

**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)
5 U.S.C. §552(b)(6)

Against the Republic of Iraq

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Claim No. IRQ-II-259

Decision No. IRQ-II-336

Counsel for Claimant:

Daniel Wolf, Esq.
Law Office of Daniel Wolf

PROPOSED DECISION

Claimant Estate brings this claim against the Republic of Iraq (“Iraq”) alleging that Iraq held the decedent, James Lemuel Worthington, hostage in violation of international law in August 1990, and that Mr. Worthington died while in Iraqi custody. Because the Estate has established that Iraq held Mr. Worthington hostage for 27 days, it is entitled to an award of \$285,000. In addition, because Claimant Estate has established that Mr. Worthington died while being held hostage by Iraq, it is entitled to a separate award of \$3,000,000.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Worthington was living in Kuwait when Iraq invaded the country on August 2, 1990. It asserts that, beginning with the invasion and for approximately four weeks thereafter, Mr. Worthington was first confined to his hotel in

Kuwait City, and then taken by Iraqi soldiers to a military facility in Jahra, Kuwait, after which he and his fellow captives were taken by bus to Baghdad, and finally, transported to an industrial facility in Basra, Iraq. Mr. Worthington died in captivity on August 28, 1990.

Although neither Mr. Worthington nor Claimant Estate was among them, many of the U.S. nationals in Iraq and Kuwait at the time of the 1990-91 Iraqi occupation of Kuwait sued Iraq (and others) in federal court for, among other things, hostage-taking.¹ Those cases were pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement.² The Agreement, which entered into force in May 2011, covered a number of personal injury and death claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004, including claims of personal injury or death caused by hostage-taking.³ Exercising its authority to distribute money from the settlement funds, the U.S. Department of State provided compensation to numerous individuals whose claims were covered by the Agreement, including some whom Iraq had allegedly taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait.

Under the International Claims Settlement Act of 1949 ("ICSA"), the Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission.⁴ The Secretary has delegated that authority to the State Department's Legal Adviser, who, by letter dated October 7, 2014, referred three categories of claims to

¹ See, e.g., *Hill v. Republic of Iraq*, 175 F. Supp. 2d 36 (D.D.C. 2001); *Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (D.D.C. 2006).

² 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").

³ See *id.* Art. III(1)(a)(ii).

⁴ See 22 U.S.C. § 1623(a)(1)(C) (2012).

this Commission for adjudication and certification.⁵ This was the State Department's second referral of claims to the Commission under the Claims Settlement Agreement, the first having been by letter dated November 14, 2012 ("2012 Referral" or "November 2012 Referral").⁶

Two categories of claims from the 2014 Referral are applicable here. One category, known as Category A, consists of

claims by U.S. nationals for hostage-taking¹ by Iraq² in violation of international law prior to October 7, 2004, provided that the claimant was not a plaintiff in pending litigation against Iraq for hostage taking³ at the time of the entry into force of the Claims Settlement Agreement and has not received compensation under the Claims Settlement Agreement from the U.S. Department of State. . . .

¹ For purposes of this referral, hostage-taking would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

² 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.

³ For purposes of this category, pending litigation against Iraq for hostage taking refers to the following matters: *Acree v. Iraq*, D.D.C. 02-cv-00632 and 06-cv-00723, *Hill v. Iraq*, D.D.C. 99-cv-03346, *Vine v. Iraq*, D.D.C. 01-cv-02674; *Seyam (Islamic Society of Wichita) v. Iraq*, D.D.C. 03-cv-00888; *Simon v. Iraq*, D.D.C. 03-cv-00691.

⁵ See Letter dated October 7, 2014, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission ("2014 Referral" or "October 2014 Referral").

⁶ Although the November 2012 Referral involved claims of U.S. nationals who were held hostage or unlawfully detained by Iraq, it did not involve hostage-taking claims *per se*. Rather, it consisted of certain claimants who had *already received* compensation under the Claims Settlement Agreement from the State Department for their hostage-taking claims, and it authorized the Commission to award additional compensation to those claimants, provided they could show, among other things, that they suffered a "serious personal injury" during their detention. The 2012 Referral expressly noted that 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." 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, at ¶3 n.3.

2014 Referral at ¶ 3. The other category of claims, known as Category B, consists of claims of U.S. nationals for death while being held hostage by Iraq in violation of international law prior to October 7, 2004.

2014 Referral at ¶ 4.

On October 23, 2014, the Commission published notice in the *Federal Register* announcing the commencement of the second Iraq Claims Program pursuant to the ICSA and the 2014 Referral.⁷

On October 23, 2015, the Commission received from Claimant Estate two completed Statement of Claim forms seeking compensation under Category A and Category B of the 2014 Referral, together with exhibits supporting the elements of its claims.

DISCUSSION

Standing

As an initial matter, the Commission has reviewed the Successor Letters Testamentary, issued on December 22, 2017, by the Ulster County Surrogate's Court, State of New York, appointing Maggie Worthington-Tyndorf successor executor of Mr. Worthington's estate. Based on this review, the Commission finds that the ESTATE OF JAMES LEMUEL WORTHINGTON, DECEASED; MAGGIE TYNDORF, EXECUTRIX, is the proper claimant in this claim.

