

**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)	}	
5 U.S.C. §552(b)(6)	;}	Claim No. IRQ-II-300
	}	
	}	Decision No. IRQ-II-169
	}	
	}	
Against the Republic of Iraq	}	
	}	

Counsel for Claimant:	Daniel Wolf, Esq. Law Offices of Daniel Wolf
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PROPOSED DECISION

Claimant Estate brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held the decedent, Sergio Coletta, hostage in violation of international law from August 2, 1990, to December 2, 1990. Because it has established that Iraq held Mr. Coletta hostage for 123 days, it is entitled to an award of \$765,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Coletta was a United States citizen working in Kuwait when Iraq invaded the country on August 2, 1990. It asserts that, beginning with the invasion and for approximately 16 weeks thereafter, Mr. Coletta was forced to hide in his apartment or was detained in a hotel in Baghdad and a munitions facility south of the city. It further claims that during this entire period, the Iraqi government in effect forcibly prevented Mr. Coletta (and other U.S. nationals) from leaving Kuwait and Iraq and did so with the express purpose of compelling the United States government to acquiesce to

certain Iraqi government demands. Claimant Estate asserts that Mr. Coletta flew out of Baghdad on December 2, 1990, after Muhammad Ali, a former American professional boxer and activist, negotiated his release with Iraqi officials.

Although neither Mr. Coletta nor Claimant Estate 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 November 2, 2015, the Commission received from Claimant Estate a completed Statement of Claim seeking compensation under Category A of the 2014 Referral, together with exhibits supporting the elements of its claim.

DISCUSSION

Standing

Claimant Estate has submitted Letters Testamentary, issued on February 3, 2017, by the Chancery Court of Jackson County Mississippi, appointing George Alfred Coletta as executor of the decedent's estate. Accordingly, the Commission concludes that ESTATE OF SERGIO E. COLETTA, DECEASED; GEORGE ALFRED COLETTA, EXECUTOR, is the proper claimant in this claim.

Jurisdiction

This Commission's authority to hear claims is limited to the category of claims referred to it by the United States Department of State.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.

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).

Nationality

This claims program is limited to claims of “U.S. nationals.” Here, that means the claim must have been held by 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 Estate satisfies the nationality requirement. It has provided a copy of Mr. Coletta’s voter registration records, which show that he was a U.S. national at the time of the alleged hostage-taking in August 1990. It has also provided a copy of Mr. Coletta’s most recent U.S. passport, which expired in August 2016 and 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. George Coletta, the Estate’s Executor, has averred, and the pleadings in the cases cited in footnote 3 confirm, that Sergio Coletta was not a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant Estate has also satisfied this element of its claim.

*No Compensation under the Claims Settlement Agreement
from the Department of State*

Claimant Estate also satisfies the final jurisdictional requirement. George Coletta, the Estate’s Executor, has stated that neither the decedent nor the Estate has ever received “any compensation under the [Claims Settlement Agreement] from the Department of

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

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

State.” Further, we have no evidence that the State Department has provided either of them any compensation under the Claims Settlement Agreement. Therefore, Claimant Estate meets this element of its 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 Estate states that Iraq held Mr. Coletta hostage from August 2, 1990, until December 2, 1990, a total of 123 days. It asserts that Mr. Coletta was working in Kuwait when Iraq invaded the country on August 2, 1990. Starting on that date, Mr. Coletta confined himself in his apartment. Approximately three weeks later, on August 20, 1990, he was discovered by Iraqi soldiers who took him to Baghdad and subsequently held him as a human shield in a munitions factory south of the city until Muhammad Ali negotiated his release from Iraq in a meeting with Saddam Hussein. Claimant Estate states that, after Ali obtained permission for Mr. Coletta to leave Iraq, he departed Baghdad on an evacuation flight on December 2, 1990.

Supporting Evidence

Claimant Estate has supported its claim with, among other things, a sworn Statement of Claim, a declaration from Mr. Coletta’s son that describes the circumstances of Mr. Coletta’s alleged detention and ultimate departure from Iraq, an *Associated Press* news report that identifies Mr. Coletta by name as among several U.S. nationals who were on a December 2, 1990 evacuation flight organized by Muhammad Ali, and news articles published in the *Clarion-Ledger* and the *Green Bay Press-Gazette* that provide further

information about his experience in Kuwait and Iraq and also identify him as among the U.S. nationals who were evacuated due to Ali's efforts.

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

The Commission further takes notice of publicly available news reports published by the *Associated Press* and the *New York Times* that discuss Ali's efforts to obtain the release of U.S. nationals who were detained in Iraq. The *Associated Press* report, which was published on November 27, 1990, states that, on that same day, "Hussein said . . . after meeting with boxing great Muhammed Ali that a number of Americans held in Iraq would soon be allowed to leave the country." The *New York Times* reported on November 28, 1990, that on the previous day, Hussein stated in a television broadcast that "that he would allow Mr. Ali to return to the United States with 'a number of the American guests accompanying him.'"

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.¹¹ 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.¹² 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.¹³

Application of Standard to this Claim

(1) Armed Conflict: Claimant Estate alleges that Iraq took Mr. Coletta hostage in Iraq on August 2, 1990, and held him hostage for 123 days, until December 2, 1990, when Iraqi officials allowed him to leave the country. 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.¹⁴ Thus, Claimant Estate satisfies this element of the standard.

