

**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

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Claim No. IRQ-II-262

Decision No. IRQ-II-214

Counsel for Claimant:

Daniel Wolf, Esq.
Law Office of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held him hostage in violation of international law from August through December 1990. Because he has established that Iraq held him hostage for 130 days, he is entitled to an award of \$800,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that he was living in Kuwait when Iraq invaded the country on August 2, 1990. He asserts that, beginning with the invasion and for approximately four months thereafter, he was confined first to his apartment in Fahaheel, Kuwait, then to another apartment nearby, before eventually moving to two safe houses elsewhere in Kuwait. Claimant alleges that, during this time, he was “prohibited from leaving Iraqi controlled territory and otherwise detained as a hostage in Kuwait by the Iraqi regime in violation of international law.” After the Iraqi government authorized all foreign

nationals remaining in Kuwait and Iraq to leave, Claimant flew from Kuwait (via Baghdad, Iraq) to Frankfurt, Germany, on December 9, 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

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").

Settlement Agreement, the 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.

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

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.” 2012 Referral, *supra*, n.3.

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

On October 23, 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

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. He has provided a copy of his cancelled U.S. passport, which shows that he was a U.S. national at the time of the alleged hostage-taking (August through December 1990). He has also provided a copy of his current U.S. passport, which establishes that he 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

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 (2016).

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 under oath in his Statement of Claim, and the pleadings in the cases cited in footnote 3 confirm, that he was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant has also satisfied this element of his 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 he has never “received any compensation under the [U.S.-Iraq] Claims Settlement Agreement from the Department of State.” Further, we have no evidence that the State Department has provided him any compensation under the Claims Settlement Agreement. Therefore, Claimant meets this element of his 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 him hostage from August 2, 1990, until December 9, 1990, a total of 130 days. He alleges that he and his wife were living in an apartment in Fahaheel, Kuwait, when Iraq invaded the country on August 2, 1990. Early that morning, Claimant was driving to a hotel near the airport to meet a colleague when he noticed a large number of military vehicles traveling north. After arriving at the hotel, he and his colleague heard explosions nearby and, upon turning on the television, learned

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

that Iraq had invaded Kuwait. Claimant states that he immediately returned home, at which point he and his wife “sequestered [themselves] inside the apartment as [they] waited for events to unfold.” He further states that, “[w]ithin a couple of days, [they] heard that the borders had been closed and that foreigners were being forbidden from leaving” Claimant describes how, on or about August 6, he went to the grocery store for food, but because of the chaos inside and the presence of Iraqi soldiers, he “never again dared venture out of [his] apartment to buy food or any other items for fear of being taken into custody by the Iraqi authorities.”

Claimant states that on September 2, 1990, a group of Iraqi soldiers stationed near their apartment opened fire on some nearby buildings. In response, Claimant and his wife dove to the floor and “crawled into [their] bedroom to escape the stray bullets.” After that incident, they decided to move to a safer location “in the event Iraqi soldiers might start searching door to door.” Thus, on September 4, they moved to an acquaintance’s apartment nearby, where they remained for the next 10 weeks, “[living] in a state of constrict stress and complete despair, [and] knowing that Iraqi soldier[s] could storm through the door at any moment”

As the weeks went by, Claimant’s morale dropped precipitously, and he “began losing hope that [they] would be able to avoid capture or get out of Iraqi-controlled territory alive.” Claimant alleges that, on or about November 15, 1990, he learned that a final evacuation flight was being arranged for women and children, and he and his wife decided to attempt to secure a spot on this flight for her. Thus, on November 18, 1990, Claimant drove his wife to the airport, which was occupied by “literally hundreds of Iraqi guards” with guns who Claimant “feared . . . would arrest [him] at any moment[,]” and they said goodbye to each other.

Claimant states that, while at the airport, he met a Lebanese national who agreed to assist him and drove him to a nearby safe house. Claimant stayed there until approximately November 23, 1990, when he moved to another safe house, where he stayed for two more weeks.

On December 6, 1990, the Iraqi government released all foreign nationals remaining in Iraq and Kuwait,¹¹ and Claimant learned of the decree that day. He states that, “[w]hile uncertain as to whether this was a genuine release order or just a ploy to capture those still in hiding,” he nonetheless emerged from the safe house and drove to the airport, where Claimant boarded a flight to Baghdad, Iraq, from where he flew to Frankfurt, Germany, before finally arriving at Andrews Air Force Base in Maryland.

