

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
UNITED STATES DEPARTMENT OF JUSTICE  
WASHINGTON, DC 20579

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. LIB-III-004
	}	
	}	Decision No. LIB-III-003
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	

PROPOSED DECISION

Claimant brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") alleging that she was unlawfully detained or held hostage in violation of international law. Because she has established that she was unlawfully detained during the hijacking of Pan Am Flight 73 in Karachi, Pakistan, on September 5, 1986, she is entitled to an award of \$1 million.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant alleges that she was among the approximately 380 passengers on board Pan Am Flight 73 on September 5, 1986, when four heavily armed gunmen attacked the plane while it was on the tarmac in Karachi, Pakistan. She further alleges that those gunman, supported by Libya and in violation of international law, unlawfully detained her or held her hostage on that plane for about 16 hours; that the incident ended when the gunman fired their automatic weapons and detonated explosives inside the plane, killing and injuring many of the passengers and crew; and that she and her mother managed to escape during the ensuing commotion and mayhem.

Although Claimant was not among them, a number of the Pan Am Flight 73 victims sued Libya (and others) in federal court in 2006. *See Patel v. Socialist People's Libyan Arab Jamahiriya*, No. 06-cv-626 (D.D.C.). In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya, including claims of "hostage taking or detention." *See Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* ("Claims Settlement Agreement"), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008; *see also* Libyan Claims Resolution Act ("LCRA"), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). In October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

The Secretary of State has statutory authority to refer "a category of claims against a foreign government" to this Commission. *See* International Claims Settlement Act of 1949 ("ISCA"), 22 U.S.C. § 1623(a)(1)(C)(2012). The Secretary has delegated that authority to the State Department's Legal Adviser, who, by letters dated December 11, 2008, January 15, 2009, and November 27, 2013, has referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

In 2010, the Claimant filed a claim under the January 2009 Referral, alleging that she had suffered physical injuries as a result of the Pan Am Flight 73 hijacking. The Commission denied her claim, *see* Claim No. LIB-II-093, Decision No. LIB-II-061 (2011) (Proposed Decision), and after the Claimant objected, the Commission held an oral hearing at which she testified. The Commission then affirmed its previous decision, concluding that she had failed to meet her burden to establish that she had suffered "a

discernible injury, more significant than superficial,” as required by the standards the Commission set up for physical-injury claims. *See* Claim No. LIB-II-093, Decision No. LIB-II-061 (2012) (Final Decision).

The Legal Adviser referred an additional set of claims to the Commission on November 27, 2013. *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* (“2013 Referral” or “November 2013 Referral”). One category of claims from the 2013 Referral is applicable here. That category, known as Category C, consists of

claims of U.S. nationals who were held hostage or unlawfully detained in violation of international law during one of the terrorist incidents listed in Attachment 2 (“Covered Incidents”), provided that (1) the claimant was not a plaintiff in the Pending Litigation; (2) the claim meets the standard for such claims adopted by the Commission; and (3) the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral.

2013 Referral at ¶ 5. Attachment 2 to the 2013 Referral lists the Covered Incidents, and it includes the “September 5, 1986 hijacking of Pam Am flight 73.”

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013).

On March 5, 2014, the Commission received from Claimant a completed Statement of Claim seeking compensation under Category C of the 2013 Referral, together with exhibits supporting the elements of her claim. Her submission also

incorporates by reference the evidence she had previously submitted in connection with the physical-injury claim she made under the January 2009 Referral.

## DISCUSSION

### Jurisdiction

As an initial matter, the Commission must consider whether this claim falls within the category of claims referred to it by the Department of State. The Commission's jurisdiction under the "Category C" paragraph of the 2013 Referral is limited to claims of (1) "U.S. nationals"; who (2) have alleged that they were held hostage or unlawfully detained in violation of international law during one of the "Covered Incidents" listed in Attachment 2 to the 2013 Referral; provided that the Claimant (3) was not a plaintiff in any of the lawsuits listed in Attachment 1 to the 2013 Referral, the so-called "Pending Litigation," and (4) has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in the 2013 Referral. 2013 Referral ¶ 5.

