

**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 | } | |
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| 5 U.S.C. §552(b)(6) | } | Claim No. GUAM-0232 |
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| | } | Decision No. GUAM-0001 |
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| Under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114-328 | } | |
| | } | |

PROPOSED DECISION

Claimant brings this claim under Sections 1704 and 1705 of the Guam World War II Loyalty Recognition Act¹ based on injuries that she suffered as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II. Because she has established that she went into hiding to evade internment by Imperial Japanese military forces, and was thereafter subjected to forced march and internment, she is entitled to a payment of \$10,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was a resident of Guam in December 1941 when the Imperial Japanese army attacked and occupied the island. She asserts that immediately after the occupation, she and her family left their home in Sumay and were forced to hide in the jungle near Tenjovista and other places to avoid being captured by Imperial Japanese military forces. Claimant further alleges that in 1944, Japanese soldiers forced her and her

¹ Guam World War II Loyalty Recognition Act, Pub. L. 114-328, tit. XVII, 130 Stat. 2642 (2016) (“GLRA” or “Act”).

family to march from Tenjovista to a camp at Manenggon, where she was subsequently interned.

Although Claimant was not among them, several Guam residents received compensation from land and claims commissions established under the Guam Meritorious Claims Act (“GMCA”),² which was enacted on November 15, 1945, and provided compensation to residents of Guam for personal injury, death, and property loss sustained in Guam as a result of or incident to hostilities or hostile occupation, and/or the noncombat activities of the U.S. armed forces. The implementation and administration of the GMCA was the subject of a review conducted by the Guam War Claims Review Commission (“GWCRC”), which was established by a 2002 act³ with the same title and was tasked with assessing the “effectiveness of [the GMCA] in addressing the war claims of American nationals residing on Guam between December 8, 1941, and July 21, 1944” and “[advising] on any additional compensation . . . necessary to compensate the people of Guam for death, personal injury, forced labor, forced march, and internment.”⁴ In June 2004, the GWCRC issued a report concluding that, in some respects, there was a lack of parity of war claims paid to the residents of Guam under the GMCA compared with awards that claimants who suffered similar injuries received under the War Claims Act and other laws providing compensation for U.S. nationals who were killed or injured as a result of an invasion or occupation by the Japanese Imperial forces during World War II.⁵ The GWCRC thus recommended that Congress authorize additional funding to provide compensation to

² An Act: For the relief of the residents of Guam through the settlement of meritorious claims, ch. 483, Pub. L. 79-224, 59 Stat. 582 (1945).

³ Guam War Claims Review Commission Act, Pub. L. 107-333, 116 Stat. 2873 (2002).

⁴ *Id.* § 5(1), (5).

⁵ *See* Guam War Claims Rev. Comm’n, Rep. on the Implementation of the Guam Meritorious Claims Act of 1945, at 77-78 (2004).

residents of Guam for claims for death, rape, personal injury, forced labor, forced march, and internment (including hiding to avoid capture).⁶

On December 23, 2016, President Obama signed into law the Guam World War II Loyalty Recognition Act, which established a supplemental war claims compensation program for claims arising from the attack and occupation of Guam by Imperial Japanese military forces during World War II. The Act recognizes two categories of eligible claimants: “compensable Guam decedent” and “compensable Guam victim.”⁷ The Act defines a “compensable Guam victim,” which is the category that applies to this claim, as

an individual who is not deceased as of the date of the enactment of this Act and who is determined . . . to have suffered, as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II, or incident to the liberation of Guam by United States military forces, any of the following:

(A) Rape or severe personal injury (such as loss of a limb, dismemberment, or paralysis).

(B) Forced labor or a personal injury not under subparagraph (A) (such as disfigurement, scarring, or burns).

(C) Forced march, internment, or hiding to evade internment.⁸

On June 20, 2017, the Commission published notice in the *Federal Register* announcing the commencement of a program to adjudicate claims for compensation under the Guam World War II Loyalty Recognition Act.⁹

⁶ *See id.* at 80.

⁷ Guam World War II Loyalty Recognition Act, Pub. L. 114-328, § 1704(c)(1)-(2), 130 Stat. 2645 (2016).

⁸ *Id.* § 1704(c)(2).

⁹ Notice of Commencement of Claims Adjudication Program and of Deadline for Filing of Claims, 82 Fed. Reg. 28,093 (June 20, 2017).

DISCUSSION

As noted above, the Guam World War II Loyalty Recognition Act authorizes the Commission to award compensation to “compensable Guam victims” which the Act defines as limited to individuals who (1) were alive on December 23, 2016, and (2) are determined to have suffered any of the following: rape, severe personal injury, personal injury, forced labor, forced march, internment, and hiding to evade internment.¹⁰

1. Claimant Living on December 23, 2016

Claimant has submitted sufficient evidence to establish that she was living on December 23, 2016. She has provided a sworn and notarized claim form that she signed after the Commission published notice of the program’s commencement on June 20, 2017. Further, our review of death records from the Social Security Administration and other databases has yielded no evidence that Claimant was not living on December 23, 2016. Therefore, Claimant meets this element of her claim.

