

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

In the Matter of the Claim of	}	
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5 U.S.C. §552(b)(6)	}	Claim No. IRQ-I-025
	}	
	}	Decision No. IRQ-I-011
	}	
Against the Republic of Iraq	}	
	}	

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

The Proposed Decision on this claim awarded the Claimant \$500,000 for injuries he suffered while being held hostage in Iraq. Claimant objects to the amount awarded. He contends that the Commission employed a flawed methodology in its interpretation of the State Department’s letter authorizing this program, and that, in any event, the severe nature and long-term effects of his injuries warrant a higher award. Although we reject Claimant’s first argument, we conclude, based on additional evidence provided to the Commission, that the severity of Claimant’s injuries favors a higher award, and we therefore withdraw the award in the Proposed Decision and award Claimant One Million Dollars (\$1,000,000).

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 and Iraq 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 April 11, 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-025, Decision No. IRQ-I-011 (2014) (“Proposed Decision”). Accordingly, the Commission awarded Claimant \$500,000 in additional compensation—one third the amount of the State Department’s recommended maximum level of compensation.¹

The Commission based its determination of the appropriate level of compensation on a variety of factors, including the State Department’s recommendation. Applying these factors, the Commission noted that Claimant’s injuries “were . . . severe and inflicted with particular cruelty.” Proposed Decision, *supra*, at 16. These injuries included being “lifted off the floor with his arms behind his back” and being “beaten . . . with a rubber truncheon” while being interrogated, as well as the “threat, at gunpoint, of death if Claimant did not ‘confess.’” *Id.* at 16-17. The Commission characterized these injuries as coercive interrogation and aggravated physical assault. *See id.* at 15. The Commission found insufficient evidence, however, to support Claimant’s assertion that

¹ 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.

he suffered a nasal fracture as a result of being assaulted, or that he suffered “prolonged and severe mental and emotional injuries” *See id.* at 13-14. Nevertheless, the Commission stated that “Claimant almost certainly suffered some degree of mental and emotional harm, and his experience and serious personal injuries have most likely left him with horrific memories.” *Id.* at 14. For these reasons, the Commission held that Claimant was entitled to \$500,000 in additional compensation.

On April 29, 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 a second supplemental declaration from Claimant, recent medical records describing Claimant’s alleged long-term physical and emotional injuries, photographs of Claimant from before and after the incident, and recent declarations from Claimant’s wife and a close family friend. 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.

In his brief, Claimant makes two basic arguments in support of his assertion that he is entitled to more than \$500,000. First, Claimant argues that the Commission employed a flawed methodology in interpreting the State Department’s recommended cap. 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 using a comparative-continuum approach, Claimant argues 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]o the extent there was any deficiency in the evidence supporting his claim that his terrifying interrogation resulted in substantial long-term physical and psychological injuries," the supplemental evidence "should cure any such deficiency" Moreover, he argues that his injuries are no less severe—and in some respects are more severe—than those suffered by the claimants in Claim No. IRQ-I-003, Decision No. IRQ-I-006 (2014) (Proposed Decision) and Claim No. IRQ-I-006, Decision No. IRQ-I-026 (2014) (Proposed Decision). On that basis, Claimant contends that he should receive at least \$1 million based on emotional injuries alone, and at least \$1,250,000 if he is also able to prove his long-term physical injuries.

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 Claimant’s damages, the Commission misapprehended the nature of the [State] Department’s recommended cap and committed legal error.” Instead, Claimant argues, the Commission should first determine the amount to which he (and, by extension, each of the other claimants 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. New Evidence and Comparison with Other Claims

