

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

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-I-001
	}	
	}	Decision No. IRQ-I-005
Against the Republic of Iraq	}	

Counsel for Claimant:	Stephen A. Fennel, Esq. Steptoe & Johnson LLP
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FINAL DECISION

The Commission’s Proposed Decision awarded Claimant \$1.5 million for injuries he suffered while in Iraqi captivity in 1991. He now objects to the amount. He contends that he is entitled to a higher award, particularly in view of the amount the United States Department of State paid to certain prisoners of war (“POWs”) who were held by Iraq at the same time and in similar circumstances. Because we conclude that \$1.5 million is appropriate in light of all of the relevant factors, we affirm the Proposed Decision’s conclusion.

BACKGROUND

Claimant brought a claim against Iraq based on injuries he suffered while being held hostage in Iraq and Kuwait between January and March 1991. In a Proposed Decision entered on February 21, 2014, the Commission concluded that Claimant had met his burden of proving that he was entitled to compensation in this program. *See*

Claim No. IRQ-I-001, Decision No. IRQ-I-005 (2014) (“Proposed Decision”). The Commission then awarded Claimant \$1.5 million in additional compensation, the maximum amount recommended by the State Department in its letter to the Commission establishing this program.¹

The Commission based its determination of the appropriate level of compensation on a variety of factors, including the State Department’s recommendation. Applying those factors, the Commission noted that Claimant had “suffered countless serious personal injuries throughout his ordeal, and [that] the nature and seriousness of these injuries clearly entailed suffering that few can imagine.” The Commission further noted that Claimant’s suffering “represent[ed] some of the most egregious conduct alleged in this claims program[,]” and that the evidence “ma[d]e it clear that [Claimant had] endured, and [would] likely continue to endure, significant emotional trauma for the rest of his life.” For those reasons, the Commission held that Claimant was entitled to the maximum amount recommended by the State Department under the Referral, \$1.5 million.

On March 21, 2014, the Claimant filed a notice of objection and requested an oral hearing. On June 19, 2014, Claimant submitted a brief containing further evidence and argument in support of his objection. The additional evidence included various congressional documents and letters relating to efforts to obtain payment for Americans held hostage by Iraq during the Gulf War; a copy of the United States District Court opinion in *Acree v. Republic of Iraq*, 271 F. Supp. 2d 179 (D.D.C. 2003), *vacated* 370

¹ See Letter dated November 14, 2012, from the Honorable Harold Hongju Koh, Legal Adviser, Department of State, to the Honorable Timothy J. Feighery, Chairman, Foreign Claims Settlement Commission (“2012 Referral” or “Referral”). The Referral states in relevant part, “If the Commission decides to award compensation for claims that meet these criteria, we recommend that the Commission award up to but no more than \$1.5 million per claim.” 2012 Referral, *supra*, ¶4.

F.3d 71 (D.C. Cir. 2004); a chart comparing Claimant's injuries with those of the American POWs whose claims were paid directly by the State Department;² and the transcript of a television interview with one of those POWs. The Commission held an oral hearing on July 10, 2014; the hearing consisted solely of argument by Claimant's counsel, and the Claimant presented no witnesses for examination.

Claimant's arguments fall into three categories. First, he argues that the factors on which the Proposed Decision relied warrant an award greater than \$1.5 million, particularly in light of the additional evidence presented on objection. Second, he argues that the Proposed Decision failed to consider two additional relevant factors, the length of time since the incident and the "intent of Congress." Finally, he argues that comparing this claim with three different groups—claimants in the Libya Claims Program, the other civilian hostages in this claims program, and the POWs in Iraq—requires the Commission to award Claimant more than \$1.5 million.

DISCUSSION

I. Factors in the Proposed Decision

In deciding claims before it, the Commission is directed by its authorizing statute, the International Claims Settlement Act of 1949 ("ICSA"), to apply the following in the following order: (A) the provisions of the applicable claims agreement; and (B) the applicable principles of international law, justice, and equity. *See* 22 U.S.C. § 1623(a)(2) (2012). The Iraq Claims Settlement Agreement, the "applicable claims agreement" in this program, says nothing about the appropriate amount of compensation for claims that come within its terms, and we have no evidence from the negotiating history that

² The 17 POWs whose injuries are summarized in the chart were all plaintiffs in *Acree*; all of the information concerning their injuries comes from the opinion accompanying the district court's vacated judgment.

addresses the specifics of compensation either; therefore, the Commission must turn next to principles of international law.

The Proposed Decision in this claim discussed the difficulty of assessing the value of intangible, noneconomic damages, particularly in this program, where the injuries are both physical and mental and have arisen from a wide variety of individual circumstances. It noted that the 2012 Referral recommended the Commission award “up to but no more than \$1.5 million per [compensable] claim.” *See* 2012 Referral ¶ 4. The Commission explained that, under international law, compensation for personal injuries varies greatly, but that international courts and tribunals have commonly applied certain factors in determining compensation for personal-injury claims, including (1) the severity of the initial injury or injuries; (2) the number and type of injuries suffered; (3) whether the claimant was hospitalized as a result of his or her injuries, and if so, how long; (4) the number and type of any subsequent surgical procedures; (5) the degree of permanent impairment, taking into account any disability ratings, if available; (6) the impact of the injury or injuries on claimant’s daily activities; (7) the nature and extent of any disfigurement to the claimant’s outward appearance; (8) whether the claimant witnessed the intentional infliction of serious harm on his or her spouse, child or parent, or close friends or colleagues; and (9) the seriousness of the degree of misconduct. *See* Proposed Decision at 21-22.

In this particular claim, the most relevant international-law factors are the severity of the initial injuries, the number and type of injuries, the degree of permanent impairment, the impact of the injuries on Claimant’s daily activities, the fact that Claimant witnessed the infliction of injury on close friends and colleagues, and the

seriousness of Iraq's misconduct. Addressing those factors, Claimant emphasizes that he and his colleagues, unlike most of the hostages in this program, were held in uniquely horrifying circumstances: they were housed in the Iraqi Intelligence Service building, were in that building when it was destroyed by Allied bombs, and were then moved to Abu Ghraib prison. Moreover, he argues that because his captors were the regime's "professional torturers," his situation was far worse than that of most of the other claimants in this program.

Claimant is certainly correct that, based on the international-law factors discussed in the Proposed Decision, he is entitled to more than most of the other claimants in this program. The circumstances of his injuries are some of the most egregious in this program, the conditions of his confinement were intolerably horrid, his injuries were numerous and severe, and their effects have in many respects persisted over time. Indeed, this is why the Commission awarded Claimant the highest amount it has awarded in this program. The Commission thus incorporated into its Proposed Decision all of the factors related to the brutality of Iraq's treatment of him and the severity of his injuries.

Claimant argues that these factors entitle him to even more than the \$1.5 million the Proposed Decision awarded him. The problem is, however, that though the factors counsel for an award that is high, "high" is a relative term, not an absolute one. Nothing inherent in the compensation factors tells us what the correct number should be. The only factor that pinpoints an actual number is the State Department's recommended maximum. The Commission is thus faced with the task of quantifying an award amount based on a mix of factors, only one of which anchors its decision in any concrete way. The \$1.5 million figure specified as the recommended maximum in the State

Department's Referral Letter thus plays a uniquely significant role. This is particularly so given the fundamental difficulty of assessing the value of intangible, noneconomic damages, such as those resulting from personal injury, and the lack of any consistent formula for doing so under international law.

Claimant argues that the Commission misunderstood the intent of the State Department's recommendation. He contends that the recommendation was not intended to be an "absolute cap" on the allowable compensation, but was merely a figure "that might assist the Commission in anchoring its overall spread of awards in a certain range."