Supporting Evidence

Claimant has supported his claim with, among other things, his own sworn declaration, dated October 2, 2015, in which he describes his ordeal in Kuwait; and a copy of his U.S. passport valid at the time of the Iraqi invasion, which contains, *inter alia*, a Kuwaiti entry stamp dated July 9, 1990, and an Iraqi exit stamp dated December 9, 1990. Claimant 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

¹¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 12.

submitted in two lawsuits 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.¹² The Commission has previously held that, to establish a hostage-taking claim, a claimant must show that Iraq (a) seized or detained the claimant and (b) threatened the claimant with death, injury or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for the claimant's release.¹³ A claimant can establish the first element of this standard by showing that the Iraqi government confined the claimant to a particular location or locations within Iraq or Kuwait, or prohibited the claimant from leaving Iraq and/or Kuwait.¹⁴

Application of Standard to this Claim

(1) Armed Conflict: Claimant alleges that Iraq took him hostage in Kuwait on August 2, 1990, and held him hostage for 130 days, until December 9, 1990, when he was flown out of Kuwait. In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that during this entire period, Iraq was engaged in an armed conflict with Kuwait.¹⁵ Thus, Claimant satisfies this element of the standard.

¹² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16. An estate claimant would of course need to make this showing as to its decedent.

¹³ See *id.* at 17-20.

¹⁴ See *id.* at 17.

¹⁵ See *id.* at 16-17.

(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 him and (b) threatened him with death, injury or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for his release. Claimant satisfies this standard for the 130-day period from August 2, 1990 to December 9, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of 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;¹⁶ and (iii) from that December 6th announcement until Claimant's departure on December 9, 1990.¹⁷

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Claimant to his apartment 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 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

¹⁶ See *id.* at 12.

¹⁷ See *id.* at 20-21.

¹⁸ See *id.* at 21.

¹⁹ See *id.*

²⁰ See *id.*

any attempt to leave the country.²¹ The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Claimant 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 he departed Iraq on December 9, 1990, the Iraqi government confined Claimant to Kuwait, preventing him from leaving the country by the threat of force. As the Commission has previously held, starting on August 9, 1990, the Iraqi government formally closed Kuwait's borders, forcibly prohibiting U.S. nationals from leaving.²³ As of that date, Iraq prohibited Claimant from leaving the country, effectively detaining him within the borders of Kuwait and Iraq.²⁴ For Claimant, this formal policy of prohibiting U.S. nationals from leaving Kuwait and Iraq lasted until December 6, 1990, when the Iraqi government announced that all foreigners could leave.²⁵ Because Iraq's previous releases of various categories of foreign nationals did not apply to Claimant,²⁶ this was the earliest date that he was legally authorized to leave Iraq.

Although Claimant 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.²⁷ Any attempt "[by the

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 7, 21-22.

²⁴ See *id.* at 22.

²⁵ See *id.* at 12.

²⁶ See *id.* at 11-12, 22 (discussing Iraq's August 28, 1990 release of U.S. nationals who were women or minors).

²⁷ See *id.* at 22; see also Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

perpetrator] to restrict [the] movements” of a claimant establishes control,²⁸ 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.²⁹

Under this standard, Claimant 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).³⁰ Indeed, the available evidence indicates that Claimant left Kuwait at the first reasonable opportunity, on the December 9, 1990 evacuation flight that left Kuwait via Baghdad. Because there is no evidence that he remained voluntarily in Kuwait or Iraq at any time during this period, we conclude that he was under Iraq’s control and thus continued to be detained from December 6, 1990, to December 9, 1990.

In sum, Iraq detained Claimant 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.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

²⁸ 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)).

²⁹ *See id.*

³⁰ *See* Claim No. IRQ-II-180, Decision No. IRQ-II-140, at 10-11; Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22.

³¹ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

countries) would not be permitted to leave.³² Claimant has thus established that Iraq threatened to continue to detain him.³³

(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.³⁴ 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.³⁵ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁶

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 130 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.

³² See *id.*

³³ 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>.

³⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

³⁵ See *id.* at 23-24.

³⁶ 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 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.³⁷ Therefore, for the 130 days Iraq held Claimant hostage, he is entitled to an award of \$800,000, which is \$150,000 plus (130 x \$5,000). This amount constitutes the entirety of the compensation to which 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 ICOSA.³⁸

AWARD

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

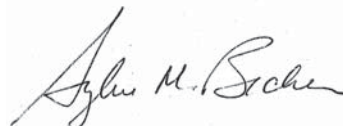
Dated at Washington, DC, January 25, 2018
and entered as the Proposed Decision
of the Commission.

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

March 5, 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).

³⁷ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁸ 22 U.S.C. §§ 1626-1627 (2012).