

**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-258
5 U.S.C. §552(b)(6)	}	Decision No. IRQ-II-274
	}	
	}	
	}	
Against the Republic of Iraq	}	
	}	
	}	
	}	

## PROPOSED DECISION

Claimant Estate brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held the decedent, James Corbett Pennington, hostage in violation of international law from August through December 1990. Because the Estate has established that Iraq held Mr. Pennington 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. Pennington was living in Kuwait when Iraq invaded the country on August 2, 1990. It asserts that, beginning with the invasion and for approximately four months thereafter, Mr. Pennington was first confined to his apartment near Kuwait City, and then taken by Iraqi soldiers to a local hotel, after which he was taken by bus to Baghdad, and finally, transported to an industrial facility in Basra, Iraq. After the Iraqi government authorized all foreign nationals remaining in Kuwait and Iraq to

leave, Claimant flew from Baghdad to London, United Kingdom, on December 9, 1990.

Mr. Pennington died in July 2003.

Although neither Mr. Pennington nor 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.<sup>1</sup> Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.<sup>2</sup> 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.<sup>3</sup> 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 ("ICSAs"), the Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission.<sup>4</sup> 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.<sup>5</sup> This was the State Department's second referral of claims to the Commission under the Claims Settlement Agreement, the

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<sup>1</sup> 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).

<sup>2</sup> 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").

<sup>3</sup> See *id.* Art. III(1)(a)(ii).

<sup>4</sup> See 22 U.S.C. § 1623(a)(1)(C) (2012).

<sup>5</sup> 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”).<sup>6</sup>

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<sup>1</sup> by Iraq<sup>2</sup> 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<sup>3</sup> 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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<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.

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<sup>6</sup> 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.<sup>7</sup>

On October 23, 2015, the Commission received from 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.

## DISCUSSION

### Standing

As an initial matter, the Commission has reviewed the Letters of Authority, issued on July 25, 2017, by the Probate Court of Cuyahoga County, Ohio, appointing Jesse Pennington administrator of Mr. Pennington's estate. Based on this review, the Commission finds that the ESTATE OF JAMES CORBETT PENNINGTON, DECEASED; JESSE PENNINGTON, ADMINISTRATOR, 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.<sup>8</sup> 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.

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<sup>7</sup> *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).

<sup>8</sup> See 22 U.S.C. § 1623(a)(1)(C) (2012).

*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.<sup>9</sup> Because the decedent, Mr. Pennington, died before May 22, 2011, this claim passed from him to his estate prior to May 22, 2011. In such circumstances, it is a well-established principle of the law of international claims that the nationality of the beneficiaries of the estate, as well as of the injured party, must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.<sup>10</sup> Thus, to satisfy the U.S. nationality requirement, Claimant Estate must show that Mr. Pennington 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. Pennington’s death until May 22, 2011.

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 July 1, 2003, the claim was held by the decedent. Claimant Estate has submitted a copy of the decedent’s U.S. birth certificate, as well as a copy of his U.S. passport valid from 1984 to 1994, which show that he was a U.S. national at the time of the alleged hostage-taking (between August and December 1990). Claimant has also submitted a copy of the decedent’s voter information

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<sup>9</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5 (2016).

<sup>10</sup> See, e.g., *Claim of ESTATE OF ELIZABETH L. ROOT, DECEASED*, Claim No. LIB-II-040, Decision No. LIB-II-026 (2011); *Claim of THE ESTATE OF JOSEPH KREN, DECEASED*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO*, Claim No. ALB-338, Decision No. ALB-321 (2008).

report, which indicates that he was a U.S. national on November 8, 1994, the effective date of his voter registration, and remained so until the registration was cancelled upon his death. This evidence and other evidence in the record indicates that the decedent remained a U.S. national from the date of his alleged hostage-taking and continuously thereafter until the date of his death (July 1, 2003).