One problem with this argument is textual. If the State Department had wanted to "anchor[] [the Commission's] overall spread of awards in a certain range," it almost certainly would not have used the phrase "up to but no more than." It could have recommended awards of "approximately" \$1.5 million or "in the range of" \$1.5 million. The phrase "up to but no more than" does not easily admit of an interpretation other than a cap or a maximum.

Relatedly, Claimant emphasizes that the State Department merely "recommend[ed]" the \$1.5 million maximum and argues that because the Commission is an independent agency, it has the authority to award more than the \$1.5 million figure "when circumstances dictate." He relies on the ICSA provisions that provide for the Commission's independence and for the nonreviewability of Commission decisions, *see* 22 U.S.C. §§ 1622g, 1623(h), and argues that the Commission failed to exercise its independence in this claim by declining to award more than \$1.5 million.

Claimant is correct that the Commission has legal authority to award more than the State Department's recommended maximum. Indeed, the Commission's Proposed

Decision acknowledges that authority and explicitly stated that “the \$1.5 million mentioned in the Referral is merely a recommended maximum and . . . does not bind this Commission” Proposed Decision, *supra*, at 23. It was only after considering the State Department’s recommendation, together with all of the above-referenced factors, that the Commission concluded that \$1.5 million was an appropriate level of compensation. Indeed, the Commission could have awarded Claimant *less* than \$1.5 million, but instead awarded the maximum based in part on the fact that the actions of Claimant’s Iraqi captors “represent[ed] some of the most egregious conduct alleged in this claims program.” *Id.* at 23. The Commission thus did exercise its independence in awarding \$1.5 million in this claim.

II. Other Factors

Claimant also contends that the Proposed Decision failed to consider two other relevant factors: the length of time since the incident and the “intent of Congress.”

Length of Time: Claimant’s captivity was more than 23 years ago, and he argues that this counsels for an award of greater than \$1.5 million. In a previous program, the Libya Claims Program,³ the Commission considered the length of time a claimant had to wait for justice as one factor supporting a high award amount.⁴ This factor, however, provides no meaningful help in determining a concrete dollar amount to award, which is our task here.

When the Commission previously considered this factor in the Libya Claims Program, it did so as support for an award *at precisely the amount recommended by the*

³ Letter dated December 11, 2008, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission (“2008 Referral”).

⁴ See Claim No. LIB-I-001, Decision No. LIB-I-001, at 11 (2009).

State Department when the State Department’s recommendation was far higher than found elsewhere in international-law jurisprudence. The Commission thus implicitly assumed that the State Department considered the length of time as a factor when it arrived at its recommendation. Here, as in the Libya Claims Program, the State Department was aware of how long it has been since Iraq inflicted these injuries and likely considered this factor when making its recommendation. Thus, the length of time Claimant has waited for justice supports an award at the State Department’s recommended maximum but does not suggest an award of more.

Intent of Congress: Claimant also argues that Congress intended that all the hostages detained by Iraq receive “just and fair compensation” and that this entitles him to more than \$1.5 million in compensation. The Proposed Decision did not consider this factor; it too is drawn from the Commission’s decisions in the Libya Claims Program.⁵ In the Libya Claims Program, however, congressional intent was relevant in the context of an actual statute *speaking to the specific issue of the amount of compensation*. Provisions in that statute, the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (2008), were premised on certain claimants receiving \$3 million in compensation, and so congressional intent on the issue was clear. The LCRA made Libya’s immunity from lawsuits contingent on the Secretary of State certifying that the United States had received “fair compensation” for certain claimants,⁶ and the Executive Branch had assured Congress that with regard to those claims, “‘fair compensation’ would include amounts comparable to what was provided for physical injuries in the LaBelle Discotheque settlement—a fixed amount of \$3 million per physical injury

⁵ See, e.g., *id.*, at 11.

⁶ See LCRA Sec. 5(a)(2)(B), 122 Stat. at 3001.

claimant.” 2008 Referral ¶ 4. The Secretary of State then did certify that the U.S. had in fact received “fair compensation” for those claimants, thereby triggering the statute’s immunity provisions. Thus, Congress’s intent was clear on the relevant question, the specific amount of compensation to be awarded to certain claimants.

In this claims program, by contrast, no law speaks directly to the appropriate level of compensation. Claimant points to the National Defense Authorization Act for Fiscal Year 2008 (“FY 2008 NDAA”), Pub. L. No. 110-181, § 1083(d)(4), 122 Stat. 3, 344, and the National Defense Authorization Act for Fiscal Year 2010 (“FY 2010 NDAA”), Pub. L. No. 111-84 § 1079, 123 Stat. 2190, 2479 (2009), both of which include “sense of Congress” provisions related to claims against Iraq. The FY 2008 NDAA simply urges the President to “work with the Government of Iraq on a state-to-state basis to ensure compensation for any meritorious claims based on terrorist acts committed by the Saddam Hussein regime” FY 2008 NDAA § 1083(d)(4). The FY 2010 NDAA similarly urges that “the claims of American victims of torture and hostage taking by the Government of Iraq . . . be resolved by a prompt and fair settlement” FY 2010 NDAA § 1079.

Neither of these “sense of Congress” provisions helps with our task here. For one, both provisions are merely hortatory, with no binding or operative legal effect. Moreover, neither makes any reference to *how much* compensation to seek. These statutes, therefore, offer no guidance on the legal question confronting us: the precise dollar amount Claimant should be awarded.

Claimant also suggests that the Commission should consider a bill introduced in Congress shortly before the Iraq Claims Settlement Agreement, the Justice for Victims of

Torture and Terrorism Act (“JVTTA”), H.R. 5167, 110th Cong. (2008). Unlike the FY 2008 NDAA and FY 2010 NDAA, the JVTTA did specify the dollar amounts the President was required to seek from Iraq in order to settle such claims. However, the JVTTA never became law. It did pass the House of Representatives and thus may represent the desire of some members of Congress for a settlement of claims in particular amounts. It is not law, however, and thus cannot inform the Commission’s interpretation of the 2012 Referral. The Commission has no mandate to consider congressional intent in the absence of an actual law that applies to the Claims Settlement Agreement.

In sum, neither the length of time since the incident nor the intent of Congress warrant any greater compensation than the \$1.5 million that the Proposed Decision awarded Claimant.

III. Comparative Analysis

Finally, Claimant also argues that the Commission must compare this claim with others to determine the appropriate amount of compensation; doing so, he says, would lead the Commission to award him more than \$1.5 million. He points to three groups of claimants for this purpose: 1) physical-injury claimants in the Libya Claims Program; 2) other civilian hostages in this Iraq Claims Program; and 3) American POWs in Iraq whom the State Department compensated directly. We address these arguments in turn.

Physical-Injury Claims in the Libya Claims Program: Claimant’s first comparison is with the physical-injury claimants in the Libya Claims Program. A claimant in that program who could show any non-superficial physical injury received \$3 million, and some claimants who could show that the severity of their physical injuries constituted a “special circumstance” were eligible for up to an additional \$7 million

dollars (although the highest award was in fact only an additional \$4 million⁷). Claimant emphasizes that these awards were made only for *physical* injuries, whereas awards under the present Iraq Referral are intended to cover both physical and psychological injuries. By comparison, Claimant received \$1.5 million, only one-half of what successful Libya Claims Program claimants were awarded “for physical injuries alone,” some of which were far less severe than even his physical injuries. This, he says, is “not consistent with the principles that must guide this Commission’s valuation of Claimants’ injuries.”

