

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

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-I-024
	}	
	}	Decision No. IRQ-I-012
Against the Republic of Iraq	}	
	}	

Counsel for Claimant:

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Henderson Law Firm, PLLC

FINAL DECISION

Claimant objects to the Commission’s Proposed Decision denying her claim against the Republic of Iraq (“Iraq”). In that decision, the Commission concluded that Claimant did not suffer a “serious personal injury,” as that phrase was used in the State Department’s letter authorizing this program, because Iraq did not inflict upon her a “sexual assault, coercive interrogation, mock execution, or aggravated physical assault,” or any discrete act, distinct from the hostage-taking itself, comparable in cruelty or brutality. In particular, the Proposed Decision concluded that an incident in which Iraqi soldiers threatened Claimant and others at the Iraq-Turkey border was not a mock execution or an act comparable in brutality to a mock execution. Claimant argues that the Commission failed to appreciate the full context of the border-crossing incident, which she argues did in fact constitute a mock execution, or at least an act comparable in brutality to one. Because we conclude that the Proposed Decision correctly determined

that Iraq did not subject her to a mock execution or an act comparable in brutality, and because Claimant raises no other reason to reverse the Proposed Decision, we affirm the Proposed Decision's conclusion that this claim be denied.

BACKGROUND

Claimant brought a claim against Iraq based on injuries she suffered as a result of being held hostage in Kuwait and Iraq in August 1990. Her claim was based, at least in part, on an incident that occurred at the Iraq-Turkey border. In that incident, armed Iraqi soldiers stopped Claimant and other hostages in an automobile convoy in the darkness of night; they then forced the hostages to line up on a bridge facing the soldiers for approximately ten minutes, before allowing them to return to their vehicles and cross the border. Claimant sought \$600,000, in addition to the compensation the State Department had previously provided her for her experience as a hostage. The Commission denied the claim in a Proposed Decision entered on May 8, 2014. *See* Claim No. IRQ-I-024, Decision No. IRQ-I-012 (2014) ("Proposed Decision"). In so doing, the Commission concluded that Claimant had not met her burden of proving that she had suffered a "serious personal injury" as contemplated in the State Department's letter to the Commission establishing this program. *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").

The Proposed Decision explained that, in order to be compensable, "serious personal injuries" in this claims program 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. Proposed Decision, *supra*, at 6 (citing Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) at 7 (Proposed Decision)). Claimant asserted that she had been the victim of a mock execution, or, alternatively, an act of a similar level of brutality or cruelty. The Commission determined, however, that “the facts [of the claim] simply d[id] not make out a claim of ‘mock execution’ as international and domestic authorities have understood that term,” and that she also had not proven that she had been the victim of an act of a similar level of brutality or cruelty. *Id.* at 14.

On May 21, 2014, Claimant filed a notice of objection and requested an oral hearing. During the pendency of her objection, Claimant retained new counsel, who filed a notice of appearance on September 23, 2014. On December 3, 2014, Claimant, through counsel, submitted a brief containing further evidence and argument in support of her objection. The new evidence included declarations from other hostages who had been present at the time of the border-crossing incident. These declarations had been prepared as part of a federal lawsuit that Claimant and other hostages brought against Iraq. On December 16, 2014, the Commission held an oral hearing at which Claimant testified and her counsel provided further argument.

In her Brief, Claimant frames her argument as “seek[ing] recovery for acts *comparable in brutality to* a mock execution.” At times, however, Claimant appears to argue that the Iraqi officials subjected her to what was in fact an actual mock execution.¹

¹ For example, she says, “To the extent the Commission’s Proposed Decision interprets the term ‘mock execution’ to ‘involve the perpetrator *committing specific acts purposefully aimed at making the victim feel*

For that reason we will address both issues in turn: whether the Iraqi officials' actions constituted a mock execution and, if not, whether they were comparable in brutality to a mock execution. As we explain in more detail below, we conclude that in the context of this Iraqi Claims Program, the Iraqi officials' actions neither constituted a mock execution nor were comparable in brutality to a mock execution. Although Claimant no doubt suffered tremendously, she thus 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.

