

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

In the Matter of the Claim of	}	
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	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-I-006
	}	
	}	Decision No. IRQ-I-026
	}	
Against the Republic of Iraq	}	
	}	

Counsel for Claimant:	Daniel Wolf, Esq. Law Offices of Daniel Wolf
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PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) based on injuries he suffered while being held hostage in Kuwait and Iraq in August and September 1990. The United States Department of State has already provided him compensation for his experience as a hostage. He now seeks additional compensation based primarily on a claim that Iraqi officials lined him up against a wall and sprayed bullets around the outline of his body, and that this experience led to mental and emotional injuries. We conclude that Claimant has established that Iraqi officials did in fact inflict those injuries on him and that he is entitled to \$1,000,000 in additional compensation.

**BACKGROUND AND BASIS OF CLAIM**

Claimant alleges that he moved to Kuwait City with his wife and two children in early 1988 for a job. He was in Kuwait when Iraq invaded on August 2, 1990. Claimant asserts that Iraq effectively held him hostage in Kuwait for the next several weeks, as he

and his family hid. Claimant's wife and children were permitted to leave Kuwait on September 1, 1990, and Claimant himself was eventually permitted to leave about two weeks later. This claim focuses on an incident in late August 1990 when Iraqi officials allegedly stopped Claimant and others at a roadblock and, after lining the men from the group up against a wall, used their automatic rifles to shoot scores of bullets all around them. Claimant's experiences and injuries are further detailed in the Merits section below.

In 2001, Claimant sued Iraq in federal court for, among other things, hostage-taking and intentional infliction of emotional distress. That case was pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement. *See Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement"). The Agreement, which came into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004. Exercising its authority to distribute money from the settlement funds, the State Department provided compensation to numerous individuals whose claims were covered by the Agreement, including some, like Claimant, whom Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this compensation "encompassed physical, mental, and emotional injuries generally associated with" being held hostage or subject to unlawful detention.<sup>1</sup> Claimant states that the amount of the payment he received was based on a formula,

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<sup>1</sup> A group of hostages, not including Claimant, received compensation for economic loss. The hostages that received compensation for economic loss are not before the Commission in this program.

consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention. Pursuant to this formula, Claimant received \$375,000.

The State Department's Legal Adviser then requested that the Commission commence a claims program for some of the hostages whom the State Department had already compensated. More specifically, the State Department authorized the Commission to award additional compensation to hostages who had suffered a "serious personal injury," when the severity of that injury is a "special circumstance warranting additional compensation." The State Department made its request in a letter dated November 14, 2012, which the Commission received pursuant to its discretionary statutory authority. *See* 22 U.S.C. § 1623(a)(1)(C) (2012) (granting the Commission jurisdiction to "receive, examine, adjudicate, and render a final decision with respect to any claim of the Government of the United States or of any national of the United States . . . included in a category of claims against a foreign government which is referred to the Commission by the Secretary of State"). The letter sets forth the category of claims as follows:

claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq<sup>1</sup> in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking<sup>2</sup> provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State<sup>3</sup> for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For the purposes of this referral, "serious personal injury" may include instances of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault.

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<sup>1</sup> 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.

<sup>2</sup> Hostage-taking, in this instance, would include unlawful detention by Iraq that resulted in an inability to leave Iraq or Kuwait after Iraq invaded Kuwait on August 2, 1990.

<sup>3</sup> The payment already received by the claimant under the Claims Settlement Agreement compensated the claimant for his or her experience for the entire duration of the period in which the claimant was held hostage or was subject to unlawful detention and encompassed physical, mental, and emotional injuries generally associated with such captivity or detention.

*See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission (“2012 Referral” or “Referral”) at ¶ 3 & nn.1-3 (footnotes in original). The Commission then commenced the Iraq Claims Program to decide claims under the 2012 Referral. Commencement of Iraq Claims Adjudication Program, 78 Fed. Reg. 18,365 (Mar. 26, 2013).*

Claimant submitted a timely Statement of Claim under the 2012 Referral, along with exhibits supporting the elements of his claim, including evidence of his U.S. nationality, his receipt of compensation from the Department of State for his claim of hostage-taking, and his alleged personal injuries.