Jurisdiction

This Commission's authority to hear claims is limited to the category of claims referred to it by the United States Department of State.⁸ The Commission's jurisdiction

⁷ *Program for Adjudication: Commencement of Claims Program*, 79 Fed. Reg. 63,439 (Oct. 23, 2014).

⁸ See 22 U.S.C. § 1623(a)(1)(C).

under the “Category A” paragraph of the 2014 Referral is limited to claims for hostage-taking of (1) “U.S. nationals,” provided that the claimant (2) was not a plaintiff in any litigation against Iraq for hostage taking pending on May 22, 2011 (the “Pending Litigation”), and (3) has not received compensation under the Claims Settlement Agreement from the Department of State. 2014 Referral at ¶ 3. The Commission’s jurisdiction under the “Category B” paragraph is also limited to claims of U.S. nationals, but has no other jurisdictional requirements.

Nationality

This claims program is limited to claims of “U.S. nationals.” Here, that means a claimant must have been a national of the United States when the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force.⁹ Because the decedent, Mr. Worthington, died before May 22, 2011, his claims passed from him to his estate prior to May 22, 2011. In such circumstances, the nationality of the beneficiaries of the estate, as well as of the injured party, must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.¹⁰ Thus, to satisfy the U.S. nationality requirement, Claimant Estate must show that Mr. Worthington was a U.S. national from the time of the alleged hostage-taking until he died and that the Estate’s beneficiaries were U.S. nationals from Mr. Worthington’s death until May 22, 2011.

Claimant Estate satisfies the nationality requirement. It has provided evidence sufficient to show that the hostage-taking claim was held continuously by a U.S. national

⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 4-5 (2016).

¹⁰ See, e.g., *Claim of ESTATE OF ELIZABETH L. ROOT, DECEASED*, Claim No. LIB-II-040, Decision No. LIB-II-026 (2011); *Claim of THE ESTATE OF JOSEPH KREN, DECEASED*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO*, Claim No. ALB-338, Decision No. ALB-321 (2008).

from August 2, 1990, which is the date that the alleged hostage-taking began, through the effective date of the Claims Settlement Agreement, and, by the same token, that the death claim was held continuously by a U.S. national through that same date from August 28, 1990, the date of the decedent's death.

From August 2, 1990, to August 28, 1990, the hostage claim was held by the decedent; the death claim was held by the decedent at the time the claim arose at the time of his death.¹¹ Claimant Estate has submitted a copy of the decedent's U.S. birth certificate, as well as a copy of his Report of the Death of an American Citizen Abroad, which show that he was a U.S. national at the time of the alleged hostage-taking and his subsequent death (August 1990). This evidence and other evidence in the record indicates that the decedent remained a U.S. national from the initial date of his alleged hostage-taking and continuously thereafter until the date of his death (August 28, 1990).

From August 28, 1990, to May 22, 2011, the hostage-taking claim, as well as the death claim, were held by the decedent's widow, Katharine Worthington, who was identified as the sole beneficiary of the decedent's estate in the decedent's Last Will and Testament, dated September 12, 1983, which was admitted to probate on October 4, 1990, by a judge of the Ulster County Surrogate's Court. Claimant Estate has submitted Katharine Worthington's U.S. birth certificate, as well as a copy of her Voter Information Registration Report, showing her voter registration from August 11, 1976, to July 30, 2014, when the registrar was notified of her death on June 17, 2014. This evidence establishes that the decedent's widow was a U.S. national from August 28, 1990, the date of the

¹¹ In death claims brought before the Commission by decedents' estates, the nationality of both the decedent and the beneficiaries of his or her estate is considered in determining whether the claim meets the requirement of continuous U.S. nationality, despite the fact that the decedent's loss is perfected at the moment of death. *See* Claim No. LIB-II-162, Decision No. LIB-II-066 (2011) (Proposed Decision).

decedent's death, through May 22, 2011, the effective date of the Claims Settlement Agreement. Thus, Claimant Estate has satisfied this element of its claims.

No Pending Litigation

Additionally, Category A states that the claimant must not have been a plaintiff in any of the so-called Pending Litigation cases at the time of the entry into force of the Claims Settlement Agreement.¹² Footnote 3 of the 2014 Referral specifically lists the Pending Litigation cases for purposes of the Referral. Claimant Estate, through its executrix, has averred under oath in an October 2015 declaration submitted with the Statement of Claim forms, and the pleadings in the cases cited in footnote 3 confirm, that neither Mr. Worthington nor his estate was a plaintiff in any of those Pending Litigation cases. The Commission thus finds that Claimant Estate has also satisfied this element of its claim.

