

**FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, D.C. 20579**

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In the Matter of the Claim of

5 U.S.C. §552(b)(6)

Against the Republic of Iraq

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Claim No. IRQ-I-011

Decision No. IRQ-I-014

Counsel for Claimant:

Daniel Wolf, Esq.  
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) based on injuries he suffered while being held hostage in Iraq and Kuwait during the first Gulf War period between August and December 1990. The United States Department of State has already provided him compensation for his experience as a hostage. He now seeks additional compensation based on a claim that as a result of his captivity, he suffered various mental and emotional injuries, including post-traumatic stress disorder (“PTSD”), anxiety, and depression. Although we are sympathetic to all that Claimant endured as a result of his hostage experience, Claimant has not alleged any discrete act of sufficient brutality or cruelty causing his injuries and thus, under the terms of this program, he is not entitled to additional compensation. Therefore, the claim is denied.

## BACKGROUND AND BASIS OF CLAIM

Claimant alleges that he was serving in the Army as the administrative and finance officer for the United States Liaison Office in Kuwait when Iraq attacked Kuwait in August 1990. He claims that Iraq effectively held him hostage for approximately the next four months, first for ten days in the Japanese Embassy in Kuwait, next for eleven days in the U.S. Embassy in Kuwait and for the remainder of the time in an apartment in Baghdad with several other hostages. Claimant's experiences and injuries are detailed in the Merits section below. Key to his claim is that throughout his ordeal he lived in constant fear that Iraqi authorities would storm his position and that, if so, he would be killed, wounded, tortured, or brutalized.

Claimant sued Iraq in federal court for, among other things, hostage-taking and intentional infliction of emotional distress. That case was pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement. *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"). The Agreement, which came 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. Exercising its authority to distribute money from the settlement funds, the State Department provided compensation to numerous individuals whose claims were covered by the Agreement, including some, like Claimant, whom Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this compensation "encompassed physical, mental, and emotional injuries generally

associated with” being held hostage or subject to unlawful detention.<sup>1</sup> Claimant states that the amount of the payment he received was based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention. For Claimant, this was \$800,000 total.

The State Department’s Legal Adviser subsequently requested that the Commission commence a claims program for some of the hostages that it had already compensated. More specifically, the State Department authorized the Commission to award additional compensation to hostages who suffered a “serious personal injury,” when that injury was “knowingly inflicted ... by Iraq” and the severity of that injury is a “special circumstance warranting additional compensation.” The State Department made its request in a letter dated November 14, 2012 pursuant to its discretionary statutory authority. *See* 22 U.S.C. § 1623(a)(1)(C) (2012) (granting the Commission jurisdiction to “receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or 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”). The letter sets forth the category of claims as follows:

claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq<sup>1</sup> in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking<sup>2</sup> provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State<sup>3</sup> for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For the purposes of this referral, “serious personal injury” may include instances of serious physical, mental, or emotional injury arising from sexual

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<sup>1</sup> A group of hostages, not including claimant, received compensation for economic loss. The hostages that received compensation for economic loss are not before the Commission in this program.

assault, coercive interrogation, mock execution, or aggravated physical assault.

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<sup>1</sup> 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.

<sup>2</sup> Hostage-taking, in this instance, would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

<sup>3</sup> 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.

*See 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 (“2012 Referral” or “Referral”) at ¶ 3 & nn.1-3 (footnotes in original). The Commission then commenced the Iraq Claims Program to decide claims under the 2012 Referral. Commencement of Iraq Claims Adjudication Program, 78 Fed. Reg. 18,365 (Mar. 26, 2013).*

Claimant submitted a timely Statement of Claim under the 2012 Referral, along with exhibits supporting the elements of his claim, including evidence of his U.S. nationality, his receipt of compensation from the Department of State for his claim of hostage-taking, and the severity of his alleged personal injuries.