2. Claimant Suffered an Injury Compensable Under the GLRA

Claimant asserts that she sustained three injuries recognized under the Act: forced march, internment, and hiding to evade internment. Her claim is based upon events that took place during the invasion and occupation of the island of Guam by Imperial Japanese military forces during World War II.

Factual Backdrop to Claimant’s Allegations

Japan invades Guam: In December 1941, Guam was an unincorporated and organized territory of the United States, having been ceded by Spain under the terms of the Treaty of Paris of 1898 in the aftermath of the Spanish-American War.¹¹ The invasion of

¹⁰ See Guam World War II Loyalty Recognition Act §§ 1704(a), 1704(c)(2), 1705(a)(1).

¹¹ See Robert Rogers, *Destiny’s Landfall: A History of Guam* 112-13 (1995).

Guam by the Imperial Japanese army began hours after Japan's attack on Pearl Harbor, on December 8, 1941, with air strikes in the vicinity of Sumay, Piti, and Hagåtña (formerly known as Agana).¹² The air strikes hit a number of strategic targets and buildings, including the Pan American Hotel kitchen, and killed several Guamanians.¹³ The Japanese military continued this air offensive on December 9, 1941, causing more damage to several of the targets that it had bombed the previous day and striking several new targets, including the villages of Dededo, Inarajan, Merizo, and Umatac.¹⁴ Not all of the attacks, however, produced civilian casualties, because many Guamanians had gone into hiding by that time.¹⁵

On December 10, 1941, a Japanese force made up of several hundred naval troops landed at Dungas Beach, northeast of Hagåtña.¹⁶ The landing force quickly made its way towards the center of the city, killing and injuring several Guamanians along the way. Among the casualties were passengers of a jitney who were shot and bayoneted on the Agana-Tamuning road and a group of men who suffered the same fate when they encountered Japanese soldiers in the San Antonio district.¹⁷ At the Plaza de España in central Hagåtña, the Japanese forces were met by members of the Insular Guard, a group of Guamanians that had been organized in early 1941 to augment the island's naval militia.¹⁸ During the brief firefight that ensued, the Guard members drove back the

¹² See Memorandum from Captain G.J. McMillin to Sec'y of the Navy (Sept. 11, 1945) in GUAM RECORDER, Apr.-Sept. 1972, at 9, 10, ¶ 8.

¹³ See *id.*

¹⁴ See McMillin, *supra* note 12, at 11, ¶ 10; Russell Apple, *Two Invasions and Three Military Occupations* 26 (1980); Rogers, *supra* note 11, at 165.

¹⁵ See Apple, *supra* note 14, at 26; Rogers, *supra* note 11, at 165; Tony Palomo, *An Island in Agony* 17 (1984).

¹⁶ See McMillin, *supra* note 12, at 11, ¶ 12; Apple, *supra* note 14, at 25.

¹⁷ See Palomo, *supra* note 15, at 23-25; Rogers *supra* note 11, at 167-168.

¹⁸ See McMillin, *supra* note 12, at ¶¶ 7, 12.

Japanese forces twice before they were overwhelmed.¹⁹ Some Guardsmen were killed, as was a teenage civilian and photographer who assisted them.²⁰ At approximately 6:00 a.m., shortly after this battle had ended, then Governor of Guam, U.S. Navy captain George McMillin, surrendered the island to the commander of the Japanese force.²¹

Japan's occupation of Guam: Japan's occupation of Guam began with the Governor's surrender on December 10, 1941. That same day, Japanese forces began to arrest and detain Guamanians. Japanese forces apprehended members of the Insular Guard and other local militias, local leaders, and retired military employees as they stood in line to register with the Japanese authorities, holding them in various buildings in Hagåtña.²² Additionally, in Merizo, a village on Guam's southern coast, a separate landing force from the Japanese army's South Seas Detachment "rounded up all the [Guamanians] they could find and held them at the school house."²³ Several Guamanian nurses were also detained and "treated as prisoners."²⁴

During the first few weeks of the occupation, a period described by war correspondents as a "reign of terror"²⁵ during which the occupying force "ran wild,"²⁶ Japanese forces raped several Guamanians and physically attacked others for, among other things, failing to bow properly and for assisting several U.S. servicemen who remained at large on the island.²⁷ On January 6, 1942, less than a month after the occupation began,

¹⁹ See Rogers, *supra* note 11, at 167.

²⁰ See McMillin, *supra* note 12, at 14-15; Palomo *supra* note 15, at 27; Rogers *supra* note 11, at 167.

²¹ See McMillin, *supra* note 12, at 9 ¶ 2.

²² See Rogers, *supra* note 11, at 170; Roger Mansell, *Captured: The Forgotten Men of Guam* 53 (2012).

²³ See Apple, *supra* note 14, at 26.

²⁴ See Rogers, *supra* note 11, at 170.

²⁵ Keith Wheeler, Account of Occupation of Guam, *as reprinted in* Palomo, *supra* note 15, at 211.