Claimant's second argument focuses on the nature and severity of his injuries. He argues that, even under the Commission's comparative-continuum methodology, the additional evidence he submitted on objection establishes that his injuries were severe enough to warrant an award of greater than \$500,000. In particular, he says that he should be entitled to more than the claimants in Claim Nos. IRQ-I-003 and IRQ-I-006, cases in which the Commission awarded \$500,000 and \$1 million respectively. Claimant asserts that his newly submitted evidence substantiates his claim that he "has suffered from severe and prolonged emotional injuries—injuries that continue to afflict him to this day[,]” and that those injuries are “significantly more severe than those suffered by [the] Claimants [in IRQ-I-003 and IRQ-I-006].” He argues that the “awards in [those claims] dictate . . . an award of at least \$750,000, and as much as \$1 million on the basis of his psychological injuries alone.” In addition, Claimant contends that the new evidence establishes that the Iraqi officers' actions resulted in a “broken nose and his prolonged nasal problems, including two separate surgeries to correct those problems,” as well as “scars above his right eye and on his scalp.” To the extent that the Commission did not compensate him for these physical injuries in its Proposed Decision,² he asserts that it should do so now. This is especially the case, he maintains, in light of the fact that in Claim No. IRQ-I-006, the Claimant was awarded \$1 million even though he alleged no physical injuries at all. Claimant thus argues that, taking both his long-term mental injuries and his physical injuries into account, the Commission should award him \$1.25 million.

² See Proposed Decision at 13 (noting that there was “insufficient evidence to conclude that he suffered the nasal fracture”).

Psychological Injuries: The new evidence substantiates Claimant's assertion that he has suffered from serious psychological problems in the years since his hostage experience. Claimant has submitted three pieces of relevant evidence: declarations from his wife and a lifelong friend, both of whom make statements based on their observations of Claimant in the years after Claimant's return from Iraq; and a declaration from a psychiatrist with extensive experience with ex-hostages who conducted a clinical interview of Claimant in 2014.

Both Claimant's wife and Joseph Wassel, a long-time friend, describe changes to Claimant's personality after his return. Wassel met and spent several days with Claimant immediately after Claimant's return from Iraq; Wassel states in his declaration that Claimant's personality had changed markedly and that he became "very quiet . . . distant and disinterested [sic]" Further, he notes that Claimant began to drink alcohol "more than he should have[]" and put on considerable weight; on at least one occasion, Claimant suffered a panic attack at his house.

Claimant's wife's declaration is consistent. She says that Claimant was "extremely irritable and short-tempered," and that he became more isolated, had difficulty sleeping, and experienced frequent nightmares. She further notes that anxiety attacks "would strike him as frequently as once a week" and that on several occasions, "he was frightened that he was going to have a heart attack and had to be taken to the emergency room." Claimant's wife states that these problems persisted for many years. Although she notes Claimant's condition began to improve somewhat around seven or eight years ago, he still remains "withdrawn, moody and a shell of the person he once was." These two declarations are consistent with many of Claimant's own statements in

his 2007 and 2013 declarations.

Although Claimant has not provided any medical records relating to his psychological problems, he has provided a declaration from a psychiatrist, Dr. Robert Blum, M.D., who has extensive experience with the evaluation and treatment of ex-hostages. Based on a review of (1) Claimant's medical records, (2) a clinical interview, (3) Claimant's responses to the MMPI-2, the Minnesota Multiphasic Personality Inventory-2 (an instrument Dr. Blum says is "useful in revealing psychopathology"), and (4) a review of Claimant's Declaration, Dr. Blum confirms Claimant's assertions of long-term emotional problems. He concludes that Claimant "has been suffering from symptoms of post-traumatic stress disorder (PTSD)." As evidence of this, Dr. Blum cites various symptoms that include, *inter alia*, anxiety, sadness, moodiness, memory problems, nightmares, flashbacks, lethargy, eating issues, social isolation, and alcohol abuse. While Dr. Blum's experience and expertise merit some deference, he gives no indication of how exactly he came to his conclusion. In particular, at no point does his declaration connect any of Claimant's symptoms to (1) any of Claimant's medical records, (2) the clinical interview, or (3) Claimant's MMPI-2 responses. Moreover, Claimant did not submit any of the underlying documentation that Dr. Blum is said to have reviewed. Given that Claimant himself reported these symptoms in his own declarations, it is not clear whether Dr. Blum's conclusions are based primarily (or solely) on Claimant's self-reporting or were based on something else. Finally, Dr. Blum adds that Claimant "has not sought any counseling[.]" and opines that this "may be the result of the hopelessness caused by his depression." Again, he does not explain the basis for this belief.