*No Compensation under the Claims Settlement Agreement
from the Department of State*

Claimant Estate also satisfies the final jurisdictional requirement under Category A. Maggie Tyndorf, the successor executrix of Mr. Worthington's estate, has stated that neither Mr. Worthington nor his estate has "ever receive[d] any compensation under the [Claims Settlement Agreement] from the Department of State." Further, we have no evidence that the State Department has provided Mr. Worthington or his estate any compensation under the Claims Settlement Agreement. Therefore, Claimant Estate meets this element of its claim.

In summary, Claimant Estate's claims under Categories A and B are both within the Commission's jurisdiction pursuant to the 2014 Referral and are entitled to adjudication on the merits.

¹² The Agreement entered into force on May 22, 2011. See Claims Settlement Agreement, art. IX.

Merits

Factual Allegations

Claimant Estate asserts that Iraq held Mr. Worthington hostage from August 2, 1990, until August 28, 1990, a total of 27 days, and that he died while in Iraqi custody. It states that Mr. Worthington was working as a private contractor for a Kuwaiti bank and living at the Kuwait Hilton Hotel when Iraq invaded Kuwait on August 2, 1990. According to Claimant Estate, the morning of the invasion, the U.S. Embassy called Mr. Worthington, “informing him of the Iraqi invasion and instructing him not to report to work.” A few hours later, the hotel management advised him to relocate to the basement “for protection, as Iraqi tanks were surrounding the U.S. Embassy across the street.”

Claimant Estate states that Mr. Worthington remained at the hotel until August 18, 1990, when he and several other western nationals were arrested by Iraqi soldiers and “forcibly relocated to the Kuwait Military Club in Jahra.” They were held there for one night before being transported to a nearby electrical station where they remained until August 22, 1990, after which they were placed on buses and driven to Baghdad. Then, on August 25, 1990, Mr. Worthington was “relocated to a petrochemical facility in Basra,” where, according Claimant Estate, he was held as a human shield. Mr. Worthington remained at this site until he died “suddenly in bed of coronary thrombosis[.]” on August 28, 1990. Ms. Tyndorff, the Estate’s executrix, learned of her father’s death the next day, and his remains were returned to the United States around the second week of September 1990.

Supporting Evidence

Claimant Estate has supported its claim with, among other things, two sworn statements from Maggie Tyndorf, the Estate’s successor executrix, dated October 14, 2015,

and March 2, 2018, respectively, describing Mr. Worthington's experience as learned by Ms. Tyndorf after her father's death; a copy of Mr. Worthington's Report of the Death of an American Citizen Abroad, dated September 19, 1990, noting the cause of death on August 28, 1990, as "coronary thrombosis"; a copy of an August 30, 1990 autopsy report from the Ibn Al-Bitar Hospital in Baghdad, verifying the cause of death as "coronary thrombosis"; and a copy of a news article published shortly after Mr. Worthington's death, verifying the details of his captivity and his death from a heart attack.¹³

Claimant Estate has also submitted a number of documents that provide background about the broader geopolitical situation during the First Gulf War in 1990-91, including some that relate specifically to the circumstances faced by U.S. nationals in Iraq and Kuwait at the time. These documents include statements from U.S. and Iraqi officials, resolutions of the United Nations Security Council, newspaper articles, a report from Amnesty International on human rights violations committed by Iraq in 1990, unclassified cables and a memorandum from the U.S. Department of State, and affidavits submitted in a lawsuit brought by other U.S. nationals who were also in Kuwait or Iraq during the First Gulf War.

Legal Standards

To make out a substantive claim under Category A of the 2014 Referral, a claimant must show that (1) Iraq was engaged in an armed conflict and (2) during that conflict, Iraq took the claimant hostage.¹⁴ The Commission has previously held that, to establish a

¹³ The article indicates that Mr. Worthington died on August 27, 1990, rather than August 28, 1990, the date reflected in the U.S. State Department Report and Ms. Tyndorf's sworn statements. The different dates, however, are plausibly consistent in light of the seven-hour time difference between the United States and Kuwait.

¹⁴ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16 (2016). In claims such as this that involve an estate claimant, this applies to the claimant's decedent.

hostage-taking claim, a claimant must show that Iraq (a) seized or detained the claimant and (b) threatened the claimant with death, injury or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for the claimant's release.¹⁵ A claimant can establish the first element of this standard by showing that the Iraqi government confined the claimant (or, in this case, the Claimant Estate's decedent) to a particular location or locations within Iraq or Kuwait, or prohibited the claimant from leaving Iraq and/or Kuwait.¹⁶

The substantive requirements of hostage-taking under Category A also apply to claims under Category B, which consists of "claims of U.S. nationals for death while being held hostage by Iraq in violation of international law prior to October 7, 2004." 2014 Referral at ¶ 4. By its plain terms, the standard for hostage-taking is incorporated into Category B. To make out a substantive claim under Category B of the 2014 Referral, the only additional requirement is that the claimant show documentary proof of death "while being held" hostage.

Application of Standard to this Claim

Hostage-Taking (Category A)

(1) Armed Conflict: Claimant Estate alleges that Iraq took Mr. Worthington hostage in Kuwait on August 2, 1990 and held him hostage for 27 days, until August 28, 1990, when he died in captivity. In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission held that during this entire period, Iraq

¹⁵ See *id.* at 17-20.