²⁶ Robert Trumbull, *Guam Natives Tell of Captors' Abuses*, N.Y. TIMES, Aug. 9, 1944, at 5.

²⁷ See *id.*; Apple, *supra* note 14, at 29; Palomo, *supra* note 15, at 104-105; Rogers, *supra* note 11, at 171.

two Guamanians were publically executed by firing squad.²⁸ The majority of the occupying force left Guam on January 14, 1942, to participate in other military campaigns in Southeast Asia.²⁹ But the testimony of Guam residents and naval records that address the investigation and prosecution of war crimes make clear that Japanese soldiers continued to rape, kill, and physically assault Guamanian civilians during the entire period that they occupied the island.³⁰

For the first few months of the occupation, several Guamanians remained in hiding.³¹ Many of those who were not in hiding, including the men and women detained and/or arrested during the first days of the occupation, were compelled to work by the occupying force.³² Men were employed constructing the Orote air base, which began in “early 1942,”³³ and other military defenses, or as stevedores or miners for the Imperial Japanese forces,³⁴ while women and children worked in agricultural production.³⁵ For many Guamanians, these assignments became more onerous in March 1944, when several companies of Japanese soldiers returned to Guam in anticipation that the United States would seek to liberate the island.³⁶ Quotas for agricultural production “increased

²⁸ Apple, *supra* note 14, at 29; Rogers, *supra* note 11, at 171-72.

²⁹ See Apple, *supra* note 14, at 31; Rogers, *supra* note 11, at 172.

³⁰ See Memorandum from Director War Crimes, Pacific Fleet to Director Civil Affairs Division, WDSS, The Pentagon (Oct. 27, 1947) (enclosing a statistical report on the prosecution of war crimes committed against Guamanians) (on file with Commission); Transcript of Hearings Held on Guam by the Guam War Claims Rev. Comm’n, (Dec. 8-9, 2003) (on file with Commission).

³¹ See Palomo, *supra* note 15, at 83.

³² The commander of the Japanese garrison stated that “native prisoners [had been released] and are at work” at a meeting of the occupying government on July 18, 1942. Robert Lowe, *Problems in Paradise* 285 (1967). See also Pedro Sanchez, *Guam 1941-1945 Wartime Occupation & Liberation*, 36 (1984); Rogers, *supra* note 11, at 170.

³³ Sanchez, *supra* note 32, at 73.

³⁴ See Sanchez, *supra* note 32, at 73; Rogers, *supra* note 11, at 170, Wakako Higuchi, *The Japanese Administration of Guam 1941-1944*, 102 (2003).

³⁵ See Sanchez, *supra* note 32, at 47; Apple, *supra* note 14, at 30; Palomo, *supra* note 15, at 163, Higuchi, *supra* note 34, at 113.

³⁶ See Sanchez, *supra* note 32, at 47; Rogers, *supra* note 11, at 175-77; Higuchi, *supra* note 34, at 100.

drastically,” more Guamanians (adults and children) were conscripted to work, and workers were treated as “slave laborers, working sometimes twenty-four hours at a stretch.”³⁷

The frequency and brutality of attacks on Guam residents by Japanese soldiers increased during this period. On July 8, 1944, Japanese soldiers arrested a Catholic priest, Father Jesus Duenas, and his nephew, Eddie Duenas. The soldiers interrogated and tortured them for several days before beheading them.³⁸ On or around July 10, 1944, a Japanese commander ordered all Guamanians to relocate to camps at Manenggon, Maimai, Tai, Malojloj, Payesyeyes, Atate, Asinan, Talofofu, and Inarajan, among other places.³⁹ While some Guamanians managed to escape internment by hiding in caves after the removal order was issued, Japanese guards forced thousands of Guamanians to walk from their residences and villages to these camps.⁴⁰ This procession formed a “wretched column” comprised of “exhausted men, women, children, the sick who were hardly able to carry themselves, and invalids on stretchers borne on the shoulders of tired men.”⁴¹ No one was allowed to stop on the way.⁴² Those who attempted to do so were clubbed by Japanese guards, as were all stragglers.⁴³ Some became too tired to walk and “were picked up by relatives and friends and dragged along the way.”⁴⁴ Others “died enroute” and “were left along the roadsides.”⁴⁵

³⁷ Rogers, *supra* note 11, at 176; *see* Apple, *supra* note 14, at 38-39.

³⁸ *See* Apple, *supra* note 14, at 44-45; Palomo, *supra* note 15, at 180.

³⁹ *See* Paul Carano, *Liberation Day*, GUAM RECORDER, July-Sept. 1973, at 3, 4. Some sources state that the order was issued on July 15, 1944. *See* Apple, *supra* note 14, at 44-45; Sanchez, *supra* note 32, at 87-88.

⁴⁰ *See* Apple, *supra* note 14, at 47.

⁴¹ Carano, *supra* note 39, at 4.

⁴² *See id.*

⁴³ *See id.*; Apple, *supra* note 14, at 48.