Overall, the evidence is sufficient to meet Claimant's burden of showing that he has suffered from long-term mental and emotional problems related to his hostage experience. While none of the evidence specifically connects these mental injuries to the coercive interrogation or aggravated physical assaults (rather than to Claimant's hostage experience in general, which is not compensable in this program), the Commission is nevertheless comfortable concluding that his experience at the border contributed to his long-term psychological problems to some degree.

Physical Injuries: Claimant's newly submitted evidence substantiates his claim that the Iraqi border assaults led to a fractured nose and scars on his face. Claimant's new evidence about his physical injuries consists of a 2014 report from a doctor who performed nasal surgery on Claimant in 1998; x-rays and an accompanying radiologist's report, also from 2014; photos from before (1988) and immediately after (early 1991) the assaults; as well as the declarations from his wife and Mr. Wassel. An otolaryngologist (ear, nose, and throat specialist), J.R. Sarpa, M.D., indicates in an August 2014 report that Claimant reported having "had passed [sic] blunt nasal trauma during the Iraq war when he was a prisoner[,]” and “having a septoplasty^[3] done in the Philippines in 1990”⁴ Dr. Sarpa further notes that Claimant “was seen by me and evaluated and had surgery [on his] nasal fracture with a revision septoplasty done 5/22/98.” He adds that, following the surgery, Claimant “had some recurrent bouts repeatedly of sinusitis and has a long history of postnasal drainage[,]” which Dr. Sarpa indicates “could be related to [Claimant's]

³ A “septoplasty” is an “[o]peration to correct defects or deformities of the nasal septum, often by alteration or partial removal of skeletal structures.” *Stedman's Medical Dictionary* 1750 (28th ed. 2006).

⁴ Claimant's own Declaration indicates that this was in “the winter of 1991.” While we are unsure of the exact date, we take both statements to refer to some time soon after his leaving Iraq in August 1990, perhaps the winter of 1990-1991.

nasal fracture and blunt head trauma.”

Recent x-rays confirm his nasal surgeries. In another August 2014 report, radiologist Lawrence McBride, M.D., notes that Claimant has a “[s]eptal deviation” and an “[o]bvious deformity of the nasal bones consistent with prior nasal fracture.” Finally, Dr. Sarpa (the otolaryngologist) examined Claimant’s head and notes that Claimant “has an old scar . . . possibly 2 cm and diagonally positioned on the LEFT parietal scalp[,]” where Claimant alleged he had been struck while in Iraq.

This medical evidence is buttressed by the witness testimony. Claimant’s wife states in her declaration that when Claimant returned from Iraq, she noticed a “long scab buried under his right eyelid” and “the remnants of a scar . . . below his upper eyelid.” In addition, she states that Claimant showed her “a scab on his scalp that was about an inch and a half long and that was covered by his hair.” She also noticed “a knot on the side of his nose, which appeared crooked, and noticed some faded discoloration around that knot and under the eye.” Claimant’s wife also confirms in her declaration that Claimant experienced “a lot of nose bleeding and sinus problems[.]” after his return and to this day “still experiences a lot of nasal drip.”

Mr. Wassel also makes reference to these physical injuries in his declaration, stating that, upon Claimant’s return, “his face was still a little puffy and . . . the side of his nose was swollen.” Mr. Wassel also noted “a scab that had formed over a cut on his eyebrow and some discoloration beneath the eye lid[,]” and indicates that Claimant told him that these injuries were the result of the beating he suffered in Iraq. Mr. Wassel adds that he was aware of Claimant’s nasal fracture and subsequent surgeries, and that, following the first procedure, he “saw [Claimant’s] bandaged nose” He notes that

Claimant's nose "remains crooked to this day"

With this newly submitted evidence, Claimant has met his burden of establishing that the Iraqi officers fractured his nose, which in turn required two nasal surgeries and resulted in other long-term nasal problems. Claimant has also sufficiently proven that the assault led to two scars, one above his right eye and another on the left side of his scalp.

Conclusion: In sum, Claimant has proven that he experienced six hours of brutal interrogations and aggravated physical assaults that led to both long-term mental injuries and physical injuries, including a fractured nose and permanent scars above one eye and on his scalp. Given all this, we are convinced the Proposed Decision's award of \$500,000 is too low and that Claimant should be awarded more. The question, though, is how much more.

