

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

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| In the Matter of the Claim of | } | |
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| 5 U.S.C. §552(b)(6) | } | Claim No. IRQ-I-022 |
| | } | |
| | } | Decision No. IRQ-I-008 |
| Against the Republic of Iraq | } | |
| | | |

Counsel for Claimant:

Daniel Wolf, Esq.
Law Offices of Daniel Wolf

FINAL DECISION

The Proposed Decision on this Claim awarded the Claimant \$1.25 million for injuries he suffered while being held hostage in Kuwait. Claimant objects to the amount awarded. He contends that the Commission employed a flawed methodology when interpreting language in the State Department’s referral letter that recommended a cap of \$1.5 million for successful claimants in this program. He also argues that, even applying that methodology, his experience and injuries are similar enough to two other claimants who were awarded \$1.5 million that the Commission should award him the same amount. Because we conclude that Claimant’s injuries are among the most severe in this claims program, and are similar enough to those suffered by the two other claimants who were awarded \$1.5 million, we withdraw the portion of the Proposed Decision that awarded Claimant \$1.25 million and award him One Million Five-Hundred Thousand Dollars (\$1,500,000.00).

BACKGROUND

Claimant brought a claim against the Republic of Iraq (“Iraq”) based on injuries he suffered as a result of being held hostage in Kuwait between August and September 1990. He sought \$1.5 million, in addition to the compensation the State Department had previously provided him for his experience as a hostage. In a Proposed Decision entered on March 14, 2014, the Commission concluded that Claimant had met his burden of proving that he had suffered a “serious personal injury,” the severity of which was a “special circumstance” warranting additional compensation under the State Department’s letter to the Commission establishing this program. *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”). *See* Claim No. IRQ-I-022, Decision No. IRQ-I-008 (2014) (“Proposed Decision”). Accordingly, the Commission awarded Claimant \$1.25 million in additional compensation—an amount just below the recommended maximum for awards in 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 of the maximum award for compensable claims under the Referral. Applying these factors, the Commission noted that “Claimant’s initial injuries were both severe and inflicted with particularly cruelty.” Proposed Decision, *supra*, at 17. These injuries included “numerous instances of physical assault and harsh interrogation over a three-week period,” threats of death while being interrogated, and a separate assault committed at a

¹ The 2012 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.

gas station prior to his imprisonment. *Id.* at 18-19. The Commission cited, among other things, “significant bruising on [Claimant’s] face as well as fractures to his nose and finger.” *Id.* at 17. The Commission further noted that, “[a]lthough Claimant ha[d] not submitted medical documentation evidencing the long-term mental and emotional effects of his injuries, [the Commission was] persuaded that his injuries and experiences led to some degree of emotional trauma in addition to lasting physical injury.” *Id.* at 19. For these reasons, the Commission held that Claimant was entitled to \$1.25 million in additional compensation, more than 80% of the maximum amount recommended by the State Department.

On April 3, 2014, the Claimant filed a notice of objection and requested an oral hearing. On August 29, 2014, Claimant submitted a brief containing further evidence and argument in support of his objection. The additional evidence included recent medical records from Kuwait that make reference to nasal problems and “pain and triggering of the left middle finger[.]”—conditions that Claimant attributes to the fractures he sustained during his beatings in Kuwait. The Commission held an oral hearing on September 18, 2014; the hearing consisted solely of argument by Claimant’s counsel, and the Claimant presented no witnesses for examination.