Claimant’s reliance on awards made in the Libya Claims Program is misplaced. As the Commission noted when determining the appropriate compensation in its first award in the Libya program, “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.*” Claim No. LIB-I-001, Decision No. LIB-I-001, at 10 (2009) (emphasis added). The circumstances underlying the Libyan settlement agreement were very different from those of the Iraq Agreement. For one, the Libyan settlement was nearly four times the amount of the Iraqi settlement, and the recommended levels of compensation were considerably higher than the recommendation made in the 2012 Iraq Referral, which is at issue here. Indeed, \$3 million was extraordinarily high in the history of physical-injury compensation in international law. Moreover, the State Department was explicit as to why it had recommended the \$3 million figure for physical-injury claims: it had specifically assured Congress that successful, physical-injury claimants would be compensated at the same level as the amount provided for physical injuries in the LaBelle Discotheque settlement—namely,

⁷See Claim No. LIB-II-118, Decision No. LIB-II-152 (2012).

\$3 million. *See* December 2008 Referral ¶4; January 2009 Referral ¶ 7; *see also Letter from John D. Negroponte, Deputy Secretary of State, to the Honorable Mitch McConnell, United States Senate 2* (July 28, 2008). The LaBelle Discotheque settlement specifically involved Libya, and the State Department’s rationale was thus tied to the unique circumstances of the Libya settlement. *See generally* Claim No. LIB-I-001, Decision No. LIB-I-001. The \$3 million that physical-injury claimants were awarded in the Libya program thus offers no guidance in determining the appropriate amount of compensation here.

Other Civilian Hostages: Claimant also argues that his award should be higher because his injuries were far more serious than those suffered by the other civilian hostages who brought claims in this program. Moreover, he claims that, because the State Department’s awards for hostage-taking⁸ were based on a strict per diem basis, there are claimants in this program who suffered less than he did, but will have received greater total compensation because they were held for a longer period of time. Claimant believes that he should receive more in total than those other claimants and that the only way to remedy this inequity is to award him more than \$1.5 million in this program.

One factual premise of Claimant’s argument is certainly correct. As the Commission stated in its Proposed Decision, “the injuries . . . and . . . treatment Claimant suffered at the hands of his captors represent some of the most brutal circumstances in this claims program.” Claim No. IRQ-I-001, Decision No. IRQ-I-005, at 7 (2014)

⁸ As explained in the Proposed Decision, the State Department already compensated claimants prior to this Referral for “physical, mental, and emotional injuries generally associated with” being held hostage or subject to unlawful detention. Claim No. IRQ-I-001, Decision No. IRQ-I-005, at 2-3 (2014). The Referral to the Commission encompassed separate and additional compensation for “serious personal injuries” that constituted a “special circumstance warranting additional compensation.” *See id.* at 3.

(Proposed Decision). Claimant's injuries were thus certainly more severe than those suffered by most of the other civilian hostages compensated in this program.

However, the Commission already took this into account in awarding him the maximum amount in this program. While Claimant may have suffered more numerous and more severe injuries than most of the other claimants, he was also awarded more compensation than they were. *See, e.g.*, Claim No. IRQ-I-003, Decision No. IRQ-I-006 (2014) (awarding \$500,000 to a claimant who had suffered three instances of coercive interrogation); Claim No. IRQ-I-006, Decision No. IRQ-I-026 (2014) (awarding \$1 million to a claimant who had undergone a mock execution). The only other claimant who has been awarded the \$1.5 million recommended maximum so far was also held captive under appalling conditions and beaten frequently by Iraqi authorities, just like Claimant. *See* Claim No. IRQ-I-002, Decision No. IRQ-I-007 (2014). The award of \$1.5 million thus represents an appropriate amount when compared across the full range of claimants and injuries in this program. *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006 (2014) at 18-19 (holding that compensation in this program is to be awarded on the basis of a "continuum from zero to \$1.5 million, with amounts to be awarded within that range based on an assessment of claimant's injuries within this program").

As noted above, Claimant argues that the relevant point of comparison is not the amounts awarded in this program, but rather the sum of the amount the State Department awarded for hostage-taking and the amount awarded in this program. According to Claimant, because the State Department's hostage-taking awards were based solely on the number of days a claimant was detained in Iraq and because Claimant was detained for far fewer days than many of the other hostages, some of the other hostages, including

several who did not suffer injuries as severe as Claimant's, will receive greater total compensation than Claimant. "This result," Claimant argues, "whereby individuals who suffered less than [Claimant] can receive more than [him]—is presumably not something that the State Department intended." Though he alludes to claimants who might have received more in total compensation, he does not point to any other specific claimant who both suffered less and received more in total compensation than he did. Thus, Claimant's premise may not be correct.

Even if correct, however, the possibility that another claimant may have suffered less but received more in total compensation does not in and of itself warrant an award above the State Department's recommendation in this program. The 2012 Referral covers only serious personal injuries, not hostage-taking *per se*; the Commission may therefore only compensate for serious personal injuries. We have no mandate to consider the amounts of the State Department's hostage-taking awards when making compensation decisions in this program. Moreover, the State Department certainly knew that it had made its hostage-taking awards on a per diem basis when it recommended the \$1.5 million maximum, and it knew how much it had awarded each of the hostages. It thus certainly could have foreseen the possibility that other claimants might receive more in total compensation, and yet it set the recommended maximum at \$1.5 million nonetheless.

Military Prisoners of War: Much of Claimant's argument focuses on the compensation the State Department paid directly to the American prisoners of war. Claimant indicates that these POWs were paid a fixed amount substantially more than

\$1.5 million, the amount recommended in the Referral.⁹ Claimant argues that, because his experience in Iraq was “substantially similar” to that of the POWs, he should be awarded the same amount as them notwithstanding the State Department’s recommendation. Indeed, he asserts that his injuries are worse than some of the POWs and comparable to those POWs who suffered the most serious injuries. Thus, he argues, to award him less than the fixed sum the State Department paid the POWs “would run afoul of the principles of justice and equity that this Commission is required to apply.”

The Proposed Decision noted that the Commission did not “have any information about the full array of injuries” the POWs suffered, and on objection, Claimant has provided evidence to respond to this concern. That evidence does show that Iraq treated Claimant with a similar level of brutality as many of the POWs and that Claimant suffered many of the same personal injuries as well.

The fundamental problem with this argument, however, is that the State Department did not instruct the Commission to take the POW award amount into account in making awards in this program. Indeed, not only has the POW award amount never been included or referenced in any documents provided to the Commission, but we also have no indication that the amount was ever made public, a point reinforced by the fact that Claimant’s attorney, who also represented the POWs, stated that the number is confidential. When the State Department wants the Commission to know and consider amounts it has previously awarded, it knows how to inform us accordingly. In fact, the State Department did just that in a referral in a previous program. In one of the categories of the 2009 Libya II Referral, the State Department set a recommended

⁹ Because disclosure of the precise amount Claimant believes those claimants received may raise confidentiality concerns, we will not disclose it here. To understand the nature of claimant’s argument, it is sufficient to note that the number is several times greater than the \$1.5 million maximum.

maximum based directly on awards that it had made to other claimants. *See* 2009 Libya II Referral ¶ 6 (noting that the \$7 million recommended maximum was based on the \$10 million the State Department had itself awarded for wrongful death claims); *cf. also* 2008 Libya I Referral ¶ 4 (State Department basing its recommended award amount for physical-injury claims in the Libya Claims program on the amount “provided for physical injuries in the LaBelle Discotheque settlement”).

Given that the State Department was fully aware of how much it awarded to the POWs, its silence here speaks volumes. It strongly suggests that the State Department did not intend for the Commission to look to that amount when determining compensation in this program. As the Commission stated in the Proposed Decision, “Since we [do not] have . . . an explicit indication in the Referral that the POW awards were to be considered, . . . we will not use the POW awards as a factor for assessing the appropriate level of compensation to be awarded in this Program.” Claim No. IRQ-I-001, Decision No. IRQ-I-005, at 24 (Proposed Decision).

