

demands. Claimant asserts that he 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 U.S. Certificate of Naturalization, which states that he became a U.S. citizen on July 2, 1976, and 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 October 4, 1990 through October 3, 2000, and 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 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.

¹⁰ 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 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 son in 1990, and 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 son joined a group of three Egyptian families who were planning to flee the country. Claimant states that he was instructed at that time to leave his U.S. Passport in Kuwait, so as not to endanger the Egyptians with whom they were escaping. According to Claimant, he and his son 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

¹¹ Claimant's son is also a claimant in this Iraq Claims Program.

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.

Claimant has also supported his claim with documents specific to his claim, including his signed Statement of Claim, two signed declarations from him, and a signed declaration of his son. 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 son through September 5, 1990, when Iraqi soldiers allegedly seized the four of them at gunpoint. None could say what happened to Claimant and his son 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 son by name a number of times and states that the husband thought he heard Claimant's son 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 he 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, and three letters from the U.S. State Department advising him 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 employment in Kuwait, including his employment agreement executed on January 29,

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.

1990, for a 24-month work project in Kuwait, his employer's payment schedule for the project, and a January 10, 1991 memorandum from his 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 son 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 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 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 was issued for 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, 2000, and his son's U.S. passport valid from October 4, 1990, to October 3, 1995. Claimant says he and his son 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

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.

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

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, when Iraqi soldiers seized the four individuals at gunpoint; and (2) the contemporaneous journal kept by two of those individuals, which references Claimant and his son a number of times

¹⁴ See *id.* at 17-20.

¹⁵ See *id.* at 17.

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 son 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 son remained in Kuwait or Iraq beyond September 5, 1990: none of the witnesses were able to say anything about Claimant and his son'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 son 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 son] 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 son 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 son 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.

Moreover, statements that Claimant made in a claim to the UNCC also contain several different alleged dates of departure, contradicting each other as well as those he made to the Commission. At one point, Claimant’s UNCC claim forms state that he was detained through September 16, 1990. In response to others questions, however, which explicitly ask Claimant to specify the date he departed Kuwait, he responded “September 23, 1990.” Similarly, in another UNCC form, Claimant 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 stated that he suffered mental pain for 51 days.¹⁷ Given these inconsistencies, we find that

¹⁷ It appears that Claimant 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.

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 son] have not met their burden of proving their September 19 departure date, ... the Commission should acknowledge the reality that under the very best 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 son crossed the Iraqi-Jordan border on September 19, 1990, we find that Claimant has not

¹⁸ See 45 C.F.R. § 509.5(b) (2017); *see also* Claim No. IRQ-II-160, Decision No. IRQ-II-103 (Proposed Decision), at 10-11 (2017); Claim No. IRQ-II- 289, Decision No. 165 (Proposed Decision), 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 stated that the Jordanian military escorted him and his son across Jordan to the Egyptian seaport in Suez. He later changed that narrative and instead asserted that the Jordanian military escorted them to the Jordanian seaport in Aqaba, from where he asserts they took the ferry to the Egyptian port city of Nuweibah. 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.

carried his burden to prove that he remained in Kuwait and/or Iraq beyond September 5, 1990. Thus, for purposes of analyzing Claimant's allegation of being held hostage by 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.²¹ 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; and (ii) from August 9th until September 5, 1990, the latest date that Claimant has substantiated he was in Kuwait/Iraq..²²

²¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

²² 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.²³ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Claimant could not reasonably be expected to have escaped.²⁴ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.²⁵ 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.²⁶ 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.²⁷ 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.²⁸ As of that date, Iraq prohibited Claimant from leaving the country, effectively detaining him

²³ *See id.* at 21.

²⁴ *See id.*

²⁵ *See id.*

²⁶ 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.

²⁷ *See* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²⁸ *See id.* at 21-22.

within the borders of Kuwait and Iraq,²⁹ through the September 5, 1990 date he has substantiated.³⁰

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

²⁹ See *id.* at 22.

³⁰ See *supra* pp. 9-13.

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

³² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

³³ See *id.*

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. 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.³⁶ 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 ICOSA.³⁷

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

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 \$325,000.

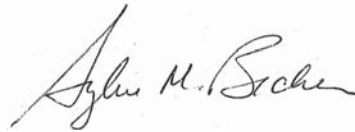
Dated at Washington, DC, May 10, 2018
and entered as the Proposed Decision
of the Commission.

**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) (2018).

**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)	}	Claim No. IRQ-II-293
	}	
	}	
Against the Republic of Iraq	}	Decision No. IRQ-II-269
	}	

Counsel for Claimant:	Daniel Wolf, Esq. Law Office of Daniel Wolf
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ORDER AND AMENDED FINAL DECISION

On May 20, 2019, Claimant filed a Petition to Reopen this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held him hostage in violation of international law from August 2, 1990, until September 19, 1990, a total of 49 days. Claimant brought the claim pursuant to “Category A” of the *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”).