Claimant contends that he is entitled to \$1.5 million—the maximum amount recommended by the State Department in the 2012 Referral. He makes two arguments in support of this contention. First, he argues that the Commission employed a flawed methodology in interpreting the State Department’s recommended cap. On this point, he notes that the Commission used a comparative-continuum approach, reserving the State Department’s maximum of \$1.5 million for the claimants in this program who sustained

the severest injuries and then awarding Claimant an amount proportionate to that maximum based on the severity of Claimant's injuries relative to those other claimants. Instead of a comparative-continuum approach, Claimant argues that the Commission should have used a cut-off approach, under which the Commission first determines what Claimant's damages would be in the absence of a cap, and if, and only if, that amount exceeds the \$1.5 million cap, then reduce the award to \$1.5 million. Claimant argues that, under his preferred cut-off approach, he should receive \$1.5 million. Second, Claimant argues that, even accepting the Commission's comparative-continuum methodology, "[t]he experiences that [he] endured and the personal injuries [he] suffered as a result were comparable in severity to" those endured by the two other claimants who were awarded the \$1.5 million maximum. Because his injuries were "somewhere in the same ballpark[]" as those other claimants, Claimant contends that he should be awarded that same level of compensation.

DISCUSSION

I. The Proposed Decision's "Continuum" Approach

Claimant's first argument is that the Commission erred by interpreting the State Department's recommended maximum as establishing a continuum from zero to \$1.5 million based on the relative severity of a claimant's injuries, rather than a cut-off maximum for all claimants who would, in the absence of the cap, otherwise be entitled to more than \$1.5 million. As he put it in his brief, "the Commission calculated [his] award[] by placing [his] injuries along a continuum of severity in which (1) the stratum corresponding to a \$1.5 million award at the top of the continuum is reserved for the one or two claimants who sustained the severest injuries, and (2) the various strata below are

occupied with claimants whose injuries are proportionately less severe.” According to Claimant, “[i]n using the \$1.5 million capped amount that [two other claimants] were awarded—rather than the amounts [they] would have been awarded absent that cap—as the benchmark for determining the comparative valuation of Claimants’ damages, the Commission misapprehended the nature of the Department’s recommended cap and committed legal error.” Instead, Claimant argues, the Commission should first determine the amount to which he (and, by extension, every other claimant in this program) would be entitled in the absence of the cap and then, if that amount is above \$1.5 million, reduce it to \$1.5 million.

Other claimants represented by Claimant’s attorney have made the same argument, and in a recent decision, we rejected it. After carefully considering all of the arguments in favor of Claimant’s proposed cut-off approach, we explicitly reaffirmed the comparative-continuum approach that we implicitly used in determining Claimant’s compensation. *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006, at 8-18 (2014) (Final Decision). In that decision, the Commission held that “the Referral’s recommendation to award ‘up to but no more than \$1.5 million per claim’ is best understood to recommend the creation 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.” *Id.* at 18.

This conclusion applies equally here, and the Commission reaffirms the approach to compensation it adopted in the Proposed Decision: Claimant is entitled to compensation of an amount somewhere on a continuum from zero to \$1.5 million based on the severity of his injuries relative to all the other successful claimants in this program.

II. Comparison of Claimant's Injuries with Similar Claims in this Program

Claimant's second argument is that he is entitled to \$1.5 million, the recommended maximum, even under the comparative-continuum approach. In particular, he notes that the two claimants in Claim No. IRQ-I-001, Decision No. IRQ-I-005 (2014), and Claim No. IRQ-I-002, Decision No. IRQ-I-007 (2014) (claimants "1 and 2"), both received \$1.5 million and that his experience and long-term injuries, both physical and mental, are sufficiently similar to theirs to warrant the same award.

First, Claimant asserts that his experience and conditions of confinement were "not dissimilar to those endured by" claimants 1 and 2. For example, he notes that he was "viciously beaten on numerous occasions over a 25-day period, including while blind-folded," and that, like claimants 1 and 2, he "was subjected to numerous interrogations in which he was threatened with imminent execution" This was in addition to the brutal assault that he suffered at the hands of Iraqi soldiers at a gas station a few weeks earlier. *See Proposed Decision, supra*, at 8-9. Further, Claimant notes that, like claimants 1 and 2, he "was detained . . . in hot, filthy, excrement-covered cells, provided little and, sometimes, no food or water, and forced to witness 'corpses lining the hallways' of his detention facility." Based on the experiences alone, he argues that the other two claims are indistinguishable from his claim or, alternatively, that the distinctions are "too slight" to warrant a difference in compensation.