From July 1, 2003, to February 21, 2010, the decedent's widow, Marisa Pennington, held the claim. Mr. Pennington died intestate in Ohio. At the time of his death, he had a surviving spouse, Ms. Pennington, and two surviving children, both of whom were children of his spouse. In such circumstances, Ohio law provides that all of a decedent's property pass to the surviving spouse.<sup>11</sup> Claimant Estate has submitted Ms. Pennington's U.S. certificate of naturalization, dated March 18, 1960, her U.S. passport valid from February 1986 to February 1996, and her Ohio voter registration card, dated September 12, 2003, evidencing her U.S. nationality during the entire period she held the claim.

From February 21, 2010, the date of Marisa Pennington's death, until May 22, 2011, the claim was held by her two children, Jesse Pennington and Carla Pennington Shelstad, who (apart from specific bequeaths not relevant here) were identified as the beneficiaries of Ms. Pennington's residuary estate in her Last Will and Testament, dated February 11, 2004, which was admitted to probate by the Lorain County Probate Court on September 6, 2017. Claimant Estate has submitted Jesse Pennington's U.S. passport valid from May 2003 to May 2013, as well as his current U.S. passport valid from February 2013 to February 2023. The Estate has also submitted Carla Shelstad's U.S. passport valid from April 1996 to April 2006, as well as her current U.S. passport valid from October 2010 to

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<sup>11</sup> Ohio Rev. Code Ann. § 2105.06(B) (West 2004).

October 2020. This evidence establishes that the decedent's children were U.S. nationals from February 21, 2010, the date of his wife'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 must 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.<sup>12</sup> Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant Estate, through its administrator, has averred under oath in an October 2015 declaration submitted with the Statement of Claim, and the pleadings in the cases cited in footnote 3 confirm, that neither Mr. Pennington nor his estate was a plaintiff in any of those 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*

Claimant Estate also satisfies the final jurisdictional requirement. Jesse Pennington, the administrator of Mr. Pennington's estate, has stated that neither Mr. Pennington nor his estate has "ever receive[d] any compensation under the [Claims Settlement Agreement] from the Department of State." Further, we have no evidence that the State Department has provided Mr. Pennington or his estate any compensation under the Claims Settlement Agreement. Therefore, Claimant Estate meets this element of its claim.

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<sup>12</sup> 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 Estate asserts that Iraq held Mr. Pennington hostage from August 2, 1990, until December 9, 1990, a total of 130 days. It states that he and his wife were living in an apartment near Kuwait City when Iraq invaded Kuwait on August 2, 1990. Claimant Estate further states that, from that date until September 5, 1990, Mr. Pennington and his wife "remained confined in their apartment building to avoid capture by Iraqi security forces. . . . [T]hey lived in fear that they would be found by Iraqi soldiers, who would arrest them and harm them physically, execute them, or force them to serve as 'human shields.'" The Estate adds that "[w]ith heavily armed Iraqi military forces clearly visible outside their apartment complex, James and Marisa did not dare risk venturing outside their apartment . . . ."

Claimant Estate states that on September 5, 1990, "three armed Iraqi security officials" came to the apartment of Mr. Pennington and his wife, took them into custody, and brought them to a hotel in Kuwait City. Later that day, they were placed on a bus, and the next day, September 6, 1990, they arrived in Baghdad, where they were taken to a local hotel. The next day, they were taken by bus to Basra, Iraq, where, according to Claimant Estate, they were "deployed as 'human shields' to deter air strikes at a petrochemical plant." They were "housed in makeshift tents and trailers" with poor sanitation and without adequate provisions. About a week earlier, the Iraqi government had announced the formal release of foreign national women and minors, and after three days at the plant, Ms. Pennington decided to board an evacuation flight to the United States. For his part, Mr.

Pennington “continued to be detained as a human shield” at the petrochemical plant for three more months.

On December 6, 1990, the Iraqi government released all foreign nationals remaining in Iraq and Kuwait,<sup>13</sup> and Claimant Estate asserts that on December 9, 1990, Mr. Pennington finally left Iraq. The Estate alleges that he boarded an evacuation flight that day, arriving in London on December 10, 1990, before ultimately arriving back in the United States.