Given the comparative-continuum approach we are taking to claims in this program⁵ and the fact that we are making awards in this program in broad categories,⁶ we believe an award of \$1 million is the appropriate amount. Claimant argues that he suffered both physical and mental injuries and should thus be awarded more than the claimant in IRQ-I-006, whom the Commission awarded \$1 million. That claimant, however, was subject to a firing squad that placed him against a wall and "halo-ed" the wall around him with bullets. This mock execution is an inherently different form of psychological abuse, one that led him to believe he was about to die. The two claims, therefore, are too different to engage in any direct comparison. More importantly, the only four claimants in this program to have been awarded more than the claimant in IRQ-I-006 all suffered horrendous experiences with multiple assaults and coercive

⁵ See *supra* 5-6.

⁶ See Claim No. IRQ-I-022, at 8-10.

interrogations for weeks on end. *See* Claim No. IRQ-I-001, Decision No. IRQ-I-005 (2015); Claim No. IRQ-I-002, Decision No. IRQ-I-007 (2015); Claim No. IRQ-I-022, Decision No. IRQ-I-008 (2015); Claim No. IRQ-I-018, Decision No. IRQ-I-009 (2015). Those four claimants were awarded \$1.5 million, the maximum amount recommended by the State Department in this program. Given those awards, an award of any more than \$1 million for this claim, two-thirds of that maximum, would be disproportionately high in the context of this program.

Accordingly, in light of the discussion above, and based on the evidence and information submitted in this claim, the Commission modifies the award in its Proposed Decision and enters 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.

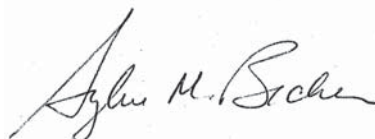
AWARD

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

Dated at Washington, DC, April 1, 2015
and entered as the Final Decision
of the Commission.



Anuj C. Desai, Commissioner



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)

Against the Republic of Iraq

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Claim No. IRQ-I-025

Decision No. IRQ-I-011

Counsel for Claimant:

Daniel Wolf, Esq.
Law Offices of Daniel Wolf

PROPOSED DECISION

Claimant brings this claim against the Republic of Iraq (“Iraq”) based on injuries he suffered while being held hostage in Kuwait and Iraq 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 Iraqi officials subjected him to coercive interrogation and a “violent physical assault,” 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 \$500,000 in additional compensation.

BACKGROUND AND BASIS OF CLAIM

Claimant alleges that he was working in Kuwait at an oil refinery when Iraq attacked Kuwait in August 1990. He claims that he was detained in Kuwait and Iraq for about a month, when he attempted to leave Iraq via bus. As he was crossing the border

into Jordan, he claims that Iraqi officials took him off the bus and, for six to seven hours, detained, assaulted and coercively interrogated him. Claimant's experiences and injuries are detailed in the Merits section below.

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 based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention (\$300,000 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

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.

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 his U.S. birth certificate as well as a copy of two U.S. passports—one from a few years after the hostage incident (valid from May 1995 to May 2005) and his current one (valid from December 2010 to December 2020).

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 10, 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 email from the Department of State indicating that this sum was to be sent for payment on September 23, 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.” The Commission has held that in order to satisfy this standard, the injury must have arisen from one of the four acts specifically mentioned in the Referral—*i.e.*, sexual assault, coercive interrogation, mock execution, or aggravated physical assault—or from some other discrete act, separate from the hostage experience itself, that is comparable in seriousness to one of those four acts—that is, an act of a similar type or that rises to a similar level of brutality or cruelty as the four enumerated acts. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014).

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, the claimant must prove 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 making this determination, the Commission will consider the nature and extent of the injury itself (including the specific acts committed by Iraq giving rise to the 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

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

long-term basis), and/or the extent to which there is permanent scarring or disfigurement that resulted from the injury.

