

acquiesce to certain Iraqi government demands. Claimant asserts that he and his father escaped across the Iraqi-Jordanian border in September 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

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").

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”).⁶

One category of claims from the 2014 Referral is applicable here. That category, known as Category A, consists of

claims by U.S. nationals for hostage-taking¹ by Iraq² in violation of international law prior to October 7, 2004, provided that the claimant was not a plaintiff in pending litigation against Iraq for hostage taking³ at the time of the entry into force of the Claims Settlement Agreement and has not received compensation under the Claims Settlement Agreement from the U.S. Department of State. . . .

¹ For purposes of this referral, hostage-taking would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

² For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

³ For purposes of this category, pending litigation against Iraq for hostage taking refers to the following matters: *Acree v. Iraq*, D.D.C. 02-cv-00632 and 06-cv-00723, *Hill v. Iraq*, D.D.C. 99-cv-03346, *Vine v. Iraq*, D.D.C. 01-cv-02674; *Seyam (Islamic Society of Wichita) v. Iraq*, D.D.C. 03-cv-00888; *Simon v. Iraq*, D.D.C. 03-cv-00691.

2014 Referral at ¶ 3.

⁶ Although the November 2012 Referral involved claims of U.S. nationals who were held hostage or unlawfully detained by Iraq, it did not involve hostage-taking claims *per se*. Rather, it consisted of certain claimants who had *already received* compensation under the Claims Settlement Agreement from the State Department for their hostage-taking claims, and it authorized the Commission to award additional compensation to those claimants, provided they could show, among other things, that they suffered a “serious personal injury” during their detention. The 2012 Referral expressly noted that the “payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.” *Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission*, at ¶3 n.3.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICSA and the 2014 Referral.⁷

On 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. By letters dated May 18, 2016, July 25, 2017 and November 2, 2017, Claimant has provided additional documents related to 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 at ¶ 3.

Nationality

This claims program is limited to claims of "U.S. nationals." Here, that means a claimant must have been a national of the United States when the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force.⁹

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

⁸ See 22 U.S.C. § 1623(a)(1)(C)(2012).

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

Claimant satisfies the nationality requirement. He has provided a copy of his California birth certificate which substantiates Claimant's statement that he was a U.S. national at the time of the alleged hostage-taking (August and September of 1990). He has also provided a copy of his U.S. passport valid from December 19, 2005, to December 18, 2015, 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 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 not received any compensation under the Claims Settlement Agreement from the Department of State. Further, we have no evidence that the State Department has provided 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.

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

Merits

Factual Allegations

Claimant states that Iraq held him hostage from August 2, 1990, until September 19, 1990, a total of 49 days. Claimant alleges that he moved to Kuwait with his father in 1990, and that his father was working on a construction project for the University of Kuwait Development Program when Iraq invaded the country on August 2, 1990.¹¹ He further alleges that after hiding in their apartment for several weeks, he and his father joined a group of three Egyptian families who were planning to flee the country. Claimant states that he and his father were instructed at that time to leave their U.S. Passports in Kuwait, so as not to endanger the Egyptians with whom they were escaping. According to Claimant, he and his father began their “escape journey” with the three Egyptian families on September 16, 1990; they reached the Iraqi border station on September 17, 1990; and crossed the border into Jordan on September 19, 1990.

Supporting Evidence

In support of his claim, Claimant has submitted a number of documents that provide background about the broader geopolitical situation during the First Gulf War in 1990-91, including some that relate specifically to the circumstances faced by U.S. nationals in Iraq and Kuwait at the time. These documents include statements from U.S. and Iraqi officials, resolutions of the United Nations Security Council, newspaper articles, a report from Amnesty International on human rights violations committed by Iraq in 1990, unclassified cables 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.

¹¹ The Commission has previously adjudicated the claim of Claimant’s father. See Claim No. IRQ-II-293, Decision No. IRQ-II-269.

Claimant has also supported his claim with documents specific to his claim, including his signed Statement of Claim, two signed declarations from him, and two signed declarations from his father. Claimant has also submitted the declarations of four U.S. nationals who all state that they hid in the same apartment complex as Claimant and his father through September 5, 1990, when Iraqi soldiers allegedly seized the four of them at gunpoint. None could say what happened to Claimant and his father after September 5, 1990. Two of these individuals were a married couple, and Claimant has also provided a copy of pages from a contemporaneous journal the couple kept. The journal references Claimant and his father by name a number of times and states that the husband thought he heard Claimant in a stairwell on the day Iraqi soldiers apprehended the four of them. Claimant has also provided copies of contemporaneous newspaper articles and the U.S. passports of all four witnesses with Kuwaiti entry stamps and Iraqi exit stamps evidencing the presence of all four in Kuwait and Iraq during the relevant time period.