⁴⁴ Carano, *supra* note 39, at 4.

⁴⁵ Apple, *supra* note 14, at 48.

Deplorable conditions pervaded the camps. Because of the heavy rainfall, “[a]lmost every camp was a sea of mud.”⁴⁶ The lack of shelters forced camp residents to live out in the open or in temporary dwellings constructed out of coconut palms and tangantangan poles.⁴⁷ Obtaining food was a constant struggle. Food stores left over from the journey to the camps were exhausted “shortly after arrival,”⁴⁸ and, by all accounts, camp residents subsisted on plants and fruits foraged from the nearby jungles.⁴⁹ Water was collected from the Ylig River, which was contaminated with dead bodies.⁵⁰ There were no medical supplies, latrines, or facilities for sanitation.⁵¹

Despite these conditions, camp residents were not exempt from the work requirements that the Japanese forces had imposed on Guamanians in March 1944. Women were required to dig foxholes,⁵² while “some young men . . . were forced . . . to carry ammunition and other heavy supplies to distant island points.”⁵³ Many of these men did not return to the camps after their assignments ended.⁵⁴ By all accounts, they comprised some of the many victims killed by the Japanese forces after the issuance of the July 1944 relocation order.⁵⁵

Japanese forces committed immeasurable atrocities during this period, including the beheading of groups of young workers whose corpses were discovered by U.S. soldiers

⁴⁶ Carano, *supra* note 39, at 4.

⁴⁷ *See id.*; Apple, *supra* note 14, at 48; Rogers, *supra* note 11, at 180; Transcript of Hearings Held on Guam by the Guam War Claims Rev. Comm’n, (Dec. 8-9, 2003) (on file with Commission) at 32, 80.

⁴⁸ Apple, *supra* note 14, at 48.

⁴⁹ *See* Rogers, *supra* note 11, at 180.

⁵⁰ *See* Transcript of Hearings Held on Guam by the Guam War Claims Rev. Comm’n, (Dec. 8-9, 2003) (on file with Commission) at 71.

⁵¹ *See* Apple, *supra* note 14, at 48; Rogers, *supra* note 11, at 180.

⁵² *See* Apple, *supra* note 14, at 45.

⁵³ *Id.* at 46.

⁵⁴ *See id.*

⁵⁵ *See id.*; Sanchez, *supra* note 32, at 82.

in the northern jungles near Yigo,⁵⁶ the rape and murder of several women at a cave near Fena,⁵⁷ the massacre of several Guamanians in Hagåtña who were accused of signaling a U.S. plane,⁵⁸ an attack on villagers from Merizo that were “herded” into a cave and pelted with hand grenades, bayoneted, and then beheaded,⁵⁹ and an attack on another group of Merizo residents who were similarly massacred while digging a trench for Japanese soldiers.⁶⁰

The Guam War Claims Review Commission described the conditions on Guam during the Japanese occupation as an “[incomparable] situation . . . where virtually the entire population was either interned, in hiding to avoid capture, or subjected to forced march at one time or another.”⁶¹

U.S. forces liberate Guam: On July 21, 1944, less than a week after Japanese forces ordered the relocation of all Guamanians to camps in the interior of the island, U.S. forces invaded Guam.⁶² The campaign to liberate Guam began at 5:30 a.m., with an intense bombardment of the coastline by sea, and later, by air as well.⁶³ At approximately 8:30 a.m., U.S. Marines landed on the Agat and Asan beaches.⁶⁴ After battling Japanese forces for several days, they advanced towards the Orote peninsula and the Fonte plateau, where a significant garrison of Japanese soldiers remained.⁶⁵ The U.S. soldiers made their first contact with Guamanians on the island on July 24, 1944, when several individuals who had

⁵⁶ See Alvin Josephy, *The Long and the Short and the Tall* 90-91 (2000); Sanchez, *supra* note 32, at 82. Several Guamanians were killed in a similar manner at Tumon. See Sanchez, *supra* note 32, at 82.

⁵⁷ See Palomo, *supra* note 15, at 184; Rogers, *supra* note 11, at 181.

⁵⁸ See Sanchez, *supra* note 32, at 82.

⁵⁹ See Sanchez, *supra* note 32, at 82; Palomo, *supra* note 15, at 185-87.

⁶⁰ See Sanchez, *supra* note 32, at 82; Palomo, *supra* note 15, at 185-87; Rogers, *supra* note 11, at 180.

⁶¹ See *supra* note 5, at 75.

⁶² See O. Lodge, *The Recapture of Guam*, 37 (1954); Apple, *supra* note 14, at 54.

⁶³ See *id.*

⁶⁴ See Apple, *supra* note 14, at 58.