### *Nationality*

As noted above, 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 continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-001, Decision No. LIB-III-001, at 5-6 (2014) (Proposed Decision).

Claimant satisfies this requirement. In its Proposed Decision on Claimant's physical-injury claim under the January 2009 Referral, the Commission found that she was a U.S. national from the time of the hijacking continuously through the effective date of the Claims Settlement Agreement. Claim No. LIB-II-093, Decision No. LIB-II-061, at

5 (2011) (Proposed Decision). Thus, Claimant has satisfied the nationality requirement here.

*Covered Incident and Pending Litigation*

The list of “Covered Incidents” in Attachment 2 to the 2013 Referral includes the “September 5, 1986 hijacking of Pan Am flight 73.” Claimant’s allegations in this claim arise out of that hijacking. Moreover, the list of “Pending Litigation” cases in Attachment 1 to the 2013 Referral is identical to the list attached to the January 2009 Referral. The Commission has already found that she was not a plaintiff in any of the Pending Litigation cases on that list. *Id.* at 5. Accordingly, Claimant has satisfied the covered-incident and pending-litigation requirements here.

*Compensation Under the Claims Settlement Agreement*

Moreover, Claimant did not receive any compensation under any other distribution under the Claims Settlement Agreement and does not qualify for any other category of compensation in the 2013 Referral. While the Claimant did file a claim for physical injury pursuant to the January 2009 Referral, the Commission denied that claim. Claim No. LIB-II-093, Decision No. LIB-II-061 (2012) (Final Decision). Our independent review of Commission records from the two previous Libyan claims programs confirms that she has not received compensation from the Commission under the Libyan Claims Settlement Agreement, and we have no evidence that the State Department has provided her any compensation under the Claims Settlement Agreement either. Further, Claimant has stated on her Statement of Claim, under penalty of perjury, that “I have not received any compensation in any other distribution under the Claims Settlement Agreement” and further that “I do not believe that I qualify for any other category of compensation in this referral.” Accordingly, Claimant has not received

compensation under any other distribution under the Claims Settlement Agreement, and she is not qualified for any other category of compensation in the 2013 Referral. Therefore, Claimant meets this element of her claim.

In summary, this claim is within the Commission's jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

### Merits

To make out a substantive claim under Category C, a claimant must establish that she meets the standard adopted by the Commission for claims of those "who were held hostage or unlawfully detained in violation of international law." 2013 Referral ¶ 5. The Commission has held that in order for claims of those held hostage or unlawfully detained pursuant to Category C to be considered compensable, a claimant must have been

- (a) held illegally against his or her will;
- (b) in a particular area; and
- (c) for an extended period of time, or for shorter periods of time in circumstances in which he or she reasonably felt an imminent threat to his or her life.<sup>1</sup>

See Claim No. LIB-III-001, Decision No. LIB-III-001(2014) (Proposed Decision<sup>2</sup>) at 8.

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<sup>1</sup> This standard is effectively one for an unlawful-detention claim, not a hostage-taking claim. As the Commission has previously noted, an unlawful-detention claim in international law is not the same as a hostage-taking claim, but is instead a lesser-included offense, one that excludes the element of third-party coercion. See Claim No. LIB-II-011, Decision No. LIB-II-105, at 9. Since Category C of the 2013 Referral (like Category A of the 2009 Referral) is for claims of those who were *either* unlawfully detained *or* taken hostage, claimants only need to prove the former in order to be entitled to compensation here. It thus makes no difference to the determination of the merits of this claim whether Claimant was taken hostage, as long as she can show that she was unlawfully detained.

<sup>2</sup> The relevant portions of this Proposed Decision were effectively incorporated into the Final Decision, since the Final Decision modified the Proposed Decision only as to the amount of compensation. See Claim No. LIB-II-002, Decision No. LIB-II-002 (2011) (Final Decision).