In a Proposed Decision dated May 10, 2018, the Commission concluded that Claimant had substantiated that Iraq held him hostage from August 2, 1990, until September 5, 1990, a total of 35 days, and awarded him \$325,000. Claimant did not object to the Proposed Decision, which was entered as the Commission’s Final Decision on July 10, 2018 (“Final Decision”).

Claimant bases his Petition to Reopen on new evidence that he says shows that he was held hostage by Iraq through at least September 16, 1990. That evidence consists of a signed, sworn, and notarized declaration from a business acquaintance of Claimant's during his time in Kuwait who states that, on September 15, 1990, he drove Claimant and Claimant's son to an apartment in Kuwait City from which Claimant and Claimant's son departed the next day, September 16, 1990, with an Egyptian family that took them across the border into Jordan. Based on this and other record evidence, Claimant seeks additional compensation for the 11-day period from September 5, 1990, to September 16, 1990.

Because we agree that Claimant's new evidence substantiates that Iraq held him hostage from August 2, 1990, until September 16, 1990, a total of 46 days, we withdraw the portion of the Final Decision that awarded Claimant \$325,000 and award him \$380,000.

PETITION TO REOPEN

The Commission's regulations permit claimants to petition to reopen a claim after a Final Decision on the ground of newly discovered evidence. Subsection 509.5(*l*) of the regulations states,

At any time after a final Decision has been issued on a claim, or a Proposed Decision has been entered as the Final Decision on a claim, but not later than 60 days before the completion date of the Commission's affairs in connection with the program under which such claim is filed, a petition to reopen on the ground of newly discovered evidence may be filed. No such petition will be entertained unless it appears therein [1] that the newly discovered evidence came to the knowledge of the party filing the petition subsequent to the date of issuance of the Final Decision or the date on which the Proposed Decision was entered as the Final Decision; [2] that it was not for want of due diligence that the evidence did not come sooner to the claimant's knowledge; and [3] that the evidence is material, and not merely cumulative, and that reconsideration of the matter on the basis of that evidence would produce a different decision. [4] The petition must include [a] a statement of the facts which the petitioner expects to prove, [b] the name and address of each witness, [c] the identity of documents, and [d] the reasons for failure to make earlier submission of the evidence.

45 C.F.R. § 509.5(*l*) (2018) (numbering and lettering added).

Claimant submits the following in support of his petition: (1) In a newly submitted declaration, dated May 13, 2019, Claimant states that on a recent trip to a family residence in Egypt he unexpectedly found the 30-year old business card of a business acquaintance Claimant met while working in Kuwait prior to Iraq's invasion, and who had assisted Claimant and other hostages during the Iraqi occupation of Kuwait. Claimant further states that, after he returned from Egypt to the United States on April 26, 2019, he was able to contact this former business acquaintance using information from the business card. (2) Claimant states that, prior to his recent travel to Egypt, he did not have any knowledge of this individual's whereabouts or any means of contacting him. Given the many years that have passed since Claimant escaped from Kuwait, and the substantial geographic distances involved, we find this assertion credible and that "it was not for want of due diligence that the evidence did not come sooner to the claimant's knowledge." (3) Claimant has submitted a signed, sworn and notarized declaration from this individual (the "Declarant"), dated May 14, 2019. The Declarant states that, on September 15, 1990, he drove Claimant and Claimant's son to an apartment in Kuwait City from which Claimant and Claimant's son departed the next day, September 16, 1990, with an Egyptian family that took them across the border into Jordan. As described in more detail below, this is the only piece of third-party evidence that explicitly places Claimant in Kuwait after September 5, 1990, and is thus "material, not merely cumulative" and "would produce a different decision." (4) Finally, Claimant's petition recites the facts that the submitted evidence purports to prove, all documentation is clearly identified, the name and address of the Declarant are provided, and the reasons for failure to make earlier submission of the new evidence are set forth.

Upon consideration of this matter in the light of the entire record, good cause having been shown for failure to make earlier submission of the newly discovered evidence, it is

ORDERED that the request to reopen and amend the claim be granted; and that an Amended Final Decision be entered.