Claimant also argues that his long-term physical injuries are, if anything, even more severe than at least one of the two other claimants. While he does acknowledge that claimants 1 and 2 "were subjected to . . . horrifying treatment for 15 more days than" he was, he argues that his physical injuries were "demonstrably more consequential than

those sustained by” claimant 1. Specifically, he notes that claimant 1 “did not allege any lasting physical effects as a result of his 40-day ordeal in Iraq. By contrast, the Commission found that [this] Claimant . . . sustained a fractured nose and a fractured and permanently deformed finger as a result of the assaults that were perpetrated upon him.”² Thus, he contends, any difference in compensation cannot be attributed to any difference in “post-release physical suffering.”

Similarly, he argues that his long-term mental injuries were more severe, or at least better documented, than those of claimant 2. While he acknowledges that claimant 1’s mental injuries are much better documented than his own, he argues that claimant 2’s evidence of long-term emotional injuries is actually weaker than in his claim. Claimant 2’s evidence consisted primarily of the statement of the claimant’s fiancée, whereas in this claim the Claimant adduced (in addition to his own statement) the statement of his brother-in-law, who Claimant argues is a more distant (and thus arguably more credible) party. Thus, with regard to “post-release psychological injury,” Claimant argues, “the quantum of evidence supporting the . . . claims of [claimants 1 and 2], on the one hand, and [this Claimant] on the other, do not justify different award amounts.”

The thrust of Claimant’s argument is that, in the context of this program, his experience and injuries are sufficiently similar to claimants 1 and 2 that he too should be

² To further buttress his claims of permanent physical injury, Claimant has also submitted additional medical evidence on objection. The medical records primarily document office visits within the last year, although they do appear to offer further support for Claimant’s assertions that he has suffered lasting physical injuries. One medical report, from July 2014, notes that Claimant complained of “pain and triggering of the left middle finger[.]”; Claimant was “advised to do surgical release for the triggering left middle finger.” Another medical report, also from the same month, noted that Claimant had a “right deviated nasal septum + (bilateral) hypertrophy inferior turbinates[.]” and that Claimant “may need surgery[.]” although the report does not specifically attribute either the deviated septum or the hypertrophy to a nasal fracture. These records offer further evidence of the injuries Claimant already proved in his original submission.

awarded the same amount as they were, \$1.5 million. Claimant acknowledges that there are some differences that might warrant the Commission treating him differently from claimants 1 and 2. In particular, Claimant recognizes that they were subject to Iraqi brutality for 40 days, 15 days (i.e., more than 50%) longer than he was. Given our comparative-continuum approach, this difference alone might suffice to justify awarding claimants 1 and 2 \$250,000 (or 20%) more than Claimant.

But Claimant's argument is not simply based on a finely tuned comparative analysis of the facts of the claims. Rather, his argument is premised on a belief that it is a mistake for the Commission to make awards based on distinctions that are too fine. As Claimant's counsel put it during oral argument, by distinguishing between him and claimants 1 and 2 in compensation amount, the Commission is "slicing the salami too thinly."

Essentially, Claimant argues that if we are making awards on a continuum from zero to \$1.5 million, it is important not to make distinctions that are too fine given how horrendous all the claimants' experiences and injuries were. Doing so will, as our detailed discussion of the differences above makes clear, force us to compare incomparables: Is the lasting impact of Claimant's physical injuries as bad as the severe emotional suffering that claimant 1 continues to experience? How squalid or horrid were their conditions of confinement? Should it matter that claimants 1 and 2 were in the Iraqi Intelligence Headquarters when the Allies bombed it? How physically and psychologically coercive were the innumerable interrogations they were all put through? How bad were the countless beatings? Is this Claimant's brother-in-law's statement more credible than claimant 2's fiancée's?