## DISCUSSION

### Jurisdiction

The 2012 Referral’s statement of the category of claims defines the Commission’s jurisdiction. *See* 22 U.S.C. § 1623(a)(1)(C). Thus, the Commission has jurisdiction to entertain only claims of individuals who (1) are U.S. nationals; and (2) “already received compensation under the Claims Settlement Agreement from the Department of State<sup>1</sup> for [their] claim of hostage-taking, and such compensation did not include economic loss

based on a judgment against Iraq[.]” 2012 Referral, *supra*, ¶ 3. Claimant satisfies both requirements, and the Commission thus has jurisdiction over this claim.

*Nationality*

This claims program is limited to “claims of U.S. nationals.” Here, that means that a claimant must have been a national of the United States at the time the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force. *See* Claim No. IRQ-I-001, Decision No. IRQ-I-005, at 5 (2014) (Proposed Decision). Claimant satisfies the nationality requirement. He has provided a copy of his certificate of naturalization dated April 3, 1987, his U.S. passport from the time of the hostage-taking (valid from April 20, 1987 to April 19, 1997) and his current U.S. passport (valid from March 26, 2012 to March 25, 2022).

*Compensation from the Department of State*

Claimant also satisfies the second jurisdictional requirement. He has submitted a copy of a Release he signed on August 4, 2011, indicating his agreement to accept \$375,000 from the Department of State in settlement of his claim against Iraq. He has also submitted a copy of an electronic notification from the Department of State that he received this sum on September 9, 2011. Claimant further stated under oath in his Statement of Claim, and the Commission has confirmed to its satisfaction, that this compensation did not include economic loss based on a judgment against Iraq.

In summary therefore, the Commission has jurisdiction over this claim under the 2012 Referral.

### Merits

The 2012 Referral requires a claimant to satisfy three conditions to succeed on the merits of his or her claim. Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) at 7-8 (Proposed Decision). First, the claimant must have suffered a “serious personal injury,” which may be “physical, mental, or emotional.” In order to satisfy this standard, the injury must have arisen from one of the four acts specifically mentioned in the Referral—*i.e.*, sexual assault, coercive interrogation, mock execution, or aggravated physical assault—or from some other discrete act, separate from the hostage experience itself, that is comparable in seriousness to one of those four acts—that is, an act of a similar type or that rises to a similar level of brutality or cruelty as the four enumerated acts. *Id.* at 7.

The second requirement is that Iraq must have “knowingly inflicted” the injury. Thus, even where a claimant suffered a serious personal injury that satisfies the other requirements in the 2012 Referral, it must be proven that Iraq knowingly inflicted the injury.<sup>2</sup>

The third requirement is that the Commission determine that the severity of the serious personal injury suffered constitutes a “special circumstance warranting additional compensation.” In making this determination, the Commission will consider the nature and extent of the injury itself (including the specific acts committed by Iraq giving rise to such injury), the extent to which the injury substantially limits one or more of the claimant’s major life activities (both in the immediate aftermath of the injury and on a long-term basis), and/or the extent to which there is permanent scarring or disfigurement that resulted from the injury. *Id.* at 8.

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<sup>2</sup> “Iraq” is defined in footnote 1 of the Referral.

Here, Claimant alleges that Iraqi officials subjected him to a mock execution and interrogations and that this led to a variety of emotional injuries. To prove these allegations, Claimant has submitted, *inter alia*, three sworn statements of his own, a June 12, 2007 declaration, a June 21, 2013 declaration and an October 28, 2013 affidavit (the first prepared for his federal court litigation and the latter two for this proceeding); an October 23, 2013 affidavit from Claimant's physician; an October 28, 2013 affidavit by Claimant's ex-wife; a June 19, 2013 declaration of Claimant's brother-in-law; a June 19, 2013, declaration of Claimant's brother; a statement Claimant and his wife submitted to the United Nations Compensation Commission in 1992; two prescriptions and a printout from Claimant's pharmacy; and newspaper articles discussing in general terms Iraq's use of mock execution during its occupation of Kuwait. Except where noted, the facts we outline below are those established by this evidence.