(2) Hostage-taking: To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant Estate must show that Iraq (a) seized or detained Mr. Coletta 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 Estate satisfies this standard for the 123-day period from August 2, 1990, to December 2, 1990.

¹¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16. As is the case here, an estate claimant needs to make this showing as to its decedent.

¹² See *id.* at 17-20.

¹³ See *id.* at 17.

¹⁴ See *id.* at 16-17.

(a) Detention/deprivation of freedom: For purposes of analyzing Claimant Estate's allegations that Iraq detained Mr. Coletta, his time in Kuwait and Iraq following the Iraqi invasion of Kuwait can be divided into three periods: (i) between the 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 Iraq purportedly released him on or around November 27, 1990; and (iii) from that November 27, 1990, announcement until the decedent's departure on December 2, 1990.¹⁵

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Mr. Coletta to his apartment in Kuwait by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁶ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, the decedent could not reasonably be expected to have escaped.¹⁷ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.¹⁸ Mr. Coletta would have 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 residence.¹⁹ The Commission has previously recognized that for the purposes of the legal standard applicable here, putting Mr. Coletta in this situation in effect amounts to detention.²⁰ Iraq thus detained him from August 2, 1990, to August 9, 1990.

¹⁵ See *id.* at 20-21.

¹⁶ See *id.* at 21.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ 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.

²⁰ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

From August 9, 1990, until he departed Iraq on December 2, 1990, the Iraqi government confined Mr. Coletta to Kuwait and to Iraq, preventing him from leaving those countries by the threat of force. As the Commission has previously held, starting on August 9, 1990, the Iraqi government formally closed Iraq's borders, forcibly prohibiting U.S. nationals from leaving.²¹ As of that date, Iraq formally prohibited Mr. Coletta from leaving the country, effectively detaining him within the borders of Iraq.²² For Mr. Coletta, this formal policy of prohibiting U.S. nationals from leaving Iraq lasted until around November 27, 1990, when the Iraqi government purportedly authorized his release. Because Iraq's previous releases of various categories of foreign nationals did not apply to Mr. Coletta,²³ this was the earliest date that he was legally authorized to leave Iraq.

Although Mr. Coletta may have been legally permitted to leave Iraq on or around November 27, 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.²⁴ Any attempt "[by the perpetrator] to restrict [the] movements" of a claimant establishes control,²⁵ 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.²⁶

Under this standard, Mr. Coletta remained under Iraq's control until December 2, 1990. The Commission has previously held that Iraq imposed conditions on air travel that

²¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 7, 21-22.

²² See *id.* at 22.

²³ See *id.* at 11-12, 22 (discussing Iraq's August 28, 1990 release of U.S. nationals who were women or minors).

²⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 22; see also Claim No. LIB-II-183, Decision No. LIB-II-178 (Proposed Decision), at 13 (2012).

²⁵ 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)).

²⁶ See *id.*

limited the ability of foreign nationals, including U.S. nationals, to leave Iraq and/or Kuwait immediately after the August 28, 1990 release announcement applicable to women and minor U.S. nationals,²⁷ and we conclude that there is sufficient evidence in the record to establish that a U.S. national who sought to leave Iraq and Kuwait late in November 1990 would have been treated similarly.²⁸ Indeed, the available evidence indicates that Mr. Coletta left Iraq at the first reasonable opportunity, on the December 2, 1990 evacuation flight that left Iraq. Because there is no evidence that the decedent remained voluntarily in Iraq at any time during this period, we conclude that he was under Iraq's control and thus detained from the date that Iraq purportedly released him (on or around November 27, 1990) to December 2, 1990.

In sum, Iraq thus detained Mr. Coletta from August 2, 1990, until December 2, 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.²⁹ This included Mr. Coletta.³⁰ 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.³¹

²⁷ See *id.* at 22.

²⁸ See Claim No. IRQ-II-267, Decision No. IRQ-II-145, at 10.

²⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 23.

³⁰ While we determine that these statements apply to Mr. Coletta 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>.

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

In short, the Iraqi government made unequivocal threats to continue to detain U.S. nationals in Kuwait and Iraq. Mr. Coletta was a U.S. national in Kuwait and Iraq at the time. Claimant Estate 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 and 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.³² 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.³³ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³⁴

In sum, this claim meets the standard for hostage-taking within the meaning of the 2014 Referral. Iraq held Mr. Coletta hostage in violation of international law for a period of 123 days, and Claimant Estate is thus entitled to compensation.

COMPENSATION

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

In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that successful claimants should be awarded compensation in the amount of \$150,000 plus an additional \$5,000 for each day the claimant was in

³² *See id.*

³³ *See id.* at 23-24.

³⁴ *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).

captivity.³⁵ Therefore, for the 123 days Iraq held Mr. Coletta hostage, Claimant Estate is entitled to an award of \$765,000, which is \$150,000 plus (123 x \$5,000). This amount constitutes the entirety of the compensation to which Claimant Estate is entitled under the Claims Settlement Agreement.

The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA.³⁶

AWARD

Claimant Estate is entitled to an award in the amount of \$765,000.

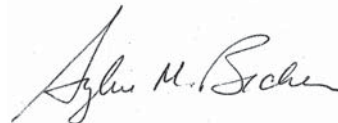
Dated at Washington, DC, September 14, 2017
and entered as the Proposed Decision
of the Commission.

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

December 19, 2017



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2016).

³⁵ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³⁶ 22 U.S.C. §§ 1626-1627 (2012).