuwait on August 12, 1990; and a letter dated May 20, 1992, written by Claimant that states that she and her family left Kuwait on August 12, 1990, and entered Jordan on August 14, 1990.

Claimant has also submitted a claim form that she submitted to the United Nations Compensation Commission ("UNCC") that states that she departed Kuwait on August 12, 1990, and spent 11 days being illegally detained; a letter dated July 14, 2004, from the UNCC's secretariat that includes an annex setting forth the award that was proposed in her claim; several declarations that provide further details about her alleged detention and

ultimate departure from Kuwait and Iraq; and a copy of her mother's Lebanese travel document, which bears a partially legible Syrian transit stamp printed in Arabic, the date of which is not clear, but which appears to have been issued on August 12, 1990, or August 13, 1990. Claimant has provided a translation stating that the date on the stamp is August 13, 1990. In response to questions from the Commission's staff about the accuracy of the translation, Claimant's counsel stated in a letter dated March 30, 2018, that the translator informed him that "the stamp appears to bear a date that most resembles the Arabic script for August 13, 1990," but that "it was plausible for [the] stamp to be translated as August 12, 1990" because the "Arabic numerals for '2' and '3' are quite similar and the image of the stamp . . . is somewhat blurred."

Additionally, Claimant has 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, 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.

As discussed further below, the record raises a factual question as to whether Claimant left Iraq on August 12, 1990, or on August 13, 1990, as she contends.

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.¹¹ 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.¹² 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.¹³

Application of Standard to this Claim

Claimant satisfies this standard for the period August 2, 1990, to August 12, 1990. While she alleges that she escaped from Iraq on August 13, 1990, Claimant has not carried her burden to prove that she remained in Iraq that one extra day. The evidence supporting this conclusion includes the documents that Claimant has submitted, which establish that she was in Kuwait and/or Iraq on August 12, 1990, but are inconclusive as to whether she departed from Iraq on that date or one day later, on August 13, 1990.

To establish that she left Iraq on August 13, 1990, Claimant relies primarily on her mother's Syrian transit stamp, which she maintains was issued on that date. But the date on the stamp, which is in Arabic, is smudged, and as Claimant's own translator stated, is not clear enough to rule out the possibility that it was issued on August 12, 1990.¹⁴ Claimant also points to her May 20, 1992 letter. That letter was provided in response to a State Department request that she submit further evidence to corroborate her assertion in

¹¹ 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.

¹² See *id.* at 17-20.

¹³ See *id.* at 17.

¹⁴ The Arabic numerals for two “٢” and three “٣” are quite similar to each other.

support of her UNCC claim that she left Kuwait on August 12, 1990, and entered Jordan on August 30, 1990. The letter does not, however, establish that Claimant's departure date from Iraq was August 13th and not August 12th. The letter states that Claimant left Kuwait on August 12, 1990, but does not provide any date for Claimant's departure from Iraq and does not acknowledge at all that Claimant's family crossed the Iraqi-Syrian border before they reached Jordan. Most importantly, Claimant's UNCC claim form explicitly lists August 12, 1990, as the date on which she departed Kuwait and provides no date for a departure from Iraq. Moreover, that same claim form states that she spent 11 days in illegal detention, which, depending on how one does the counting, is consistent with either an August 12, 1990 or an August 13, 1990 departure date from Iraq.

The only other evidence in the record that specifically addresses Claimant's date of departure from Iraq are her three declarations, which are inconsistent on this point. Her first declaration, dated September 8, 2015, states that she and her family were seized in Kuwait by Iraqi guards on August 7, 1990, taken to Baghdad and detained there until September 13, 1990, which is the date that Claimant originally asserted that she left Iraq. In Claimant's second declaration, dated December 7, 2017, and submitted together with records from her UNCC claim requested by the Commission's staff, she states that she left Iraq and escaped into Jordan on August 14, 1990. Claimant also states that she does not have a "specific recollection" of this date and that her assertion was based on the date that she claimed to have entered Jordan in her May 20, 1992 letter to the State Department. In her third declaration, dated February 18, 2018, and submitted together with a translation of her mother's Lebanese travel document requested by the Commission's staff, Claimant (who was six years old at the time) concedes that she has "no independent recollection of the date upon which [she] departed Iraq" or the "specific route" that her family took when

it escaped the country. Claimant nevertheless asserts that she left Iraq on August 13, 1990, based on her review of the translation of her mother's Syrian transit stamp and other documents that she has submitted in this claim. Yet, as noted above, the submitted documents do not confirm her assertion, and we have previously recognized in several other claims in this program that "[a] single statement from an interested party," particularly by someone who admittedly has no independent recollection of the events described in the declaration, is simply not sufficient to meet a claimant's burden of proof.¹⁵