Here, Claimant has alleged that Iraqi officials coercively interrogated and physically assaulted him and that these acts resulted in physical, mental, and emotional injuries, including some that persist to the present day. To prove these allegations, Claimant has submitted sworn statements, medical records, and other documentation. This evidence includes, *inter alia*, three sworn statements from Claimant himself describing his ordeal and his alleged personal injuries (one dated November 2007 from his federal court litigation and two others prepared specifically for this Commission in June 2013); a recording of a half-hour television interview Claimant gave regarding his captivity shortly after his release; contemporaneous news articles describing his ordeal; a photocopy of the forged travel document he used to escape Iraq; recent medical records (including x-ray imaging reports) detailing orthopedic injuries that Claimant attributes to his hostage experience; and recent photographs of Claimant's scalp and face, which he claims depict scarring from the physical assault he suffered in Iraq. Except where noted, the facts we outline below are those established by this evidence.

Captivity in Kuwait: At the time of Iraq's invasion of Kuwait, Claimant was working as a site maintenance manager at an oil refinery in Kuwait. Two days into the invasion, on August 4, 1990, Claimant went to the refinery with several of his employees, removed sensitive documents, and brought them back to the labor camp for safe-keeping. Claimant learned that, later that day, the Iraqis had entered the refinery and were searching specifically for him and the documents he had taken. He therefore decided not to return to his own flat and instead stayed in a friend's apartment for the next two days.

Then, on or about August 6, 1990, Claimant moved into a vacated corporate apartment complex, where he spent the next few weeks. Claimant notes that, at some point, he heard that westerners were “going to be apprehended.” During that time, Claimant made several attempts to escape into Saudi Arabia by car, but was unsuccessful. On one of these outings, Claimant witnessed Iraqi forces pulling a Kuwaiti man out of the car in front of him, beating him to death in front of his family, and dragging his body to the side of the road.

Claimant states that “[a]s the days passed, conditions in the apartment complex steadily deteriorated[,]” and obtaining food and water became increasingly difficult. Eventually, the building’s water ran out, and it became difficult to cook and clean. The toilets backed up, and rats soon infested the building because garbage collection had stopped. Claimant indicates that Iraqi forces periodically shut the power off, leaving him without air conditioning in the oppressive summer heat in Kuwait.

Claimant further describes how Iraqi forces would occasionally fire rounds “over or into the top floors” of the apartment building to “flush Americans and other westerners out into the streets[.]” On one such occasion, Claimant slipped on a staircase while trying to avoid gunshots and “injured [his] back so badly that [he] had to be carried into [his] apartment and was unable to walk or lie down without experiencing intense pain for several days.” Shortly thereafter, he began to experience burning and pain in his legs, which he claims eventually led to a diagnosis of lumbar radiculitis.

Journey to Baghdad and Interrogation at the Jordanian Border: At some point, Claimant learned that Iraq was allowing Filipino nationals to cross the border between Iraq and Jordan. Recognizing an opportunity to escape, he procured a forged Filipino

travel document with the assistance of colleagues and, on August 28, 1990, he and several of his colleagues traveled by bus to Baghdad with the eventual goal of crossing into Jordan.

Claimant spent a few days in Baghdad making the necessary travel arrangements, and on August 31, 1990, he and his colleagues traveled by bus to the Jordanian border. Upon reaching the border post, an Iraqi officer boarded the bus to check everyone's travel documents. The officer sensed Claimant was not Filipino and ordered Claimant off the bus. Iraqi officials then led him into a "portable building" at the border gate, where they "proceeded to interrogate [him] for six or seven hours in the hope of securing a confession that [he] was an American citizen or perhaps even an agent for the CIA."

During this interrogation, Claimant was made to sit on his knees; the interrogators "restrained [his] hands behind [his] back and threaded a rope through the rope or cuffs used to restrain his hands. They hung the other end of the rope over a hook in the ceiling." Claimant explains how they then "grilled [him] with questions [and] periodically pulled on the rope, pulling [his] arms and body upward, inflicting severe pain to [his] arms, back and abdomen, before dropping [him] back down on [his] knees." They "accused [him] of being a spy and threatened [him] with execution if [he] did not confess." At one point, one of the guards struck Claimant repeatedly in the right knee with a "rubber truncheon"; at another point, one of the interrogators "put a pistol to [Claimant's] face, threatening to shoot [him] if [he] did not confess." Claimant adds that, on two occasions during the interrogation, he was struck in the head and face with the butt of a pistol, which "caused lacerations to [his] scalp and bloodied [his] nose, which, though [he] did not know it at the time, was fractured as a result. [He] felt as if [he] would lose consciousness from the

intense pain and feared that [he] would be killed.” Eventually, after six to seven hours of this treatment, one of Claimant’s colleagues tried to pay to have Claimant released; around the same time, two senior officers entered the building and spoke with the Iraqi soldier in charge of the interrogation. After the senior officials left, Claimant was released, and he and the others successfully crossed into Jordan.