Claimant has also provided claim forms that his father submitted to the United Nations Compensation Commission (“UNCC”)¹² for damages arising from Iraq’s invasion of Kuwait, a UNCC document showing a recommendation that an award be made to Claimant’s father, and three letters from the U.S. State Department advising Claimant’s father that the UNCC had made him an award for lost compensation and an award of a lump sum payment for family departure from Kuwait. Claimant has also provided several documents related to his father’s employment in Kuwait, including his father’s employment agreement executed on January 29, 1990, for a 24-month work project in Kuwait, his father’s employer’s payment schedule for the project, and a January 10, 1991

¹² The UNCC was created in 1991 as a subsidiary organ of the United Nations Security Council to process claims and pay compensation for losses and damage suffered as a direct result of Iraq's 1990–1991 invasion and occupation of Kuwait.

memorandum from his father's employer that lists various types of compensation that might be available to employees whose projects were affected by Iraq's invasion of Kuwait. The memorandum states that it covers Claimant and his father because the employer had assigned Claimant to a Kuwaiti project "at the time of the invasion of Kuwait and the resulting detainment." The memo indicates that Claimant's father was paid for the loss of personal property and relocation expenses.

Additionally, Claimant has submitted a number of documents from the time period immediately following his and his father's alleged escape into Jordan, including a receipt from the Aqaba Seaport in Jordan from September 22, 1990 (including a certified translation thereof), a receipt of payment for port storage (together with a certified translation) covering September 19, 1990, to September 22, 1990, and an invoice Claimant's father was issued for an October 14, 1990 Lufthansa flights from Egypt to Germany to the United States. Claimant has additionally submitted his U.S. passport valid from October 4, 1990, to October 3, 1995, and his father's U.S. passport valid from October 4, 1990, to October 3, 2000. Claimant says he and his father received these passports from the U.S. Embassy in Egypt after they purposely left their previous U.S. passports in Kuwait so as not to be identified as U.S. nationals when they fled the country.

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

¹³ 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.

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

Application of Standard to this Claim

Claimant satisfies this standard for the period August 2, 1990, to September 5, 1990. Although he alleges that he did not leave Iraq until September 19, 1990, Claimant has not carried his burden to prove that he left on that date, nor has he carried his burden to prove that he was in either Kuwait or Iraq any later than September 5, 1990. He has thus not carried his burden to show that Iraq held him hostage in either Kuwait or Iraq beyond September 5, 1990. The evidence supporting this conclusion includes the documents that Claimant has submitted, which establish that he was in Kuwait between August 2, 1990, and September 5, 1990, but are inconclusive as to when he departed from Kuwait and/or Iraq after September 5, 1990.

To establish that he left Iraq on September 19, 1990, Claimant relies primarily on (1) the declarations of four U.S. nationals who attest that they believe the Claimant and his son were in hiding with them in their apartment complex through September 5, 1990, on which date Iraqi soldiers seized the four individuals at gunpoint; and (2) the contemporaneous journal kept by two of those individuals, which references Claimant and

¹⁴ See *id.* at 17-20.

¹⁵ See *id.* at 17.

his son a number of times and states that one of the authors thought he heard Claimant's son in a stairwell on September 5, 1990.

These documents are sufficient to establish that Claimant and his father were present in Kuwait though September 5, 1990.¹⁶ They are not, however, sufficient to establish that Claimant's departure date from Iraq was September 19, 1990, or that he and his father remained in Kuwait or Iraq beyond September 5, 1990: none of the witnesses were able to say anything about Claimant and his father's whereabouts after that date.

The only other evidence in the record that specifically addresses Claimant's date of departure from Kuwait and/or Iraq are his own statements, and these are inconsistent on this point. For one, his statements to the Commission allege various different dates of departure from Iraq. Claimant initially stated in his sworn Statement of Claim, submitted on October 23, 2015, that he and his father were held hostage in Kuwait by Iraq from August 2, 1990, until September 30, 1990, a total of 60 days. He additionally stated that they were "on the run from approximately September 27 to September 30, when [he and his father] finally crossed the border into Jordan posing as members of an Egyptian family." In a Declaration dated May 12, 2016, about six months later, Claimant reconfirmed that he and his father crossed into Jordan on September 30, 1990, providing a full four paragraphs of detail about their alleged escape. In that Declaration, Claimant stated that "[o]n or about the evening of September 25, 1990," he and his father joined a group of three Egyptian