In hiding: Claimant alleges that he moved to Kuwait City in early 1988 for a job. After Iraq attacked Kuwait on August 2, 1990, Claimant and his family stayed in their apartment living in a state of constant anxiety and fear. Sometime around August 16, 1990, the U.S. Embassy told Claimant that the Iraqis had begun conducting systematic sweeps through the city in search of American citizens and other Western nationals to use as human shields. So, Claimant and his family left their apartment and for the next couple of weeks hid in several other apartments in their building that had been abandoned.

"Haloing" and Interrogation: In late August, having nothing left to eat, Claimant, his pregnant wife, and two small children (aged 5 and 6) left their apartment to search for

a bakery with Claimant's brother,<sup>3</sup> Claimant's brother-in-law, and two male Kuwaiti friends. They set out for the bakery but were stopped by a group of Iraqi soldiers who accused Claimant and his Kuwaiti friends of being part of the Kuwaiti resistance. The soldiers insisted the group confess, and Claimant and his friends tried to convince them that they had nothing to do with the resistance and were only trying to get some bread for their families. The soldiers ordered all of the men, including Claimant, to stand against the wall of a building, and then started firing their automatic weapons at them. As Claimant stood in terror, the gunmen took turns shooting in front and around the group. After shooting right in front of them, the soldiers then did something that Claimant refers to as "halo"ing. This consisted of the soldiers shooting at the group, with the bullets landing in an outline around where the group stood, starting up one side of where the group was standing, then over their heads and then down the other side. Though Claimant was not hit by any bullets, debris from the concrete brick and stucco building came down on him as he attempted to shield himself. Claimant could hear his wife and children screaming. Claimant was so sure he was being executed that he lost control of his bladder and urinated uncontrollably in his trousers. The gunmen then started to laugh at Claimant and to insult him.

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<sup>3</sup> There is some ambiguity about whether Claimant had one or two brothers with him that day. In Claimant's June 2013 Declaration, he refers to his immediate family being "joined by two Kuwaiti friends, . . . and *my two brothers* and brother-in-law" (emphasis added). His ex-wife, brother-in-law, and physician indicate that only one of Claimant's brothers was there. See El-Wailly Affidavit at ¶ 8 ("I, along with my children . . ., as well as [Claimant], set out for the bakery one afternoon in our car while [*Claimant's*] brother . . ., [Claimant's] brother-in-law . . ., and two of [Claimant's brother's] Kuwaiti friends, set out in a second car" (emphasis added)); <sup>5 U.S.C.</sup> §552(b)(6) Decl. ¶ 5 ("[Claimant] and his family, along with me, *his brother* . . . and two Kuwaiti friends, drove to the bakery" (emphasis added)); <sup>5 U.S.C.</sup> §552(b) Aff. ¶ 2 ("[Claimant] and *his brother*, as well as his brother-in-law, were forced to stand against a wall while armed soldiers took turns firing their automatic weapons at them 'haloing' them with bullets" (emphasis added)). Claimant has submitted a statement from only one brother, and he too indicates that he was Claimant's only brother who accompanied them that day. See <sup>5 U.S.C.</sup> §552(b)(6) Decl. ¶ 4 ("Claimant and *I* and his family left the relative safety of our apartment building with two other Kuwaiti friends who knew of a bakery" (emphasis added)).

After firing their weapons, the gunmen directed Claimant's wife and children back to their car but ordered Claimant and the other adult males up an exterior stairway to the second floor of a nearby building. Initially, Claimant was locked alone in a room, where he spent the next two to three hours. He and the others were then brought into the same room, where they were interrogated by an Iraqi officer, who questioned them for hours about their backgrounds and their activities in Kuwait before letting them go. Claimant went back to his car to find his wife and children waiting for him, and they all then returned to their apartment building. Claimant was traumatized by these events and suffered from feelings of helplessness, frustration, and despondency.

Departure from Kuwait: On September 1, 1990, Claimant's wife and children were allowed to leave Iraq. Claimant then hid for another two weeks in abandoned apartments in their building. On September 15, 1990, Claimant was allowed to leave on an evacuation flight. A Kuwaiti friend drove Claimant to the rendezvous point where a bus was to pick up the departing hostages and drive them to the airport. During this car ride, Claimant was stopped six times by Iraqi roadblocks and at each one soldiers pointed their guns directly at his head. Each time, Claimant sat in dread of being shot or arrested. Claimant finally reached the bus and then the airport, and flew to London via Baghdad and then on to Arizona.