Injuries Alleged: Claimant alleges both physical and mental injuries. His physical injuries began at the time of his interrogation when the Iraqis assaulted him. He claims, however, that these injuries continued long after his release, indeed to this day. He alleges that, upon his return to the United States, he suffered high blood pressure, which caused dizziness and swelling in his ankles and feet, for several months until he obtained new medication. He also alleges that he suffered “severe sinus problems and frequent nosebleeds[,]” which he claims his doctors attributed to a nasal fracture he sustained during his interrogation and beating in Iraq. Claimant asserts that he continued to have related sinus problems and underwent two nasal surgeries in the years following his release. In addition, Claimant alleges that he suffers from “chronic knee and back pain” stemming from the injuries he sustained during his captivity and further suffers from lumbar radiculitis, which he claims “has sometimes left [him] virtually unable to walk and which has required treatment with steroids and physical therapy.” Claimant further alleges that, as a result of the Iraqi guards beating him, he has scars below his eyebrow and on his scalp.

The evidence supporting the claim that his physical injuries persist consists of recent medical reports (including radiological reports) and photographs of his face and scalp. The medical records confirm that he does indeed suffer from numerous orthopedic

impairments and that he underwent a laminectomy in 2010. They do not, however, say anything about the cause of these conditions and thus do not establish a causal connection between the physical assaults and his current injuries. The photographs do appear to show a scar or other blemish near his eyebrow, although the photograph of his scalp is too obscured to make out any scar.

Claimant also alleges numerous mental and emotional injuries, both at the time of the incident and with effects that persist to this day. He states that, shortly after his return home, he fell into a deep depression and experienced feelings of worthlessness and apathy. He further alleges that he “was short-tempered, irritable and unable to concentrate or work.” His depression lasted for many years and led him to experience “severe anxiety attacks”; he also alleges that his depression caused him to gain substantial weight. Further, Claimant alleges that he is haunted by “intrusive memories of [his] ordeal” and that he suffers from memory lapses and has difficulty concentrating. He adds that his emotional injuries have harmed his marriage. Claimant has not submitted any evidence indicating that he sought or received treatment for his alleged mental injuries, or even any corroborating evidence from anyone else attesting to these emotional injuries.

As a result of both his physical and mental injuries, Claimant alleges that he has gone through periods of extended unemployment and has lost substantial income as a result. In one instance, he left his job due to anxiety and depression; after finding another job several months later, he had to take three weeks unpaid leave due to a flare-up of his lumbar radiculitis. A similar incident occurred two years later. He also notes that his work suffered due to his depression and inability to concentrate and that, in August 1994,

he was terminated for poor performance. Although Claimant was able to find another job, he says that his work continued to suffer as a result of his mental and emotional injuries; he again had to leave a job due to his mental difficulties and was terminated from another job for poor performance. Claimant is, however, currently employed.

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. Claimant's statements, the newspaper and magazine articles, and the television interview all corroborate Claimant's own declarations about his treatment by Iraqi officials during the six hours he was held at the border with Jordan. While Claimant has not submitted any contemporaneous medical records from the time of the incident, the evidence in the record supports the conclusion that Iraqi personnel assaulted him and subjected him to brutal interrogations.

Turning to the first requirement of the Referral, the Commission finds that Claimant did suffer "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 by Iraqi officials at the Jordanian border under the circumstances described 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." Claimant suffered physical, mental, and emotional injuries from aggravated physical assault³ and coercive

³ The term "aggravated physical assault" is not specifically defined in international law; however, the UNCC lists it as a form of "serious personal injury," which excludes "bruises, simple strains and sprains,

interrogation,⁴ by Iraqi forces, and he therefore satisfies the first requirement for compensability under the 2012 Referral.