¹⁶ The Commission considers certain factors in determining how much weight to place on personal declarations and statements, including, for example, the length of time between the incident and the statement, *see* Claim No. IRQ-I-010, Decision No. IRQ-I-022 (Final Decision), at 3-4 (2015) (*citing Akayesu*, Case No. ICT-96-4-T, ¶ 137), and whether the declarant is a party interested in the outcome of the proceedings or has a special relationship with the Claimant, *see id.* (*citing Bin Cheng, General Principles of Law as Applied by International Courts and Tribunals* (2006), at 312, 317). Here Claimant has provided declarations by individuals who do not have an economic interest in the outcome of the proceedings, and while their declarations were executed more than 27 years after the events they describe, they rely in large part on journal entries made contemporaneously with those events by two of the declarants.

families who were planning to flee the country, that they all set out “early in the morning of September 26,” that they “reached the Iraqi border station on September 28,” and then crossed the Jordanian border “on September 30.”

Despite these detailed allegations with specific dates, Claimant’s account later changed in response to inquiries from the Commission’s staff about the sufficiency of the evidence. In a letter dated July 25, 2016, the Commission’s staff requested that Claimant submit further evidence substantiating his allegations, particularly his assertion that he was in Kuwait and then Iraq from August 2, 1990 through September 30, 1990. By letter dated July 25, 2017, exactly one full year after the Commission staff’s letter, and nearly two years after Claimant filed his Statement of Claim asserting he had been held hostage until September 30, 1990, Claimant filed additional documentation and a new declaration asserting that he had escaped on September 19, 1990, and not, as he had previously claimed, on September 30, 1990.¹⁷ Given these inconsistencies, we find that Claimant’s evidence is not sufficient to carry his burden to prove his contention that he departed Iraq on September 19, 1990.

Claimant nevertheless argues that “even if the Commission were to find that [Claimant and his father] have not met their burden of proving their September 19 departure date, ... the Commission should acknowledge the reality that under the very best

¹⁷ Relatedly, statements that Claimant’s father made in a claim to the UNCC also contain several different alleged dates of departure, contradicting each other as well as the dates identified by the Claimant in his submissions to the Commission. At one point, Claimant’s father’s UNCC claim forms state that he was detained through September 16, 1990. In response to others questions, however, which explicitly ask Claimant’s father to specify the date he departed Kuwait, he responded “September 23, 1990.” Similarly, in another UNCC form, Claimant’s father states he was a captive for 46 days, but in a February 25, 1992 letter to the U.S. State Department, he says he was a captive for 45 days. Still further, in a calculation he made for his UNCC submission, Claimant’s father stated that he suffered mental pain for 51 days. It appears that Claimant’s father did ultimately get some compensation through the UNCC claims process, but there is no evidence that he received any award that was dependent on the number of days he had been in Kuwait and/or Iraq.

of circumstances it would have taken a minimum of three days for Claimants to make their way to Jordan following the capture of their colleagues and, hence should grant their claim at least through September 8.” The Commission’s regulations, however, provide that a claimant has the burden of proof in submitting evidence and information sufficient to establish the validity of his claim,¹⁸ and Claimant has provided no evidence that would confirm that it took him a minimum of three days to escape via Jordan. Indeed, other claimants in this claims program were able to escape Kuwait within one day.¹⁹ And, as discussed above, Claimant’s recollection about the timing and manner of his departure from Kuwait are unsubstantiated and inconsistent. They thus lack the reliability necessary to meet his burden of proof.²⁰

Given the lack of evidence corroborating Claimant’s contention that he and his father crossed the Iraqi-Jordan border on September 19, 1990, we find that Claimant has not carried his burden to prove that he remained in Kuwait and/or Iraq beyond September 5, 1990.²¹ Thus, for purposes of analyzing Claimant’s allegation of being held hostage by

¹⁸ See 45 C.F.R. § 509.5(b) (2017); *see also* Claim No. IRQ-II-160, Decision No. IRQ-II-103, at 10-11 (2017); Claim No. IRQ-II- 289, Decision No. 165, at 8-10 (2017); Claim No. LIB-II-150, Decision No. LIB-II-115 (Final Decision), at 4 (2012); Claim No. LIB-II-164, Decision No. LIB-II-183 (Final Decision), at 19 (2013).

¹⁹ *See, e.g.*, Claim No. IRQ-II-212, Decision No. IRQ-II-153 (2017). Furthermore, Claimant has not substantiated that his departure was by means of crossing the Jordanian border, and there appear to have been closer means of potential escape. *See, e.g.*, Claim No. IRQ-II-264, Decision No. IRQ-II-126 (2017).