Even if we ignore the fact that the State Department did not disclose the POW award amount to the Commission, one fact about those awards significantly undercuts Claimant’s argument: the State Department awarded each of the POWs the exact same amount, despite huge disparities in the severity of their injuries and treatment by the Iraqi authorities. Indeed, based on an assessment of those injuries, a federal judge determined that the POWs’ compensatory damage amounts ranged from \$16 million to \$35 million. *See Acree v. Republic of Iraq*, 271 F. Supp 2d 179, 219-221 (D.D.C. 2003), *vacated* 370

F.3d 71 (D.C. Cir. 2004).¹⁰ It thus appears that the amount of compensation the State Department provided the POWs was *not* based on an assessment of the specific injuries the individual POWs suffered. Therefore, we cannot use the POW award amount to conclude that the State Department somehow valued the injuries and treatment Claimant suffered at that amount.

Moreover, the State Department was aware that the injuries and treatment suffered by Claimant were comparable to those suffered by the POWs, and yet at the same time both set the recommend maximum in this program at \$1.5 million and affirmatively chose not to disclose the POW award amount to the Commission. As explained in the Proposed Decision, “We can thus infer that the State Department did not intend the POW awards (which, according to Claimant, were made by the State Department itself) to serve as a rationale for this Commission to make awards greater than \$1.5 million in this Program.” Claim No. IRQ-I-001, Decision No. IRQ-I-005, at 24 (Proposed Decision).

Claimant argues that while the State Department may have been aware of Claimant’s experiences and injuries generally, it was not “in possession of [the] full facts” about those injuries. If it had had those “full facts,” Claimant argues, “it would have had to conclude that the experiences and injuries of [Claimant] were very much in line with those of the POWs.”

We disagree. The State Department had enough facts prior to issuance of the Referral to know that Claimant’s experiences and injuries were comparable to the POWs’. As Claimant himself recognizes, “[t]he State Department was fully briefed on

¹⁰ These actual amounts were not based on principles of international law and so have no bearing on the amount we should award here. What is relevant, however, is how wide the range was, based as it was on an assessment of the different injuries and treatment each POW suffered.

the experiences and injuries suffered by the POWs” Moreover, Claimant submitted several documents to the State Department, including the 21-page complaint from his federal lawsuit against Iraq¹¹ and several contemporaneous news articles, documents that detail Claimant’s experiences in captivity and many of his injuries. The complaint alleges that Claimant was “beaten with clubs and truncheons, subjected to freezing and vile confines, and threatened constantly with death.” First Amended Complaint ¶ 9; *see also id.* ¶¶ 23-32 (alleging “unsanitary conditions” and “cockroach-infested cells, “relentless beatings . . . with truncheons,” and Claimant losing consciousness from the violence); ¶ 37 (alleging detention was 40 days). One of the news articles made reference to Claimant’s detention in “Iraq intelligence headquarters” (as did the Complaint) and the presence of at least one British POW. 5 U.S.C. §552(b)(6)

Finally, Claimant and the POWs had the same lawyer, and he represented all of them before the State Department. He maintains that he had conversations with State Department lawyers, and though he may not have shared all the details of Claimant’s captivity and subsequent mental injuries, he did explain to them that Claimant “[was] held in the same locations and subjected to the same conditions and treatment (including brutal beatings and starvation).”

Finally, there are some differences between Claimant and the POWs that the State Department may have viewed as relevant for purposes of compensation. For instance, the POWs were members of the United States Armed Forces, and a military-civilian

¹¹ First Amended Complaint, 5 U.S.C. §552(b)(6)

distinction could have been considered when determining compensation and creating various categories of claims. Indeed, Claimant's attorney stated during oral argument that this was his understanding of the distinction the State Department used to determine whom it paid directly. In addition, the POWs had obtained a judgment against Iraq in their lawsuit, whereas Claimant never did. Although the POWs' judgment was vacated soon thereafter, the JVTTA (the bill that would have established a specific formula for compensation against Iraq) would have made the existence of a judgment, even a vacated judgment, worth extra compensation in its formula. *Compare* JVTTA Sec. 3(c) (1) and (3)(c) (2) *with id.* Sec. 3(c) (4). While we have no evidence as to how, if at all, these or other factors may have affected the specifics of the POWs' compensation and the Referral's recommended maximum, these distinctions between Claimant and the POWs could have been considered in determining both the payment amount to the POWs and the Referral's recommended maximum.

In sum, if this Commission had made the POW awards as part of this program, Claimant's argument for compensation at the same level as those awards would be more compelling. Based on the evidence we do have, it appears both that Iraq treated Claimant to a similar level of brutality in similar conditions as the POWs and that he has suffered similar injuries of comparable magnitude. It was the State Department, however, that made the POW awards, and the State Department is the very agency that also set the recommended maximum in this program at \$1.5 million. In these circumstances, therefore, we cannot ignore the recommended maximum, the one number the State Department did give us, and instead consider the amount the POWs purportedly received, a number the State Department consciously chose not to give us.

CONCLUSION

We recognize that Claimant suffered enormously during his hostage experience in Iraq and indeed sustained more serious personal injuries over a longer period of time than the majority of the claimants in this claims program. Therefore, within the context of this program, Claimant is entitled to substantial compensation for his injuries. At the same time, however, this Commission's authority to determine award amounts in this program is framed through the lens of the Commission's statutory mandate and the State Department's 2012 Referral. Seen through that lens, we remain convinced that \$1.5 million is the most appropriate amount to award Claimant.

We recognize of course that no amount of money can adequately compensate Claimant for the barbaric acts Iraqi officials committed and the extraordinarily horrendous experiences Claimant was put through. In that sense, we do not mean to suggest that the amount we award suffices to "compensate" Claimant in the literal sense of that word. In the context of this program, however, \$1.5 million is the amount to which he is entitled.

In sum, for the reasons discussed above and in the Proposed Decision, and based on the evidence and information submitted in this claim, the award entered in the Proposed Decision in this claim is restated below and will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of Title I of the International Claims Settlement Act (22 U.S.C. §§ 1626-27). This constitutes the Commission's final determination in this claim.

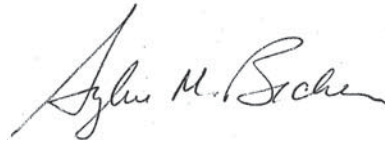
AWARD

Claimant is entitled to an award in the amount of One Million Five-Hundred
Thousand Dollars (\$1,500,000.00).

Dated at Washington, DC, January 13, 2015
and entered as the Final Decision
of the Commission.

A handwritten signature in black ink, appearing to read "Anuj C. Desai". The signature is fluid and cursive, with the first name being the most prominent.

Anuj C. Desai, Commissioner

A handwritten signature in black ink, appearing to read "Sylvia M. Becker". The signature is cursive and somewhat stylized, with the first name being the most prominent.

Sylvia M. Becker, Commissioner

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

In the Matter of the Claim of	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-I-001
	}	
	}	Decision No. IRQ-I-005
Against the Republic of Iraq	}	

Counsel for Claimant:	Stephen A. Fennel, Esq. Steptoe & Johnson LLP
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PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) based on injuries he suffered as a result of being held hostage in Iraq and Kuwait between January and March 1991. The United States Department of State has already provided him a payment, which compensated him for his experience as a hostage. He now seeks additional compensation based on a claim that Iraqi officials repeatedly and brutally beat him, subjected him to numerous instances of harsh interrogation, imprisoned him in inhumane conditions, and forced him to listen to fellow captives being beaten, and that, as a result, he suffered numerous physical and emotional injuries, some of which remain to this day. We conclude that Iraqi officials did in fact inflict those injuries on Claimant and that the Claimant is thus entitled to \$1.5 million in additional compensation.