Claimant has not proven all of his alleged injuries. For example, Claimant says that he suffered a nasal fracture while being beaten by Iraqi soldiers; however, he has submitted no medical records to substantiate this claim, despite his assertion that he underwent nasal surgeries in 1991 and 1995. Without such records, the Commission has insufficient evidence to conclude that he suffered the nasal fracture. Additionally, although Claimant alleges various mental and emotional injuries resulting from his experience, he has not submitted any documentation beyond his own sworn statements to support those allegations. Without additional evidence (such as medical records,

minor burns, cuts and wounds; or other irritations not requiring a course of medical treatment.” *Decision Taken by the Governing Council of the United Nations Compensation Commission During its Second Session, at the 15th Meeting, Held on 18 October 1991, S/AC.26/1991/3*, at 2 (Oct. 23, 1991). Here, the assaults were clearly well above the threshold of “bruises, simple strains and sprains, minor burns, cuts [or] wounds,” and so Claimant’s injuries would likely have satisfied the UNCC’s definition of “serious personal injury.”

Given the lack of direct definition of “aggravated physical assault” in international law, however, we can look to domestic sources. *See* Statute of the International Court of Justice Art. 38 (1)(c) (noting that one source of international law is “the general principles of law recognized by civilized nations”). Although United States law does not normally use the term “aggravated *physical* assault,” many jurisdictions in the U.S. do have a crime of “aggravated assault.” Given that “assault” itself normally implies a willful attempt or threat of physical force, it makes sense to use definitions of the phrase “aggravated assault” here, since an “aggravated assault” will almost always be an aggravated *physical* assault.

Under U.S. domestic law, “aggravated assault” is generally defined as “[c]riminal assault accompanied by circumstances that make it more severe, such as the intent to commit another crime or the intent to cause serious bodily injury, esp. by using a deadly weapon. *See* Model Penal Code § 211.1(2).” *Black’s Law Dictionary* 130 (9th ed. 2009). The Model Penal Code (MPA) defines it in similar terms, indicating that a person is guilty of aggravated assault if he or she “(a) attempts to cause serious bodily injury to another, or causes such injury purposely, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life; or (b) attempts to cause or purposely or knowingly causes bodily injury to another with a deadly weapon.” Model Penal Code § 211.1(2) (2001). Numerous states have adopted some variation of this definition. *See, e.g.* Texas Penal Code Ann. § 22.02 (West 2014); D.C. Code § 22-404.01 (LexisNexis 2014); 18 Pa. Cons. Stat. Ann. § 2702 (2014).

Under this standard, Iraqi officials clearly committed numerous aggravated assaults on Claimant. They “cause[d] serious bodily injury ... knowingly ... under circumstances manifesting extreme indifference to the value of human life.” Although there may appear to be a circularity in the Referral’s defining “*serious* personal injury” in terms of “aggravated physical assault” and then our defining “aggravated physical assault” by reference to “attempts to cause *serious* bodily injury,” we have no trouble concluding that the assaults on Claimant were “aggravated physical assaults” within the meaning of the Referral.

⁴ *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006, at 6-8 (2014).

declarations from others who can attest to and corroborate those injuries, or other similar documentation specifically addressing this issue), Claimant has failed to meet his burden to show that his experiences in Iraq caused him to suffer prolonged and severe mental and emotional injuries or harmed his personal and professional life in the years since. Still, Claimant almost certainly suffered some degree of mental and emotional harm, and his experience and serious personal injuries have most likely left him with horrific memories.

Turning to the Referral's second requirement, that Iraq have "knowingly" inflicted the serious personal injuries, we look to international law to understand the term "knowingly." See 22 U.S.C. 1623 (a)(2)(B). The Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S 90 [hereinafter Rome Statute], provides a specific definition of the term "knowingly" that requires awareness that a specific person or persons *will* suffer harm. Article 30 states: "For the purposes of this article, 'knowledge' means awareness that a *circumstance exists* or a *consequence will occur* in the ordinary course of events. 'Know' and 'knowingly' shall be construed accordingly." *Id.* art. 30 (emphasis added). Interpreting this provision, the International Criminal Court ("ICC") has held that "will occur" in article 30 refers to "practical certainty" or "close to certainty." See *Prosecutor v. Jean-Pierre Bemba Gombo*, ICC-01/05-01/08, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, ¶ 362 (June 15, 2009), <http://www.icc-cpi.int/iccdocs/doc/doc699541.pdf>.

