

**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

5 U.S.C. §552(b)(6)

Against the Republic of Iraq

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Claim No. IRQ-I-007

Decision No. IRQ-I-013

Counsel for Claimant:

Daniel Wolf, Esq.  
Law Offices of Daniel Wolf

**FINAL DECISION**

The Proposed Decision in this Claim awarded the Claimant Estate \$1,000,000 for injuries its decedent suffered while being held hostage in Iraq. Claimant Estate objects to the amount awarded. It contends that the Commission employed a flawed methodology in its interpretation of the State Department’s referral letter authorizing this program. It also argues that, even applying that methodology, the Commission should award the Claimant Estate \$1.5 million because Iraq caused the decedent’s post-hostage drug addiction and eventual death from a drug overdose three years later. Because we conclude that the Proposed Decision’s interpretation of the State Department’s referral was correct and because Claimant Estate has still failed to prove Iraq’s actions caused the decedent’s post-hostage drug addiction and death, we affirm the Proposed Decision’s

conclusion that Claimant Estate is entitled to an award of One Million Dollars (\$1,000,000) in this claim.

## BACKGROUND

Claimant Estate brought a claim against the Republic of Iraq (“Iraq”) based on injuries its decedent suffered as a result of being held hostage in Iraq between August and October 1990. It sought \$1.5 million, in addition to compensation the State Department had previously provided it for the decedent’s experience as a hostage. In a Proposed Decision entered on May 8, 2014, the Commission concluded that Claimant Estate had met its burden of proving that its decedent 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.<sup>1</sup> See Claim No. IRQ-I-007, Decision No. IRQ-I-013 (2014) (“Proposed Decision”). In particular, the Commission found that (a) an Iraqi soldier shot at the decedent and knocked his teeth out with the butt of a gun, and (b) Iraqi officials knowingly deprived him of needed medication. The Commission concluded that the former was an aggravated physical assault and the latter was comparable in cruelty to an aggravated physical assault. Proposed Decision at 14-18. Accordingly, the Commission awarded the Claimant Estate \$1,000,000 in additional compensation—an amount within the State Department’s recommended level of compensation.<sup>2</sup>

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<sup>1</sup> 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”).

<sup>2</sup> 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.

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 as follows:

[T]he decedent suffered physical harms that required subsequent dental surgery. The hostage also suffered terrible pain from the deprivation of his medication. We can also presume—and there is evidence to support the presumption—that the hostage suffered greater psychological harm after his captivity than he would have suffered had he not been deprived of his medications. That said, the thinness of the evidence—in particular the lack of any medical records—makes it difficult to make conclusions on two aspects of the claim: (1) the causal connection between Iraq's act of depriving the hostage of medications and the Estate's allegations about his subsequent addiction to morphine, downward emotional spiral and eventual death of a heart attack due to a heroin overdose three years later; and (2) the *extent* of the hostage's physical injuries and medical treatment due to the Iraqi guard's assault on him.

Nevertheless, the hostage suffered both physical and emotional injuries as a result of Iraq's aggravated physical assault and deprivation of his medication. Accordingly, the Claimant Estate is entitled to an award of \$1,000,000.00 and this amount (not including the amount already received from the Department of State) constitutes the entirety of the compensation that the Claimant Estate is entitled to in the present claim.

Proposed Decision at 19-20.

On May 23, 2014, the Claimant Estate filed a notice of objection and requested an oral hearing. On July 25, 2014, Claimant Estate submitted a brief with argument in support of its objection. The Commission held an oral hearing on August 14, 2014; the hearing consisted solely of argument by Claimant Estate's counsel. The Claimant Estate presented no witnesses for examination.

Claimant Estate contends that it is entitled to \$1.5 million—the maximum amount recommended by the State Department in the 2012 Referral. It makes two arguments in support of this contention. First, it argues that the Commission employed a flawed

methodology in interpreting the State Department's recommended cap. If the Commission had used the proper methodology, Claimant argues, it would have awarded \$1.5 million. Second, Claimant Estate argues that, even under the Commission's methodology, the Commission should award the Estate \$1.5 million because Iraq's actions led to the decedent's post-hostage drug addiction and eventual death from a drug overdose three years after his release.

## DISCUSSION

### *I. The Proposed Decision's "Continuum" Approach*

Claimant Estate'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. Instead, Claimant Estate argues, the Commission should first determine the amount the Claimant would be entitled to in the absence of the cap and, if and only if that amount is above \$1.5 million, then reduce it to \$1.5 million.