BACKGROUND AND BASIS OF CLAIM

Claimant, ^{5 U.S.C.} §552(b)(6), alleges that he and three colleagues were working near the border between Saudi Arabia and Kuwait shortly after the commencement of Operation Desert Storm in January 1991. He states that, as they were walking from Kuwait back into Saudi Arabia, they were seized by Iraqi military personnel, driven behind Iraqi lines, and held hostage under brutal conditions at various prisons until March 2, 1991. Claimant's experiences and injuries are detailed in the Merits section below, and encompass a wide range of allegations, including, among other things, numerous instances of physical assault and harsh interrogation.

^{5 U.S.C.} §552(b)(6) Claimant sued Iraq in federal court for, *inter alia*, hostage taking, torture, and intentional infliction of emotional distress. The case was ultimately dismissed on jurisdictional grounds ^{5 U.S.C.} §552(b)(6). Several months later, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement. *See Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement"). The Agreement, which came into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004. Exercising its authority to distribute money from the settlement funds, the State Department provided compensation to numerous individuals whose claims were covered by the Agreement, including some, like Claimant, whom Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this compensation "encompassed physical, mental, and emotional injuries

generally associated with” being held hostage or subject to unlawful detention.¹ Claimant states that the amount of the payment he received was based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention.

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

claims of U.S. nationals for compensation for serious personal injuries knowingly inflicted upon them by Iraq¹ in addition to amounts already recovered under the Claims Settlement Agreement for claims of hostage-taking² provided that (1) the claimant has already received compensation under the Claims Settlement Agreement from the Department of State³ for his or her claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq, and (2) the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation. For the purposes of this referral, “serious personal injury” may include instances of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault.

¹ 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.

¹ For purposes of this referral, “Iraq” shall mean the Republic of Iraq, the Government of the Republic of Iraq, any agency or instrumentality of the Republic of Iraq, and any official, employee or agent of the Republic of Iraq acting within the scope of his or her office, employment or agency.

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

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

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

Claimant submitted a timely Statement of Claim under the 2012 Referral, along with exhibits supporting the elements of 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 State¹ 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* ⁵ U.S.C. §552(b)(6) Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 5-6 (2014) (Proposed Decision). Claimant satisfies the nationality requirement. He has provided a copy of two U.S. passports: one from the time of the hostage-taking (valid from April 1987 to April 1997) and his current one (valid from April 2007 to April 2017).

Compensation from the Department of State

The Claimant also satisfies the second jurisdictional requirement. He has submitted a copy of a Release he signed on August 25, 2011, indicating his agreement to accept a certain amount 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 November 3, 2011, and he has also included a confirmation from the bank that this amount was successfully deposited. Claimant further states 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 to entertain this claim under the 2012 Referral.

Merits

The 2012 Referral limits claims in this program to those for “serious personal injuries knowingly inflicted upon [the claimant] by Iraq.” The Referral explains that, “[f]or 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.” It further limits compensation to those cases in which “the Commission determines that the severity of the serious personal injury suffered is a special circumstance warranting additional compensation.”

As the language makes clear, the 2012 Referral requires a claimant to satisfy three conditions to succeed on the merits of his or her claim. First, the claimant must have suffered a “serious personal injury,” which may be “physical, mental, or emotional.” If the Referral used the phrase “serious personal injury” without any elucidation, it might imply that we need solely determine how bad a claimant’s injury is—that is, to focus solely on the injury itself. But the Referral expressly lists four specific acts from which such injury may arise, indicating that, in determining whether a particular injury satisfies the legal standard of a “serious personal injury,” we must consider not just the injury itself, but also how the injury arose. It is clear, for example, that the Referral’s phrase “serious personal injury” includes injuries arising from any of the four acts specifically mentioned—*i.e.*, sexual assault, coercive interrogation, mock execution, or aggravated physical assault. At the same time, the use of the permissive “may” in the same sentence suggests that an injury need not necessarily have arisen from one of those four acts to be deemed a “serious” personal injury. Rather, the language of the Referral suggests that an

injury may be caused by an act that is comparable in seriousness to one of those four acts—that is, an injury arising out of an act or acts of a similar type or that rise to a similar level of brutality or cruelty as the four enumerated acts.

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

The third requirement is that the Commission determine that the severity of the serious personal injury suffered constitutes a “special circumstance warranting additional compensation.” In determining whether the severity of the injury is such a “special circumstance,” 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.

In this claim, the injuries alleged and the treatment Claimant suffered at the hands of his captors represent some of the most brutal circumstances in this claims program. The sheer number of injuries, the regularity with which Iraqi officials inflicted those injuries, and the appalling conditions of Claimant’s confinement involve suffering that few could imagine.

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

The facts we outline are those established by the evidence Claimant submitted.³ Where the evidence is insufficient to establish any particular allegation, we note that fact below. We chronicle the Claimant's captivity by dividing it into four time periods: (1) the Iraqi authorities' initial seizure of the Claimant and his colleagues near the Saudi-Kuwaiti border and their forcible abduction of him to Basrah, Iraq (approximately the first day); (2) the forcible taking of him to Baghdad and the time he spent in a cell with his colleagues (approximately, days 2 through 10); (3) a period of solitary confinement in Baghdad (approximately, days 10 through 33); and (4) the final week in a cell in a different prison, after the Allies bombed the building in which he had previously been imprisoned. At each stage, the Iraqi authorities treated him with extraordinarily violent physical brutality.

(1) Seizure and Initial Interrogations: Claimant and three colleagues were in Saudi Arabia in January 1991 when the Allies began air strikes against Iraq. On January 21, 1991, less than a week later, Claimant and his colleagues were near the Saudi-Kuwaiti border when an Iraqi military patrol driving a jeep approached them. Two soldiers with AK-47s then seized them and "shoved [them] into the jeep." The soldiers drove them "behind Iraqi lines to a bunker complex[.]" and when they arrived, Claimant and his colleagues "were yanked out and thrown to the ground." Soldiers then

³ Claimant has submitted extensive documentation and other evidence in support of his claim, both recent and from shortly after his hostage experience. This includes, *inter alia*, two recent sworn statements describing his hostage ordeal, the severe personal injuries he alleges he sustained, and the lingering effects of those injuries; a sworn statement from his wife, describing his condition upon release and his alleged injuries; similar sworn statements from several work colleagues; several sworn statements from physicians who have treated Claimant both recently and in the months and years following his ordeal; a sworn statement from an American POW captured in the same time period as Claimant, and who attests to Claimant's captivity and his physical condition towards the end of his captivity; several contemporaneous news articles regarding Claimant's hostage experience; several contemporaneous photographs depicting Claimant both before and after his captivity; a lengthy, detailed narrative written by claimant the year after his experience; and a video clip of a contemporaneous news report on Claimant's release in March 1991, including footage of Claimant shortly after his release.

surrounded them, with rifles pointed at them, and one “pushed his gun into [Claimant’s] cheek.” One of the soldiers also “knocked [him] with his rifle butt in the back of the head.” Claimant then “went down on all fours as [the soldier] backed up and took aim. [He] lowered [his] forehead and waited to hear shots.”

Claimant and his colleagues were again placed in a jeep and driven to a second bunker; along the way they were blindfolded, and their hands were tied behind their backs. They eventually arrived at a second bunker and were led into an office where they were interrogated concerning their identities and what they had seen in Saudi Arabia. They were told that they were prisoners of war. Claimant told his interrogators that he was a ^{5 U.S.C. §552(b)(6)} and they responded that ^{5 U.S.C. §552(b)(6)} (an Iranian who had been accused of being a spy and was hanged in Iraq in 1990) had had ^{5 U.S.C. §552(b)(6)} as well.