DISCUSSION

I. Claimant's Testimony and Additional Evidence

During the oral hearing, Claimant provided compelling live testimony and responded forthrightly to the Commission's questions. Her testimony focused on the incident at the Iraq-Turkey border, even though her written declarations had originally described the border incident as just one event in a longer narrative that began with the invasion of Kuwait and included her family's harrowing journey from Kuwait City to Baghdad, her separation from her husband and son, her eventual departure from Iraq, and the anguish she experienced until her son and husband finally returned to the United States months later.

Claimant testified that she left Baghdad with a convoy of about 11 or 12 vehicles at 5:30 a.m. on August 26, 1990. There were approximately 40 people in the group: three young men, an American embassy escort whom Claimant knew as "Charlie," and

certain that his or her death is imminent,' Proposed Decision at 12 (emphasis added), the acts at the bridge . . . comport with that interpretation."

the rest, all of whom were women and children. Claimant stated that Iraqi soldiers drove cars positioned at the front and back of the convoy and that the soldiers stopped the group at least five times along the way. During these stops, the soldiers, who had automatic rifles across their chests, would motion for the cars to stop, after which they ordered the occupants to roll the windows down, hand over their passports, and produce their paperwork. Claimant testified that, during these stops, the soldiers “were having their guns pointing at [them]”

Claimant described how, during one of these stops, the soldiers allowed them to leave their vehicles to relieve themselves in an adjacent field. While they were in the field, one of the soldiers yelled “land mines!” so as to scare them and keep them from walking any further.

Claimant testified that they arrived at the border at 1:30 a.m. (about twenty hours after leaving Baghdad) and that it was “very dark.” They stopped next to what Claimant described as a customs house—a long building with offices and a parking lot in front. Claimant stated that they remained at this building for two to three hours while their papers were being processed. During this time, they were permitted to leave their vehicles and were not forced to stand in any particular formation. At about 4:00 a.m., Claimant and the others were then allowed to proceed. All of the males, however—the three young men (including Claimant’s son) and Charlie—were forced to stay behind, so that the entire convoy now consisted only of women and children. They drove away from the customs house and onto a bridge at the border crossing, about 400 to 500 meters past the customs building.

Once the convoy was about halfway across the bridge, which Claimant estimated to be about one kilometer long, the soldiers stopped the cars by “wav[ing] their weapons” at them. Claimant testified that, at this point, she and the other hostages were forced to exit their vehicles, and the soldiers led them to the other side of the bridge—with their guns waving and pointed at them—and made them stand on a ledge along the edge of the bridge next to the railing. She testified that she could hear dogs barking at them from a ravine about three to four stories below them. Claimant stated that the soldiers, who still had their guns and were “yelling and screaming,” then ordered the hostages to turn around and face them. She described how the soldiers “pushed them around” to form a straight line, with their backs to the railing, and directed them to “stand absolutely still.” Claimant stated that although her daughter was with her and she could hold her daughter’s hand, she could not hug her because the soldiers would push them apart with their guns.

Claimant testified that, at this point, she saw a “secret police officer of the Saddam secret police force . . . wearing a long black leather coat, and he had a revolver in his hand, . . . and he wore sunglasses in the middle of the night when it was pitch black dark” She further testified that this officer “had a very threatening and terrifying attitude[,]” and appeared to be the “leader of the soldiers” because he was giving orders to the others. Claimant described how this officer reminded her of a Gestapo official, a fear that evoked in her the German occupation of the Netherlands, where she had grown up.² The other soldiers were dressed differently, wearing beige uniforms.

² Although Claimant was not born until 1947, after the end of World War II and the liberation of the Netherlands, we have no doubt that such an image could evoke greater fears in her than in someone who had not grown up in a country occupied by the Nazis.

At this point, according to Claimant, the officer ordered the soldiers to line up and face the 35-40 captives “in a straight line across from [them].” Claimant testified that the soldiers then pointed their automatic rifles at them “as if they were going to prepare for a firing squad.” Although Claimant was not sure exactly how many soldiers there were, she believed there were at least five and that they were positioned “in front of [their] cars on the other side of the road.” Claimant did not know the precise width of the bridge, but noted that it was about the width of a “regular road where you drive cars on.”

Claimant testified that, at that point, she believed “[they] were going to be shot . . . or shot and thrown to the dogs . . . or taken away to some concentration camp.” She estimated that the guns were trained on them for about five minutes (although the total time they were in the lineup was about ten minutes). Claimant’s fear and anxiety were heightened by the strong impulse to protect her daughter, whom she described as a “special-needs child.”