This level of detail in making comparisons is unnecessary to our broader task in this program. As we have noted in other claims awarding compensation in this program (including the Proposed Decision in this Claim), “[a]ssessing the value of intangible, non-economic damages is particularly difficult” and “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.” Proposed Decision at 16-17.

There is no question that the nature of this program requires us to make certain distinctions based on the international law factors we have enumerated. We have no doubt, for example, that an individual instance of coercive interrogation would merit less compensation than do the subhuman conditions and merciless and incessant beatings for weeks on end that this Claimant and claimants 1 and 2 endured. We are nonetheless convinced that, in the context of this program, the use of broad categories for making distinctions suffices for our task. That task, we should emphasize, is not to “compensate” Claimant (or any of the victims) in the literal sense of that word. *See* Claim No. IRQ-I-001, Decision No IRQ-I-005, at 20 (2015). Given what he and the other victims endured and continue to suffer, we know that no “compensation” we could award could ever make Claimant whole. Our task, rather, is to provide monetary awards in the context of a specific program within the constraints imposed upon us by the law. In that context, setting broad categories suffices to allow different awards for indisputably different levels of relative injury while at the same time not requiring normative judgments about the relative intensity of different kinds of injuries or the relative level of wrongfulness committed when such comparisons simply cannot reasonably be made.

Given our decision to make awards in this program in broad categories, determining Claimant's award amount is not difficult: whatever the distinctions between his experience and injuries on the one hand and claimants 1 and 2 on the other, they are differences of degree, not kind. Claimant is thus entitled to be in the top category of award amounts in this program. He is therefore entitled to the same amount as claimants 1 and 2, \$1.5 million, which is the maximum recommended by the State Department.

Accordingly, in light of the discussion above, and based on the evidence and information submitted in this claim, the Commission withdraws the portion of its Proposed Decision that awarded Claimant \$1.25 million and issues the following award, which 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. §§ 1626-1627 (2012). This constitutes the Commission's final determination in this claim.

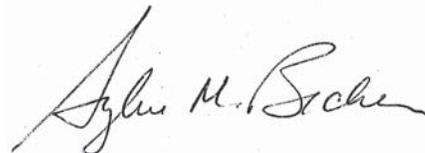
AWARD

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

Dated at Washington, DC, February 12, 2015
and entered as the Final Decision
of the Commission.



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

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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 between 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 on a claim that, while in captivity, Iraqi officials repeatedly and brutally beat him, detained him under inhumane conditions, and subjected him to numerous harsh interrogations and repeated threats of death; and that, as a result, he suffered severe physical and emotional injuries, some of which persist to this day. We conclude that Iraqi officials did in fact inflict those injuries on Claimant and that he is entitled to \$1,250,000 in additional compensation.

BACKGROUND AND BASIS OF CLAIM

Claimant alleges that he was living in Kuwait, tending to his family business, when Iraq attacked Kuwait in August 1990. He claims that he was detained by Iraqi

authorities twice in the weeks that followed, first for three hours following an altercation with Iraqi soldiers at a gas station, and second for a period of 25 days in a military prison, and that during these periods he suffered serious personal injuries at the hands of Iraqi personnel. Claimant's experiences and injuries are detailed in the Merits section below, and encompass numerous allegations of, among other things, physical assault and harsh interrogation.

Claimant sued Iraq in federal court in 2001 for, among other things, hostage-taking. *See* 5 U.S.C. §552(b)(6) . 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.¹ Claimant states that the amount of the payment he received was

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.

based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention (\$410,000 total).

The State Department's Legal Adviser subsequently requested that the Commission commence a claims program for some of the hostages that 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 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,” where “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. 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 June 1990 to June 2000) and his current one (valid from April 2010 to April 2020)—as well as his Certificate of Naturalization from March 1990.