¹⁶ See *id.* at 17.

was engaged in an armed conflict with Kuwait.¹⁷ Thus, Claimant Estate satisfies this element of the standard.

(2) Hostage-taking: To satisfy the hostage-taking requirement of Category A of the 2014 Referral, Claimant Estate must show that Iraq (a) seized or detained the decedent and (b) threatened him with death, injury or continued detention (c) in order to compel a third party, such as the United States government, to do or abstain from doing any act as an explicit or implicit condition for her release. Claimant Estate satisfies this standard for the 27-day period from August 2, 1990 to August 28, 1990.

(a) Detention/deprivation of freedom: For purposes of analyzing the Estate's allegations of Mr. Worthington having been detained, his time in Kuwait and Iraq following the Iraqi invasion can be divided into two periods: (i) between the Iraqi invasion on August 2, 1990 and the Iraqi government's formal closing of the borders on August 9, 1990; (ii) from that August 9th formal closing of the borders until Mr. Worthington's death on August 28, 1990.¹⁸

From August 2, 1990, until Iraq formally closed its borders to foreign nationals on August 9, 1990, Iraq confined Mr. Worthington to his hotel in Kuwait City. The Commission has previously determined that Iraq detained U.S. nationals who were in Kuwait and/or Iraq during this period by threatening all U.S. nationals with immediate seizure and forcible detention.¹⁹ Although some foreign nationals did manage to leave Kuwait and/or Iraq during this period, Mr. Worthington could not reasonably be expected

¹⁷ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 16-17.

¹⁸ See *id.* at 20-21. While Claimant Estate alleges that Mr. Worthington was physically seized and held by force by Iraq, we need not decide that issue: as explained below, his presence in Kuwait and/or Iraq during this time is alone sufficient to establish that he was detained under the standard that applies here. See Claim No. IRQ-II-109, Decision No. IRQ-II-142, at 8.

¹⁹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21; Claim No. IRQ-II-281, Decision No. IRQ-II-139, at 9-10.

to have escaped.²⁰ Iraqi authorities were forcibly detaining foreign nationals (including U.S. nationals) in Kuwait, relocating many to Baghdad against their will.²¹ Mr. Worthington understandably had, as the United Nations Compensation Commission has put it, a “manifestly well-founded fear” of being killed or forcibly detained if he had made any attempt to leave the country.²² The Commission has previously recognized that for the purposes of the legal standard applicable here, putting a claimant in this situation in effect amounts to detention.²³ Iraq thus detained Mr. Worthington from August 2, 1990 to August 9, 1990.

From August 9, 1990 until he died on August 28, 1990, the Iraqi government confined Mr. Worthington to Kuwait and Iraq, preventing him from leaving by the threat of force. As the Commission has previously held, starting on August 9, 1990, the Iraqi government formally closed all borders under its control, forcibly prohibiting U.S. nationals from leaving.²⁴ As of that date, Iraq prohibited Mr. Worthington from leaving Kuwait and Iraq, effectively detaining him within the borders of those countries.²⁵ This formal policy of prohibiting U.S. nationals from leaving Kuwait and Iraq lasted well beyond the date of Mr. Worthington’s death while in captivity.²⁶

In sum, Iraq detained Mr. Worthington from August 2, 1990, until August 28, 1990.

(b) Threat: In its first decision awarding compensation for hostage-taking under the 2014 Referral, the Commission determined that the Iraqi government

²⁰ See Claim No. IRQ-II-281, Decision No. IRQ-II- 139, at 9-10; Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²¹ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²² *Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US \$100,000 (Category “C” Claims)*, UN Doc. S/AC.26/1994/3 (1994), at 93.

²³ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 21.

²⁴ See *id.* at 7, 21-22.

²⁵ See *id.* at 22.

²⁶ See *id.* at 12.

threatened U.S. nationals in Kuwait and Iraq numerous times with continued detention.²⁷ Both Iraqi President Saddam Hussein and the Speaker of Iraq's National Assembly Saadi Mahdi made clear that American nationals (as well as those from numerous other countries) would not be permitted to leave.²⁸ Claimant Estate has thus established that Iraq threatened to continue to detain Mr. Worthington.

(c) Third party coercion: The Commission has previously held that Iraq detained all U.S. nationals in Kuwait or Iraq at the time and threatened them with continued detention in order to compel the United States government to act in certain ways as an explicit and/or implicit condition for their release.²⁹ Iraq itself stated that it sought three things from the United States government before it would release the detained U.S. nationals; it wanted the United States (i) not to attack Iraq, (ii) to withdraw its troops from Saudi Arabia; and/or (iii) to end the economic embargo imposed on Iraq.³⁰ Indeed, at the time, the U.S. government itself understood Iraq's actions to be hostage-taking.³¹

For the foregoing reasons, the Commission therefore finds that Iraq held Mr. Worthington hostage in violation of international law for a period of 27 days.

