

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, DC 20579

In the Matter of the Claim of

5 U.S.C. § 552(b)(6)

Against the Great Socialist People's  
Libyan Arab Jamahiriya

Claim No. LIB-II-183

Decision No. LIB-II-178

Counsel for Claimant:

Mark N. Bravin, Esq.  
Winston & Strawn LLP

Oral hearing held on January 25, 2013

FINAL DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by 5 U.S.C. § 552(b)(6) ("claimant"), and is based on her alleged hostage-taking or unlawful detention while she was in Libya beginning on or about February 10, 1987, as well as the alleged severity of physical injuries suffered by claimant during her alleged detention. The portion of claimant's claim presently before the Commission was submitted under Category A of the January 15, 2009 *Letter from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* ("January Referral Letter").<sup>1</sup>

<sup>1</sup> In the Proposed Decision, the Commission denied claimant's Category D claim. Claimant did not object to that part of the Proposed Decision.

On September 13, 2012, the Commission entered a Proposed Decision (“PD”) granting claimant’s Category A claim and awarding claimant \$282,000 for her 94 days of detention in Libya.

On November 15, 2012, claimant notified the Commission of her objection to the portion of the Proposed Decision awarding claimant compensation under Category A. Then, on January 7, 2013, the Commission received claimant’s objection brief along with evidence in support of her claim. Claimant submitted two State Department cables and a previously submitted psychiatric evaluation by Dr. Jerrold Post.

In her objection, claimant requests that the Commission “reconsider and reverse” its award and instead award her the \$1 million as recommended in the January Referral Letter. She also requests an award of an additional \$1.75 million for “her long-term injuries and prolonged suffering during the past 27 years, which are a direct consequence of her intentionally wrongful detention by the Libyan Government in 1987,” for a total award of \$2.75 million.

On January 25, 2013, the Commission held a hearing on claimant’s objection.

#### DISCUSSION

The present objection is for the award made for claimant’s Category A claim. According to the January Referral Letter, Category A consists of

claims by U.S. nationals who were held hostage or unlawfully detained in violation of international law, provided that (1) the claimant meets the standard for such claims adopted by the Commission; (2) the claim was set forth as a claim for injury other than emotional distress alone by the claimant named in the Pending Litigation; (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission; and (4) the claimant did not receive an award pursuant to [the Secretary of State’s] referral of December 11, 2008.

January Referral Letter, ¶ 3.

Since the Commission held in the Proposed Decision that claimant satisfied the requirements for unlawful detention under the January Referral Letter, the only question the Commission must determine on objection is the amount of compensation for claimant's Category A award.

#### COMPENSATION

The January Referral Letter specifically addresses compensation for Category A claimants with the following recommendation: “[g]iven the amount we recommended for physical injury claims in our December 11, 2008 referral, we believe and recommend that a fixed amount of \$1 million would be an appropriate level of compensation for all damages for a claim that meets the applicable standards under Category A.” As noted in the Proposed Decision, this claim was the only claim under Category A that did not arise from the hijacking of Pan Am Flight 73 in Karachi, Pakistan on September 5, 1986. *See* PD at 14.

The Commission has also previously held that the language of the January Referral Letter demonstrated that the State Department's recommendation of compensation for Category A was based on the level of compensation it recommended for physical injury claims under the December Referral Letter.<sup>2</sup> *Claim of*

<sup>5</sup> U.S.C. § 552(b), Claim No. LIB-II-002, Decision No. LIB-II-002 (2011) (Final (6) Decision), at 8. In <sup>5</sup> U.S.C. § 552(b),<sub>(6)</sub> the Commission specifically noted that the recommended \$1 million for Category A claimants “was based not on the intrinsic value of the claims for hostage-taking or unlawful detention, but rather on the relationship of such claims to physical injury claims, which were valued at \$3 million.” *Id.*

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<sup>2</sup> December 11, 2008 letter from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission.

During the proceedings on the objection, counsel for claimant acknowledged that the intensity of claimant's ordeal did not approach the horror endured by those aboard Pan Am Flight 73. Yet, counsel persuasively argued that the duress claimant experienced during her detention and the length of her detention together warrant her being treated, for purposes of this claims program, exactly like the Pan Am Flight 73 Category A claimants. In particular, the Commission is persuaded that her claim bears the same relationship to the physical-injury claims as that described in 5 U.S.C. § 552(b) (6). Consequently, having considered claimant's arguments in support of her objection, the complete record in support of the claim, the January Referral Letter, and applicable law, the Commission finds that claimant is entitled to \$1 million in compensation for her unlawful detention in Libya.