Injuries Alleged: Although he does not allege any physical injuries, Claimant states that he continues to be plagued by the psychological consequences of his time as a hostage, including depression, anxiety, flashbacks, irrational fears, an inability to concentrate, insomnia, nightmares, and an exaggerated startle response. Claimant also says that he "began to smoke heavily and turned periodically to alcohol to forget the

past”; though he doesn’t say it explicitly, the clear implication is that this occurred soon after his return and that he did not smoke or drink before the hostage-taking. Claimant also states that he often feels that life has lost all meaning and at one point contemplated suicide. He even attributes his 1995 divorce to the “financial and emotional toll” of his experience in Iraq. Though his emotional problems appear to be based on the whole hostage experience and not just the haloing, his 2007 Declaration states explicitly that he “still relive[s] [the haloing] scene over and over again in [his] nightmares.” There is evidence that Claimant has received medical treatment and has been on prescription medication for various conditions, including depression, anxiety, and erectile dysfunction, since 1992.

Analysis: Claimant is entitled to compensation in this program. First, Claimant suffered a “serious personal injury” within the meaning of the Referral. The 2012 Referral specifically provides that the phrase “serious personal injury” may include injuries arising from, *inter alia*, “mock execution.” The term “mock execution” means “a simulated or feigned execution whereby a perpetrator commits an act or acts that sufficiently mimic an actual execution so as to trick or deceive the victim into holding a reasonable (but ultimately false) belief that his or her death is imminent.” Claim No. IRQ-I-024, Decision No. IRQ-I-012, at 13 (2014) (Proposed Decision).

Claimant has established that Iraq subjected him to a mock execution. The evidence establishes that Iraqi soldiers lined Claimant up against a wall and showered the wall around him with bullets in a path designed to make Claimant believe that those bullets would strike him. He says he was so convinced that he was about to die that he urinated in his pants. His belief that his death was imminent was reasonable in these

circumstances. This haloing incident is thus a mock execution within the meaning of the 2012 Referral.

Although the evidence does not corroborate each and every detail of Claimant's account and while Claimant has not submitted any medical records connected to the haloing incident in particular, the evidence he has submitted suffices to establish the relevant aspects of what happened. In addition to his own statements, Claimant has provided sworn statements from four others: his brother, his brother-in-law, his ex-wife, and his physician. In circumstances where, as here, a claim relies heavily on written statements, certain factors must be considered in determining how much weight to place on them. These may include, for example, the length of time between the incident and the statement, and whether the affiant(s) is a party interested in the outcome of the proceedings or has a special relationship with the Claimant. *See generally* Claim No. IRQ-I-010, Decision No. IRQ-I-022, at 10-11 (2014) (Proposed Decision).

Although almost all of the statements were prepared in 2013, more than two decades after the alleged events, there is some evidence from earlier. One of Claimant's own declarations is from 2007, predating the Claims Settlement Agreement by three years. Moreover, that declaration specifically references a written statement that Claimant and his wife submitted to the United Nations Compensation Commission in 1992, less than two years after the hostage-taking. Even though the 1992 statement does not provide as many details of the haloing incident as the more recent statements, it does clearly reference Iraqi soldiers shooting at Claimant: "In one incident, [Claimant] was searching for food in Salmiah when Iraqi soldiers detained him and began interrogating him. The questioning focused on his nationality, but he told them, in Arabic, that he did

not have his identification with him. One of the soldiers, dissatisfied with his response, began firing a submachine gun in the ground next to his feet. He was then taken to an Iraqi command center (formerly the Kuwaiti Educational Institute, Salmiah) for further interrogation. Only after several hours of argument, in Arabic, did [Claimant] succeed in convincing the Iraqi commander that he was an Iraqi National from Baghdad, who then released him.” Moreover, one of the affidavits, that of his physician, though also prepared in 2013, states that Claimant told him about the haloing back in 1998. *See* <sup>5 U S C</sup> §552(b) <sub>(6)</sub> Aff. ¶ 2 (stating that, on November 17, 1998, Claimant told him about an incident “where [Claimant] and his brother, as well as his brother-in-law, were forced to stand against a wall while armed soldiers took turns firing their automatic weapons at them ‘haloing’ them with bullets”).