## DISCUSSION

### Jurisdiction

The 2012 Referral's statement of the category of claims defines the Commission's jurisdiction. *See* 22 U.S.C. § 1623(a)(1)(C). Thus, the Commission has jurisdiction to entertain only claims of individuals who (1) are U.S. nationals and (2) "already received compensation under the Claims Settlement Agreement from the Department of State<sup>1</sup> for [their] claim of hostage-taking," where "such compensation did not include economic loss based on a judgment against Iraq[.]" 2012 Referral, *supra*, ¶ 3. Claimant satisfies both requirements, and the Commission thus has jurisdiction over this claim.

### *Nationality*

This claims program is limited to "claims of U.S. nationals." Here, that means that a claimant must have been a national of the United States at the time the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force. Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 5-6 (2014) (Proposed Decision). Claimant satisfies the nationality requirement. He has provided a copy of two U.S. passports: one from the time of the incident (valid from July 25, 1988 to October 20, 1990) and his current one (valid from October 15, 2009 to October 14, 2019).

### *Compensation from the Department of State*

The second requirement for jurisdiction under the 2012 Referral is that the claimant must have already received compensation under the Claims Settlement Agreement from the Department of State for his or her claim of hostage-taking, and that compensation must not have included economic loss based on a judgment against Iraq.

In support of this aspect of his claim, Claimant has submitted a copy of a Release he signed on August 15, 2011, indicating that he would accept a given sum from the Department of State in settlement of his claim against Iraq. He has also submitted a copy of an electronic notification from the Department of State that they submitted his claim for payment to the Department of Treasury on October 25, 2011. Claimant further stated under oath in his Statement of Claim, and the Commission has confirmed to its satisfaction, that this compensation did not include economic loss based on a judgment against Iraq. The Claimant has therefore satisfied this element of his claim.

In summary therefore, the Commission has jurisdiction over this claim under the 2012 Referral.

#### Merits

The 2012 Referral requires a claimant to satisfy three conditions to succeed on the merits of his or her claim. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-007, at 7-8 (2014). First, the claimant must have suffered a “serious personal injury,” which may be “physical, mental, or emotional.” In order to satisfy this standard, the injury must have arisen from one of the four acts specifically mentioned in the Referral—*i.e.*, sexual assault, coercive interrogation, mock execution, or aggravated physical assault—or from some other discrete act, separate from the hostage experience itself, that is comparable in seriousness to one of those four acts—that is, an act of a similar type or that rises to a similar level of brutality or cruelty as the four enumerated acts. *Id.* at 7.

The second requirement is that Iraq must have “knowingly inflicted” the injury. Thus, even where a claimant suffered a serious personal injury that satisfies the other

requirements in the 2012 Referral, the claimant must prove that Iraq knowingly inflicted the injury.<sup>2</sup>

The third requirement is that the Commission determine that the severity of the serious personal injury suffered constitutes a “special circumstance warranting additional compensation.” In making this determination, the Commission will consider the nature and extent of the injury itself (including the specific acts committed by Iraq giving rise to such injury), the extent to which the injury substantially limits one or more of the claimant’s major life activities (both in the immediate aftermath of the injury and on a long-term basis), and/or the extent to which there is permanent scarring or disfigurement that resulted from the injury. *Id.* at 8.

Here, the facts Claimant alleges do not satisfy the requirement that Claimant have suffered a “serious personal injury” within the meaning of the Referral. We thus need not address the question of whether Iraq “knowingly inflicted” such an injury on him or whether the severity of his injuries constitutes a “special circumstance warranting additional compensation.”

A review of the facts Claimant alleges<sup>3</sup> shows that though he no doubt suffered tremendously, he cannot recover under the Referral because his injuries did not arise from “sexual assault, coercive interrogation, mock execution, or aggravated physical assault” or any other acts comparable in brutality or cruelty.

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<sup>2</sup> “Iraq” is defined in footnote 1 of the Referral.