Claimant goes further, however, requesting more than the \$1 million recommended in the January Referral Letter. The Commission denies her request for compensation beyond the \$1 million recommended amount. The Commission held in 5 U.S.C. § 552(b) (6) that the January Referral Letter's recommendation of the \$1 million fixed amount for "all damages" demonstrates that the \$1 million amount was intended to cover all damages related to an ordeal. 5 U.S.C. § 552(b) (6) at 9. Specifically, the

Commission held that the awards

could include damages associated with, among other things, emotional distress, assault, or other psychiatric harm, such as post-traumatic stress disorder. If nothing else the reference to 'all damages' suggests that the amount awarded should not be limited to the actual limitations on movement experienced by Category A claimants, but rather should contemplate all harm that they suffered as a result of the incident (excluding physical injury, which would have been compensated under the December Referral Letter instead).

*Id.*

This principle applies with equal force to claimant here. Though claimant argues that she suffered “long-term injuries and prolonged suffering” following her captivity in Libya, this is true of virtually all of the successful Category A claimants; and as 5 U.S.C. § 552(b)(6) held, these harms are included in the \$1 million award. While the Commission has great sympathy for all that claimant has suffered, both during and after her unlawful detention, it is not persuaded that she is entitled to compensation above the State Department’s recommendation and the amount that almost every other successful Category A claimant has received.<sup>3</sup>

In addition, as the Commission has previously held, compensable hostage-taking or unlawful detention claims in this claims program are not entitled to interest as part of the awards granted therein. In conclusion, the Commission determines that the claimant, 5 U.S.C. § 552(b)(6), is entitled herein to an award of \$1,000,000.00 and that this amount constitutes the entirety of the compensation that claimant is entitled to in the present claim.

Accordingly, the Commission withdraws the portion of its Proposed Decision that awarded her \$282,000 under Category A of the January Referral Letter and issues an award for \$1 million as set forth below, which will be certified to the Secretary of

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<sup>3</sup> The only Category A claimants who did not receive \$1 million were the Pan Am 73 pilots, who received less than \$1 million. See *Claim of* 5 U.S.C. § 552(b)(6), Claim No. LIB-II-006, Decision No. LIB-II-104 (2012) (Final Decision); *Claim of* 5 U.S.C. § 552(b)(6), Claim No. LIB-II-011; Decision No. LIB-II-105 (2012) (Final Decision). No Category A claimant received more than \$1 million.

Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-1627 (2006). This constitutes the Commission's final determination in this claim.

AWARD

Claimant 5 U.S.C. § 552(b)(6) is entitled to an award in the amount of One Million Dollars (\$1,000,000.00).

Dated at Washington, DC, February 15, 2013  
and entered as the Proposed Decision  
of the Commission.

  
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Timothy J. Feighery, Chairman

  
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Rafael E. Martinez, Commissioner

  
\_\_\_\_\_  
Anuj C. Desai, Commissioner

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Counsel for Claimant:

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PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by 5 U.S.C. § 552(b)(6), and is based on her alleged hostage-taking or unlawful detention while she was in Libya beginning on or about February 10, 1987, as well as the alleged severity of physical injuries suffered by claimant during her alleged detention.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim of . . . any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State.

22 U.S.C. § 1623(a)(1)(C) (2006).

On January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for adjudication six categories of claims of U.S. nationals against Libya. *Letter dated January 15, 2009, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* ("January Referral").

The present claim is made under Categories A and D. According to the January Referral, Category A consists of

claims by U.S. nationals who were held hostage or unlawfully detained in violation of international law, provided that (1) the claimant meets the standard for such claims adopted by the Commission; (2) the claim was set forth as a claim for injury other than emotional distress alone by the claimant named in the Pending Litigation; (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission; and (4) the claimant did not receive an award pursuant to [the Secretary of State's] referral of December 11, 2008.

*Id.* at ¶ 3. Category D of the January Referral consists of

claims of U.S. nationals for compensation for physical injury in addition to amounts already recovered under the Commission process initiated by [the Department of State's] December 11, 2008 referral, provided that (1) the claimant has received an award pursuant to [the Department of State's] December 11, 2008 referral; (2) the Commission determines that the severity of the injury is a special circumstance warranting additional compensation, or that additional compensation is warranted because the injury resulted in the victim's death; and (3) the Pending Litigation against Libya has been dismissed before the claim is submitted to the Commission.