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 September 27, 2011, indicating his agreement to accept a given 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 was paid this sum on December 27, 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 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 arise from one of those four acts to be deemed a “serious” personal injury. Rather, the language of the Referral suggests that the

injury may arise from 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.

Here, Claimant has alleged numerous physical assaults, harsh interrogation by Iraqi forces, and imprisonment in deplorable conditions for an extended period of time. To prove these allegations, Claimant has submitted several sworn statements, medical records, and other documentation—mostly recent in nature—in support of his claim. This evidence includes, *inter alia*, two sworn statements from Claimant himself (one dated February 2008 from his federal court litigation and another one submitted to this Commission in December 2013) describing his ordeal and his alleged personal injuries; recent sworn statements from Claimant’s brother-in-law, father, and father’s former

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

neighbor in Kuwait attesting both to his condition following his imprisonment by Iraqi personnel and to the medical treatment he received at the time; recent medical reports, referencing x-ray imaging reports, noting evidence of fractures in Claimant's nose and left middle finger; x-ray images depicting these fractures; a photograph of Claimant, said to have been taken after the first assault incident, showing bruising and swelling on his face; recent photographs of Claimant's fingers and hands showing his finger's deformity; and the visa pages from his expired passport. Except where noted, the facts we outline below are those established by this evidence.

In August 1990, Claimant was living in Kuwait, working in the family business in "scrap metal, spare parts, and heavy equipment sales, leasing, and repair[]." Iraq then invaded Kuwait, and Claimant was illegally held in Kuwait (and briefly in Iraq) from the date of the invasion, August 2, 1990, until September 22, 1990, when he flew to the United States via London. Claimant's injuries arose from two different time periods during the 52 days he was in Iraq-occupied Kuwait: (1) several hours on or about August 8, 1990, when he was detained at a gas station; and (2) a 24-25 day period when he was imprisoned in various prison cells under the control of Iraqi military authorities (August 25, 1990 to September 18, 1990).

Gas Station: On or about August 8, 1990, Claimant was at a gas station operated by Iraqi soldiers. The men told him that he had to pay in Iraqi Dinars or give them his expensive watch. Claimant only had Kuwaiti Dinars and refused to hand over his watch. The men then "began [to beat him] in the face and stomach." He was then "detained for three hours at the gas station, threatened with a gun and severely beaten." The soldiers then took his watch and let him go.

Claimant's account of the incident at the gas station is largely confirmed by the declarations of his father, brother-in-law, and his father's neighbor. Each of these declarations indicates that, about one week after the invasion, Claimant arrived at his father's house with his face bloody and bruised, and explained how he had been physically assaulted by Iraqi military personnel at a gas station. According to the neighbor, Claimant had stated that "the soldiers... beat him up—striking blows with their rifle butts and fists and then kicking him with their boots." In addition, Claimant's father and brother-in-law confirm that, following that incident, they took him to Mubarak Hospital, where he was treated for a broken nose. Further, his father states that he was with Claimant when he took a photograph of his facial injuries the same day as the assault. Claimant has attached a copy of this photograph with his claim, which although somewhat obscured, appears to depict Claimant with bruising on both eyes and swelling on the left side of his face. In addition, a recently generated x-ray image, according to an attached medical report, indicates that Claimant has a "linear nasal bone fracture."³

Military Detention Camp: About three weeks after the invasion, on August 25, 1990, Claimant went to his company's storage yards and saw officials looting his inventory. When Claimant yelled at them to stop, they "pointed their guns at [him], and arrested [him]." They then took him to a checkpoint, where he was questioned and searched. Inside his wallet was an identification card indicating he was an American citizen; upon seeing this, the men "began shouting and started kicking [him] and took [him] inside a tent for interrogation." He was held there, blindfolded, for five hours

³ Claimant contends that the Iraqi soldiers broke his nose on two separate occasions: once during the altercation at the gas station, and again during his captivity in the military prison. The recent x-ray does not offer any insight as to which incident caused the nasal fracture; however, for purposes of this decision, it is sufficient that the Commission is persuaded that Claimant sustained a broken nose during his captivity.

without food or water; during this time, they repeatedly attacked him. They “kick[ed] and slapp[ed] [him] while shouting and swearing[,]” accusing him of being an “Enemy collaborator” and “US Agent,” and threatening him with death. They “struck [his] back and chest with . . . their rifles which caused [him] to fall on the ground[,]” and they “then kicked [him] with their heavy army boots.” He “bled from the mouth” and it “was difficult to breathe[.]”