Eventually, the officer directed the soldiers to count the hostages (Claimant testified that the guns were not pointed at them during this process), after which the soldiers reported back to the officer, who then ordered them to resume their previous posture in the lineup with their guns trained on the hostages for two additional minutes. Claimant testified that she believed they were about to be killed by firing squad; however, the soldiers then approached them and escorted them back to their cars. Claimant further testified that, as she and the other hostages were returning to their vehicles, the soldiers were “joking and smiling and laughing” After the hostages were all back in their cars, they drove for a short distance, and, according to Claimant, the soldiers made them stop, roll down their windows, and thank them for letting them go.

After this, Claimant and the other hostages continued driving into the “no man’s land” separating Iraq and Turkey and eventually reached the Turkish border, about 50 to 100 meters past the end of the bridge, where they were met by American embassy officials.

Claimant testified that she still has nightmares of the incident, and that they always involve a bridge with a ravine under it and the “Gestapo man” who was present during the incident in Iraq. She further testified that she still receives psychological treatment for her mental and emotional injuries.

In addition to her live testimony, Claimant submitted with her objection brief six sworn declarations (dated between 2004 and 2008) that had previously been filed in the federal lawsuit Claimant and others brought against Iraq. Each of the declarants had been present in the convoy from Baghdad to the Turkish border and described some version of the incident at the border crossing. Their allegations, for the most part, are consistent with Claimant’s testimony. Although none of the declarations is as detailed as the oral testimony Claimant provided, and although not all of the witnesses describe each of Claimant’s factual assertions, there is at least one declaration corroborating each of the following claims: (1) the Iraqi soldiers lined the hostages up at gunpoint on or near the bridge, (2) the soldiers raised their rifles and pointed them at the hostages during the lineup, (3) the soldiers conducted a head count before directing the hostages back to their vehicles, and (4) the soldiers laughed as the hostages got back into their cars.

II. The Serious Personal Injury Standard and “Mock Execution”

Claimant’s testimony provided useful detail that went well beyond her 2007 and 2013 Declarations. Her testimony was both compelling and sincere, and the Commission has no doubt that Claimant feared for her life. The question in this claim, however, is

whether Claimant suffered a “serious personal injury” within the meaning of that phrase in the 2012 Referral. We conclude that she did not.

To be eligible for compensation under the 2012 Referral, the claimant’s 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 of a similar type or that rises to a similar level of brutality or cruelty as the four enumerated acts. Proposed Decision, *supra*, at 6 (quoting Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) at 7 (Proposed Decision)). The Proposed Decision reviewed relevant cases before international tribunals and concluded that a “mock execution” was defined as “a simulated or feigned execution whereby a perpetrator commits an act or acts that sufficiently mimic 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.” *Id.* at 13 (internal citation omitted).

Claimant argues that the soldiers’ actions at the bridge satisfy the Commission’s definition of a mock execution, or were at least comparable in brutality to a mock execution. Claimant points in particular to the following: the hostages’ Arabic-speaking U.S. embassy escort was no longer with them; the Iraqi officer at the bridge “was strikingly more menacing in his appearance and conduct than the soldiers at other checkpoints,” calling to mind a Gestapo agent, and “shouted threateningly in Arabic”; the soldiers “brandished automatic weapons hanging at their waists . . . and waved, gestured, and pointed [them] to direct and control the hostages’ movement[]”; the commands for the hostages to leave their vehicles and line up at the bridge “mimicked the assembling of

victims to be executed by a firing squad[.]” as did the demand that the hostages remain still and not move; and the soldiers were also lined up across from the line of hostages, such that Claimant argues they “were positioned to act as [a] firing squad” Claimant contends that there was no apparent reason for this behavior other than to act out a mock execution. She argues that this is further evidenced by the soldiers’ act of laughing at the hostages when they returned to their cars and insisting they say “thank you” as they drove away.