*Id.* at ¶ 6. Attachment 1 to the January Referral lists the suits comprising the Pending Litigation.

The January Referral, as well as a December 11, 2008 referral letter ("December Referral") from the State Department, followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya.



Specifically, on August 4, 2008, the President signed into law the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999, and on August 14, 2008, the United States and Libya concluded the *Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008. On October 31, 2008, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008), which, *inter alia*, espoused the claims of U.S. nationals coming within the terms of the Claims Settlement Agreement, barred U.S. nationals from asserting or maintaining such claims, terminated any pending suit within the terms of the Claims Settlement Agreement, and directed the Secretary of State to establish procedures governing claims by U.S. nationals falling within the terms of the Claims Settlement Agreement.

On July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

By Proposed Decision entered on April 7, 2011, the Commission denied claimant’s physical injury claim under the December Referral. Claimant objected to the Commission’s decision and requested an oral hearing. Subsequently, the Commission issued its Final Decision on June 20, 2012 affirming its prior denial of the physical injury claim. *Claim of* 5 U.S.C. § 552(b)(6), Claim No. LIB-I-051, Decision No. LIB-I-043 (2012) (Final Decision).

## BASIS OF THE PRESENT CLAIMS

The Commission received from claimant a completed Statement of Claim, dated July 7, 2010, in which she asserts claims under Categories A & D of the January Referral, along with exhibits supporting the elements of her claims. Claimant has also incorporated by reference the materials previously submitted in support of her claim under the December Referral. In addition, on August 26, 2012, claimant made a subsequent submission of evidence in support of her claim.<sup>1</sup>

Claimant asserts that, in early February 1987, she was traveling on a boat from Italy to Egypt with her husband,<sup>5 U.S.C. § 552(b)</sup> (6), and three other persons. She alleges that, during the voyage, a severe storm forced them to seek refuge in the port of Benghazi, Libya on February 10, 1987. Libyan authorities then allegedly searched the boat, interrogated the passengers, confiscated their passports and kept them on the boat for four days. Claimant and her companions were then taken to a hotel in Benghazi. Claimant contends that two weeks later they were taken to a hotel in Derna, Libya, where they were held for two more months, until May 13, 1987. Claimant asserts that on that day, she and the others were flown to Tripoli, Libya and then released to Belgian Embassy officials the next day, May 14, 1987.<sup>2</sup> She states that five days later, on May 19, 1987, she arrived in Zurich, Switzerland.

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<sup>1</sup> Although the August 26, 2012 submission was made after the Commission's deadline, the Commission has nonetheless accepted the submission and considered its arguments and evidence.

<sup>2</sup> At that time, the United States did not have diplomatic relations with Libya.

## DISCUSSION

### *Category A Claim*

#### Jurisdiction

Pursuant to Category A of the January Referral, the Commission has jurisdiction over claims of individuals who: (1) are U.S. nationals; (2) are named parties in a Pending Litigation case against Libya which has been dismissed; (3) set forth a claim for injury other than emotional distress alone in the Pending Litigation; and (4) did not receive an award pursuant to the December Referral. January Referral, ¶3.

#### *Nationality*

The Commission determined in its Final Decision on claimant's December Referral claim that claimant was a U.S. national from the time of the incident continuously through the effective date of the Claims Settlement Agreement. That determination applies to satisfy the nationality requirement here.

#### *Pending Litigation and its Dismissal*

The January Referral requires that the claimant provide evidence that the Pending Litigation against Libya has been dismissed. January Referral, ¶3. The Commission determined in its decision on claimant's December Referral claim that 5 U.S.C. § 552(b)(6) was dismissed by a Stipulation of Dismissal, dated November 19, 2008. That determination applies here.

#### *Claim for Injury Other than Emotional Distress*

The January Referral also requires that the claimant have set forth a claim for injury other than emotional distress in the Pending Litigation. January Referral, ¶3. In

the Third Amended Complaint, under Count II, claimant states a cause of action for false imprisonment. The Commission therefore finds that claimant has also satisfied this element of her claim.

*Prior Award*

Finally, the January Referral requires that the claimant not have received an award pursuant to the December Referral. January Referral, ¶3. As noted above, while claimant filed a claim under the December Referral, the Commission denied that claim. Accordingly, claimant meets this element of her claim.

Therefore, the Commission concludes, on the basis of the foregoing, that this claim is within the Commission's jurisdiction pursuant to the January Referral and is entitled to adjudication on the merits.