⁶⁵ See Lodge, *supra* note 62, at 63-67, 76.

escaped from camps entered territory held by U.S. forces.⁶⁶ Between July 27, 1944, and July 30, 1944, more Guamanians crossed behind U.S. lines, and several served as scouts for U.S. troops who were searching for Japanese forces in southern Guam.⁶⁷ On July 30, 1944, Guamanians in camps in the southernmost part of the island encountered a U.S. patrol, and together, they “killed and chased away” the Japanese guards assigned to the camp.⁶⁸ A day later, on July 31, 1944, U.S. soldiers liberated the main camps in the Manenggon valley and released thousands of Guamanians, who were then relocated to refugee camps in Finile and Asan in early August 1944.⁶⁹ During this same period, U.S. forces advanced through the northern part of the island, repelling Japanese attacks at Barrigada, Finegayan, Mt. Santa Rosa, and Yigo.⁷⁰ On August 10, 1944, General Roy Geiger, the commander of the Marine Corps division charged with liberating Guam, declared that organized resistance on Guam had ended.⁷¹ By August 15, 1944, the United States again controlled Guam, however, reports of sporadic fighting and guerilla warfare by Japanese soldiers on the island continued throughout 1944 and beyond.⁷²

Factual Allegations Specific to Claimant

Claimant asserts that she was a Guam resident in December 1941, when Japan invaded and occupied the island. Claimant states that, after the occupation began, she and her family left their home in Sumay and were forced to hide in the jungle near Tenjovista, among other places, to avoid being captured by Imperial Japanese military forces. Claimant further alleges that in 1944, Japanese soldiers forced her and her family to walk

⁶⁶ See Palomo, *supra* note 15, at 224; Rogers, *supra* note 11, at 190.

⁶⁷ See Lodge, *supra* note 62, at 105; Rogers, *supra* note 11, at 189.

⁶⁸ Rogers, *supra* note 11, at 189.

⁶⁹ See Trumbull, *supra* note 26, at 5; Lodge, *supra* note 62, at 130; Rogers, *supra* note 11, at 191.

⁷⁰ See Lodge, *supra* note 62, at 131-58.

⁷¹ *Id.* at 158.

⁷² See Rogers, *supra* note 11, at 193-94.

from Tenjovista to a camp at Manenggon, where she was subsequently detained under deplorable conditions.

Supporting Evidence

Claimant has submitted a sworn Statement of Claim, including a notarized affidavit, that describes the circumstances of the injuries she alleges: hiding to evade internment, internment, and forced march. The Commission also takes notice of several sources that provide background about the Imperial Japanese Army's occupation of Guam during World War II, including many that relate specifically to the circumstances faced by Guamanians who were residents of the island at that time. These sources include historical accounts of Japan's capture and occupation of Guam, newspaper articles, memoranda from officials in the U.S. Navy, a June 2004 report issued by the GWCRC, and testimony from survivors of the occupation who participated in hearings held by the GWCRC on Guam in December 2003.

Legal Standard

To be eligible for compensation as a "compensable Guam victim" under the GLRA, a claimant must establish that "as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II, or incident to the liberation of Guam by United States military forces," he or she suffered any of the following injuries: rape, personal injury, forced labor, forced march, internment, and hiding to evade internment.⁷³ Neither the GLRA itself, nor regulations issued by the Commission on April 3, 2017,⁷⁴ define any of the three specific injuries that Claimant alleges here: forced march, internment, and hiding to evade internment. Thus, to interpret these terms, we consider

⁷³ Guam World War II Loyalty Recognition Act, Pub. L. 114-328, § 1704(c)(2), 130 Stat. 2642, 2645 (2016).

⁷⁴ The regulations provide definitions for two injuries recognized under the GLRA: "personal injury" and "severe personal injury." See 45 C.F.R. § 510.1 (2018).

other sources of law that define forced march, internment, and hiding to evade internment in the context of analogous claims.

Forced march: While no domestic statute authorizing compensation for war claims arising from World War II specifically recognizes “forced march” as a compensable injury, courts considering liability for war crimes under principles of international law have used the term to describe evacuations or transfers of prisoners of war and civilians during wartime. In *United States v. von Weizsaecker*, a U.S. military tribunal used the term “forced marches” to refer to various evacuations of U.S. and Allied prisoners of war by German forces that were carried out on foot in Europe during the latter stages of World War II.⁷⁵ Similarly, the International Military Tribunal for the Far East described forced marches as a “common practice followed by the Japanese Army and Prisoner of War Administration” that involved “moving prisoners of war from one place to another under harsh conditions enforced by the beating and murdering of stragglers.”⁷⁶ The tribunal also characterized several forced marches that the Imperial Japanese army imposed on civilians and prisoners of war in Southeast Asia as conventional war crimes that violated the international law applicable in armed conflict.⁷⁷ The common element in these cases is the

⁷⁵ *United States v. von Weizsaecker (The Ministries Case)*, in *14 Trials of War Criminals Before the Nuremberg Military Tribunals* 443-46 (1949).

⁷⁶ *United States v. Araki*, Judgment, 1047 (Int’l Mil. Trib. for the Far E. Nov. 12. 1948).