Claimant was then taken to a military detention camp and, for three days, “held in a closed cement cell with little water, hard bread and dates for food, and a small blanket with which to sleep on the filthy, excrement-covered floor.” The cell was dark and without a toilet. In addition, the cell was hot and without fresh air, and “the windows [were] cemented shut.” Iraqi officials interrogated him for 3-4 hours each day, accusing him of aiding the Kuwaiti resistance. He “was systematically beaten—often with sticks—[his] whole body was black and blue, [his] finger and nose were broken.” His “face and body were so bruised that [he] couldn’t open [his] eyes to see.” Then, “[a]fter [the] severe beatings [he] fell unconscious. They poured water on [him] to revive [him], and then beat [him] again.” The damage to his nose severely impaired his ability to breathe, and his “entire body was a source of pain” as a result of the beatings. Despite all his obvious injuries, the Iraqis provided him no medical treatment. Moreover, the “psychological trauma [he] suffered was nearly unbearable.” He states, “The officers wanted me to admit that I was a spy. The more I denied it, the more violent they became.”

After four days, they blindfolded him again and transferred him to another prison. Again, the cell was hot and dirty, and this time, he shared it with six other prisoners. He

“was given little water and one or two meager meals a day.” At one point, the guards told him that some of his cellmates had been executed for stealing and that he “would be next.” For more than three weeks he endured “harsh interrogation, severe beatings, death threats, hunger and illness[]” before finally being released on September 18, 1990, after his father paid a bribe to his captors. A few days later, on September 22, 1990, Claimant flew to Baghdad and then a few hours later, was permitted to leave, flying first to London and then to the U.S.

As with the events at the gas station, the declarations of Claimant’s family and neighbor are consistent with his account of these 25 days. His father states that when Claimant was released, he “had lost a lot of weight[,]” and his “face was bruised and his shirt was filthy and stained with blood.” He also notes that Claimant’s “middle finger on his left hand was swollen and bent out of shape, and had turned a brown, reddish color.” In addition, he states that his son explained how he had been treated in captivity: “they had accused him of being a spy and had threatened to execute him if he did not confess and tell them what they wanted to hear about his alleged associates in the Kuwaiti resistance [Claimant] told [him] that while blindfolded and with his hands tied behind his back, his Iraqi guards repeatedly beat him about his face and body” with rifles, sticks, and their fists. Claimant’s father also confirms that he finally paid a bribe for Claimant to be released, and that he left Kuwait on September 22, 1990, en route to Baghdad.

Claimant’s brother-in-law also confirms this account in his declaration. He states that when Claimant returned to his father’s house, his “body and face were . . . black and blue from all the beatings that had been inflicted on him and he complained of a

severe and excruciating headache.” He adds that Claimant told him that “the Iraqi authorities had tortured him practically day and night, that they beat him repeatedly and ferociously with their nightsticks and that they had broken his finger.”

A recent x-ray report confirms the existence of a “united old fracture” in Claimant’s left middle finger and reflects a diagnosis of a “[t]rigger left middle finger.” Recent photographs submitted by Claimant likewise appear to substantiate this, clearly depicting a deformity on Claimant’s left middle finger. Although no contemporaneous medical record has been submitted, Claimant’s brother-in-law states that a doctor came to the house and “set his finger in a splint.” In addition, the brother-in-law states that in the years that followed, Claimant told him that his captors “would frequently deny him food and water and that they would not change the waste bucket that he had to use as his toilet[,]” and that they “accused him of being a traitor and threatened to kill him.” Both Claimant’s father and brother-in-law note that, following his release, Claimant “was clearly traumatized by what had happened and would frequently break out into tears[,]” was “in a state of complete despair[,]” and “was unable to sleep at night.”