Death While Being Held Hostage (Category B)

To satisfy the requirements of Category B of the 2014 Referral, Claimant Estate must establish that: (1) the decedent was held hostage by Iraq in violation of international

²⁷ See *id.* at 23.

²⁸ See *id.*

²⁹ See *id.*

³⁰ See *id.* at 23-24.

³¹ See George H. W. Bush, "These Innocent People . . . Are, In Fact, Hostages" in U.S. Dep't of State, *American Foreign Policy Current Documents 1990* 484 (Sherrill Brown Wells ed. 1991); see also 2014 Referral at ¶ 3; cf. United Nations S.C. Res. 674 (Oct. 29, 1990) (noting "actions by . . . Iraq authorities and occupying forces to take third-State nationals hostage" and demanding that Iraq "cease and desist" this practice).

law prior to October 7, 2004; and (2) the decedent died while being held hostage. Claimant Estate satisfies this standard.

(1) Hostage-Taking: As determined above, Claimant Estate has submitted evidence sufficient to establish that Mr. Worthington was held hostage by Iraq in violation of international law between the dates alleged. Claimant Estate therefore satisfies this element of its Category B claim.

(2) Evidence of Death While Being Held Hostage: Claimant Estate has submitted a copy of a Report of the Death of an American Citizen Abroad, dated September 19, 1990, indicating that Mr. Worthington died on August 28, 1990. The autopsy report, completed by a doctor at the Ibn Al-Bitar Hospital in Baghdad, does not specify the date of Mr. Worthington's death; however, the report was completed on August 30, 1990 two days after Mr. Worthington died. Based on this evidence, the Commission determines that Claimant Estate has proven this element of its claim.

In sum, this claim meets the standard for hostage-taking and death while being held hostage within the meaning of the 2014 Referral. Iraq held Mr. Worthington hostage in violation of international law for a period of 27 days, and Mr. Worthington died while being held hostage in violation of international law. His Estate is thus entitled to compensation as described below.

COMPENSATION

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

In its first decision awarding compensation for hostage-taking under Category A of the 2014 Referral, the Commission held that successful claimants should be awarded compensation in the amount of \$150,000 plus an additional \$5,000 for each day the

claimant was in captivity.³² Therefore, for the 27 days Iraq held Mr. Worthington hostage, his Estate is entitled to an award of \$285,000, which is \$150,000 plus (27 x \$5,000).

The appropriate amount of compensation under Category B is an issue of first impression under the 2014 Referral. The State Department's Legal Adviser has provided some guidance. In the 2014 Referral, the Legal Adviser states that "[i]f the Commission decides to award compensation for these claims, we recommend that the Commission award up to but no more than \$5 million per claim."³³ In order to determine whether this recommendation is appropriate for this category of claims, and, if so, what amount to award successful claimants under Category B, the Commission looks first to the provisions of the applicable claims agreement—in this case, the U.S.-Iraq Claims Settlement Agreement.³⁴

The Claims Settlement Agreement itself provides no guidance on this issue; therefore, the Commission must look to pertinent sources of international law to determine the appropriate amount of compensation. In so doing, the Commission has carefully reviewed the decisions of international tribunals and commissions that have adjudicated similar claims, as well as the Commission's own precedent. Of course, as the Commission has stated previously, "each claims settlement is based on a unique set of circumstances, which may in turn lead to breaks with past practices—though without setting a precedent for the future."³⁵

³² See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24-26.

³³ 2014 Referral, *supra* note 5, ¶ 4.

³⁴ See 22 U.S.C. § 1623(a)(2) (2012).

³⁵ Claim No. LIB-I-001, Decision No. LIB-I-001, at 10 (2009); *see also* Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 24 (2016) (noting, in determining appropriate compensation under Category A of the 2014 Referral, that the Commission does so "[w]ithout setting a precedent for other categories or other claims programs . . .").

Under international law, damages for wrongful death have traditionally been based on economic harm, usually the loss of contributions to the decedent’s survivors.³⁶ One frequently-cited set of criteria was set forth by the U.S.-German Mixed Claims Commission in the *Lusitania* cases,³⁷ which based its compensation in death claims on the probable contributions to the claimants had the decedent not been killed, the “pecuniary value” of the loss of the decedent’s contributions to the claimants, and “reasonable compensation for such mental suffering or shock” suffered by the claimants.³⁸ Using these criteria, the commission issued awards ranging from \$36,626 to \$2,063,067, adjusted for inflation.³⁹ More broadly, Marjorie Whiteman, in *Damages in International Law*, noted that, as of 1937, the average award for death claims in cases involving, as in this claim, widows and children was \$339,000, adjusted for inflation.⁴⁰

More recent decisions also reflect award amounts within this range. For example, the United Nations Compensation Commission (UNCC),⁴¹ applying similar criteria has also issued awards in death claims of up to \$100,000 for loss of support, with an additional \$30,000 per family for accompanying mental pain and anguish.⁴²

³⁶ See Dinah Shelton, *Remedies in International Human Rights Law* 343 (3d ed. 2015); I Marjorie M. Whiteman, *Damages in International Law* 660 (1937); Christine Gray, *Judicial Remedies in International Law* 37-38 (1987).