⁷⁷ Among the incidents cited are a march removing prisoners of war to Koepang camp in what was then Dutch Timor, during which the “prisoners suffering from wounds, hunger, malaria and dysentery were marched for five days with their hands tied behind their backs, and were driven and beaten along by their Japanese and Korean guards like a herd of cattle”; “[s]imilar marches . . . imposed upon Indian prisoners . . . in British New Guinea during 1943 and 1944,” where “prisoners who became ill and were unable to keep up with the main body were shot”; the Ranau marches in 1945, where Japanese guards removed prisoners of war who were suffering from “malaria, dysentery, beri-beri and malnutrition” across rough jungle terrain for a distance of over 100 miles and “shot or bayoneted to death” those who fell behind the marching column; and a march involving civilians and prisoners of war “employed in the construction of the Burma-Siam Railway” who were “required to march 200 miles on foot in two and one half weeks” and subjected to “constant driving and daily beating.” *Id.* at 1047-1051.

use or threatened use of physical force to effect the transfer of individuals from one location to another on foot.

We therefore conclude that to establish the injury of “forced march” under the GLRA, a claimant must show that he or she was transferred from one location to another in Guam on foot by the use or threatened use of physical force.

Internment: To determine the standard for establishing the injury of “internment” under the GLRA, we look to the treatment of the injury of internment under the War Claims Act of 1948 (“WCA”), which authorized compensation for civilians who were interned on Guam during World War II and, thus, is particularly relevant for our determination here.

To be eligible for compensation for internment under the WCA, a claimant had to establish that he or she was a U.S. citizen “captured by the Imperial Japanese Government” at, among other places, Guam “on or after December 7, 1941,”⁷⁸ and was entitled to benefits “for any period of time . . . during which he [or she] was held by the Imperial Japanese Government as [an] . . . internee[.]”⁷⁹ The meaning of “captured” in this context is set forth in regulations issued by the War Claims Commission (“WCC”) on December 30, 1949,⁸⁰ that define the term as the

time when, by reason of any act of . . . [the Imperial Japanese] government or any agent thereof, [a claimant] was taken into actual or constructive custody by such government, whether by forceable seizure and detention or by his compliance with any order of such government, however published, directing him to restrict his freedom of movement.⁸¹

⁷⁸ War Claims Act of 1948, Pub. L.80-896, § 5(a), 62 Stat. 1240, 1242 (1948).

⁷⁹ *Id.* § 5(b).

⁸⁰ The WCA authorized the WCC to “prescribe such rules and regulations as may be necessary to enable it to carry out its functions.” *Id.* § 2(c).

⁸¹ War Claims Comm’n Regulations, 14 Fed. Reg. 7845 (Dec. 30, 1949).

An internal regulation adopted by the WCC on August 25, 1950, further established that a claimant was

presumed, in the absence of rebutting evidence, to have been held by the Imperial Japanese Government as [an] . . . internee . . . when it is alleged in the claim application or supporting evidence that such person was restricted in his [or her] movements or otherwise limited by action of the Imperial Japanese Government so as not to be a free person and such allegation is substantiated by official records or otherwise competent evidence.⁸²

The WCC used the definition of the term “captured” set forth above to determine whether a claimant suffered internment under the WCA, and the Commission’s commentary on the WCC’s practice indicates that the custodial restriction in the definition “was determined to be synonymous with internment.”⁸³

We adopt this standard and conclude that to establish the injury of “internment” under the GLRA, a claimant must establish that he or she was taken into actual or constructive custody, whether by forcible seizure and detention or by compliance with any order, however published, directing him or her to restrict his or her freedom of movement.

Hiding to evade internment: To determine the standard for establishing the injury of “hiding to evade internment,” we again look to the WCA, which authorized compensation for civilians who hid to evade internment on Guam during World War II, and is thus particularly relevant to our determination here.

The WCA authorized compensation for claimants who “went into hiding” at, among other places, Guam “to avoid capture or internment” by the Imperial Japanese government.⁸⁴ This injury was further defined in the WCC’s December 30, 1949

⁸² War Claims Comm’n, Internal Regulation No. 13 (Aug. 25, 1950) [hereinafter “Internal Regulation No. 13], in *Settlement of Claims by the Foreign Claims Settlement Commission of the United States and Its Predecessors from September 14, 1949 to March 31, 1955*, at 548 (1955).

⁸³ *Settlement of Claims by the Foreign Claims Settlement Commission of the United States and Its Predecessors from September 14, 1949 to March 31, 1955*, at 370 (1955).

⁸⁴ War Claims Act of 1948 § 5(a).

regulations, which state that an eligible claimant “shall be deemed to have entered into hiding to avoid capture or internment by the Imperial Japanese government when he initiated a course of conduct consistent with an intention to evade such capture or detention.”⁸⁵ This definition was also adopted in the WCC’s Internal Regulation, which states that a claimant

shall be presumed, in the absence of rebutting evidence, to have gone into hiding to avoid being captured by the Imperial Japanese Government when it is alleged in the claim application that such person was in an area controlled by the Japanese government, and such allegation is supported by official records or other competent evidence, and it is alleged that a course of conduct consistent with an intention to evade such capture was initiated, and such allegation is supported by competent evidence.⁸⁶

The WCC revisited the definition of the phrase “went into hiding . . . in order to avoid capture or internment” in a precedent opinion issued on December 19, 1950.⁸⁷ The opinion adopted definitions that U.S. state and federal courts had articulated for the terms “hiding,” “in order to,” “avoid,” and “capture,” and concluded that the entire phrase could be more precisely defined as “[a] withdrawal from observation or keeping from sight with the intention of thereby averting a taking or seizure by the enemy.”⁸⁸ Although the last part of this standard, “a taking or seizure by the enemy,” was specifically derived from the term “capture” (not “internment”) it is consistent with the definition of internment set forth above and thus provides a sound basis for determining what constitutes “hiding to evade internment” for our purposes here.