After the interrogation, Claimant was again blindfolded and his hands were tied, and he and his colleagues were “shoved” in the back of another jeep. They were then driven four hours to Basrah, Iraq. During the drive, it was “freezing cold,” and the “guards poked [Claimant and his colleagues] with sticks and [laughed] when [they] grunted or moved.” Upon arriving in Basrah, they “were dragged out of the jeep, shoved through a door and thrown to the floor.” At that point, he was taken to a side room and blindfolded with his hands tied behind a chair. He “was told [he] would be asked questions and that [he] would answer them, or [he] would be made to answer them.” As the questioning began, he was struck with a cane on both legs, and was “then beaten on the head with canes.” Two men conducted the beating while a third “shouted questions” at him. During the beating, he was “drifting out of consciousness,” and his captors

“opened the door so that [he] could hear [his] three colleagues screaming.” (They were being beaten at the same time.)

At some point, Claimant “was smashed in the face with a cane” and was then taken into the corridor, where he was struck on the back of the head, at which point he fell to the ground, his hands still tied behind his back. He and his colleagues were then driven 15 minutes away to yet another location, where he was thrown into a “pitch black” prison cell. His head was “covered in bumps, which were capped with crusted blood,” and the cell was “freezing cold”—he had been wearing summer clothing when seized. When he walked around in the dark, he stumbled over a pail full of urine which then spilled on the floor. He was not able to sleep that night due to the cold and his anxiety.

(2) Transfer to Baghdad: In the morning, after being led to the toilet through a “pool of liquid and feces,” Claimant and his colleagues were bound, gagged, and handcuffed, and were placed into a car and told they were going to Baghdad. Claimant states that the gag was so tight that “it cut into the sides of [his] lips.” Along the way, the car stopped, and they were taken out of the car. Still blindfolded, the four of them were then led up a hill, lined up, and made to stand there for about 15 minutes. Claimant “was convinced that [they] were going to be executed.”

It took 10 hours to drive to Baghdad. During this time, his handcuffs were so tight that his wrists swelled and bled. When he complained to the guards, they “smashed [him] in the face and [his] gag was tightened.” Eventually, Claimant was dumped out of the car, the cuffs were removed, and his hands were tied behind his back. He was then punched in the stomach, pulled up by the hair, and slapped in the face. He was “then tripped backward and pushed to the ground.”

Shortly thereafter, he and his colleagues were placed in a cell in barracks at an army camp. At one point, he pulled the blindfold down and saw that his “hands were swollen with bloody gashes around [his] wrists.” He was then removed from the cell, blindfolded with his hands bound again, and, as in Basrah, taken to be interrogated. He was directed to answer questions, and one of the questioners said, “I think you are a CIA man, so you know what will happen.” After his interrogation, Claimant was taken back to his cell with his colleagues. It was very cold and dank; they had to sleep on the floor and huddled together to stay warm. He also describes an incident from the following day, when they “were given pieces of bread floating in a cloudy liquid for the four of us to eat. We ate the soggy bread and realized that the guards had urinated in our food.”

After nine days in the camp, Claimant and his colleagues were again blindfolded with their hands tied, placed in a car, and taken to another facility which “seemed like an underground garage.” Claimant was “dumped out and shoved onto a bench[,]” where somebody spat in his face. When Claimant responded to a question about his nationality with the answer “American,” he “got bashed in the face.” The interrogators asked again about his nationality, and then one of them struck him in the face with a closed fist and he was kicked in the shins. He was pulled up by his hair and “slapped back and forth.” Claimant asserts that the men continued to beat him: they “hit [him] with sticks in the head, punched [him] in the face, and kicked [his] legs.” He told them “I want to die Just let me die, no more of this.”

At some point, Claimant’s blindfold was ripped off, and he found himself in an office with several Iraqi soldiers. He alleges that an officer “forced [his] mouth open and spit in it[,]” and said the Arabic word for “Jew” to the other men in the room. Claimant

states that this “confirmed [his] worst fear – that they knew [he] was Jewish[,]” and that he “felt that [his] murder was imminent.” He adds that “[a]t that point, one of the men drew his finger across his neck, signaling that he was going to cut [their] throats.” Another one of the soldiers “punched [him] square in the face.”

(3) Solitary Confinement: Claimant was then taken to a solitary confinement cell. After a short while, he was taken out of the cell, blindfolded, and led into a room with three men. They told him, “You can talk freely or we will use force. It is you who choose.” They then proceeded to interrogate him about what he and his colleagues had been doing. By then, he had noticed a pattern in the interrogations: the Iraqi soldiers would ask his name and rank, and when he said he was ^{5 U.S.C.} §552(b)(6), not a soldier, they would say “that is not satisfactory” and begin beating him with “sticks and belts and punches and kicks.” Claimant does not know how long the sessions lasted because he usually passed out. When they were finished, they threw cold water on his face, then led him back to his cell, pushing him along the way.

The conditions of Claimant’s confinement were intolerably filthy and characterized by an utter lack of regard for basic human needs. The toilet in the cell was broken—nothing more than a “feces-filled broken dry porcelain bowl” There was no electricity, there were cockroaches in the cell, and it was freezing: Claimant “could see [his] breath[,] and [his] feet felt numb.” Plus, it was very dark—so dark that “for about 12 hours at a time, [he] could not see [his] hands.” Once a day, somebody would open the small window in his cell and give him a small amount of food, generally consisting of “two pieces of pita bread and a tin cup of watery soup.” He was given water in the evening. At some point, he got dysentery and suffered terrible stomach

pains. He “could feel [him]self starving” and losing weight very quickly. All he could think about was food, and he “feared that [he] would die of starvation” He asked his captors for a doctor, but was told that one could not see him until the next day; however, the doctor did not arrive until two days later, and even then, only gave Claimant a single tetracycline pill. He never returned after that. Every night, Claimant had difficulty sleeping due to the cold. Because he was in solitary confinement and feared going insane, he “talked to [him]self to keep [his] mind running.” However, one day a guard opened the door and told him to be quiet, and said that if he heard him again “he would first punish [him], then he would kill [him].”

On the eighth day of his solitary confinement, he was blindfolded, bound, and taken to another interrogation room, where he was again seated with his hands tied around a chair. His captors told him that he probably would not see his wife and daughter again because they believed he was a spy. When he again told them he was a ^{5 U.S.C. §552(b)(6)}, they repeated that ^{5 U.S.C. §552(b)(6)} was ^{5 U.S.C. §552(b)(6)}, and that, in fact, they had killed ^{5 U.S.C. §552(b)(6)} in that very place. They then said that “if you ever want to see your wife and daughter again, tell us who sent you on your mission.” At that point, Claimant alleges that he “felt a cold metal circular object pushed against [his] left cheek[,]” although he did not know if it was a gun or a pipe. Eventually, Claimant was led back to his cell. He states, “I told the guard that, since they are planning to kill me, I wanted them to kill me now.” Back in his cell, he experienced fantasies of suicide and considered using materials in his cell to accomplish this. During this time, he could hear another man screaming down the corridor.

Seventeen days later, Claimant was again blindfolded, bound, and taken to an interrogation room. His interrogators told him that their sources told them that Claimant was Jewish, had good relations with the Israeli government, and worked for Mossad. They further stated that Iraq had assassinated the U.S. president and “had killed 70,000 U.S. troops with chemical weapons.” Claimant states that he feared he “was about to get killed for being Jewish.”