<sup>3</sup> In support of his claim, Claimant has provided, *inter alia*, two sworn statements, dated November 4, 2004, and June 24, 2013, in which he describes his hostage experience and his alleged serious personal injuries; a copy of his April 23, 2002 VA disability Rating Decision; a medical report created by Gary Sacks, Ph.D based upon his examination of claimant on September 7, 2000.; and a letter from a former employer, the Oregon Department of Corrections, dated October 11, 2000 notifying Claimant that he has been placed on Administrative Leave With Pay.

Kuwait City: On August 2, 1990, the day Iraq invaded Kuwait, Claimant was stationed by the Army in Kuwait where he lived with his family. On that day, he was ordered by his superiors to go with his family to the Japanese Embassy in Kuwait, where they remained for the next 10 days. During this time, he and his family “hid in the [Embassy] basement, sharing it with two dozen other western nationals and some 200 Japanese.” The conditions were not pleasant. Claimant recalls that “they had to sleep side-by-side on the floor” with only a “handful of blankets and some furniture cushions”; he also says that there were “only four toilets ... and there was food enough for only half a normal diet.” Claimant heard of a threat by Saddam Hussein “to turn Kuwait into a graveyard,” and he was concerned that Iraqi troops “might storm the embassy” or that embassy officials “might make [him] leave in order to avoid reprisals for harboring [him].”

On August 12, Claimant states that he and his family were ordered to relocate to the U.S. Embassy. During their trip from the Japanese Embassy to the United States Embassy, they were forced to stop at a roadblock and told that they “needed to get out of the car so that [they] could be taken to a hotel.” Rather than complying, however, Claimant stalled the border guards, who proceeded to get an officer to whom Claimant offered money and “suggested that it would be proper to let [them] proceed.” Immediately thereafter, Claimant was able to drive away, due to a commotion arising from a vehicle behind him that attracted the attention of the checkpoint personnel. Claimant describes the conditions at the U.S. Embassy as like those at the Japanese Embassy--crowded with limited food supplies--and he states that he and his family had to sleep on the floor of a cramped office. The overcrowding was corroborated by another

person detained in the embassy compound who said that there were “about 150 people—including many families—staying there, and it was difficult to move around the compound because of the crowding.”

Throughout his confinement both at the U.S. and Japanese Embassies in Kuwait, Claimant feared that he would not be able to protect his family if Iraqi forces attacked. This fear caused him to feel “utterly helpless and [to endure] a state of perpetual anxiety, turmoil and dread.”

Travel from Kuwait to Baghdad: On August 23, Claimant traveled with a diplomatic convoy to Baghdad, because Iraqi authorities had assured them that, upon arrival in Baghdad, they would be permitted to leave Iraq. Claimant states that “as they drove through the desert, [he] saw countless Kuwaiti corpses littering the roadside[,] ... [their] car broke down[,] [and his] wife, [his] daughter and [he] separated into three different vehicles ....”

Baghdad: After arriving in Baghdad, he and the other members of the convoy learned that all of the adult male members of the convoy would—contrary to the Iraqi authorities’ previous assurances—not be permitted to leave Iraq. However, Claimant’s wife and daughter were permitted to leave. Claimant thought he might never see them again, and “[s]aying goodbye to them was the hardest thing [he] ever did.” Claimant “worried incessantly until confirmation came that they had reached Turkey.”

For the next three-and-one-half months, Claimant was confined in the former apartment of an American diplomat. During this time, he feared being “killed, tortured, or forced to serve as a ‘human shield’ at a strategic site,” though none of these things ever happened to him. He did suffer however: during his detention he lost weight, suffered

from diarrhea and a fever, and broke a tooth on a pebble while eating rice. Further, he was unable to receive treatment and/or physical therapy for injuries he had received as a result of being beaten in Kuwait by “a gang of Iraqi neighbors” some three months before the Iraqi invasion of Kuwait. On December 9, 1990, Iraq permitted Claimant to leave the country.