Claimant's experience at the Iraqi-Jordanian border easily satisfies this standard. Iraqi officials knew what they were doing when they assaulted Claimant and coercively

interrogated him, and they certainly knew he would suffer injuries as a result. On the other hand, the back injury Claimant says he suffered when slipping on the staircase in his apartment building in Kuwait does not satisfy this standard. Although Iraqi officials may have been trying to “flush Americans and other westerners out into the streets,” Claimant does not allege that the Iraqi officials had any awareness that Claimant would in fact fall. Therefore, regardless of whether his back injuries constitute a “serious personal injury” (an issue we do not reach), Iraq did not “knowingly” inflict those injuries within the meaning of the Referral.

With regard to the third requirement, Claimant has proven that the severity of his injuries—namely, those caused by the coercive interrogation and aggravated physical assault—constitute a “special circumstance warranting additional compensation[.]” The evidence indicates that the Iraqi border guards subjected Claimant to a brutal six to seven-hour period of interrogation, during which time they threatened him with death if he did not tell them what they wanted to hear and subjected him to a cruel and bizarre method of physical coercion by lifting his body off the floor by his arms, which were tied behind his back. This, combined with the severe beating by rubber truncheon, was undoubtedly a terrifying experience, and given the officials’ stated suspicion that Claimant was a spy, he reasonably could have felt that he might be killed or subjected to even worse treatment. Although Claimant has not provided sufficient evidence to establish that he suffered prolonged and damaging mental or emotional injuries, the vicious nature of his mistreatment makes it very likely that, at the very least, he suffered extreme mental pain and anguish at the time and in the weeks and months after his

release as well. For these reasons, Claimant has shown that the severity of his personal injuries thus constitutes a “special circumstance” under this Referral.

Based on the evidence submitted, and in particular the sworn statements, contemporaneous newspaper articles, and contemporaneous television interview, 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

The Commission has previously held in this program that in determining the appropriate level of compensation under the 2012 Referral, the Commission will 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. *See* Claim No. IRQ-I-001, Decision No. IRQ-I-005, at 22 (2014) (Proposed Decision).

Here, Claimant’s injuries, although inflicted over only a single, six-hour time period, were nonetheless severe and inflicted with particular cruelty. The manner in which Claimant was lifted off the floor with his arms behind his back revealed a degree

of brutality matched only by the threat, at gunpoint, of death if Claimant did not “confess.” The deliberate cruelty of his captors’ actions is further evidenced by their having beaten Claimant with a rubber truncheon during the interrogation, an act clearly intended to maximize pain and suffering and coerce a “confession” from him. Claimant has not shown, however, that he suffered permanent physical impairments from the experience; although a recent photograph does appear to show a scar below Claimant’s right eyebrow, he has not shown that this scar was caused by the beating. Nonetheless, given the nature of the beating at the time, Claimant almost certainly must have suffered enormous physical pain. Additionally, although Claimant has not provided evidence demonstrating prolonged mental and emotional harm, we are persuaded that his injuries and experiences led to some degree of emotional trauma in addition to lasting physical injury. Accordingly, the Commission determines that the Claimant is entitled to an award of \$500,000.00 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 ICSEA. 22 U.S.C. §§ 1626-27 (2012).

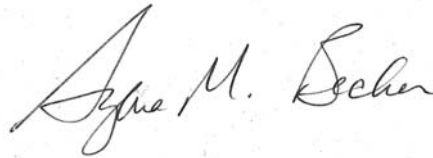
AWARD

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

Dated at Washington, DC, April 11, 2014
and entered as the Proposed Decision
of the Commission.

Handwritten signature of Anuj C. Desai in black ink, consisting of a stylized 'A' followed by 'nuj C. Desai'.

Anuj C. Desai, Commissioner

Handwritten signature of Sylvia M. Becker in black ink, consisting of a stylized 'S' followed by 'ylvia M. Becker'.

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).