

**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)

Against the Republic of Iraq

}
}
}
}
}
}
}
}
}
}

Claim No. IRQ-I-016

Decision No. IRQ-I-016

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 she suffered while being held hostage in Kuwait and Iraq in August 1990. The United States Department of State has already provided her compensation for her experience as a hostage. She now seeks additional compensation based on a claim that her captivity led to a variety of emotional injuries. Although we are sympathetic to all that Claimant endured as a result of her hostage experience, she has failed to show that she is entitled to additional compensation beyond that which the State Department has already provided her. Therefore, the claim is denied.

BACKGROUND AND BASIS OF CLAIM

Claimant alleges that she was living with her family in Kuwait when Iraq attacked the country in August 1990. She was 11 years old at the time. She claims that Iraq effectively held her hostage for approximately four weeks, first for ten days in the

Japanese Embassy in Kuwait, then for eleven days in the U.S. Embassy in Kuwait and then for three days in Baghdad prior to her release at the Turkish border. Claimant's experiences and injuries are detailed in the Merits section below.

Claimant sued Iraq in federal court for, among other things, hostage-taking. 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.¹ Claimant states that the amount of the payment she 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 \$280,000 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

¹ 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.

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 Iraq¹ in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking² provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State³ 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 assault, coercive interrogation, mock execution, or aggravated physical assault.

¹ 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.

² 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.

³ 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 her claim, including evidence of her U.S. nationality, her receipt of compensation from the Department of State for her claim of hostage-taking, and the severity of her 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 State¹ 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. She has provided a copy of two U.S. passports: one from the time of the hostage taking (valid from May 19, 1988 to October 31, 1990) and her current one (valid from January 15, 2008 to January 14, 2018).

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 her claim, Claimant has submitted a copy of a Release she signed on August 17, 2011, indicating that she would accept a given sum from the Department of State in settlement of her claim against Iraq. She has also submitted a copy of an electronic notification from the Department of State that they submitted her claim for payment to the Department of Treasury on October 25, 2011. Claimant further stated under oath in her 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 her 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. Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) at 7-8 (Proposed Decision). 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, it must be proven that Iraq knowingly inflicted the injury.²

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.

² “Iraq” is defined in footnote 1 of the Referral.

Here, even assuming all the facts Claimant alleges to be true, Claimant has not proven that she 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 her or whether the severity of her injuries constitutes a “special circumstance warranting additional compensation.” A review of the facts Claimant alleges³ shows that, although she no doubt suffered tremendously, she cannot recover under this program because her injuries did not arise from “sexual assault, coercive interrogation, mock execution, or aggravated physical assault” or any other discrete act, distinct from the hostage-taking itself, comparable in brutality or cruelty.

Kuwait City: On August 2, 1990, the day Iraq invaded Kuwait, Claimant was living with her family in Kuwait where her father was stationed with the Army. When she awoke on that day, Claimant “could hear jets fly overhead and ... explosions in the distance.” Later that day, she and her family moved to the Japanese Embassy in Kuwait where she and her family remained for the next 10 days. Claimant’s father, in his declaration, states that Claimant and her family “hid in the [Embassy] basement, sharing it with two dozen other western nationals and some 200 Japanese.” He recalls that “they had to sleep side-by-side on the floor” with only a “handful of blankets and some furniture cushions,” that there were “only four toilets ... and there was food enough for only half a normal diet.” Claimant heard “constant shelling” that “shook and rattled the windows of the building” causing her to fear that “the Embassy would be hit and that [she] would be injured or killed.”

³ In support of her claim, Claimant has provided, *inter alia*, two sworn statements, dated April 2, 2008, and June 24, 2013, in which she describes her hostage experience and her alleged serious personal injuries; and copies of certain of her VA medical records dating from 2003 and 2010 and Naval medical records dated March 2002, regarding her physicians’ diagnosis of PTSD.