³⁷ 7 R. Int’l Arb. Awards 32 (Mixed Claims Comm’n 1923). The cases involved the deaths of American citizens aboard a British ocean liner destroyed by a German submarine following the outbreak of the First World War. *See id.* at 33.

³⁸ *Id.* at 35.

³⁹ The actual awards ranged from \$2500 to \$140,000. Adjusted amounts for 2018 were calculated using the Department of Labor’s Consumer Price Index (CPI) Inflation Calendar, available at https://www.bls.gov/data/inflation_calculator.htm.

⁴⁰ *See Whiteman, supra* note 36, at 794, 803. The actual average amount was approximately \$19,650.

⁴¹ The UNCC was created in 1991 as a subsidiary organ of the United Nations Security Council to process claims and pay compensation for losses and damage suffered as a direct result of Iraq’s 1990–1991 invasion and occupation of Kuwait. *See generally* <https://uncc.ch/home>.

⁴² Specifically, the UNCC issued awards in death claims ranging from \$10,000 for the parent-claimants of deceased children, to \$100,000 for the spouse of a decedent younger than 55, plus \$15,000 per dependent child, for loss of support. *See United Nations Comp. Comm’n Governing Council, Report and Recommendations Made by the Panel of Commissioners Concerning Part One of the First Instalment of Individual Claims for Damages Above US\$100,000 (Category “D” Claims)*, ¶¶ 208, 223, S/AC.26/1998/1, Feb. 3, 1998. Further awards of up to \$30,000 for a family unit, plus an additional \$5000 per family unit if

This Commission itself has issued awards in death claims in at least three of its past programs. For example, in its Cuba Claims Program, the Commission awarded \$20,000 (approximately \$425,400 in present-day value) to the daughter of an American executed by the Cuban government based on “expected contributions” to the daughter until she reached the age of majority.⁴³ In another claim in the same program, the Commission awarded a total of \$480,000 to a decedent’s widow and her four children (approximately \$3,000,000 in present day value), also based on expected contributions.⁴⁴ In the Italian Claims Program, the Commission assessed losses in one death claim at \$7,500 (approximately \$65,000 in present-day value), divided among the decedent’s three children, although the basis for the award was not explained in the decision.⁴⁵

In its General War Claims program, the Commission adopted a different approach to death claims, employing a methodology not based on economic harm. The Commission noted that the claims at issue were not cognizable under international law, and that Congress, in authorizing the program, indicated that awards for such claims would be “clearly gratuities.”⁴⁶ The Commission went on to state:

The [authorizing statute] constitutes remedial legislation which seeks to accomplish a humane purpose. To hold that one life is more valuable than another on the basis of rules that govern tort actions would serve only to defeat that purpose. The circumstances demand that the Commission fix limitations on awards granted for death under . . . the Act.⁴⁷

the claimants witnessed events leading up to the death, were made for mental pain and anguish. *See id.* ¶¶ 233-234.

⁴³ *See Claim of JENNIE M. FULLER, ET AL.*, Claim No. CU-2803, Decision No. CU-6199 (1971). Although the decedent’s parents also filed a claim for the death of their son, they received no compensation for this aspect of their claim. The Commission does not explain the denial; however, the most likely reason is that they suffered no pecuniary harm, i.e. they had no “expected contributions” for which to claim.

⁴⁴ *See Claim of DOROTHY S. MCCARTHY*, Claim No. CU-0697, Decision No. CU-6244 (1971). The losses for the decedent’s widow were measured based on her husband’s life expectancy, and for the children based on the contributions until they reached the age of majority. *See id.* at 8-9.

⁴⁵ *See Claim of ALESSANDRA BORRIONE LEONI*, Claim No. IT-10,833, Decision No. IT-879 (1958).

⁴⁶ *Claim of CLARA EMMA TINNEY*, Claim No. W-1276, Decision No. W-8, at 6 (1964) (Proposed Decision) (citing H.R. Rep. No. 2035, at 15 (1962)).

⁴⁷ *Id.*

After citing a handful of domestic statutes governing compensation for disability and death, the Commission fixed the award for death claims in that program at \$10,000,⁴⁸ which it later increased to \$25,000 (approximately \$198,000 in present-day value).⁴⁹

The Commission issued awards in death claims more recently in its second Libya Claims Program.⁵⁰ Under Category E of the Second Libya Referral, the Commission determined that a fixed award of \$10 million—the amount recommended by the State Department—was the appropriate level of compensation for successful wrongful death claims in that program.⁵¹

Based on the foregoing, the Commission concludes that its approach in the General War Claims and Libya Claims Programs—adopting a fixed sum award regardless of individual economic harm—would be appropriate for all claims under Category B. For one, the Settlement Agreement, by its very nature, was simply a *settlement* of claims, and as such does not purport to provide full payment to the United States for the claims of its nationals.⁵² Moreover, the Commission’s practice under both this Referral and the 2012 Referral, consistent with the State Department’s recommendations and its own distribution of compensation under the Agreement,⁵³ has been to award fixed amounts of compensation

⁴⁸ See *id.* at 6-7.

