FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D.C. 20579

In the Matter of the Claim of	}	
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	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-II-059
	}	
	}	Decision No. IRQ-II-069
	}	
Against the Republic of Iraq	}	
	}	

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 and September 1990. Because she has established that Iraq held her hostage for 42 days, she is entitled to an award of $360,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was a five-year-old United States citizen living in Kuwait with her family when Iraq invaded the country on August 2, 1990. She asserts that, beginning with the invasion and for six weeks thereafter, she and her family were forced to hide in a number of locations, including her family's apartment, the homes of relatives, and various hotels in constant fear of being captured by Iraqi authorities. She further 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. After the Iraqi government authorized female and minor U.S. nationals to leave, Claimant flew out of Kuwait (via Baghdad, Iraq) on September 12, 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

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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* 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-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.[7]

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[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 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." 2012 Referral, *supra*, n.3.

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

On May 11, 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 ¶ 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. She has provided a copy of her birth certificate from the state of New York, which shows that she was a U.S. national at the time of the alleged hostage-taking (August and September of 1990). She has also provided a copy of her current U.S. passport, which expires on March 4, 2024 and establishes that she remained a U.S. national through the effective date of the Claims Settlement Agreement.

[8] *See* 22 U.S.C. § 1623(a)(1)(C).
[9] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5.

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 2 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 2 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 compensation under the Claims Settlement Agreement from the United States 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 September 12, 1990, a total of 42 days. Claimant alleges that she was five years old and living in Kuwait with her family when Iraq invaded the country on August 2, 1990. She alleges that after

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

the invasion, she and her family hid inside her home, the residences of relatives and various hotels in constant fear of being apprehended and taken into custody by Iraqi forces.

Claimant and her family remained sequestered for six weeks, beginning with the invasion on August 2, 1990. Pursuant to Iraqi President Saddam Hussein's August 28, 1990 announcement that foreign national women and minors could leave the country, Claimant was formally permitted to go.[11] Between September 1, 1990 and September 23, 1990, the U.S. government organized several charter flights from Iraq and Kuwait to repatriate those released U.S. nationals wishing to return to the United States.[12] On September 12, 1990, Claimant flew to Baghdad with her family on one of these U.S. chartered flights. They then flew to London that same day, September 12, 1990, and from there to Raleigh, North Carolina the next day.

Supporting Evidence

Claimant has supported her claim with, among other things, her sworn Statement of Claim and a copy of a travel document issued in lieu of a passport by the U.S. Embassy in Baghdad, which contains an Iraqi exit stamp dated September 12, 1990, and an entry stamp from Gatwick Airport in London with the same date. Claimant has also provided her mother's declaration and three newspaper articles describing the circumstances of her alleged detention and ultimate departure from Kuwait, and a photograph in a news article dated September 13, 1990 of her mother and her brother arriving in London on the night of September 12, 1990. Additionally, Claimant has submitted two other newspaper articles. The first article, which was published in the *Deseret News* on August 20, 1990, addresses Iraq's treatment of foreign nationals in Kuwait after the August 2, 1990 invasion.

[11] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 11.
[12] *See id.* at 12-13.

The second article is an *Associated Press* news report that describes efforts to evacuate women and children who were foreign nationals after the August 28, 1990 release. Claimant has also provided correspondence detailing her mother's efforts to secure exit visas from the Iraqi government for her and her children, a parent handout titled "Children and War—Responding to Operation Desert Storm" that was published in *Communiqué*, the journal of the National Association of School Psychologists, and that was sent to Claimant's mother by her school counselor, a boarding pass for an Iraqi Airways flight to an unspecified location, and a boarding pass from her mother's flight from London to Raleigh, North Carolina.

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]

[13] *See id*. 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.

Application of Standard to this Claim

(1) Armed Conflict: Claimant alleges that Iraq took her hostage in Kuwait on August 2, 1990 and held her hostage for 42 days, until September 12, 1990, when Iraqi officials allowed her 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 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 explicit or implicit condition for her release. Claimant satisfies this standard for the 42-day period from August 2, 1990 to September 12, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, her time in Kuwait 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 12, 1990.[17]

From August 2, 1990 until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to her family's residence, the homes of relatives,

[16] *See id.* at 16-17.
[17] *See id.* at 20-21.

and various hotels in Kuwait and Baghdad by threatening all U.S. nationals with immediate seizure and forcible detention.[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 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 apprehended by Iraqi forces.[21] 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.[22] Iraq thus detained Claimant from August 2, 1990 to August 9, 1990.

From August 9, 1990 until she flew from Baghdad to London on September 12, 1990, the Iraqi government confined Claimant to Kuwait (and, for a short time just before her release, the Baghdad airport), preventing her from leaving the country 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.[23] 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.[24] For Claimant, this formal policy of prohibiting U.S. nationals from leaving Iraq and Kuwait lasted until August 28, 1990, when the Iraqi government announced that all female and minor U.S. nationals could leave.[25]

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[18] *See id.* at 21.
[19] *See id.*
[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 id.* at 21-22.
[24] *See id.* at 22.
[25] *See id.*

Although Claimant may have been legally permitted to leave Kuwait on August 28, 1990, her detention did not end on that date. As the Commission has previously recognized, a claimant's detention ends only on the date that she is released from the control of the person or entity that detained her.[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, Claimant remained under Iraq's control until September 12, 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 12, 1990 U.S. government-chartered flight that left Iraq. Because there is no evidence that Claimant remained voluntarily in Kuwait at any time during this period, we conclude that she was under Iraq's control and thus detained from August 28, 1990 to September 12, 1990.

In sum, Iraq thus detained Claimant from August 2, 1990 until September 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.[30]

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[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] *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)).
[28] *See id.*
[29] *See id*.
[30] *See id.* at 23.

This included Claimant.[31] 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.[32]

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

(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.[33] 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.[34] Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.[35]

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 42 days, and Claimant is thus entitled to compensation.

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[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 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.*

[34] *See id.* at 23-24.

[35] *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.[36] Therefore, for the 42 days Iraq held Claimant hostage, she is entitled to an award of $360,000, which is $150,000 plus (42 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.[37]

[36] *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.
[37] 22 U.S.C. §§ 1626-1627 (2012).

AWARD

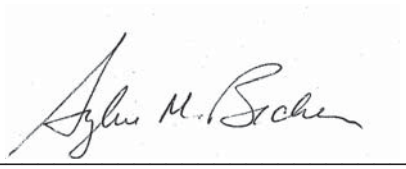
Claimant is entitled to an award in the amount of $360,000.

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

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

April 26, 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).