⁸⁵ War Claims Comm’n Regulations, 14 Fed. Reg. 7845 (Dec. 30, 1949).

⁸⁶ Internal Regulation No. 13, at A(2).

⁸⁷ *Claim of ANTHONY LEO GAMPP*, Claim No. 003720, Precedent Opinion No. 11, at 2-3 (War Claims Comm’n 1950).

⁸⁸ *Id.* at 3. The Commission’s commentary on the WCC’s practice reaches the same conclusion. *See Settlement of Claims by the Foreign Claims Settlement Commission of the United States and Its Predecessors from September 14, 1949 to March 31, 1955*, at 370 (1955).

In sum, we conclude that a claimant seeking compensation for “hiding to evade internment” under the GLRA must show that he or she withdrew from observation or kept from sight with the intention of thereby averting a taking or seizure.

Application of Standard to this Claim

The GLRA provides that the Commission “shall treat a claim that is accompanied by an affidavit of an individual that attests to all material facts required for establishing the eligibility of such individual for payment . . . as establishing a prima facie case of the eligibility of the individual for such payment without the need for further documentation, except as the Commission may otherwise require.”⁸⁹ The Act further provides that “[s]uch material facts shall include . . . a detailed description of the injury or other circumstances supporting the claim involved.”⁹⁰ Thus, to determine whether Claimant has satisfied the standards for forced march, internment, and hiding to evade internment in this program, we look to the account of her injuries set forth in the sworn affidavit attached to her claim form.

Forced march: Claimant’s sworn affidavit stating that she was forced to walk with little rest or food for several days over rough terrain from Tenjovista to a camp at Manenggon, Yona in 1944 sets forth all material facts required to establish forced march under the GLRA and thus to establish a prima facie case that she was “transferred from one location to another in Guam on foot by the use or threatened use of physical force” as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II. Claimant’s sworn statements are consistent with the evidence in the record, which shows that thousands of Guamanians were subjected to forced march by Imperial

⁸⁹ Guam World War II Loyalty Recognition Act, Pub. L. 114-328, § 1705(b)(9), 130 Stat. 2642, 2646-47 (2016).

⁹⁰ *See id.*

Japanese forces during this period under the standard that applies in this program. As we note above, on or around July 15, 1944, an officer in the Imperial Japanese army issued a removal order that required all Guamanians to relocate to camps in the interior of the island. These transfers were carried out over long distances on foot, and Japanese soldiers or guards physically attacked stragglers and those who attempted to stop. In the absence of rebutting evidence, her sworn statements averring that she was among the Guamanians who were relocated in this manner at that time are sufficient to establish that she was subjected to forced march within the meaning of the GLRA.

Internment: Claimant's sworn affidavit states that she and her family were held at a camp in Manenggon in 1944 by Japanese guards and details the harsh conditions of their detention. Her affidavit sets forth all material facts required to establish internment and thus makes a prima facie case that she was "taken into actual or constructive custody, whether by forcible seizure and detention or by compliance with any order, however published, directing her to restrict her freedom of movement" as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II. Her sworn account is consistent with the evidence in the record, which shows that thousands of Guamanians were interned by Imperial Japanese forces in camps in July 1944 under the standard that applies in this program. As we note above, on or around July 10, 1944, the occupying force issued an order requiring all Guamanians to relocate to various camps, which were located among other places, at Manenggon, Maimai, Tai, Malojloj, Payesyes, Atate, Asinan, Talofof, and Inarajan. Thousands of Guamanians complied with this order and were confined to camps guarded by Japanese guards until they were liberated by U.S. forces on or around July 31, 1944. In the absence of rebutting evidence, Claimant's sworn affidavit averring that she was among those Guamanians who were taken into custody at

one of these camps is sufficient to establish that she was interned within the meaning of the GLRA.