Given the lack of evidence corroborating her contention that her family crossed the Iraqi-Syrian border on August 13, 1990, we find that Claimant has not carried her burden to prove that she remained in Iraq that one extra day.¹⁶ Thus, for the purpose of analyzing Claimant's allegation of being held hostage by Iraq, we conclude that she left Iraq on August 12, 1990.

(1) Armed Conflict: Claimant alleges that Iraq took her hostage in Kuwait on August 2, 1990, and held her hostage for 12 days, until August 13, 1990, when she escaped to Jordan (via Syria). 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.¹⁷ 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

¹⁵ Claim No. IRQ-II-304, Decision No. IRQ-II-220, at 7; Claim No. IRQ-II-305, Decision No. IRQ-II-221, at 6-7; Claim No. IRQ-II-306, Decision No. IRQ-II-222, at 6-7; Claim No. IRQ-II-307, Decision No. IRQ-II-223, at 6-7.

¹⁶ See IRQ-II-160, Decision No. 103, at 10; IRQ-II IRQ-II-289, Decision No. IRQ-II-165, at 8.

¹⁷ See *id.* at 16-17.

explicit or implicit condition for her release. Claimant satisfies this standard for the 11-day period from August 2, 1990, to August 12, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, her time in Kuwait and Iraq following the Iraqi invasion falls in 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 that August 9th formal closing of the borders until she and her family escaped from Iraq on August 12, 1990.¹⁸

From August 2, 1990 until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁹ Iraq confined Claimant to Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.²⁰ Although some foreign nationals did manage to leave Kuwait and/or Iraq prior to August 7, 1990,²¹ Claimant could not reasonably be expected to have escaped any earlier than she did.²² Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.²³ Claimant and her family understandably had, as the United Nations Compensation Commission has put it, a "manifestly well-founded fear" of being killed or forcibly detained if they had made any earlier attempt to leave the country.²⁴ Indeed, the facts suggest that they risked their lives to attempt to leave

¹⁸ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 20-21.

¹⁹ See *id.* at 21.

²⁰ See *id.*

²¹ See Elizabeth Thames, *American Couple Flee Amid Sounds of War*, SAN JOSE MERCURY NEWS, Aug. 4, 1990, at 16A.

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

²³ See *id.*

²⁴ 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.

when they did. The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Claimant and her family in this situation in effect amounts to detention.²⁵ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990 until she left Iraq on August 12, 1990, the Iraqi government confined Claimant to Kuwait and Iraq, preventing her from leaving 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.²⁶ As the Commission has previously held, as of that date, Iraq prohibited Claimant from leaving the country, effectively detaining her within the borders of Kuwait and Iraq.²⁷ Claimant was subject to this formal policy of prohibiting U.S. nationals from leaving Iraq and Kuwait until August 12, 1990, when she and her family left Iraq for Jordan (via Syria).²⁸

In sum, Iraq thus detained Claimant from August 2, 1990 until August 12, 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.²⁹ 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 Claimant escaped from Kuwait.³⁰ Claimant has thus established that Iraq threatened to continue to detain her.³¹

²⁵ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²⁶ See *id.* at 21-22.

²⁷ See *id.* at 22.

²⁸ See *id.*

²⁹ See *id.* at 23.

³⁰ See *id.*

³¹ 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

(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, 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 11 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 11 days Iraq held Claimant hostage, she is entitled to an

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>.

³² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

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.

award of \$205,000, which is \$150,000 plus (11 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 ICSA.³⁶

AWARD

Claimant is entitled to an award in the amount of \$205,000.

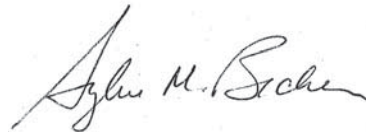
Dated at Washington, DC, April 11, 2018
and entered as the Proposed Decision
of the Commission.

**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) (2018).

³⁶ 22 U.S.C. §§ 1626-1627 (2012).