Claimant states that, on August 12, 1990, she and her family moved to the U.S. Embassy in Kuwait. Claimant describes the conditions at the U.S. Embassy to be like those of the Japanese Embassy, *i.e.*, crowded, with limited food supplies, and sleeping accommodations consisting of the floor of a “cramped business 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.” Claimant was able to move about the compound of the Embassy during the day; however, it was chaotic, and she heard “radio broadcasts reporting Saddam Hussain’s threat to ‘make Kuwait a graveyard.’” Further, on one occasion, she saw an Iraqi soldier in a tree overlooking the compound watching them with “a big machine gun,” which caused her to run and hide “overcome by terror.”

Travel from Kuwait to Baghdad: On August 23, 1990, 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. The car Claimant and her family were riding in broke down, and she became separated from her parents. She states that “[she] was worried about [her] parents’ safety and hated having to ride separate from them.”

Claimant states that when they arrived in Baghdad, she and her family were “sent to a large residence for a layover of a few hours”; however, they ended up staying for three days, again in crowded conditions with limited food and facilities. On August 26, 1990, Claimant was advised that she and her mother would be allowed to leave, but her father would be required to stay.

Departure from Iraq: Claimant and her mother, along with other women and children, were allowed to leave Baghdad in cars, without an escort. When they arrived at the Turkish border, Claimant states that “Iraqi soldiers ordered [them] to get out of [their] cars and lined [them] up next to a fence on a bridge” for several minutes before being “ordered back to [their] cars” and allowed to cross into Turkey. She was “terrified that [they] were all going to be killed.” Claimant has submitted two slightly different descriptions of this incident. In 2003, Gary P. Monkarsh, Ph.D., a licensed clinical psychologist, examined Claimant and wrote a summary of his evaluation of her. In it, he quoted her own description of her time as a hostage, and the quotation included a description of what appears to be this incident at the Iraqi-Turkish border: “They then took us to what I believe was Turkey or near Turkey[,] and the Iraqis held guns to us and threatened to shoot us and then they finally let us go.” In Claimant’s 2008 Declaration prepared for her federal court litigation, however, she makes no reference to the Iraqi guards either drawing their weapons or threatening to shoot. In that Declaration, she states, “When we finally reached the Turkish border, after nearly 24 hours of driving with little food or water, Iraqi soldiers ordered us to get out of our cars and lined us up next to a fence on a bridge. For several long minutes, I was terrified that we were all going to be killed. We were eventually ordered back to our cars”

Several other individuals, including other claimants in this program, were there, and Claimant’s counsel references declarations submitted by two of them in support of this claim. In one of them, the claimant in Claim No. IRQ-I-020 states that “[w]hen the convoy reached the Turkish border, armed soldiers ordered [them] out of [their] vehicles and lined [them] up at gunpoint while searching [their] vehicles.” In the second, the

claimant in Claim No. IRQ-I-024 states that “Iraqi security officers ordered everyone out from their vehicles and instructed [them] to line up along the railing of a bridge in a straight line, to stand absolutely still and not make a sound.” She further describes how “[f]or the next ten minutes, [their] guards stood there facing [them] with their hands inside their jackets, as if they were clutching their pistols,”

Injuries Alleged: Following this experience, Claimant asserts that she “had a hard time making friends, fitting in, and feeling accepted” and that she “would go to the baseball field dug out after school and cut words into [her] legs with broken glass.” As an adult, Claimant joined the Navy, and while in the service, she was diagnosed with Post Traumatic Stress Disorder in February 2002 based upon a “severe episode of nightmares and depression ... triggered by [her] ship’s deployment to the Middle East in June of 2000...and again by the news coverage of the terror attacks of September 11.” Claimant filed a claim with the Veterans Administration for “disability due to PTSD,” which she states has been granted. In addition she continues to experience “nearly constant anxiety[,] ... [to] suffer from disordered eating[,] ... [to] experience flashbacks, which are triggered by common things, such as hearing helicopters or certain music, eating certain foods, or visiting places with Middle Eastern influence[,] ... [to] panic if [she is] restrained physically [and to have] frequent nightmares that leave [her] with an overwhelming sense of dread.”