We turn first to the question of whether these alleged facts, viewed in context, constitute a “mock execution,” as that term is used in international law and the 2012 Referral. As noted above, a mock execution must “trick or deceive the victim into holding a reasonable (but ultimately false) belief that his or her death is imminent,” and this feeling must be precipitated by an “act or acts that sufficiently mimic an actual execution” This definition contains both subjective and objective elements. Claimant must establish both that she believed her death was imminent, the subjective aspect of the definition, and that, from an objective standpoint, the acts of the Iraqi officials “sufficiently mimic an actual execution” so as to reasonably instill that belief. *Cf., e.g., Prosecutor v. Aleksovski*, Case No. IT-95-14/1-T, Judgment, ¶ 56 (Int’l Crim. Trib. for the Former Yugoslavia June 25, 1999) (“In the prosecution of an accused for a criminal offence, the subjective element must be tempered by objective factors; otherwise, unfairness to the accused would result because his/her culpability would depend not on the gravity of the act but wholly on the sensitivity of the victim.”); *Prosecutor v. Kunarac, et al.*, Case No. IT-96-23 & IT-96-23/1-A, Judgment, ¶ 162 (Int’l Crim. Trib. for the Former Yugoslavia June 12, 2002) (in applying “reasonable person”

standard to determine when an act constitutes a crime, Trial Chamber properly analyzed the victim's "purely subjective evaluation of the act" as well as "objective criteria").

First, we find that Claimant actually and sincerely believed that she was about to be executed under the circumstances, thereby satisfying the subjective aspect of the definition. Her testimony was credible. She and the other hostages were told to line up on the bridge over a ravine in the dark with armed Iraqi soldiers pointing their guns at them. A menacing, officer-like figure who reminded Claimant of a Gestapo agent was standing nearby. Claimant had been separated from her husband the previous day and from her son only hours earlier; and her 21-year old special-needs daughter was suffering through the ordeal with her. An air of uncertainty clearly hung over the hostages throughout their journey to the border, particularly when they were being directed to line up on the bridge with no indication of what the soldiers intended to do.

The crucial question, however, involves the objective aspect of the definition: did the soldiers' actions at the bridge, viewed together and in context, objectively manifest the type of "concrete . . . steps to act out an execution" that are required for a finding of mock execution? *See* Proposed Decision, *supra*, at 14. The Proposed Decision listed several examples of such conduct: 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 a mock lynching) the placing of a rope around the victim's neck." *Id.* at 13.³ These types of concrete acts

³ Claimant does not appear to challenge the broad contours of this definition of a "mock execution," but rather the Commission's interpretation of what facts give rise to a finding that a mock execution occurred. However, she did question the Commission's explanation that "[i]n 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 . . ." Proposed Decision, *supra*, at 13 (emphasis added). Claimant argues that the requirement that the act cause a feeling that death is "immediately" imminent improperly modifies the notion of imminence by requiring a shorter interval of time between the act and one's expected demise. The precise level of imminence is not crucial to our inquiry here. Because our focus here is on the specific acts and how closely in *type* they resemble an actual execution, we need not define precisely how

are what distinguish a mock execution from a *threat* of execution, whether explicit or implicit.

Even assuming all the facts as Claimant describes them (facts that, we should emphasize, Claimant very credibly recounted), they do not make out a “mock execution,” as that term has been used in international law and as the State Department used it in the 2012 Referral: the Iraqi officials simply did not perform a concrete act or a series of concrete acts that sufficiently mimicked an actual execution. In the context of this Iraq Claims Program, where the claimants were all hostages, the phrase “mock execution” cannot encompass all conduct that caused a victim to fear that she is about to be killed. All of the claimants in this program, including this Claimant, have already received compensation from the State Department for having been held hostage, and that compensation encompassed all of the “physical, mental, and emotional injuries generally associated with” having been held hostage or unlawfully detained. The threat that a hostage could be killed instantly and at any time is a fear generally associated with being held hostage, even if not every American hostage in Iraq at the time necessarily experienced such a threat. The presence of Iraqi officials with deadly weapons in post-invasion Kuwait and Iraq was ubiquitous. Under such circumstances, a definition of “mock execution” requiring merely that the victim reasonably fear that she could be killed would result in the finding of innumerable “mock executions.”⁴ Stated differently,

“immediate” the “imminent” putative death would have to be. The key point in this objective inquiry is the perpetrators’ specific acts. Moreover, while we do list in the text certain acts that would satisfy that standard, that list is by no means intended to be exhaustive; rather, all that is needed is for the type of act to be comparable to one of the listed acts.