Merits

*Standard for Claims under Category A*

To be eligible for compensation under Category A of the January Referral, a claimant must meet "the standard for such claims adopted by the Commission" for purposes of this referral. January Referral, ¶3. The Commission held in *Claim of* 5 U.S.C. § 552(b)(6) ; Claim No. LIB-II-002, Decision No. LIB-II-002 (2009) (Proposed Decision),<sup>3</sup> that in order for a claim for hostage taking or unlawful detention pursuant to Category A to be considered compensable, a claimant must have been: (a) held illegally against his or her will; (b) in a particular area; and (c) for an extended

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<sup>3</sup> In *Claim of* 5 U.S.C. § 552(b)(6) ; Claim No. LIB-II-002, Decision No. LIB-II-002 (2011) (Final Decision), the Proposed Decision was modified as to the amount of compensation only.

period of time, or for shorter periods of time in circumstances in which he or she reasonably felt an imminent threat to his or her life. *Id.* at 8.<sup>4</sup>

*Application of Standard to this Claim*

Claimant alleges that Libyan government officials (a) illegally held her against her will; (b) in a particular area – several specific locations in Libya;<sup>5</sup> and (c) for an extended period of time, from February 10, 1987 to May 19, 1987, a total of 99 days. To support her allegations, claimant referred the Commission to the documents she submitted in support of her December Referral claim, including: a Department of Treasury Form TFR-635: Census of Claims by United States Persons Against Libya (“Form TFR-635”); a State Department cable dated March 14, 1987; her contemporaneous diary; the transcription of<sup>5</sup> U.S.C. § 552(b)(6) taped recollections of his Libyan captivity; two affidavits from claimant, one notarized on November 28, 2004, and the other on July 30, 2009; a copy of a handwritten translation of a contemporaneous diary of<sup>5</sup> U.S.C. § 552(b)(6) ; a psychiatric evaluation of claimant by a Dr. Jerrold Post; an affidavit from Camille Reynkens, the Belgian Ambassador to Libya at the time; the

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<sup>4</sup> In addition to the three elements necessary for an unlawful detention claim, a claim for hostage-taking requires a showing that those alleged to have engaged in the hostage-taking have made a demand of a third party in exchange for the claimant’s freedom. *See Claim of* <sup>5</sup> U.S.C. § 552(b)(6) , Claim No. LIB-II-011, Decision No. LIB-II-105 (Final Decision), pg. 14. Since the record contains no evidence that Libya ever made such a demand in exchange for<sup>5</sup> U.S.C. § 552(b)(6) freedom, she has failed to meet her burden to establish a hostage-taking. (6)

<sup>5</sup> To support her claim that she was detained in a particular area, claimant’s counsel asserts that

from February 10 – February 14, 1987, they were detained in the<sup>5</sup> U.S.C. § 552(b)(6) without the ability to leave. Their passports were confiscated on arrival. From February 14-March 1, 1987, they were detained in the Uzu Hotel in Benghazi, Libya and their movements within and out of the hotel were controlled by guards. From March 1, 1987 to May 13, 1987, they were under armed and guarded surveillance at all times in the Green Mountain Hotel in Derna, Libya. On May 13, 1987, they were transferred to Tripoli, Libya and spent the evening at the Yasser Hotel. On May 14, 1987, they were placed in the custody of the Belgium Embassy without their passports and unable to leave until their eventual release on May 19, 1987.

supplemental statement of Dr. Adel Taher; claimant's supplemental statement to the Commission; and a copy of the Third Amended Complaint from the Pending Litigation.

*Aboard the Carin II*

Claimant states that in early February 1987, she was on board a boat, the <sup>5 U.S.C. § 552(b)(6)</sup> , traveling from Messina, Italy to Egypt. Shortly into the trip, the boat was caught in a severe storm and suffered engine problems. According to an affidavit claimant submitted in the Pending Litigation, the <sup>5 U.S.C. § 552(b)(6)</sup> docked in Benghazi, Libya on February 10, 1987. Also, according to claimant, the boat was then searched, the passengers' passports were confiscated; and despite several requests, claimant and her companions were repeatedly denied access to their respective embassies. In her TFR-635 Form, claimant stated that guards at the dock in Benghazi surrounded the boat. Claimant's allegations about her arrival in Libya are supported by an affidavit from Camille Reynkens, the Belgian Ambassador to Libya at the time.<sup>6</sup> Claimant alleges that the passengers were kept on the moored boat for four days while members of the "Revolutionary Security Force" interrogated them and TV camera crews filmed and interviewed them. According to claimant, during this time, they were able to talk with crews from other ships.<sup>7</sup>