*Application of Standard to this Claim*

Claimant satisfies this standard. She alleges that, along with her parents and her sister, she was on board Pan Am Flight 73 on September 5, 1986, when four heavily armed hijackers attacked and took over the aircraft while it was on the tarmac in Karachi, Pakistan. Claimant's evidence in support of her claim consists of, *inter alia*, the live testimony she provided during an oral hearing the Commission held for her physical-injury claim under the January 2009 Referral; the transcript of a deposition of her mother taken on March 27, 1989; the transcript of her mother's testimony during the sentencing hearing of one of the hijackers, Zayad Al Safarini, before the United States District Court for the District of Columbia on May 12, 2004; copies of her Pan Am flight 73 ticket stubs; and a sworn statement of a former FBI Agent, Lewis Subelsky. In connection with claims arising out of Pan Am Flight 73 in the two earlier Libya claims programs, the Commission also has a copy of the Pan Am 73 flight manifest (list of passengers), which includes Claimant's name.

Claimant's evidence establishes that she was on board Pan Am Flight 73 during the terrorist attack and that the gunmen on that flight (a) held her illegally against her will (b) on the airplane and (c) for 16 hours in circumstances in which she reasonably felt an imminent threat to her life. The evidence conclusively shows that Claimant was on Pan Am Flight 73 during the hijacking, which is enough to show that she was "(a) held illegally against . . . her will" and "(b) in a particular area." She has testified about the ordeal that she endured, both during the time the hijackers held the passengers and at the end with the mayhem of violence caused by the gunmen firing automatic weapons and detonating explosives. We also have evidence that the terrorists killed at least 20 people during the terrorist attack. *See, e.g.,* Subelsky Decl. ¶ 3. In such circumstances, we have

no doubt that Claimant “(c) . . . reasonably felt an imminent threat to . . . her life.” *Cf.* Claim No. LIB-II-013, Decision No. LIB-II-003, at 9-10 (2009) (Proposed Decision<sup>3</sup>) (concluding that a claimant who was two years old at the time of the Pan Am Flight 73 hijacking “reasonably felt an imminent threat” to his life, even though he had no recollection of the event: he “either would have felt an imminent threat to his life but for his young age, or did in fact experience such feelings but [was] unable to remember the incident for the same reason.”).<sup>4</sup>

In sum, this claim meets the standard for unlawful detention, and Claimant is thus entitled to compensation.

#### COMPENSATION

The Commission has held that \$1 million is an appropriate amount of compensation for Pan Am Flight 73 hostage-taking victims whose claims meet the Commission’s standard under Category C, and that such claims are not entitled to interest as part of the awards granted therein. *See* Claim No. LIB-III-001, Decision No. LIB-III-001 (2014) (Proposed Decision) at 10-11. Accordingly, Claimant is entitled to an award of \$1,000,000.00, and this amount constitutes the entirety of the compensation that the Claimant is entitled to in the present claim.

The Commission therefore enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-1627 (2012).

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<sup>3</sup> The relevant portions of this Proposed Decision were effectively incorporated into the Final Decision, since the Final Decision modified the Proposed Decision only as to the amount of compensation. *See* Claim No. LIB-II-013, Decision No. LIB-II-003 (2011) (Final Decision).

<sup>4</sup> Because we conclude that the Claimant “reasonably felt an imminent threat to her life,” we need not determine whether 16 hours is long enough to constitute “an extended period.”

AWARD

Claimant is entitled to an award in the amount of One Million Dollars (\$1,000,000.00).

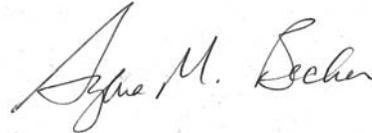
Dated at Washington, DC, September 18, 2014  
and entered as the Proposed Decision  
of the Commission.

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

**October 29, 2014**



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Anuj C. Desai, Commissioner



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Sylvia M. Becker, Commissioner

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