⁴⁹ See *Claim of EDWARD T. WILKES & DANIEL WILKES*, Claim No. W-10922, et al, Decision No. W-3576 (1965) (Final Decision).

⁵⁰ The second Libya Claims Program included six categories of claims falling within the scope of a 2008 U.S.-Libya Claims Settlement Agreement, which were referred to the Commission for adjudication and certification by the State Department’s Legal Adviser in January 2009. Category E of that referral consisted of claims of U.S. nationals for “wrongful death or physical injury” resulting from one of several listed terrorist incidents. See *Letter dated January 15, 2009, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Foreign Claims Settlement Commission*, at ¶7.

⁵¹ See *Claim of ESTATE OF VIRGEN MILAGROS FLORES, DECEASED*, Claim No. LIB-II-065, Decision No. LIB-II-043, at 17 (2011).

⁵² See *cf.* Claim No. LIB-II-046, Decision No. LIB-II-017, at 5 (2011) (Final Decision) (noting that the U.S.-Libya settlement agreement was “a settlement of claims for just compensation . . . and never purported to be payment in full[.]” and that the Claimant’s “demand that he be compensated for each count in his underlying federal court litigation against Libya is inconsistent with the very nature of a settlement as a just compromise.”).

⁵³ See Claim No. IRQ-II-161, Decision No. IRQ-II-003, at 25 (2016).

to all similarly situated claimants. Therefore, to ensure just and equitable treatment among all claimants, the Commission will award a fixed level of compensation for all death claims under Category B.

The Commission has previously recognized the difficulty in “assessing the value of intangible, non-economic damages”⁵⁴ Further, as Whiteman notes, “[n]o amount of money can, of course, atone for the death of a person.”⁵⁵ For this reason, determining an appropriate amount of compensation for a death claim, particularly when not based purely on economic loss, can be a difficult exercise. That being said, in light of awards made by international tribunals and commissions which have adjudicated similar claims, as well as the Commission’s own precedent, and in light of the State Department’s recommendation of an award “up to but no more” than \$5 million and the overall circumstances of the U.S.-Iraq Claims Settlement Agreement, the Commission determines that the appropriate amount of compensation for claims under Category B is \$3 million. The Commission notes that this is far greater than the amount generally awarded under international law for wrongful death or that has been awarded in the Commission’s past programs for death claims, apart from the Libya Claims Programs discussed above. Nevertheless, we believe this represents fair compensation in light of the awards made in other categories under the 2014 Referral, as well as the awards made to personal injury victims under the 2012 Referral.

In a brief filed with this claim, Claimant Estate argues that it should be awarded \$5 million *i.e.*, the maximum award amount recommended by the State Department for valid death claims under Category B. Claimant Estate first notes that in the Libya Claims

⁵⁴ *Id.* at 24 n.87 (citing, *inter alia*, Claim No. LIB-II-012, Decision No. LIB-II-006, at 10 (Proposed Decision); Claim No. IRQ-I-022, Decision No. IRQ-I-008, at 15 (Proposed Decision)).

⁵⁵ Whiteman, *supra* note 44, at 705.

Program the Commission awarded the fixed sums of \$10 million for death claims and \$3 million for physical injury claims. According to Claimant Estate, because the Commission purportedly determined that a “\$10 to \$3 ratio” of “death to physical injury” was the “appropriate award level for wrongful death claims” in the Libya Claims Program, the same “\$10 to \$3” ratio should also inform the Commission’s determination here. Claimant Estate thus argues that an award of \$5 million for death is appropriate here, insofar as the Commission adopted the State Department’s recommendation of a maximum of \$1.5 million for serious personal injuries in the first Iraq Claims Program.⁵⁶

We find Claimant Estate’s comparison of between the Libya and Iraq programs to be inapposite. For one, the Estate’s argument mistakenly analogizes the “physical injury” claims under the first and second Libya Claims Programs to the “serious personal injury” claims under the first Iraq Claims program.⁵⁷ In the Libya Claims Program, the physical injury claims for which \$3 million were awarded ranged from relatively minor injuries to more significant injuries requiring significant medical treatment.⁵⁸ Claims for injuries that were substantially greater were considered “special circumstance” claims eligible for additional compensation under Category D in the second and third Libya Claims

⁵⁶ See, e.g., Claim No. IRQ-I-001, Decision No. IRQ-I-005 (2015) (awarding claimant \$1.5 million for “serious personal injuries”). Claimant Estate calculates the \$5 million award amount by effectively applying a factor of 3.33 (*i.e.*, 10 divided by 3) to the maximum \$1.5 million amount awarded in the Commission’s first Iraq Claims Program for serious personal injuries.