⁴ See, e.g., Claim No. IRQ-I-016, Decision No. IRQ-I-016 (2014) (denying claim for additional compensation of another hostage who was also on the same bridge on the Iraq-Turkey border as Claimant); Claim No. IRQ-I-013 Decision No. IRQ-I-019 (2014) (denying claim for additional compensation of hostage who hid herself in various spots in a building, including “inside air conditioning ducts, electrical cabinets and storage closets” because of “fear that Iraqi security forces would storm into her home and that

in a program aimed at providing *additional* compensation for *some* claimants when all eligible claimants were hostages of an authoritarian regime in a time of war and when Iraqi officials with deadly weapons were ubiquitous, a definition of “mock execution” that included all serious threats of death would sweep too broadly.⁵

Claimant argues that the Commission should adopt a flexible definition of the term “mock execution” that would encompass the acts committed by the Iraqi soldiers at the Turkish border. Claimant does not, however, propose an alternative standard that would meaningfully distinguish instances of mock execution from the threat of death that generally accompanies being held hostage. Without such a distinction, particularly in the context of a program for additional compensation for a subset of a group of claimants who were all hostages, a flexible standard of the sort proposed by the Claimant would introduce far too much subjectivity. Given the wide variety of circumstances in which hostages face threats of death, such an approach would be unworkable, particularly in the context of this program.

In sum, the Iraqi officials’ actions at the border crossing did not constitute a “mock execution,” because there was no “concrete act that mimic[ked] an actual execution” While the soldiers brandished weapons, they did not fire their guns, either with blanks or live ammunition, and the officer did not direct the soldiers to fire.

she would be raped, tortured, and killed”); Claim No. IRQ-I-012, Decision No. IRQ-I-028 (2015) (denying claim for additional compensation of hostage who was “grabbed ... by the throat with enough force to leave him gasping for air, and dragged ... by his neck” by “an Iraqi security officer with his sidearm drawn”).

⁵ Indeed, Claimant herself was subjected to numerous other incidents during her time as a hostage when she reasonably might have feared severe physical injury or death. During her time at the U.S. Embassy in Kuwait, for example, she “lived in constant fear that Iraqi forces would storm the Embassy and that [her] daughter or [she] would be raped, and that all of [them] would be killed, brutalized, or forced to serve as ‘human shields.’” On one occasion, she heard someone screaming that the Iraqis were climbing over the Embassy walls, and her fear was so palpable that she “grabb[ed] a pair of scissors and hid[] over [her] daughter under a desk to defend” her daughter and herself. Along the way from Baghdad to the Turkish border, moreover, the soldiers at each of the checkpoints pointed guns directly at the hostages, another example of the constant threat of death facing many U.S. nationals in Kuwait and Iraq at the time.

Without such actions, or some similar act or omission by the Iraqi soldiers, the circumstances Claimant describes are too similar in nature to many typical hostage-taking scenarios in which captives are held under armed guard. *See, e.g.*, Claim No. LIB-II-003, Decision No. LIB-II-016 (2011) (hostage-taking involving passengers on hijacked plane, who, among other things, were forced to hold hands up in the air while the hijackers threatened them with automatic weapons and grenades); *Finogenov v. Russia*, 2011-VI Eur. Ct. H.R. 365, 374, 377 (2011) (hostage-taking involving more than nine hundred victims held for three days under gunpoint in a booby-trapped theatre with eighteen suicide bombers positioned among the hostages, and during which several hostages were in fact killed during the rescue operation); *Wyatt v. Syrian Arab Republic*, 908 F.Supp.2d 216, 220-21 (D.D.C. 2012) (hostage-taking in which gunmen captured hostages while “yelling and screaming and pointing their weapons” at them, “pushing [them] around and roughing [them] up[,]” and then marched them miles through the wilderness before detaining them for three weeks, a period during which the victims “feared for their lives throughout”; on one occasion, “the gunmen lined the captives up in a row and pointed guns at them as though they were going to execute them[.]” so as “to prevent them from attempting to escape”); *Surette v. Islamic Republic of Iran*, 231 F.Supp.2d 260, 263-65 (D.D.C. 2002) (hostage-taking in which hostages “lived with death 24 hours a day,” with their captors at one point “charg[ing] into the room carrying weapons, forc[ing] the hostages to line up against the wall and vow[ing] to kill them if anyone tried to rescue them”); *Daliberti v. Republic of Iraq*, 146 F.Supp.2d 19, 22 (D.D.C. 2001) (hostage-taking in which one hostage was “threatened . . . with physical torture” and “was in constant fear that he would be killed or suffer serious bodily harm[,]” and another was