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<sup>6</sup> Ambassador Reynkens' affidavit, dated, February 7, 1988, states

<sup>5 U.S.C. § 552(b)(6)</sup> [claimant's husband] arrived, unintentionally, at Benghazi, Libya on the 10th of February 1987, on board his yacht<sup>5 U.S.C. § 552(b)(6)</sup> by reason of Force Majeure...After having duly petitioned the permission of Benghazi Port Authorities,<sup>5 U.S.C. § 552(b)(6)</sup> has been escorted to the port by the coastguard,<sup>5 U.S.C. § 552(b)(6)</sup> as well as the members of his crew have immediately been put under round-the-clock surveillance and then deprived of their liberty.

<sup>7</sup> The record includes evidence that is not wholly consistent with claimant's narrative, including a diary entry dated February 10, 1987 in which the claimant states that they were "given permission to enter and leave." It is unclear whether this language means that *the boat* was "given permission to enter and leave" the harbor or it means that *claimant* was "given permission to enter and leave" the boat itself - i.e. to board and/or disembark the boat at will. In either case, however, the statement appears inconsistent with the claim that claimant was being unlawfully detained both on the boat and in the harbor at that time.

*Stay in Benghazi*

Claimant states that on February 14, 1987, she and her companions were taken from their boat to the Uzu Hotel in Benghazi. The Uzu Hotel was, according to claimant's husband, a "very fine hotel." At the same time, however, claimant describes her experience at the Uzu Hotel as being "kept in such a state of uncertainty that we were afraid that if we did anything wrong, we would ruin our chances of leaving and that they would charge us with something and then would have a reason to keep us. Our hosts kept alternating between being optimistic about our situation and being totally non-responsive." Claimant also says that she was told that they could not leave the hotel property and that all attempts to place calls would be blocked by the switchboard.

Claimant was, however, free to communicate with other foreigners during at least part of this time. For example, according to her affidavit, she met a Canadian national in the hotel lobby on February 15, 1987 and asked him to contact her mother.<sup>8</sup> On February 20, 1987, she received a call at the hotel from her mother, and the next day her husband also received a call from outside Libya, from a business associate.

During the same period, claimant states that her "host" took her to the Gado Gallery in town, where the owner gave her souvenirs. In what is described as a transcription of his taped recollection, claimant's husband stated that while staying at the hotel, "I managed to talk to one of the Libyans who works in the ports, and he told me that he had fear for us because we had a lot of alcohol on the boat and fishing equipment

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<sup>8</sup> This fact was confirmed by a State Department cable dated March 14, 1987. The cable indicates that claimant's mother contacted the State Department seeking assistance in ascertaining the welfare and whereabouts of her daughter. According to the cable, claimant's mother received a call from a Canadian national with information that claimant was at the Uzu Hotel in Benghazi. The cable does, however, contain statements that question claimant's story to a certain degree: it notes that Mr. Sole, the Canadian national, "suspects that <sup>(5)</sup>U.S.C. § 552(b), et al. are not being held in Libya against their will but rather, are having problems finding someone to repair the yacht." <sup>(6)</sup>

and video and stereo and so on which were not available in Libya . . . . They might try to run a charge, so they can take things from the ship.” On February 28, 1987, about two weeks after arriving at the Uzu Hotel, claimant’s husband was able to return to the boat. There he found that “they were stripping it of its contents, although he was not in a position to see exactly what they took.”

*Stay in Derna*

Claimant further states that the next day, March 1, 1987, claimant and the rest of her group were put in vehicles and driven five hours to Derna, Libya, where they were placed under guard at the Green Mountain Hotel. She states that the individuals transporting them told the various checkpoint officials along the way that they were “foreign tourists visiting the Green Mountains.” They were then in an apartment on the roof of the hotel, where their room doors were locked, and they were placed under constant surveillance. In an unsigned statement, the captain of the boat states that they were not even allowed to walk around in the open air on the roof until after they complained to the guards about a lack of exercise, and that during their time at the Green Mountain Hotel, they were informed that they had no right to contact their embassies. In her testimony during the oral hearing before the Commission on her December Referral claim, claimant testified:

During the day we had access out, but they didn't lock the windows, so we developed this system of just walking out the door out through the windows . . . . Where would we go? I mean we didn't have our passports. We didn't have any papers so they could instantly pick us up and charge us with something.