(4) Final Days and Release: On February 23, 1991—approximately 33 days into his captivity—Allied forces dropped three bombs on the facility where Claimant was imprisoned. The building was “shaking and crumbling” around him, and after the third bomb fell, the ceiling collapsed and “[c]hunks of concrete were falling on [his] head.” Claimant “was up to [his] [waist] in rubble,” and “[p]eople were screaming all around [him].” Shortly thereafter, the guards came and removed Claimant, his colleagues, and the other prisoners from their cells and placed them in the back of a bus out on the street. Claimant states that he “was pushed down on the floor [of the bus], and a blanket was thrown over [his] head.” Then he “was hit in the head with a truncheon.” When he attempted to speak to a POW sitting next to him, he was again struck in the head.

One of the Iraqi guards on the bus asked Claimant his nationality; when he responded “American,” he was again hit in the head with a truncheon. Claimant was then asked if he was a pilot; when he responded that he was a ^{5 U.S.C.} ~~§ 552(b)(6)~~, the guard “hit [him] in the forehead so hard [he] blacked out.” Claimant believes that he was beaten in the head repeatedly during the drive, although he states he has “little memory of that as [he] was in and out of consciousness for much of the ride.” However, Claimant’s account is confirmed by one of the other prisoners on the bus, an American POW, who states that

“the guard beat [Claimant] savagely[]” and that “he had the impression that [Claimant] was rendered unconscious from this beating”

The bus eventually stopped, and he and the other detainees were taken into another prison facility. He was led inside, “struck in the small of [his] back and shoved into a cell which was completely dark[]” with six other prisoners. It was so tight in the cell that they had to lie on their sides because there was insufficient space to lie on their backs.

In the morning, Claimant gestured to one of the other prisoners, at which point Claimant was “yanked out [of his cell], clubbed in the head with a truncheon [and] then clubbed in the groin. . . . Two guards were beating [him], both with truncheons, one blow after another. They shoved [his] face against the wall. . . . They pushed [him] to the floor and kept swinging. . . . Then they hit [him] once more in the head and [he] lost consciousness.” Claimant was then pulled onto his feet, and a guard “bashed [him] with a truncheon above [his] right ear and [he] went down.” He was told that if he made that gesture again, they would kill him.

Claimant recounts the final three or so days in the prison: his cell was full of fleas, which got into his clothes and hair, and there was no toilet, only a hole in the floor. He was taken to the bathroom twice a day. He and the other prisoners were only given a small amount of bread to eat. In addition, it was difficult and painful for him to walk due to swelling in his right knee caused by the beatings he had endured.

On the night of March 1, 1991, Claimant was “pushed” from his cell into the prisoner corridor, where his three colleagues were also standing. They were led outside to a van and driven around with the lights off. Eventually, they were taken to a local hotel,

and in the pre-dawn hours of March 2, 1991, they were released to their employer after a 40-day ordeal.

Injuries Alleged: Claimant contends that he suffered “serious personal injuries” warranting additional compensation under the 2012 Referral. His allegations involve both physical and mental injuries both during and after his time in captivity. He says that, while in captivity, he “suffered repeated beatings, was tied with restraints that cut into [his] wrists, was put on a starvation diet[,] . . . was kept in vile conditions that caused other physical injuries,” and was subjected to “hostile interrogations” and “threats of imminent execution.”

Claimant also says that he has suffered (and continues to suffer) injuries since his release. Upon his release, he “was admitted to Humana Hospital in London. . . . with severe malnutrition.” He “had lost 35 pounds [and] had severe dysentery due to a parasite found in [his] intestines from ingesting sewage.” Further, one of his colleagues noted that “he had a yellowish pallor.” Claimant was released from the hospital after three or four days and was advised by his doctors to take two or three months off, although he concedes that he “mistakenly tried to push through work.” In addition, he alleges that, after leaving the hospital, “familiar landmarks seemed blurry.” He saw an optometrist and discovered that he was nearsighted, which Claimant found unusual since he had not previously needed glasses.

Claimant asserts that for several months he experienced headaches due to the beatings he suffered in captivity. In addition, he states that he “was very weak and had difficulty walking, in part because of the pain from the beatings on [his] legs.” He adds

that when sleeping, he “had to lie on [his] stomach because [his] back and sides hurt too much.”

In addition to his physical injuries, Claimant also describes “ongoing, crippling emotional and mental injuries” suffered both during and after his captivity; indeed, Claimant contends that his claim “focuses on [these] severe mental and emotional injuries” and that his physical injuries “do not compare” to these injuries. He alleges that he suffered PTSD, depression, anxiety, nightmares, flashbacks, insomnia, and despondency. He states that he was “totally traumatized for months[,] . . . suffered from a lack of sleep, and, when [he] was able to sleep, had nightmares.” Claimant’s wife and colleagues submitted declarations confirming Claimant’s severe emotional anguish and its detrimental effect on his personal and professional life.

Claimant took two and a half months off work and during that time wrote a detailed narrative describing his experience as a hostage. According to a colleague, when Claimant did finally return to work, he had difficulty performing his duties.

Medical professionals have also provided evidence to support Claimant’s injuries: they have submitted declarations detailing Claimant’s treatment for PTSD, depression, and anxiety immediately following his release and in the years since.⁴

⁴ 5 U.S.C. §552(b)(6)

Analysis: Having reviewed the extensive documentation Claimant has provided, we conclude that (1) he suffered “serious personal injuries,” (2) Iraq knowingly inflicted those injuries upon him, and (3) the severity of his injuries constitutes a special circumstance warranting additional compensation under the 2012 Referral. The sworn statements by Claimant and others are credible and consistent with, and generally supported by, the other evidence provided. Further, the detailed contemporaneous documentation (including the various news articles, photographs, video clip, and Claimant’s highly detailed contemporaneous recounting of the experience), provides strongly corroborative evidence of Claimant’s sworn statements and those of the other declarants. Although Claimant has not submitted any actual medical records to support his claim, he has submitted the sworn statements of several physicians. These statements are largely consistent with each other and provide compelling and detailed evidence not only of the injuries *per se*, but also of their severity and the impact they have had on Claimant’s life.

(1) *Serious Personal Injury:* As detailed above, Claimant has submitted compelling evidence that his captors subjected him to numerous violent assaults and harsh interrogations, gave him inadequate rations, denied him medical care, and forced him to listen to and witness the physical abuse of others. Iraqi authorities inflicted such injuries on a near daily basis throughout his hostage experience and these conscious acts resulted in Claimant suffering severe mental and emotional injuries, including PTSD and

5 U.S.C. §552(b)(6)

severe depression. Claimant has thus proven that he suffered numerous distinct “serious personal injuries” within the meaning of the 2012 Referral, which expressly provides that “‘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,” and which we interpret to also encompass serious injury arising from acts of a similar type or that rise to a similar level of brutality or cruelty as one of the four enumerated acts. On the basis of the evidence provided by Claimant, we have no trouble concluding that Claimant has satisfied this element of this claim.

(2) *Knowingly Inflicted by Iraq:* Iraq knowingly inflicted these injuries. Iraqi military personnel singled him out for abusive treatment and controlled nearly every aspect of his life throughout his captivity. Moreover, they seemed to relish the abuse they inflicted, taunting him and threatening him so as to maximize both his physical and mental suffering. Claimant has thus also satisfied the “knowingly inflicted” requirement.