“detained . . . at gunpoint” and “often blindfolded and held at gunpoint”); *Baker v. Socialist People’s Libyan Arab Jamahiriya*, 775 F. Supp. 2d 48 (D.D.C. 2011) (hostage-taking involving a hijacked airplane on the tarmac where one of the hijackers “began to taunt passengers on board by attempting to pull a pin out of a hand grenade while simultaneously brandishing a firearm[,]” where the hijackers demanded fuel, and “threatened to shoot a passenger every fifteen minutes if they did not receive [it,]” and where the hijackers did in fact shoot several passengers execution-style in the open door of the aircraft). Regrettably, the desperate fear engendered by explicit or implicit threats of death is inherent in many hostage experiences. Claimant has already received compensation from the State Department for injuries generally associated with having been held hostage. See 2012 Referral, *supra*, n.3. Under these circumstances, the Commission concludes that Claimant was not subjected to a mock execution meriting additional compensation for a “serious personal injury” as that phrase is used in the 2012 Referral.

III. Act Similar in Brutality or Cruelty to Mock Execution

Claimant also argues that she is entitled to additional compensation in this program because she “suffered injuries as the result of actions comparable in brutality and cruelty to a mock execution[.]” Although this argument is intertwined with Claimant’s argument that the Iraqi officials’ actions constituted a mock execution *per se*, we can think of it as a distinct argument: in this program, we have held that claimants may be awarded additional compensation for injuries from acts of brutality comparable to

the Referral's four enumerated acts (sexual assault, coercive interrogation, mock execution, or aggravated physical assault), even if the act was not one of those four.⁶

In previous claims, however, we have awarded compensation for injuries caused by acts other than the Referral's four enumerated acts only when the Iraqi act was factually distinct from these four acts. For example, we awarded compensation to a claimant who suffered injuries because Iraq denied him access to vital medication.⁷ We also awarded compensation in two claims where the claimants were subjected to prolonged solitary confinement in near-total darkness and in appalling conditions, placed on a starvation diet, and forced to witness and listen to other persons being physically tortured.⁸ By contrast, we have never awarded compensation when the act in question, although factually similar to an enumerated act, does not satisfy the definition of that act as set forth by the Commission. Such acts, by definition, are not comparable in seriousness to one of those acts, as required by the Commission's standard: Given the Referral's explicit listing of specific acts in the context of a program designed to provide a subset of a group of hostages "additional compensation" for "special circumstances," this approach best comports with the Referral's language and purpose. The Commission thus finds that Claimant's injuries were not caused by an act "comparable in brutality and cruelty to a mock execution" and, therefore, do not qualify as "serious personal injuries," as that term is used in the 2012 Referral.

⁶ See Proposed Decision, *supra*, at 6 (citing Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) at 7 (Proposed Decision)).

⁷ See *Claim of*⁵ U.S.C. §552(b)(6) _____, Claim No. IRQ-I-007, Decision No. IRQ-I-013 (2014).

⁸ See Claim No. IRQ-I-001, Decision No. IRQ-I-005 (2015); Claim No. IRQ-I-002, Decision No. IRQ-I-007 (2015).

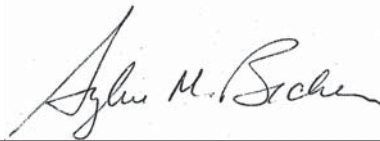
CONCLUSION

In sum, while we recognize the terror that Claimant felt during her experience at the border, for the reasons discussed above and in the Proposed Decision, and based on the evidence and information submitted in this claim, the Commission concludes that the denial of this claim set forth in the Proposed Decision must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, November 16, 2015
and entered as the Final Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

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

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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 husband and two college-aged children in Kuwait when Iraq attacked the country in August 1990. She claims that Iraq effectively held her hostage for approximately 26 days, first for three weeks in the U.S.