While the evidence claimant presented indicates that claimant could not leave the Green Mountain Hotel without permission, it is also the case that claimant was permitted to leave the hotel on some occasions. For example, on March 27, 1987, the group was



taken for a trip to see some Roman ruins, and claimant picked wild flowers and brought them back to the hotel. On two separate occasions in early April, according to claimant, she was taken to the hospital - - once for what she describes as circulation problems and another time for x-rays. On another day she was able to buy toothpaste and commented that “[t]he market here is really empty.”

Despite these occasional trips outside of the Green Mountain Hotel, claimant described the challenging situation they faced there. For example, claimant states in her affidavit that on approximately April 10, 1987, two members of her group “indicated to the guards that they wanted to leave the building. This appeared to cause our captors to get very upset and an additional guard was placed outside our quarters.” According to her affidavit, two days later, security personnel informed the group that, “if we left, we would be shot and that we could be shot at any time depending on the orders he received.” Moreover, on the anniversary of a U.S. bombing of Libya, her guards showed her a book with gruesome pictures of people killed by the air attack. While claimant describes in her affidavit that there were no “major incidents” during her final month in captivity (April 13, 1987 to May 13, 1987), claimant nonetheless stated in her affidavit that, “we were afraid for our lives now to the extent that any thoughts of attempted escape were given up. All we could do was wait and hope.”

#### *Release to Belgian Authorities*

On May 13, 1987, more than two months after arriving in Derna, claimant and her group were flown to Tripoli, Libya; everyone in the group except claimant’s husband was released to the Belgian embassy the following day. Claimant describes in her affidavit that in the days that followed her release, it took multiple requests from the Belgian

Ambassador before the Libyan officials would release the passports and issue travel documents for claimant and her group to leave Libya.

*Analysis*

Considering the totality of the evidence submitted and the testimony provided by the claimant during the oral hearing for her December Referral claim, the Commission finds that claimant has established that she was unlawfully detained in Libya for the period from (and including) February 10, 1987 until May 14, 1987, a total of 94 days.<sup>9</sup>

While it is unclear precisely when claimant's passport was, in fact, confiscated, it is clear that at some point after she arrived in the Port of Benghazi on February 10, 1987, she was not at liberty to depart from Libya. All of the evidence, including the contemporaneous diary of one of claimant's companions Mirella Bongaerts, indicates that the group was not made aware of the reasons for the detention and questioning. Claimant was then moved approximately 300 kilometers, from one hotel to another, against her will and was confined to specific areas. On May 14, she and all of her companions, except her husband, were released by the Libyan personnel to Belgian embassy officials.

The evidence further suggests that, as of May 14, 1987, claimant was no longer detained and in the custody of Libyan security personnel because from then on she stayed in Tripoli at the home of a Belgian official. There is no evidence that Libyan authorities or security personnel made any attempts to restrict claimant's movements in Libya during the period from May 14th to May 19th. Claimant's counsel argues that her unlawful detention includes this period because she was without her passport and unable to leave the country. The evidence, however, suggests otherwise. In the Third Amended

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<sup>9</sup> As explained below, she has not met her burden of proving unlawful detention from May 14, 1987 to May 19, 1987.

Complaint in the Pending Litigation, claimant alleges that while she was at the Belgian embassy, “[t]he Ambassador then issued them ‘laissez-passez’ documents, which are emergency documents that temporarily replace a passport in order to permit the bearer to exit one country and enter another.” Claimant goes on to allege in the complaint, that the Belgian Ambassador threatened to take claimant, her companions, and all of the embassy personnel out of the country if Libyan officials failed to return their passports: “[t]he Ambassador then informed the Libyan government that if they did not immediately return the passports of <sup>5 U.S.C. §</sup> 552(b)(6) and the two Belgian nationals and grant them official permission to leave the country, he would close the embassy and take them, and all Belgian mission staff, out of the country under his own diplomatic umbrella.”<sup>10</sup> Therefore, it is unclear whether she meets the unlawful-detention standard for that five-day period. The evidence indicates that claimant was no longer under the direct control of Libyan authorities as of May 14, 1987. While there is some evidence to suggest that she might not have been able to leave the country during this time, because of the lack of conclusive evidence about those final five days, the Commission finds that claimant has failed to meet her burden to show that she was unlawfully detained after May 14, 1987.