Analysis: Claimant argues that her injuries qualify as “serious personal injuries” and are severe enough to constitute a “special circumstance warranting additional compensation” through this program, beyond that already provided by the State Department. Claimant’s alleged injuries are all mental or emotional, and for the most

part, she attributes them to her overall experience of being a hostage. The one event she singles out, however, is the incident at the Iraq/Turkey border. In pointing to this incident in particular, she seeks to draw on the Referral's inclusion of "mock execution" in its list of acts that could cause a "serious personal injury": she argues that "[w]hether the Commission regards this incident as a 'mock execution' in the strict or technical sense, it was plainly 'similar in nature' to a mock execution."

The term "mock execution" does not appear in the Claims Settlement Agreement and does not have a clear or universally recognized definition under international law. The cases of mock executions that our independent research has uncovered, both international and domestic, all involve the perpetrator committing specific acts purposefully aimed at making the victim feel certain that his or her death is imminent. *See, e.g., Prosecutor v. Delalić*, Case No. IT-96-21-T, Judgment, ¶ 1276 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998) (describing mock execution where victim was "made to kneel down while [captor] pressed a gun against his neck in mock execution"); *Dikme v. Turkey*, 2000-VIII Eur. Ct. H.R. 223, 234 (characterizing as a "mock execution" an incident where the applicant was "taken to a forest, where somebody pointed a revolver at his head and urged him to say his 'last prayer' before firing a blank shot."); *Kalklosch (U.S.) v. United Mexican States*, 4 R.I.A.A. 412 (U.S.-Mex. Gen. Claims Comm'n 1928) (describing as a "mock lynching" an incident where individuals "blindfolded [the claimant] and conducted him to a tree where they put a rope around his neck and went through the motions of hanging him, evidently with the purpose of frightening him."); *Prosecutor v. Limaj*, Case No. IT-03-66-T, Judgment, ¶ 292 & n.1055 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 30, 2005) (describing

mock execution where captor “armed with a pistol handed over the weapon to another soldier, telling him to kill the prisoners. The soldier complied and put the pistol next to one of the prisoner’s forehead but the weapon had no bullet.”); *Ilașcu v. Moldova* *Russia*, 2004-VII Eur. Ct. H.R. 179, 235, 289 (describing several instances of mock execution: “The first time, [the applicant’s] death warrant was read out to him, whereas on the other occasions he was taken out blindfolded into a field where the warders fired at him with blank cartridges until he fainted.”); *Torres v. Mukasey*, 551 F.3d 616, 624 (7th Cir. 2008) (describing “mock killings” allegedly proscribed by U.N. Convention Against Torture in which “Pedro stated that Martinez would tell him, ‘I’m going to kill you,’ place a pistol to Pedro’s head, and pull the trigger. The gun, unbeknownst to Pedro, was unloaded.”).⁴

In each case of mock execution, there is a concrete act that mimics an actual execution, one that makes the victim believe his or her death is immediately imminent: the cocking of a pistol, the firing of blanks, the placement of the gun directly on the victim’s body, or (in the case of the mock lynching) the placing of a rope around the victim’s neck. That sort of concrete act is what makes it a “mock *execution*.”

Therefore, for purposes of the 2012 Referral, “mock execution” is a simulated or feigned⁵ execution whereby a perpetrator commits an act or acts that sufficiently mimic

⁴ See also *Price, et al. v. Socialist People’s Libyan Arab Jamahiriya*, 384 F. Supp.2d 120, 126 (D.D.C. 2005) (victims subjected to mock executions “by placing rifle barrels against their temples and dry firing the rifles.”); *Acree, et al. v. Republic of Iraq*, 271 F. Supp.2d 179, 200 (D.D.C. 2003), *vacated on other grounds*, 370 F.3d 41 (D.C. Cir. 2004) (“One of his interrogators asked Cmdr. Slade if he wanted to say anything to his wife, Anna, before he died. Then he pulled the trigger on an empty pistol.”); *Stethem, et al. v. Islamic Republic of Iran*, 201 F. Supp.2d 78, 91-92 (D.D.C. 2002) (hostages “feared the imminent loss of their own lives and were themselves subjected to mock executions (e.g., by firing squad or the dry firing of weapons pointed at their heads) several times during their detention.”)).