The three declarations, the contemporaneous photograph, and the recent medical records are consistent with respect to the physical assaults on Claimant and the fractures to Claimant’s nose and finger. The declarations also confirm that Claimant told them at the time of his release that he had been subjected to interrogation that included the threat of death. Moreover, Claimant has submitted copies of the visa pages from his expired passport. Although not independently conclusive, these pages show a departure stamp dated September 22, 1990 with Arabic writing clearly visible in the bottom right corner (though the country of departure has been obscured), and a U.S. entry stamp dated

September 23, 1990, consistent with his account of escaping Kuwait and Iraq and traveling to the United States.

Injuries Alleged: Claimant alleges numerous physical injuries, including some—a deformed finger and broken nose—that are permanent and continue to have an impact on his life: the broken finger affects the use of his left hand, and the broken nose makes breathing difficult.

Claimant also alleges mental and emotional injuries, both at the time and with effects that persist to this day. Claimant states that, after arriving in the United States, he sought treatment with a social worker and a psychiatrist “to help [him] deal with the practical and emotional effects of [his] ordeal.” In particular, Claimant states that for three to four months after his return, he “was completely traumatized, experiencing severe anxiety, withdrawal, crying spells, unexplained anger and loss of self-esteem.” He further states that he “drank alcohol in an attempt to help [him] forget [his] ordeal.” Claimant also asserts that, “[i]n addition to [his] deformed finger, the beatings [his] head endured now cause [him] severe headaches and [he] experience[s] partial memory loss.” Claimant also says the emotional trauma has affected his professional life. He asserts that he was unable to work for a time “due to [his] emotional stress and because [he] was unable to find a job.” This, Claimant states, affected his “ability to earn a living.” He adds: “[T]he blows I received to my head and the psychological trauma of being abused so severely have caused me significant economic losses as I am no longer able to focus and sustain my concentration as I could prior to the abuse I received as a hostage.”

Analysis: We have reviewed the documentation Claimant has submitted and find Claimant’s allegations to be generally credible and supported by the totality of the

evidence. Witness statements, the contemporaneous photograph, and recent medical records all corroborate Claimant's own declarations about his physical condition following the two detentions. While Claimant has not submitted any contemporaneous medical records or statements from the time of the incident, the evidence in the record supports the conclusion that, if nothing else, Iraqi personnel assaulted Claimant and he suffered physical injuries as a result. The credibility of Claimant's allegations is supported by the fact that they are consistent with reports of harsh interrogations, physical assaults, and other forms of abusive treatment that were credibly reported to the United Nations. *See United Nations, Report on the Situation of Human Rights in Kuwait Under Iraqi Occupation, E/CN.4/1992/26 at 23 (January 16, 1992).*

Turning to the first requirement of the Referral, Claimant suffered "serious personal injuries." Although the various sworn statements and other documents submitted do not corroborate each and every detail of Claimant's alleged mistreatment by Iraqi security personnel, we are persuaded that Claimant was in fact detained both times and suffered "serious personal injuries" within the meaning of the 2012 Referral: the Referral 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 we interpret it 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. He therefore satisfies the first requirement for compensability under the 2012 Referral.

Regarding the second requirement of the Referral, there is no question that Iraqi agents inflicted these injuries knowingly.