Based on the above, all three elements of an unlawful detention under the Commission’s standard have been met. She was (a) held illegally against her will; (b) in a particular area, several specific locations in Libya (aboard the <sup>5 U.S.C. §</sup> 552(b)(6) ; in the Uzu Hotel in Benghazi; in the Green Mountain Hotel in Derna; and then one final night in Tripoli); and (c) for an extended period of time, 94 days. Therefore, the Commission finds that claimant meets its standard for compensation under Category A and is thus entitled to compensation for those 94 days.

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<sup>10</sup> This allegation is also repeated in claimant’s affidavit for the Pending Litigation.

*Category D Claim*

Category D of the January Referral provides additional compensation for injuries that meet certain criteria. Should a claim meet these criteria, the Commission may, in its discretion, award an additional amount of compensation beyond that awarded by the Commission to the claimant for his or her physical injury claim under the December Referral. In order for a claim under Category D to be compensable, the claimant must have “received an award pursuant to [the Department of State’s] December 11, 2008 referral.” In this claim because claimant’s claim for physical injury under the December Referral was denied, she does not meet this critical element of Category D. Accordingly, the Commission finds that the claim requesting compensation under Category D of the January Referral must be, and hereby is, denied.

COMPENSATION

Having determined that claimant is entitled to compensation for 94 days, the next issue to address is the appropriate amount of compensation for claimant’s Category A claim. Although the language of the January Referral recommends “a fixed amount of \$1 million” for successful claims under Category A, this claim is significantly different from all other Category A claims.

All other Category A claims arose out of the hijacking of Pan Am Flight 73 in Karachi, Pakistan, and that hijacking was, no doubt, the paradigm that led the State Department to adopt its \$1 million recommendation. The passengers on that flight suffered extreme fear, severe physical discomfort, and the constant threat of violence, all of which were exacerbated by the hijackers’ final violent assault on the main cabin resulting in the death and severe injury of several hostages.<sup>5</sup> U.S.C. § 552(b) (Proposed  
(6))

Decision), *supra*, pg. 11. For the Pan Am Flight 73 Category A claims, the Commission generally adopted the State Department's recommendation.<sup>11</sup> Claimant's unlawful detention in this claim differs significantly from that of the Pan Am Flight 73 victims. On the one hand, claimant's captivity was certainly for a longer period than the Pan Am Flight 73 hijacking; on the other hand, it was not comparable in intensity or severity. For these reasons, it makes little sense to use the January Referral recommendation in determining the appropriate compensation here. The Commission must look elsewhere.

The Commission has previously noted that compensation in hostage or unlawful detention cases cannot be determined using a precise, mathematical formula. 5 U.S.C. § 552(b) (Final Decision), *supra*, pgs. 4-5. However, relevant factors include the (6) duration and severity of an incident. *Id.* at 3. In order to assist in its determinations, the Commission has reviewed the various levels of compensation awarded in similar claims in its prior programs and by other tribunals, courts, and commissions. 5 U.S.C. § 552(b) (6) (Proposed Decision), *supra*, pg. 10. The United Nations Compensation Commission, for example, set an amount of \$1,500 per hostage or unlawful detention claimant, plus \$100 per day for detentions more than three days, with a cap of \$10,000 per claimant. *See Decision taken by the Governing Council of the United Nations Compensation Commission during its Fourth Session, at the 22nd meeting, held on 24 January 1992:*

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<sup>11</sup> Even in some Flight 73 claims, the Commission departed downward from the \$1 million January Referral recommendation when a claimant's hostage-taking or unlawful detention was significantly shorter than the majority of the other passengers, and the hijackers' actions had not ripened to an actual hostage-taking. *See* 5 U.S.C. § 552(b)(6) (Final Decision), pgs. 14-16. In the 5 U.S.C. § 552(b)(6) claim, this significant downward departure in compensation occurred notwithstanding the claimant's extreme fear and apprehension consistent with the other passengers on Flight 73. In its decision, the Commission took into account the "fixed sum approach taken in the Category for other persons on board Flight 73" and the shorter duration of the unlawful detention, and awarded the claimant a significantly smaller amount. 5 U.S.C. § 552(b)(6) (Final Decision), *supra*, pg. 16.