Injuries Alleged: Claimant alleges that he suffered both mental and physical injuries as a result of his having been held against his will in Kuwait and Iraq. His primary claims stem from his mental injuries. Claimant asserts that he has suffered “severe and unprovoked anxiety attacks[,] ... intrusive recollections of [his] ordeal in captivity ... and depression.” In addition, he has “experienced serious problems with concentration and ha[s] lost interest in activities that [he] used to enjoy.” Moreover, he has “experienced great difficulty maintaining close relationships and ha[s] lived for extended periods in very solitary fashion.” He has sought treatment for depression “with long-term cognitive therapy and with prescription medication.”<sup>4</sup> Further, the Department of Veterans Affairs determined that Claimant has a “Service Connected, Gulf War, Incurred” disability rating of 70% related to post-traumatic stress disorder with major depressive disorder.

Claimant also attributes some physical injuries to his captivity. He says that he suffers from a “permanent partial disability,” apparently associated with his inability to

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<sup>4</sup> In support of his assertions, Claimant has submitted the report of Gary Sacks, Ph.D. dated September 7, 2000, and a Department of Veterans Affairs “Rating Decision” dated April 23, 2002 that found Claimant to be 70% disabled due to “posttraumatic stress disorder.” In his report, Mr. Sacks notes that Claimant “continues to complain of significant symptoms of post-traumatic stress disorder following his difficulties during the Gulf war.” Dr. Sacks reports the following diagnosis of Claimant:

1. Post-traumatic stress disorder, moderate to severe.
2. Major depressive disorder, recurrent, associated with post-traumatic stress disorder.

obtain “treatment or physical therapy during the crucial months of his captivity” for the injuries he sustained in Kuwait prior to Iraq’s invasion. Claimant has not, however, submitted evidence that he was engaged in any treatment for these injuries before his captivity; that he was scheduled to receive such treatment during the period of his captivity; or that Iraqi authorities were ever made aware of his alleged need to obtain treatment or therapy.

Analysis: Claimant argues that his injuries qualify as “serious personal injuries” and are severe enough to constitute a “special circumstance warranting additional compensation” in this program. He has not, however, alleged facts sufficient to satisfy the legal standard to make out a “serious personal injury” under the Referral. Claimant contends that his injuries arose solely from his captivity as a hostage and not from any discrete or specific act or acts other than the hostage-taking. Thus, Claimant’s legal theory is that injuries that arose solely from the hostage experience itself can warrant compensation under the Referral as long as those injuries are “substantially more severe than those suffered by the large majority of others who were subjected to Iraq’s hostage-taking policy . . . .”

Commission precedent requires us to reject this argument. As noted above, the Commission has previously interpreted the phrase “serious personal injury” in the Referral to mean injuries arising from one of the Referral’s four enumerated acts or some other act of a similar type or a similar level of brutality or cruelty. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014); *see supra* at 6-7. Because Claimant alleges no such act here, his claim must be denied.

In sum, after carefully considering all of Claimant’s evidence, the Commission concludes that none of the injuries alleged by Claimant constitutes a “serious personal

injury” within the meaning of the 2012 Referral. Although we sympathize with all that Claimant has experienced both during and since his captivity in Iraq and Kuwait, the facts he alleges do not satisfy the legal standard for compensation in this program.

Accordingly, this claim must be and is hereby denied.

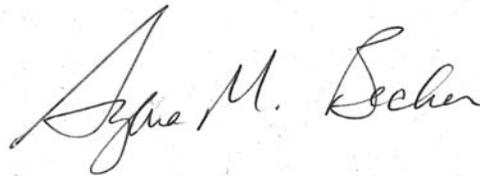
Dated at Washington, DC, May 8, 2014  
and entered as the Proposed Decision  
of the Commission.

**This decision was entered as the  
Commission’s Final Decision on  
June 16 2014**



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Anuj C. Desai, Commissioner



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Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after 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) (2013).