Finally, Claimant has also satisfied the third requirement, that the severity of the serious injuries constitute a “special circumstance warranting additional compensation[.]” The evidence points to brutal and sustained ill treatment by Iraqi forces designed to maximize pain and suffering. The physical assault Claimant suffered at the gas station was no doubt terrifying and trauma-inducing. Moreover, his prolonged detention and the cruel treatment he suffered in prison resulted in severe and lasting injuries. As the evidence presented demonstrates, Iraqi officials physically assaulted Claimant numerous times during his 25 days of captivity. Further, they harshly interrogated him during that time and threatened him with death. Testimonial evidence suggests the extreme severity of the mental and emotional injuries he suffered, but even without such evidence, it could probably be assumed from the vicious nature of his mistreatment. The personal injuries Claimant suffered were serious, numerous, and prolonged, and their severity thus constitutes a “special circumstance” under this Referral.

Based on the evidence submitted, and in particular the sworn statements, medical records, and contemporaneous photograph, the Claimant’s personal injuries meet the standard for compensability under the 2012 Referral. Accordingly, Claimant is entitled to compensation as set forth below.

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, which the Commission has been tasked with under the 2012 Referral, 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). In such cases, awards have generally been higher where the claimant’s suffering was permanent or persisted for

many years. *See id.* at 588-92. The seriousness and the manner of the wrong committed by the offending state have also been considered. *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. Tribunals have also considered 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.

Here, Claimant's initial injuries were both severe and inflicted with particularly cruelty. Claimant was subjected to numerous beatings serious enough to result in significant bruising on his face as well as fractures to his nose and finger. He was forced to endure mistreatment while in prison that included not just beatings, but also brutal

interrogations accompanied by explicit threats of death. Moreover, his second time within the direct custody of the Iraqi officials was three weeks long.

That being said, certain aspects of this claim lack corroborating evidence. For instance, Claimant has submitted little evidence to support his allegation of severe long-term mental and emotional difficulties stemming from his hostage experience. He states that he sought treatment from a psychiatrist after returning to the United States, but has not submitted evidence describing any diagnoses or treatment received, and apart from that one visit, there is no evidence that Claimant ever sought any additional psychiatric treatment. Even his brother-in-law, who advised Claimant to seek help, does not mention any such treatment. Nor has Claimant provided independent evidence explaining how his psychological injuries have affected his professional life—no statements from former employers, disability statements, or other documentation of professional disability. Although Claimant’s brother-in-law states that, following the incident, Claimant “became aggressive, short-tempered, violent, angry and generally despondent[,]” “lost his ability to focus,” and was essentially “a shell of his former self[,]” the lack of evidence detailing his psychiatric injuries makes it difficult to take any long-term mental and emotional impairments into account in determining the appropriate compensation. Additionally, although Claimant complains of “excruciating headaches,” both directly after the incident and to the present day, he has submitted no medical evidence supporting this claim or linking these headaches to Claimant’s hostage experience.

Nevertheless, Claimant suffered enormously as a result of brutal and harsh treatment by Iraqi forces. He suffered numerous instances of physical assault and harsh interrogation over a three-week period, in addition to the violence he suffered at the gas

station, and was explicitly threatened with death during the course of his interrogations. Although Claimant has not submitted medical documentation evidencing the long-term mental and emotional effects of his injuries, we are persuaded that his injuries and experiences led to some degree of emotional trauma in addition to lasting physical injury. Moreover, Iraq's conduct—detaining Claimant, physically assaulting him while he was blindfolded and tied up, and threatening him with death—was especially cruel and extended over a significant period of time. Accordingly, the Commission determines that the Claimant is entitled herein to an award of \$1,250,000.00 and that 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 ICSA. 22 U.S.C. §§ 1626-27 (2012).

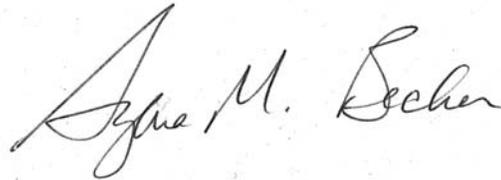
AWARD

Claimant is entitled to an award in the amount of One Million, Two Hundred and Fifty Thousand Dollars (\$1,250,000.00).

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



Anuj C. Desai, Commissioner



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).