*Determining of Ceilings for Compensation for Mental Pain and Anguish*, S/AC.26/1992/8, 27 January 1992.<sup>12</sup>

Domestic case law also provides examples of compensation for unlawful detention or hostage cases. The standard *per diem* award for victims of hostage-taking under the Foreign Sovereign Immunities Act is \$10,000 for each day of captivity. See *Jenco v. Islamic Republic of Iran*, 154 F. Supp. 2d 27, 37 (D.D.C. 2001); *Anderson v. Islamic Republic of Iran*, 90 F. Supp. 2d 107, 113 (D.D.C. 2000); *Price v. Socialist People's Libyan Arab Jamahiriya*, 384 F. Supp. 2d 120, 134-35 (D.D.C. 2005). In these cases, however, the courts determined that the victims had in fact been held as hostages and that they had suffered tremendous abuse: for example, they were often chained, held in horrific conditions, and subjected to torture.<sup>13</sup>

When courts have found that the suffering connected with the detention of the victims was not as severe, however, they have departed downward from the \$10,000 per day formula and instead awarded compensation of between \$3,000 and \$5,000 per day. For example, in *Hill v. Iraq*, 175 F. Supp. 2d 36 (D.D.C. 2001), the District Court for the District of Columbia did just that. In *Hill*, there were multiple individuals involved in the matter, and most of them were held for approximately four and one-half months. The *Hill* court described the victims' experiences as follows:

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<sup>12</sup> The Commission has also taken note of awards from the United States-Mexican General Claims Commission and more recent awards of similar claims by the European Court of Human Rights. 5 U.S.C. § 552(b)(6), *supra* (Proposed Decision), pg. 10, fn 2.

<sup>13</sup> *Jenco*, 154 F. Supp. 2d at 29 (Father Jenco was "chained, beaten, and almost constantly blindfolded." His captors held a gun to his head and told him he would die, and then would pull the trigger to reveal that it was unloaded.); *Anderson*, 90 F. Supp. 2d at 108-10 (victim was kidnapped at gunpoint and held hostage in chains for seven years. He was fed only bread, occasionally cheese, and water. When transported during detention, the captors taped his entire body leaving only his nostrils exposed.); *Price*, 384 F. Supp. 2d at 123-24 (victims were held for 105 days in Libya where they were tortured by government officials and "continuously and systematically beaten, clubbed, and kicked".).

[a]ll of them, to varying degrees, were subject to privations and hardships, and forced at gunpoint to remain where they were placed or transported. They were obliged to forage for sustenance or were maintained by their captors on minimal rations of often spoiled foodstuffs. They were deprived of sanitary facilities, changes of clothing, and medical supplies. Even drinking water was in short supply, as was shelter from desert heat or cold. Some were forced to inhabit impossibly congested and vermin-infested sleeping quarters. And they were all kept in constant fear throughout for their lives, acutely conscious of the indeterminate duration of their captivity, and the unknown fate of family members from whom they were separated, both in-country and at home.

*Id.* at 39. In determining an amount for compensation, the *Hill* court acknowledged the \$10,000 per day formula in the *Anderson* and *Cicippio* cases, but concluded that a lesser amount per day was more appropriate: “[a]lthough none were subjected to the extremes of brutality endured by the plaintiffs in such cases as *Cicippio*, *Anderson*, and *Daliberti*, their sufferings justify awards of between \$3,000 and \$5,000 per day of confinement, and lump sum awards of between \$100,000 and \$500,000 for their psychic injuries.” *Id.* at 48.

As with the other claims brought under Category A, in the present claim, the Commission considers the severity and duration of claimant’s ordeal. Claimant was indeed held for a long time, 94 days. At the same time, the claimant was not held hostage, nor did she suffer abuse or physical mistreatment that approaches anything near that suffered by the victims of Flight 73 in Karachi Airport in 1986, or even at the level of the victims in the *Hill* case. Considering all of these factors, the Commission determines that the appropriate amount of compensation is \$3,000 per day for each of claimant’s 94 days of detention – a total sum of \$282,000. In addition, consistent with previous hostage-taking or unlawful detention claims in this claims program, claimant is not entitled to interest as part of her award. <sup>5</sup> U.S.C. § 552(b) (FINAL DECISION), *supra*, pg. (6)


10.

The Commission therefore enters the following award, which will be certified to the Secretary of Treasury for payment under sections 7 and 8 of the ICSEA. 22 U.S.C. §§ 1626-1627 (2006).

AWARD

Claimant <sup>5</sup> U.S.C. § 552(b)(6) is entitled to an award in the amount of Two Hundred and Eighty-Two Thousand Dollars (\$282,000.00).

Dated at Washington, DC, September 13, 2012  
and entered as the Proposed Decision  
of the Commission.



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Timothy J. Feighery, Chairman



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Rafael E. Martinez, Commissioner



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Anuj C. Desai, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice 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 such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5(e), (g) (2010).