#### *Supporting Evidence*

Claimant Estate has supported its claim with, among other things, a sworn statement from Jesse Pennington, dated October 15, 2015, describing his father’s experience in Kuwait as Mr. Pennington and his wife Marisa explained it to him in the ensuing years; a copy of Marisa Pennington’s U.S. passport from the time of the Iraqi invasion, which contains, *inter alia*, Kuwaiti entry visas from 1985 and 1990, an Iraqi entry visa dated July 12, 1990, and an Iraqi exit stamp dated September 12, 1990; a copy of James Pennington’s U.S. passport from the time of the invasion, which contains, *inter alia*, Kuwaiti entry visas dated February 1985 and May 1989, and Kuwaiti entry stamps from January 1986 and July 1987; and several contemporaneous newspaper articles verifying the details of Mr. Pennington’s alleged hostage experience, including the approximate dates of his captivity. In addition, the Commission has independently obtained several additional newspaper articles from *The Miami Herald* that generally corroborate Claimant Estate’s account of Mr. Pennington’s experience in Kuwait and Iraq.<sup>14</sup>

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<sup>13</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 12.

<sup>14</sup> See Tony Pugh, *Miramar Woman Hopes Dad Will Be Home for Christmas*, Miami Herald, Dec. 7, 1990, at A21; Tony Pugh, *Miramar Woman Hopes to See Dad Family Who Had Been Living in Kuwait*, Miami Herald, Dec. 7, 1990, at A1; Tony Pugh, *Woman Awaits Dad’s Release from Kuwait*, Miami Herald, Dec. 10, 1990, at 6BR; Tony Pugh & Naftali Bendavid, *Dad’s Free and Broward Daughter Flies to Joyful*

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

#### *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.<sup>15</sup> 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.<sup>16</sup> A claimant can establish the first element of this standard by showing that the Iraqi government confined the claimant (or, in this case, the Claimant Estate's decedent) to a particular location or locations within Iraq or Kuwait, or prohibited the claimant from leaving Iraq and/or Kuwait.<sup>17</sup>

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*Reunion*, Miami Herald, Dec. 12, 1990, at A1; Tony Pugh, *Family Rebuilds Life Torn Apart After Parents Became Hostages*, Miami Herald, Jan. 12, 1992, at 6BR.

<sup>15</sup> See *id.* at 16. In claims such as this that involve an estate claimant, this applies to the claimant's decedent.

<sup>16</sup> See *id.* at 17-20.

<sup>17</sup> See *id.* at 17.

*Application of Standard to this Claim*

Claimant Estate satisfies this standard for the period August 2, 1990, to December 9, 1990. In his sworn statement, Jesse Pennington, the estate administrator, states that Mr. Pennington was held hostage from August 2, 1990, to the date he allegedly left Iraq, December 9, 1990. While the evidence clearly establishes that Mr. Pennington was in Iraq from August 2, 1990 until some time in December of that year, the evidence is inconsistent on the precise date Mr. Pennington left Iraq. In particular, the newspaper articles that Claimant submitted and others the Commission has uncovered independently list Mr. Pennington's departure date as either December 10, 1990 or December 11, 1990. One article states explicitly that Mr. Pennington was released on December 10, 1990. Another article indicates that Mr. Pennington arrived in London on December 11, 1990, which would be consistent with a December 10th departure date if we accept Jesse Pennington's allegation in his sworn statement that Mr. Pennington arrived in London the day after he departed Iraq. A third article, however, indicates that Mr. Pennington phoned his family from London on Monday, December 10, 1990, which, if Mr. Pennington did indeed arrive in London one day after his departure, would suggest he left Baghdad on December 9, 1990.

In any event, given that Claimant Estate alleges that Mr. Pennington left Iraq on December 9, 1990, and since the evidence presented supports a finding that he was in Iraq until at least that date, for the purpose of analyzing Claimant Estate's allegation of Mr. Pennington's being held hostage by Iraq, his evacuation flight departed from Baghdad on December 9, 1990.