(3) *Special Circumstance:* Iraqi officials acted in a particularly brutal fashion, and Claimant has proven that he suffered an extraordinary number of injuries both during and after his captivity. He was beaten repeatedly, often by multiple assailants, and in some cases, the beating was so severe that he lost consciousness. These beatings often took place in the context of a ruthless interrogation, during which Claimant was also threatened with death if his answer did not satisfy his interrogators. Moreover, Claimant also suffered the terror of being blindfolded with his hands bound during several of these interrogations, which undoubtedly would have added to the mental pain and anguish associated with the experience. On several occasions, he was struck simply for honestly answering that he was an “American.” He suffered specific physical injuries based solely

on his being a United States citizen. Moreover, on occasion, his captors noted that he was a Jew, appearing to single him out because of his religion. This undoubtedly exacerbated whatever mental pain and anguish he would otherwise have felt, adding both a layer of indignity and humiliation and a fear that his religion might be a cause of additional abuse and/or his death. Moreover, he was forced to listen to the screams of others while they were being beaten, including those of close friends/associates. Further, the conditions of Claimant's confinement were nothing short of appalling, and he was kept for an extended period in solitary confinement in a cockroach-ridden cell with nothing but a broken bowl filled with feces as a toilet, in complete darkness for 12-hour periods at night, and given barely enough food and water to survive.

In addition, the initial injuries inflicted on Claimant have had a major impact on his mental and emotional health, and have caused him great pain and anguish in the long-term. The various sworn statements provide a consistent description of the level of depression and trauma that Claimant has suffered in the years since the incident. In sum, Claimant suffered significant mental and emotional injuries that both persist to the present day and have had serious consequences for his personal and professional life.

Given the nature and severity of his physical and mental injuries, the Claimant has established that the severity of his serious personal injuries constitutes a "special circumstance warranting additional compensation."

In short, Claimant has satisfied the standard for compensability under the 2012 Referral and is thus entitled to compensation.

COMPENSATION

Assessing the value of intangible, non-economic damages is particularly difficult and cannot be done using a precise, mathematical formula. *Claim of* ^{5 U.S.C. §552(b)(6)}, Claim No. LIB-II-002, Decision No. LIB-II-002, at 4-5 (2011) (Final Decision) (citing *Claim of* ^{5 U.S.C. §552(b)(6)}, Claim No. LIB-II-002, Decision No. LIB-II-002, at 9-10 (2009) (Proposed Decision)); *see also* 2 Dan B. Dobbs, *Dobbs' Law of Remedies* ¶ 8.3(6) (2nd ed. 1993); I Marjorie M. Whiteman, *Damages in International Law* 777-78 (1937)). Furthermore, assessing the relative value of personal injury claims is especially challenging where, as here, the claimants have alleged both physical and mental injuries, of varying number and degree, arising from highly individual circumstances.

The Claims Settlement Agreement itself says nothing about the appropriate level of compensation. The Referral sets a recommended maximum of \$1.5 million per claim, but says nothing else. 2012 Referral, *supra*, ¶ 4. The Referral also makes clear that this compensation is not to include compensation for any injuries generally associated with the hostage experience, injuries for which the State Department has already paid the Claimant.

Under international law, compensation for personal injuries varies greatly, and there is no consistent formula applied by international courts and tribunals in determining the appropriate amount. Chester Brown, *A Common Law of International Adjudication* 206 (2007). Nonetheless, certain factors have been frequently cited in making this determination or in assessing the relative value of such claims. For instance, Whiteman cites, *inter alia*, “the nature and seriousness of the injury to the claimant, [and] the extent

of impairment of the health and earning capacity of the claimant” I Marjorie M. Whiteman, *Damages in International Law* 628 (1937). Awards have generally been higher where the claimant’s suffering was permanent or persisted for many years. *See id.* at 588-92. Tribunals have also considered the seriousness and the manner of the wrong committed by the offending state, *see* Dinah Shelton, *Remedies in International Human Rights Law* 295 (2006); A.H. Feller, *The Mexican Claims Commissions* 296 (1935); *M/V Saiga (No. 2) (St. Vincent v. Guinea)*, Case No. 2, Judgment of July 1, 1999, 3 ITLOS Rep. 10, ¶¶ 171-172, as well as the existence of multiple causes of action in a single claim, *see, e.g.*, J.G. de Beus, *The Jurisprudence of the General Claims Commission, United States and Mexico* 271 (1938).

In determining the appropriate level of compensation under the 2012 Referral, the Commission will thus consider, in addition to the State Department’s recommendation, such factors as the severity of the initial injury or injuries; the number and type of injuries suffered; whether the claimant 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 claimant’s daily activities; the nature and extent of any disfigurement to the claimant’s outward appearance; whether the claimant 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.

Claimant does not specify how much compensation he seeks, but he argues that the Commission should award him more than the State Department’s recommended

maximum of \$1.5 million. Claimant contends that he is entitled to a greater amount because of the brutal and repeated nature of the acts that caused his injuries, the length of time he was subjected to attack (40 days), and the (now) more than 23 years of mental pain and anguish he has suffered. He emphasizes that, under the Referral, “damage awards are by no means limited to ‘physical injury’ and . . . mental and emotional injuries are *expressly* deemed compensable” (emphasis in original). Further, he says that he suffered treatment similar to the Gulf War POWs; and, according to Claimant, the State Department awarded those POWs amounts “well in excess of the amount now recommended by the State Department” under the 2012 Referral. Claimant notes that the State Department’s recommendation “is not binding and that the Commission will give independent consideration to the dollar amounts to be awarded” For these reasons, Claimant contends that an award in excess of \$1.5 million is warranted in this claim.

The Commission recognizes that Claimant suffered countless serious personal injuries throughout his ordeal, and the nature and seriousness of these injuries clearly entailed suffering that few can imagine. The deliberate cruelty of the Iraqi military in detaining Claimant and his colleagues, including the intentional infliction of enormous physical and mental suffering, represents some of the most egregious conduct alleged in this claims program. Moreover, the sworn statements of Claimant’s treating physicians make it clear that he has endured, and will likely continue to endure, significant emotional trauma for the rest of his life. Claimant rightly points out that the \$1.5 million mentioned in the Referral is merely a recommended maximum and that it does not bind this Commission, and he may be correct that the Gulf War POWs received more than the \$1.5 million recommended maximum.

Nevertheless, having weighed all of the relevant factors, we conclude that Claimant is entitled to \$1.5 million. The State Department set a \$1.5 million recommended maximum in this Program knowing that Claimant was among the eligible claimants. We can thus infer that the State Department did not intend the POW awards (which, according to Claimant, were made by the State Department itself) to serve as a rationale for this Commission to make awards greater than \$1.5 million in this Program. Moreover, Claimant, whose attorney represented some of the POWs both in their court case against Iraq and before the State Department, declares that those amounts are confidential and has thus not provided us with any concrete information about the awards the POWs received. Nor do we have any information about the full array of injuries that the POWs suffered at the hands of Iraq. We are therefore in no position to make the comparative assessment Claimant asks us to make. Since we have neither an explicit indication in the Referral that the POW awards were to be considered, nor any information about the specific injuries suffered and awards received by the POWs, we will not use the POW awards as a factor for assessing the appropriate level of compensation to be awarded in this Program.

Accordingly, the Claimant is entitled to an award of \$1,500,000.00 and this amount, not including the amount already received from the Department of State, constitutes the entirety of the compensation that the Claimant is entitled to in the present claim.

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 ICSEA. 22 U.S.C. §§ 1626-27 (2012).

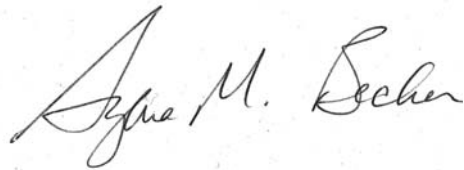
AWARD

Claimant is entitled to an award in the amount of One Million Five-Hundred
Thousand Dollars (\$1,500,000.00).

Dated at Washington, DC, February 21, 2014
and entered as the Proposed Decision
of the Commission.

A handwritten signature in black ink, appearing to read "Anuj C. Desai". The signature is fluid and cursive, with the first name being the most prominent.

Anuj C. Desai, Commissioner

A handwritten signature in black ink, appearing to read "Sylvia M. Becker". The signature is cursive and clearly legible.

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).