DISCUSSION

As detailed in the Final Decision, Claimant alleged that he moved to Kuwait with his son in 1990, and was working on a construction project for the firm of Daniel, Mann, Johnson and Mendenhall International (“DMJM”) when Iraq invaded the country on August 2, 1990. He further alleged that he and his son were forced to hide in their apartment for several weeks with other DMJM employees and their family members who were hiding at the same apartment complex. According to Claimant, some time after Iraqi soldiers seized several of his DMJM colleagues on September 5, 1990, he and his son joined a group of three Egyptian families who were planning to flee the country by car. Although Claimant initially alleged several different dates of departure, he ultimately averred that he and his son departed Kuwait on September 16, 1990; they reached the Iraqi border station on September 17, 1990; and crossed the border into Jordan on September 19, 1990. Claimant stated that upon their arrival in Jordan, the Jordanian military escorted them to the seaport in Aqaba, from where they took the ferry to the Egyptian port city of Nuweibah. Final Decision, *supra*, at 6, 12 & n.20.

The Final Decision noted that Claimant had submitted several documents to substantiate his detainment, including, *inter alia* (1) the declarations of four DMJM colleagues who attested that they believed Claimant and his son were in hiding with them in their apartment complex through September 5, 1990, when Iraqi soldiers seized the four individuals at gunpoint; and (2) the contemporaneous journal kept by two of those individuals, which referenced Claimant and his son a number of times and stated that one of the authors thought he heard Claimant’s son in a stairwell on September 5, 1990. *Id.* at

9-10. Additionally, we noted that Claimant had submitted a number of documents from the time period immediately following his alleged escape into Jordan, including, *inter alia*, a receipt from the Aqaba Seaport in Jordan from September 22, 1990 (including a certified translation thereof), and a receipt of payment for port storage (together with a certified translation) covering September 19, 1990, to September 22, 1990, and various DMJM employment records. *Id.* at 8.

Based on this record, we concluded that the evidence was sufficient to establish that Claimant and his son were present in Kuwait through September 5, 1990, but was not sufficient to establish that Claimant and his son remained in Kuwait or Iraq beyond September 5, 1990, or to establish their departure date. *Id.* at 9-10. In particular, we noted that none of the witnesses were able to say anything about Claimant and his son's whereabouts after September 5, 1990. *Id.* We further noted that the only other evidence in the record that specifically addressed Claimant's date of departure from Kuwait and/or Iraq were his own statements, and that these were inconsistent. *Id.* at 10. Finally, we explained that statements that Claimant made in a claim to the United Nations Compensation Commission (UNCC) also contained several different alleged dates of departure, contradicting each other as well as those he made to the Commission. *Id.* at 11.¹ Consequently, for purposes of analyzing Claimant's allegation of being held hostage by Iraq, we found that he was present in Kuwait from August 2, 1990, through September 5, 1990, and, applying legal standards of hostage-taking, awarded Claimant a total of \$325,000. *Id.* at 13-17.²

¹ As noted in the Final Decision, 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. *Id.* at 7 n.12.

² As noted in the Final Decision, this amount of compensation was based in part on the number of days (35) that Claimant was detained in Kuwait and/or Iraq. Specifically, hostage-taking compensation under the 2014

In the Petition to Reopen, Claimant argues that the newly-submitted declaration is sufficient to establish that Iraq held him hostage beyond September 5, 1990, because “[u]nlike the other witnesses whose sworn statements Claimants had proffered in support of their claims, [the Declarant] attests to his personal knowledge of the fact that Claimants were detained in Kuwait at least until September 16, 1990.” In particular, Claimant emphasizes that, in a key portion of his declaration, the Declarant states that on September 15, 1990, he drove Claimant and Claimant’s son to a friend’s apartment, and that, in a subsequent conversation, the friend “confirmed” to the Declarant that Claimant and his son “had, in fact, departed for Jordan on Sunday, September 16.”

Claimant maintains that Declarant’s statement is corroborated by other evidence previously submitted in support of his claim, including (1) receipts from the Aqaba Seaport that allegedly verify the presence of Claimant and his son in Jordan on September 19, 1990, and their ferry trip to Egypt on September 23, 1990; (2) news articles from August and September 1990 that, according to Claimant, confirm that “Egyptian nationals who crossed the Iraqi border into Jordan without proper travel document were required to proceed directly to Aqaba and depart by ferry to Egypt at the earliest opportunity;” (3) a statement submitted on Claimant’s behalf in support of his claim to the UNCC in February 1992 “stating that he and his son did, in fact, begin their escape journey on September 16, 1990;” and (4) DMJM employment and payroll records allegedly showing that Claimant “continued to be in detention during at least some portion of the September 7 to September 21, 1990 time frame.” For the reasons explained below, we conclude that the new declaration, considered together with other evidence Claimant has submitted, supports the

Referral includes a lump sum payment of \$150,000 plus an additional \$5,000 for each day the claimant was in captivity. *Id.* at 16.

facts that Claimant alleges in this petition, and specifically, his assertion that he departed Kuwait on September 16, 1990.