(1) Armed Conflict: Claimant Estate alleges that Iraq took Mr. Pennington hostage in Kuwait on August 2, 1990 and held him hostage for 130 days, until December

9, 1990, when he was evacuated to the United States. 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.<sup>18</sup> 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 the decedent 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 her 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 the Estate's allegations of Mr. Pennington having been detained, his time in Kuwait and 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 December 6, 1990 announcement that all foreigners could leave Iraq and Kuwait;<sup>19</sup> and (iii) from that December 6th announcement until Mr. Pennington's departure on December 9, 1990.<sup>20</sup>

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Mr. Pennington to his apartment near Kuwait City. The Commission has previously determined that Iraq detained U.S. nationals who were in Kuwait and/or Iraq during this period by threatening all U.S. nationals with immediate

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<sup>18</sup> See *id.* at 16-17.

<sup>19</sup> See *id.* at 12.

<sup>20</sup> See *id.* at 20-21. While Claimant Estate alleges that Mr. Pennington 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.

seizure and forcible detention.<sup>21</sup> Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Mr. Pennington could not reasonably be expected to have escaped.<sup>22</sup> Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.<sup>23</sup> Mr. Pennington understandably had, as the United Nations Compensation Commission has put it, a “manifestly well-founded fear” of being killed or forcibly detained if he had made any attempt to leave the country.<sup>24</sup> The Commission has previously recognized that for the purposes of the legal standard applicable here, putting a claimant in this situation in effect amounts to detention.<sup>25</sup> Iraq thus detained Mr. Pennington 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. Pennington to Kuwait and 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 all borders under its control, forcibly prohibiting U.S. nationals from leaving.<sup>26</sup> As of that date, Iraq prohibited Mr. Pennington from leaving Kuwait and Iraq, effectively detaining him within the borders of those countries.<sup>27</sup> For Mr. Pennington, 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

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<sup>21</sup> See *id.* at 21; Claim No. IRQ-II-281, Decision No. IRQ-II- 139, at 9-10.

<sup>22</sup> See Claim No. IRQ-II-281, Decision No. IRQ-II- 139, at 9-10; Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

<sup>23</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

<sup>24</sup> 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.

<sup>25</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

<sup>26</sup> See *id.* at 7, 21-22.

<sup>27</sup> See *id.* at 22.

could leave.<sup>28</sup> Because Iraq's previous releases of various categories of foreign nationals did not apply to Mr. Pennington,<sup>29</sup> this was the earliest date that he was legally authorized to leave Iraq.

Although Mr. Pennington may have been legally permitted to leave Kuwait 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 of the person or entity that detained him.<sup>30</sup> Any attempt “[by the perpetrator] to restrict [the] movements” of a claimant establishes control,<sup>31</sup> 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.<sup>32</sup>

Under this standard, Mr. Pennington 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).<sup>33</sup> Indeed, the available evidence indicates that Mr. Pennington left Iraq at the first reasonable opportunity, on a December 9, 1990 evacuation flight from Iraq. Because there is no evidence that he remained voluntarily in Iraq at any time during this period, we conclude

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<sup>28</sup> See *id.* at 12.

<sup>29</sup> See *id.* at 11-12, 22 (discussing Iraq's August 28, 1990 release of U.S. nationals who were women or minors).

<sup>30</sup> See *id.* at 22; see also Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

<sup>31</sup> 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)).

<sup>32</sup> See *id.*

<sup>33</sup> See Claim No. IRQ-II-180, Decision No. IRQ-II-140, at 10-11 (2017); Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22.

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. Pennington 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.<sup>34</sup> 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.<sup>35</sup> Claimant Estate has thus established that Iraq threatened to continue to detain Mr. Pennington.

(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.<sup>36</sup> 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.<sup>37</sup> Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.<sup>38</sup>

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<sup>34</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> See *id.* at 23-24.

<sup>38</sup> 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).

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. Iraq held Mr. Pennington hostage in violation of international law for a period of 130 days, and his Estate 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.<sup>39</sup> Therefore, for the 130 days Iraq held Mr. Pennington hostage, his Estate 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 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.<sup>40</sup>

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<sup>39</sup> See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

<sup>40</sup> 22 U.S.C. §§ 1626-1627 (2012).

AWARD

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

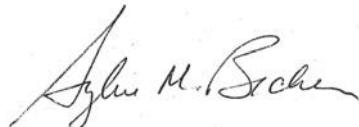
Dated at Washington, DC, May 10, 2018  
and entered as the Proposed Decision  
of the Commission.

**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).