²⁰ Claimant has numerous factual contradictions in his recollections and representations in addition to those already noted above. For example, in Claimant’s original filing with the Commission he states that the Jordanian military escorted him across the Iraqi border, after which he traveled to the Egyptian seaport in Suez. He later changed that narrative and instead asserted that he traveled to the Jordanian seaport in Aqaba. Likewise, Claimant initially stated that he was issued a new U.S. passport by the U.S. Embassy in Cairo, but later stated that he was instead issued this passport by the U.S. Consulate in Alexandria.

²¹ Furthermore, we note that he has not substantiated that he was detained beyond September 5, 1990, as the Iraqi government, as will be discussed below, announced on August 28, 1990, that all minor and female U.S. nationals could leave.

Iraq, we conclude that he was present in Kuwait from August 2, 1990, through September 5, 1990.

(1) Armed Conflict: Claimant alleges that Iraq took him hostage in Kuwait on August 2, 1990 and held him hostage until he escaped in September 1990. 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.²² 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 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 35-day period from August 2, 1990 to September 5, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant's allegations of having been detained, his time in Kuwait following the Iraqi invasion can be divided into two periods: (i) between the Iraqi invasion on August 2, 1990 and the Iraqi government's formal closing of the borders on August 9, 1990; (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 September 5, 1990, the latest date that Claimant has substantiated he was in Kuwait/Iraq.²³

²² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

²³ See *id.* at 20-21.

From August 2, 1990, until Iraq formally closed the borders to foreign nationals on August 9, 1990, Iraq confined Claimant to his apartment in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.²⁴ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.²⁵ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.²⁶ 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 left his home.²⁷ 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.²⁸ Iraq thus detained Claimant from August 2, 1990, to August 9, 1990.

From August 9, 1990, until September 5, 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.²⁹ As of that date, Iraq prohibited Claimant from leaving the country, effectively detaining him within the borders of Kuwait and Iraq.³⁰ For Claimant, this formal policy of prohibiting

²⁴ *See id.* at 21.

²⁵ *See id.*

²⁶ *See id.*

²⁷ 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.

²⁸ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²⁹ *See id.* at 21-22.

³⁰ *See id.* at 22.

U.S. nationals from leaving Iraq was in effect until August 28, 1990, when the Iraqi government announced that all minor and female U.S. nationals could leave.³¹

Although Claimant may have been legally permitted to leave Iraq on August 28, 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.³² Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,³³ 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.³⁴ 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.³⁵ Given these conditions, and Claimant's attestation that he and his father actively sought to escape from Kuwait, and given that there is no indication that Claimant would have been able to evacuate any earlier than the September 5, 1990 date he has substantiated as still being present in Kuwait,³⁶ we view Claimant as having remained under Iraq's control through September 5, 1990.³⁷

In sum, Iraq thus detained Claimant from August 2, 1990 until September 5, 1990.

³¹ *See id.* at 21-22.

³² *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, at 13 (2012).

³³ Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22 (citing Claim No. LIB-II-183, Decision No. LIB-II-178, at 12 (2012)).

³⁴ *See id.*

³⁵ *See id.*

³⁶ *See, e.g.,* Claim No. IRQ-II-274, Decision Number IRQ-II-240 (Commission awarded compensation for a period covering August 2, 1990, to September 8, 1990, to a minor who left on a September 8, 1990, evacuation flight).

³⁷ *See supra* pp. 9-13.

(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.³⁸ This would have included Claimant. 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.³⁹

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 him.

(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.⁴⁰ 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.⁴¹ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.⁴²

³⁸ Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

³⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

⁴⁰ See *id.*

⁴¹ See *id.* at 23-24.

⁴² 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. United Nations S.C. Res. 674 (Oct. 29, 1990) (noting "actions by . . . Iraq authorities and occupying forces to take third-State nationals hostage" and demanding that Iraq "cease and desist" this practice).

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. We find that Claimant has substantiated that Iraq held him hostage in violation of international law for a period of 35 days, and Claimant is thus entitled to compensation.

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation.

In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that successful claimants should be awarded compensation in the amount of \$150,000 plus an additional \$5,000 for each day the claimant was in captivity.⁴³ Therefore, for the 35 days Claimant has demonstrated that Iraq held him hostage, he is entitled to an award of \$325,000, which is \$150,000 plus (35 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.⁴⁴

⁴³ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

⁴⁴ 22 U.S.C. §§ 1626-1627 (2012).

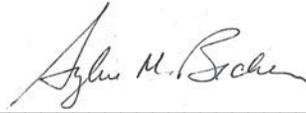
AWARD

Claimant is entitled to an award in the amount of \$325,000.

Dated at Washington, DC, August 9, 2018
and entered as the Proposed Decision
of the Commission.

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

October 15, 2018



Sylvia M. Becker, Commissioner



Patrick Hovakimian, 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).