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	Claim No. IRQ-II-052 Decision No. IRQ-II-077

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 Claimant was not a U.S. national at the time, however, this Commission lacks jurisdiction over his claim. In other words, the Commission does not have the authority to consider the merits of his claim—that is, to decide whether Iraq held him hostage. For this reason, his claim is denied.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was a five-year-old United States citizen living in Kuwait with his family when Iraq invaded the country on August 2, 1990. He asserts that, beginning with the invasion and for 38 days thereafter, he and his family were forced to hide in their residence or in their relatives' residence 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 from leaving Kuwait and/or Iraq. Claimant alleges that he flew out of Kuwait (via Baghdad, Iraq) on September 8, 1990.

Although Claimant was not involved in the suit, many U.S. nationals who were 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] The Agreement defined "U.S. nationals" as "natural and juridical persons who were U.S. nationals at the time their claim arose and through the date of entry into force of this Agreement."[4]

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.[5] 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.[6] 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").[7]

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[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 id.* Art. I(2).
[5] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).
[6] *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").
[7] *See 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* ("2012

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-taking[1] by Iraq[2] 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 taking[3] 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. . . .
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> [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.
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> [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.
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> [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 ICSA and the 2014 Referral.[8]

Referral" or "Referral"). 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 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." *Id.*

[8] *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).

On January 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.

DISCUSSION

This Commission's authority to hear claims—known in the legal vernacular as its "jurisdiction"—is limited to the category of claims referred to it by the United States Department of State.[9] Here, therefore, we must look to the language of the "Category A" paragraph of the 2014 Referral to determine our jurisdiction. That language limits our jurisdiction to claims of (1) "U.S. nationals," provided that the claimant (2) was not a plaintiff in pending litigation against Iraq for hostage taking on May 22, 2011; and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral ¶ 3.

This claim fails to satisfy the first requirement—that it be brought by a "U.S. national." The term "U.S. national" has a specific legal meaning in this context. When the Commission interprets terms such as "U.S. national," Congress has directed us to look first to "the provisions of the applicable claims agreement."[10] Here, that means we must turn first to the Claims Settlement Agreement. That Agreement expressly provides a definition of "U.S. nationals." Article I of the Agreement states that "[r]eference to 'U.S. nationals' shall mean natural and juridical persons who were U.S. nationals *at the time their claim arose* and through the date of entry into force of this agreement."[11] As the Commission has recognized in its previous decisions, the U.S. nationality requirement thus means that

[9] *See* 22 U.S.C. § 1623(a)(1)(C) (2012).
[10] 22 U.S.C. § 1623(a)(2) (2012).
[11] Claims Settlement Agreement, art. I(2) (emphasis added).

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.[12]

Claimant has not carried his burden to prove that he was a U.S. national in August and September of 1990, when his claim arose. In support of his claim to U.S. nationality, Claimant appears to argue that he was treated as a U.S. national by the U.S. Department of State on two occasions: first, in correspondence addressed to his father by the Assistant Secretary of State for Consular Affairs after Claimant returned to the United States; and second, when his family received a "Hostage Relief Payment" pursuant to Public Law 101-513.[13]

Even assuming both facts are true, neither establishes that Claimant was a U.S. national. First, the State Department letter, which is dated September 25, 1990, does not state that Claimant was a U.S. national or even address the nationality of either Claimant or his family members. Moreover, the letter appears to be a generic form letter that the State Department sent along with a handbook prepared by the National Organization for Victim Assistance to "the families . . . of Americans detained in Iraq and Kuwait and for those whose relatives [had] returned home." Because many of the U.S. nationals who were detained in Iraq and Kuwait had family members who were not U.S. nationals, Claimant has no basis for arguing that his father's mere receipt of such a letter constitutes evidence that the State Department considered Claimant to be a U.S. national. Second, the hostage benefits afforded by Public Law No. 101-513 were also not limited to those who were U.S.

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[12] *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001(Proposed Decision), at 5-6 (2014).

[13] Public Law 101-513 established a program of benefits for U.S. hostages in Iraq and Kuwait. *See* Foreign Operations, Export Financing, and Related Programs Appropriations Act for 1991, Pub. L. No. 101-513, 104 Stat. 1979, 2064 (1990) (heading to section 599C entitled "Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon"); *see also* 5 U.S.C. § 5561 note (2012) ("Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon"). Under this law, U.S. nationals and their family members who were held hostage in Iraq and Kuwait after August 2, 1990, were entitled to certain payments from the U.S. Government on account of their hostage status.

nationals. The law provided benefits not only to U.S. nationals but also to "family members" of U.S. nationals, including "any individuals who are members of the households of United States hostages."[14] Thus, nothing the State Department has done establishes that Claimant was a U.S. national.

Just as importantly, the Commission has previously recognized that U.S. nationality can be acquired "only by birth or by naturalization under the process set by Congress."[15] Claimant has not established that he was a U.S. national at birth, and there is no evidence that he acquired U.S. nationality under the naturalization process established by Congress between the date of his birth and the alleged hostage-taking in 1990. Thus, even if, by 1990, Claimant and his family had received certain assistance from the State Department (such as the receipt of statutory benefits under Public Law 101-513 or a handbook for victims of the hostage crisis and their family and friends), this would still not have made him a U.S. national at the time.[16]

[14] Foreign Operations, Export Financing, and Related Programs Appropriations Act for 1991, §§ 599C(d)(2), (4)(A), (5), Pub. L. No. 101-513, 104 Stat. 1979, 2064-65 (1990).
[15] Claim No. LIB-I-044, Decision No. LIB-I-017 (Final Decision), at 7 (2011) (*citing Abou-Haidar v. Gonzalez*, 437 F.3d 206, 207 (1st Cir. 2006)).
[16] *See id.* at 7-8. Moreover, Claimant does not allege (and the record does not support) that he or anyone in his family received the alleged assistance by the time his claim accrued on August 2, 1990.

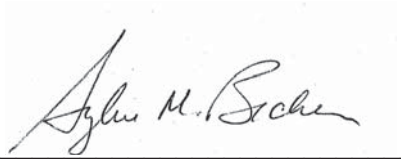
Therefore, the Commission is constrained to conclude that it has no jurisdiction to decide the present claim under the 2014 Referral. In other words, the Commission has no authority or power to decide the merits of this claim. Accordingly, this claim must be and is hereby denied for lack of jurisdiction. The Commission makes no determinations about any other aspect of this claim.

Dated at Washington, DC, March 23, 2017
and entered as the Proposed Decision
of the Commission.

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

May 8, 2017

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) (2016).