Hiding to evade internment: Claimant's affidavit states that when the Japanese forces were bombing Sumay, she and her family "went up to Tenjovista to seek safety in the mountains," where they "hid in fear everyday" in the "very dense" jungle. They "stayed there as long as [they] could before [they] had to move again in order to stay hidden from the Japanese." Her affidavit sets forth all of the material facts required to establish hiding to evade internment and thus makes a prima facie case that "she withdrew from observation or kept from sight with the intention of thereby averting a taking or seizure" as a result of the attack and occupation of Guam by Imperial Japanese military forces during World War II. Her sworn account is consistent with the evidence in the record, which shows that many Guamanians went into hiding during the first few months of the occupation under the standard that applies in this program. As we note above, Imperial Japanese forces assumed control of Guam on December 10, 1941, the date the occupation began, and immediately began seizing and detaining Guam residents. During this period, several Guamanians withdrew from observation or kept out of sight for fear of being detained or captured by the occupying force. In the absence of rebutting evidence, Claimant's sworn statements averring that she was among those Guamanians who withdrew from observation and/or kept out of sight during this period to avoid being seized by the occupying force suffice to establish that she hid to evade internment within the meaning of the GLRA.

In sum, this claim meets the standards for forced march, internment, and hiding to evade internment, and Claimant is thus entitled to compensation.

COMPENSATION

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

Our determination in this regard is governed by the express terms of the GLRA. Specifically, the Act provides that a claimant who establishes a meritorious claim as a “compensable Guam victim” is entitled to an award that is based on the classification of his or her injury under the three categories of compensation set forth in Section 1704 of the GLRA.⁹¹ Claimants who establish rape or severe personal injury are entitled to a payment of \$15,000; claimants who establish forced labor or personal injury are entitled to a payment of \$12,000; and claimants who establish forced march, internment, or hiding to evade internment are entitled to a payment of \$10,000.⁹²

Section 1704 also makes clear that a claimant who suffered multiple injuries is limited to a single payment of \$10,000, \$12,000, or \$15,000 that is determined by the category of compensation that applies to his or her most highly remunerated individual injury under the Act. Section 1704(a)(1)(C) establishes that a \$10,000 award for forced march, internment, or hiding to evade internment may be granted only to a compensable Guam victim who is “not described in” sections 1704(a)(1)(A)-(B),⁹³ which refer to those victims who suffered rape, severe personal injury, personal injury, and forced labor.⁹⁴ Similarly, 1704(a)(1)(B) establishes that a \$12,000 award for forced labor or personal injury may be granted only to a compensable Guam victim who is “not described in”

⁹¹ See *id.* § 1704(a)(1)(A)-(C).

⁹² See *id.*

⁹³ *Id.* § 1704(a)(1)(C).

⁹⁴ See *id.* § 1704(c)(2)(A)-(B)

section 1704(a)(1)(A),⁹⁵ which refers to those victims who suffered rape and severe personal injury and who are thus entitled to a payment of \$15,000.⁹⁶ Thus, a claimant who suffered rape or severe personal injury is precluded from receiving a payment for any other injury,⁹⁷ and a claimant whose highest remunerated injury is forced labor or personal injury is barred from receiving compensation for injuries, such as forced march, internment, and hiding to evade internment, that would otherwise merit a payment of \$10,000.⁹⁸ While the GLRA does not specifically address the issue of multiple payments in the case of a claimant who, like Claimant here, suffered multiple injuries within the same category of compensation, we find no basis under the Act for making such an award given the above-noted restrictions limiting claimants to a single payment. Therefore, because Claimant has established that she has suffered forced march, internment, and hiding to evade internment, she is entitled to an award of \$10,000.⁹⁹

Deductions in Payment

Pursuant to the GLRA, the Commission is required to deduct, from a payment made to a compensable Guam victim or survivors of a compensable Guam decedent, amounts paid to such victim or survivors under the Guam Meritorious Claims Act of 1945, Public Law 79-224,¹⁰⁰ before the date of the enactment of the GLRA.¹⁰¹ Claimant has asserted that she did not receive compensation under the Guam Meritorious Claims Act of 1945. Further, we have no evidence that the United States Government has provided her any

⁹⁵ *Id.* § 1704(a)(1)(B).

⁹⁶ *See id.* § 1704(c)(2)(A).

⁹⁷ *See id.* § 1704(a)(1)(B)-(C).

⁹⁸ *See id.* § 1704(a)(1)(C).

⁹⁹ *See id.*

¹⁰⁰ *See supra*, n.2.

¹⁰¹ *See* Guam World War II Loyalty Recognition Act § 1705(b)(4).

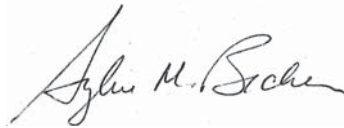
compensation under the 1945 Act. Therefore, no deduction in payment will be made from Claimant's award.

In summary, Claimant is entitled to an award of \$10,000. This amount constitutes the entirety of the compensation to which Claimant is entitled under the GLRA.¹⁰² The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under Section 1705 of the GLRA.¹⁰³

AWARD

Claimant is entitled to an award in the amount of \$10,000.

Dated at Washington, DC, July 10, 2018
and entered as the Proposed Decision
of the Commission.



Sylvia M. Becker, Commissioner



Patrick Hovakimian, 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), 510.3 (2017).

¹⁰² Under the GLRA, interest is not available on payments made by the Commission under Section 1704. *Id.* § 1705(b)(5).

¹⁰³ *Id.* § 1705(b)(8).