⁵ Merriam-Webster’s Online Dictionary defines “mock” in its adjectival form as describing something “of, relating to, or having the character of an imitation : simulated, feigned <the mock solemnity of the

an actual execution so as to trick or deceive the victim into holding a reasonable (but ultimately false) belief that his or her death is imminent. Based on Claimant's own description of the incident, as well as the accounts contained in Claims Nos. IRQ-I-020 and IRQ-I-024, the line-up at the Iraq/Turkey border is not a "mock execution" within the meaning of the Referral. There is no indication that the Iraqi guards did anything that resembled an actual execution so as to make Claimant believe her death was imminent. Even if the Iraqi guards had had their weapons drawn (a point on which the evidence is equivocal), there is no indication that they took any other concrete step or steps to act out an execution, such as dry firing a weapon.

Moreover, because the Iraqi guards committed no act or acts suggesting they intended to deceive Claimant into believing her execution was imminent, her subjective fears, by themselves, are insufficient to satisfy the standard for mock execution; we thus have no need to determine exactly what she believed at that moment. While we have no reason to doubt that Claimant was terrified, the facts here simply do not make out a claim of "mock execution" as international and domestic authorities have understood that term.

Nor does the incident constitute an "act of a similar type or that rises to a similar level of brutality or cruelty" as a "mock execution," as Claimant contends, or any of the other acts the Referral lists as examples of acts that can cause a "serious personal injury." In articulating this standard, the Commission has recognized that each of the four acts enumerated in the 2012 Referral "evokes an extremely high level of brutality and culpability." Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) (Final Decision), at 6. What makes a mock execution so cruel and brutal is the commission of acts that make

parody>." Merriam-Webster Online Dictionary, <http://www.merriam-webster.com/dictionary/mock> (last visited May 8, 2014).

the victim believe his or her death is *imminent*. Here, however, Claimant alleges only that the Iraqi guards *threatened* to shoot the members of the convoy—and, it seems almost certain from the evidence we have that the guards would have shot only if one of the detainees had attempted to escape. Unlike a mock execution or similar act, she could not have reasonably believed that her death was immediately imminent in the sense we mean “imminent,” because any threat would have necessarily been conditioned on non-compliance with her captors’ demands. Indeed, the scenario she describes is more like being held under armed guard. That makes it very much like a typical hostage-taking scenario, *see, e.g.*, Claim No. LIB-II-003, Decision No. LIB-II-016 (2011), but of course she has already received compensation from the State Department for injuries associated with having been held hostage. *See* 2012 Referral, *supra*, n.3. Therefore, even if one could identify injuries specifically attributable to this incident, they would not constitute “serious personal injuries” under the 2012 Referral.

Apart from the incident at the Iraq/Turkey border, Claimant’s only other allegations of injury are wrapped up directly in the hostage experience itself; she points to no other discrete or specific act or acts that Iraq committed to cause her injuries. Claimant contends, however, that injuries that arose solely from the hostage experience itself can warrant compensation through this program 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. The phrase “serious personal injury” in the Referral means 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, her claim must be denied.

In sum, after carefully considering all of Claimant's evidence, the Commission concludes that the injuries alleged by Claimant do not constitute "serious personal injuries" within the meaning of the 2012 Referral. Although we sympathize with all that Claimant has experienced both during and since her captivity in Kuwait and Iraq, the terms of the 2012 Referral constrain the Commission to interpret the phrase "serious personal injury" in such a way that Claimant's injuries do not satisfy the Referral's meaning of that phrase.

Accordingly, this claim must be and is hereby denied.

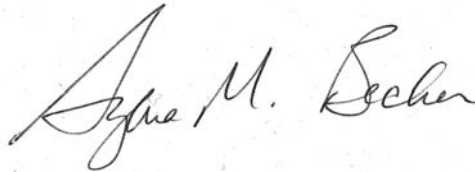
Dated at Washington, DC, May 8, 2014
and entered as the Proposed Decision
of the Commission.

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

June 16 2014



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) (2013).