While most of the declarations are from witnesses who can be said to have some special relationship with the Claimant, this is not dispositive. First, one of Claimant’s witnesses, his physician, is not related to him and can thus be said to have no special relationship with the Claimant or interest in the outcome of the proceedings. Second, while the four direct witnesses to the events were all family members at the time, one of the declarants is his former wife, to whom he is no longer married. More important, the testimony is generally consistent and credible, and all of the witnesses were there at the time: his brother and brother-in-law were haloed too, and his ex-wife, if not an eyewitness, was close enough to hear the cascade of bullets and the screams and other sounds of mayhem. In sum, the evidence suffices to demonstrate that Claimant endured a mock execution, and that the injuries Claimant suffered from that mock execution are “serious personal injuries” within the meaning of the Referral.

Claimant has also satisfied the second requirement of the 2012 Referral: Iraq obviously acted knowingly when its officials lined Claimant and his companions against the wall and sprayed their outlines with bullets.

Finally, Claimant has shown that the severity of his injuries constitutes a “special circumstance warranting additional compensation[.]” The claimants in this program have already received compensation from the State Department for injuries associated with having been held hostage. Here, though, Claimant’s experience goes well beyond that. He was forced to stand against a wall while armed soldiers took turns firing their automatic weapons at him, “haloing” him with bullets. Iraqi officials intentionally frightened him into thinking he was about to be killed, and he has suffered long-term mental and emotional injuries because of it. These acts and the injuries Claimant suffered because of them are thus severe enough to constitute a “special circumstance” under the 2012 Referral.

We thus conclude that Claimant has satisfied all three requirements of the 2012 Referral: (1) he suffered a “serious personal injury” (2) inflicted upon him by Iraq, and (3) the severity of the injury constitutes a “special circumstance warranting additional compensation.”

#### COMPENSATION

In determining the appropriate level of compensation under the 2012 Referral, the Commission considers such factors as the severity of the initial injury or injuries; the number and type of injuries suffered; whether the hostage was hospitalized as a result of his or her injuries, and if so, how long (including all relevant periods of hospitalization in the years since the incident); the number and type of any subsequent surgical procedures;

the degree of permanent impairment, taking into account any disability ratings, if available; the impact of the injury or injuries on daily activities; the nature and extent of any disfigurement to outward appearance; whether the hostage witnessed the intentional infliction of serious harm on his or her spouse, child or parent, or close friends or colleagues; and the seriousness of the degree of misconduct on the part of Iraq. *See* Claim No. IRQ-I-001, Decision No. IRQ-I-005 (2014) (Proposed Decision), at 22. In addition, all claims in this program must be viewed in light of the State Department's \$1.5 million recommended maximum and the full range of claims before the Commission under this Referral, some of which are based on extremely severe injuries. *See* Claim No. LIB-II-109, Decision No. LIB-II-112 at 5-6 (2012) (in determining what injuries are a special circumstance, the Commission considers, among other things, the nature of all of the injuries that fall under the referred category of claims).

Here, Claimant was "haloed" with bullets, intentionally put into a state of abject fear by Iraq, and made to think he was going to die. He was then separated from his family and harshly interrogated. Given the nature of the Iraqi officials' acts, we can presume that Claimant suffered significant emotional injuries, and he has provided evidence to that effect.

Accordingly, the Commission determines that Claimant is entitled to an award of \$1,000,000.00, and this amount (which is in addition to the amount already received from the Department of State) constitutes the entirety of the compensation that Claimant is entitled to in the present claim.

The Commission 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. §§ 1626-27 (2012).

AWARD

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

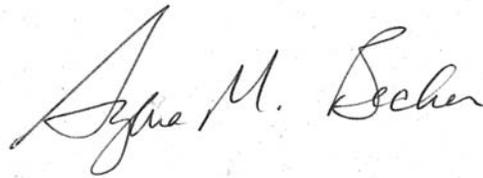
Dated at Washington, DC, August 14, 2014  
and entered as the Proposed Decision  
of the Commission.

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

January 7, 2015



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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).