Embassy in Kuwait and then for a few more days in Iraq. Claimant's experiences and injuries are detailed in the Merits section below. Key to her claim is the assertion that, "as a consequence of her hostage-taking experience, she has suffered from long-term psychological injuries, which have substantially interfered with her ability to enjoy life, and which are above and beyond the baseline level of personal injuries suffered by the hostages in general."

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.

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.

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 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 February 1987 to February 1992) and her current one (valid from June 2012 to June 2022)—as well as her Certificate of Naturalization from December 1970.

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 12, 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 she was paid this sum on October 8, 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

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

long-term basis), and/or the extent to which there is permanent scarring or disfigurement that resulted from the injury. *Id.* at 8.

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: Claimant was living in Kuwait City with her husband (an American Foreign Service Officer) and their two college-aged children when Iraq invaded Kuwait on August 2, 1990. Early that morning, they were awakened by the sound of explosions, and shortly thereafter, Claimant’s husband was called to the U.S. Embassy. Fearful of “explosions and stray bullets,” the rest of the family moved to the room in the apartment “with the smallest window[,]” where they remained for the rest of the day. Her husband did not return home that evening, which Claimant states “heightened [her] anxiety.”

³ In support of her claim, Claimant has provided, *inter alia*, two sworn statements (one dated December 17, 2007 and originally prepared for her federal court litigation, and a second one created specifically for this Commission dated June 21, 2013), in which she describes her hostage experience and her personal injuries; various letters and medical reports, both recent and from shortly after Claimant’s hostage experience, describing her mental and emotional impairments resulting from her hostage experience; a copy of the visa pages from Claimant’s expired U.S. passport showing her entry into Kuwait in 1989 and her entry into Turkey on August 27, 1990; a 1992 letter from the Department of State confirming that she was a hostage between August 2, 1990, and August 26, 1990; and copies of various contemporaneous newspaper articles describing her ordeal. Although we make no findings on the specific facts Claimant alleges, we have no reason to doubt the broad outlines of her allegations. Indeed, by awarding Claimant compensation, the State Department has necessarily concluded that Iraq took her hostage or unlawfully detained her.

The next day, a U.S. Embassy vehicle took Claimant and her children to the embassy compound. Claimant describes how they “slept in a crowded room on a cold damp concrete floor” for two nights, another room for another night, and thereafter in her husband’s office for three more weeks. 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 “plagued by diarrhea and was too distressed and frightened to eat much of the meager food rationed to [them].” Further, she “could not sleep and spent most of [her] time totally exhausted.”

As one example of the fear she felt, Claimant tells of a time when she heard a rumor that the Iraqis were scaling the U.S. Embassy walls. She grabbed a pair of scissors and hid with her daughter under a desk; fortunately, however, the rumor turned out to be false. Nonetheless, Claimant “lived in constant fear that Iraqi forces would storm the embassy and that [she or her daughter] would be raped, and that all of [them] would be killed, brutalized, or forced to serve as ‘human shields.’” Claimant states that she “sank into a deep depression, which still seriously afflicts [her].”

Travel from Kuwait to Baghdad: After three weeks inside the embassy compound, Claimant and her family 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 trip required crossing the border from Kuwait to Iraq, and according to two other individuals, the border area was full of “chaos and pandemonium,” with the temperature soaring to 120 degrees while those in the convoy

were forced to wait in an “un-shaded asphalt parking lot.” Claimant states that this is consistent with her recollection of the experience.

Travel from Baghdad to Turkey: After the convoy arrived in Baghdad, Claimant was “devastated to learn that Saddam had ordered that all men from the convoy remain hostage.” She states, “Leaving my husband behind, knowing that we might never see each other again, broke my heart.” Two days later, on August 26, 1990, Claimant traveled with a convoy to Turkey. Along the way, they encountered numerous checkpoints, and Claimant states that they “had only two bottles of water and a box of crackers for the entire trip and [they] soon grew dehydrated in the blazing heat.”

At the Iraq/Turkey border checkpoint, Iraqi guards detained Claimant’s son. Claimant states that she “was beside [her]self with bewilderment and fear for [her] son, but had no choice about leaving him behind and had no chance even to say good-bye.” She also states that there was a rumor that he “might be put in the Iraqi military, since he was over 18 years of age.”