As noted in the Final Decision, 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, and whether the declarant is a party interested in the outcome of the proceedings or has a special relationship with the Claimant.³ Based on these factors, the Declarant's newly submitted declaration, by itself, would not be sufficient to prove that Claimant was in Kuwait through September 16, 1990. This is because the value of the new declaration is lessened by the fact that it is made more than 28 years after the events the Declarant describes, and he does not persuasively explain why, after such a lengthy period of time, he is able to recall the *specific dates* on which the critical events described in his declaration occurred.⁴

Despite these deficiencies, however, we nonetheless find the declaration sufficient for purposes of Claimant's petition because it is made by a disinterested third-party and, most importantly, it is consistent with the timeline presented by other contemporaneous evidence that Claimant previously submitted in support of his claim.

Particularly instructive in this regard is the receipt for port services at Aqaba Seaport, which indicated that Claimant (referenced by name) paid for "car clearing

³ See Final Decision, at 10 & n.16 (*citing* Claim No. IRQ-I-010, Decision No. IRQ-I-022 (Final Decision), at 3-4 (2015)).

⁴ For example, regarding the date the Declarant allegedly drove Claimant and his son to his friend's house, the Declarant states that "I specifically recall the date [September 15, 1990] because I had come to the office that day to work, despite it being a Saturday." He does not explain, however, why he recalls, more than 28 years later, that he came into work on *that* specific Saturday, September 15, 1990. This omission calls into question whether the Declarant lacks an independent recollection of the essential events described in his declaration. Similarly, the Declarant's knowledge of the second allegation—that Claimant and his son departed Kuwait on September 16, 1990—is based on hearsay and, thus, standing alone, is entitled to little if any weight. See, e.g., *Claim of OTTO SOCHACZEWER*, Claim No. W-5594, Decision No. W-20141, at 4 (1967); *Claim of JACOB J. RODER*, Claim No. RUM-30337, Decision No. RUM-801, at 4-5 (Proposed Decision) (1959).

services” for the period from September 19, 1990, to September 22, 1990. Although this document establishes that Claimant was present in Jordan on September 19, 1990, it does not, by itself, prove that Claimant departed Kuwait on September 16, 1990, as opposed to some earlier date. Claimant, however, has also cited a contemporaneous news article from the *Chicago Tribune*, dated August 29, 1990, which reported that “Egyptians fleeing from Kuwait were allowed entry [into Jordan] with the proviso they drive straight to the port of Aqaba, where Egyptian ferries will repatriate them at once.” Combined with the fact that Claimant placed a car in port storage on September 19, 1990, and could plausibly have spent up to three days driving from Kuwait to Jordan, this news article provides some support for Claimant’s allegation that he and his son departed Kuwait on September 16, 1990, and travelled directly to the port of Aqaba without delay. In light of this contemporaneous, corroborating evidence, we conclude that the Declarant’s newly-submitted declaration is sufficient to “produce a different decision” under 45 C.F.R. § 509.5(l)—*i.e.*, it establishes that Claimant was present in Kuwait from August 2, 1990, through September 16, 1990.⁵

Therefore, upon consideration of this matter in the light of the entire record, good cause having been shown for failure to make earlier submission of the newly discovered evidence, it is

ORDERED that the request to reopen and amend the claim be granted; and we issue this Amended Final Decision, which supersedes our prior decision and amount of compensation awarded. We find that Claimant has now substantiated that he was held

⁵ We further note that to substantiate Declarant’s credibility, Claimant has provided additional documents with his Petition to Reopen, including a new declaration from one of the other hostages who was hiding in the same building complex as Claimant. In that declaration the other hostage notes the assistance provided by the Declarant, and she identifies pages of her contemporaneous journal, that she previously submitted to the Commission, that reference by name the assistance of the Declarant.

hostage, within the meaning of the 2014 Referral, from August 2, 1990 until September 16, 1990, and Claimant is thus entitled to the following compensation.

COMPENSATION

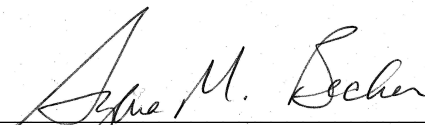
In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that successful claimants should be awarded compensation in the amount of \$150,000 plus an additional \$5,000 for each day the claimant was in captivity.⁶ Therefore, for the 46 days Claimant has demonstrated that Iraq held him hostage, he is entitled to an award of \$380,000, which is \$150,000 plus (46 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 superseding award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA.⁷

AWARD

Claimant is entitled to an award in the amount of \$380,000.

Dated at Washington, DC, March 30, 2020
and entered as the Amended Final Decision
of the Commission.



Sylvia M. Becker, Commissioner



Patrick Hovakimian, Commissioner

⁶ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

⁷ 22 U.S.C. §§ 1626-1627 (2012).