⁵⁷ As noted above, the second Libya Claims Program included a category of claims (Category E) that consisted of claims of U.S. nationals for “wrongful death or physical injury.” The first Libya Claims Program also included a category of claims for “physical injury.” See *Letter dated December 11, 2008, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Foreign Claims Settlement Commission*, at ¶3.

⁵⁸ See, e.g., Claim No. LIB-II-193, Decision No. LIB-II-148 (2013) (Order and Amended Final Decision) (awarding \$3 million to a claimant who broke her wrist as a 6-year-old child and wore a cast for a brief period, but has never sought follow-up treatment and has suffered little to no residual effects from her injury); Claim No. LIB-I-038, Decision No. LIB-I-015 (2011) (awarding \$3 million to a claimant who was shot in the head at point-blank range and thrown twice from an airplane doorway onto the tarmac, and who required four days’ hospitalization to treat his wounds and monitor for brain injuries).

Programs.⁵⁹ The highest such award was for \$5 million, and involved a claimant who lost both legs, underwent months of inpatient hospitalization, and was left with significant scarring and disfigurement.⁶⁰ Like the Libya Category D claims, the claims in the first Iraq Claims Program for which a maximum of \$1.5 million was awarded also constituted “special circumstance” claims. Such awards were made *in addition* to awards that the State Department had already made to the claimants for their hostage experience in Iraq (measured by a fixed sum plus a per-diem amount), and encompassed claims for “serious personal injuries” resulting from acts such as sexual assault, coercive interrogation, mock execution, or aggravated physical assault. In this light, we reject Claimant Estate’s assertion that the Commission applied any sort of “\$10 to \$3 ratio” in determining award amounts for death and personal injury claims in the Libya Claims Program.⁶¹

The Commission also emphasizes that the \$10 million awards for wrongful death in the second Libya Claims program were based on the amounts paid in a private settlement for deaths caused by the bombing of Pan Am Flight 103.⁶² There is no indication that either this amount or the ratio to physical injury awards was based on legal principles that

⁵⁹ Specifically, Category D of the second Libya Claims program consisted of claims for *additional* compensation, over and above amounts previously awarded for physical injury, where the Commission determined, *inter alia*, that the severity of the injury was a “special circumstance” warranting additional compensation. See Letter dated January 15, 2009, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Foreign Claims Settlement Commission, at ¶6. An identical category, also Category D, was included in the third Libya Claims Program. See Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission, at ¶6.

⁶⁰ See Claim No. LIB-III-021, Decision No. LIB-III-016 (2016) (Final Decision).

⁶¹ . Indeed, to the extent any such comparison were appropriate here , given the similar nature of the claims categories and the fact that, in both cases, the Commission was making awards in addition to fixed amounts already paid to the claimants for less serious injuries, the “special circumstances” claims awarded up to \$1.5 million under the first Iraq claims Program are more analogous to the \$5 million “special circumstances” awards in the Libya Claims Programs than to the initial \$3 million physical injury awards therein,. Applying Claimant Estate’s ratio approach accordingly would result in a recommended award amount of \$3 million for death claims under Category B—the very amount we determined above. Specifically, a “\$10 to \$5” ratio would result in a factor of 2.0 (*i.e.*, 10 divided by 5) being applied to the maximum \$1.5 million awards in the Commission’s first Iraq Claims Program, or \$3 million.

⁶² See Letter from John D. Negroponte, Deputy Secretary of State, to the Honorable Mitch McConnell, United States Senate (July 28, 2008).

should guide the Commission here. Indeed, by all indications the \$10 million recommendation for wrongful death awards in the Libya program was based solely on the desire to ensure equity among all wrongful death claimants compensated under the U.S.-Libya Claims Settlement Agreement. As such, the amounts awarded offer little guidance for appropriate compensation under Category B of the 2014 Iraq Referral.

Finally, Claimant Estate is not entitled to interest. The Commission has previously held that compensable tort claims are not entitled to interest as part of the awards.⁶³ Neither the Claims Settlement Agreement nor the 2014 Referral provide a basis to depart from this precedent. Therefore, the award of \$3,000,000 made herein constitutes the entirety of the compensation that Claimant Estate is entitled to under Category B.

The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA.⁶⁴

⁶³ See, e.g., Claim No. LIB-I-001, Decision No. LIB-I-001, at 11-13.

⁶⁴ 22 U.S.C. §§ 1626-1627 (2012).

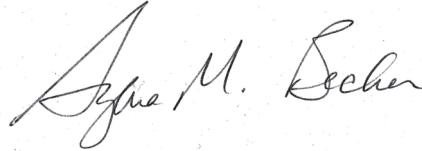
AWARD

Claimant Estate is entitled to an award in the amount of Three Million Two Hundred Eight-Five Thousand Dollars (\$3,285,000.00).

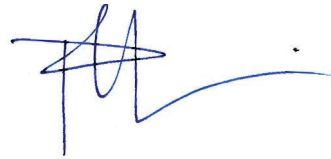
Dated at Washington, DC, April 12, 2019
and entered as the Proposed Decision
of the Commission.

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

August 20, 2019



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) (2018).