Claimant also recounts an incident that occurred on a bridge at the border “while it was still pitch black outside at about 4:00am in the morning of August 27.” She 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.” In the 2013 Declaration that she prepared for this Commission, she goes on to describe her feelings in those moments: “[t]hroughout this period, I stood there trembling in terror holding my [daughter’s] hand and praying that we would not be

killed.” Indeed, when describing what was going through her head at the time, her 2013 Declaration even says that she was “convinced that they were planning to shoot [her] daughter and [her] on the spot.” However, a more contemporaneous document, a 1992 State Department psychiatric report recounting Claimant’s description of her own experiences, describes the incident without any reference to a fear that she would be shot. It states that the hostages “were all lined up and forced to stand waiting while an Iraqi officer wearing a long leather jacket observed them. . . . [Claimant] thought they might be taken away to a concentration camp[] and . . . was also afraid that she would be separated from her daughter or that they might be thrown down into the ravine to the dogs.” While the description of the actual acts taken by the Iraqi guards is similar, there is no specific reference to Claimant believing she was going to be shot “on the spot.” Irrespective of exactly what Claimant was thinking, however, both documents say that after “several minutes,” the guards waved them back into their vehicles and they were then allowed to cross into Turkey. From Turkey, they then flew to Europe and reunited with Claimant’s family. Despite being released, Claimant “agonized” for the next 15 weeks “over the plight of [her] son and [her] husband[]” and was “desperate with anxiety.”

Injuries Alleged: Claimant states that, upon her return home, she “suffered from insomnia and nightmares and could not get [her] mind off the peril facing [her] husband and son.” Although her son was released in October, she alleges that she “sank into depression because [her] husband was still captive in Iraq.” She further alleges that she “was totally traumatized, and [her] grip on reality remained precarious until December 1990,” when her husband was finally released. Even after his release, Claimant states that she remained “distracted and depressed.” She alleges that she suffered from “a

persisting sense of hopelessness, dread and foreboding[.]" and "[o]n several occasions, [she] found [her]self contemplating suicide."

Claimant further states that, several months after their ordeal in Iraq, she and her family moved to Togo for her husband's work, and that shortly after their arrival, there was a coup d'état. Claimant alleges that her "nightmares returned and [she] lost [her] ability to concentrate on anything but [her] safety." When Togo underwent further unrest in April 1992, Claimant "began to succumb to recurrent panic attacks." After the first attack, she sought professional mental health treatment.

Claimant states that, since the time of her hostage experience, she has been diagnosed with PTSD and panic disorder, and that her symptoms include "chronic depression, inability to concentrate, and a pervasive sense of hopelessness." She continues to take medication and receive treatment for these conditions, although she continues to suffer from certain symptoms, including concentration problems and difficulty sleeping. The medical records, including detailed contemporaneous medical records, submitted with this claim confirm the mental and emotional conditions described above, and attribute these conditions to Claimant's hostage experience in Iraq and Kuwait.

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."); *Ilaşcu 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 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

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

description of the incident, 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. By Claimant’s own account, the guards simply stood nearby facing them and told them to stand still and be quiet. The guards may have been “clutching their pistols” in their jacket pockets, but there is no indication that any guns were ever drawn or pointed at the Claimant in a manner that would reasonably indicate an execution was imminent. Even if there had been evidence that guns had been drawn, there would also have to have been evidence that the guards took some other concrete step or steps to act out an execution, such as by 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

the victim believe his or her death is *imminent*. Here, however, Claimant's account suggests, at most, that the Iraqi guards implicitly threatened to harm (or perhaps kill) her if she 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.

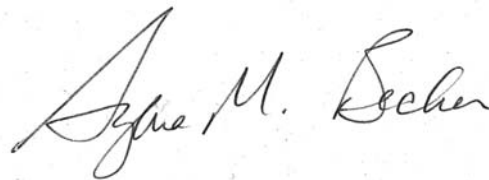
In sum, after carefully considering all of Claimant's evidence, the Commission concludes that the injuries alleged by Claimant do not constitute "serious personal injuries" within the meaning of the 2012 Referral. Although we sympathize with all that Claimant has experienced both during and since her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



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).