Other claimants represented by Claimant Estate'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 the proposed cut-off approach, we explicitly reaffirmed the comparative-continuum approach that we had implicitly used in determining Claimant Estate's compensation. *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006, at 8-18 (2014) (Final Decision); *see also* Claim No. IRQ-I-022, Decision No. IRQ-I-008, at 4-5 (2015) (Final Decision). In short, 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." Claim No. IRQ-I-003, Decision No. IRQ-I-006, *supra*, at 18.

This conclusion applies equally here, and the Commission reaffirms the approach to compensation it implicitly adopted in the Proposed Decision: Claimant Estate is entitled to compensation of an amount somewhere on a continuum from zero to \$1.5 million based on the severity of its decedent's injuries relative to all the other successful claimants in this program.<sup>3</sup>

## *II. Decedent's Drug Addiction and Death*

Claimant Estate's second argument is that the Commission should award it \$1.5 million, the State Department's recommended maximum, because Iraq's acts led to the decedent's post-hostage drug addiction and subsequent death from a drug overdose three years later. Claimant Estate's argument has two parts. First, it argues that it has met its burden to establish a causal link between Iraq's deprivation of decedent's medications and his eventual death. Its primary evidence for this conclusion, however, is that his death certificate says that he died of an "overdose of heroin." This evidence is insufficient to establish a causal link between the deprivation of medications and his

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<sup>3</sup> Claimant Estate also makes another argument against the comparative-continuum methodology that no other claimant has made. Claimant Estate argues that, under the Commission's comparative-continuum methodology, if the Commission had concluded (or does now conclude) that Iraq caused the decedent's death, the \$1.5 million State Department recommended maximum would effectively have become the amount for a wrongful-death award, and, the Estate conjectures, other claims in this program would thus have to receive proportionally less, including the extremely seriously injured claimants who have already been awarded \$1.5 million. The Claimant Estate further suggests that awarding these claimants less than \$1.5 million would be inappropriate. As we explain below, we affirm our prior determination that Claimant Estate has failed to establish a valid wrongful-death claim. Further, none of the other claims filed under the 2012 Referral involve claims of wrongful death. As such, this scenario remains only a hypothetical. Moreover, this argument may be based on an incorrect assumption, since the State Department may have recommended the \$1.5 million cap based on the premise that there would be no valid wrongful-death claims under the 2012 Referral.

death. For one, the decedent had to take morphine, not heroin, while he was in Iraq. Moreover, he died a full three years after his return to the U.S., and Claimant Estate has not submitted any medical records linking the death to his experiences in Iraq. Indeed, Claimant has not provided any medical records whatsoever.<sup>4</sup>

The second part of Claimant's argument is that, even if it has failed to establish a causal connection with the hostage's eventual death, it has nonetheless met its burden to show that Iraq's denial of his medication led to his post-release drug addiction. The Claimant Estate points to the evidence it submitted prior to the Commission's Proposed Decision, noting that (1) the Proposed Decision found that the decedent resorted to morphine to combat his pain during his confinement; (2) a number of family members submitted declarations that the decedent was unable to stop using morphine upon his release; (3) the decedent's ex-wife's declaration states that the decedent checked himself into a rehabilitation facility within a few weeks of his return to the United States; and (4) "there is absolutely no evidence – or even any reason to suppose – that [decedent] had a drug addiction during the six months he was in Iraq prior to his detainment or in any of the years preceding his assignment to Iraq." Putting this all together, the Claimant Estate argues that "the circumstantial evidence that decedent's drug addiction was caused by Iraq's conduct is compelling and more than sufficient to satisfy the Estate's burden of establishing that linkage, despite its understandable inability to produce more than two-decade old medical records." The Estate then argues that if it has shown a causal nexus between Iraq's actions and the decedent's post-detention addiction, that should be sufficient for a \$1.5 million award, regardless of the cause of his death.

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<sup>4</sup> See discussion *infra* pages 7 to 8.

We disagree. Two aspects of the Proposed Decision were key and remain so here. First, in making the \$1 million award, the Commission assumed that the decedent suffered greater psychological harm after his captivity than he would have suffered had he not been deprived of his medications. While we made no specific finding about the post-release drug addiction, the award did provide some level of compensation to account for post-detention psychological harm. Proposed Decision at 19-20; *see also id.* at 17 (noting that the deprivation of medications “most likely” caused decedent post-release emotional injuries).

Second, the Claimant Estate has provided no relevant medical records whatsoever. We recognize that all this happened more than two decades ago. *See id.* at 17. Nonetheless, the lack of medical evidence makes it difficult to conclude, as the Claimant would have us do, that Iraq’s act of depriving the decedent of medications caused his subsequent addiction to morphine. Proposed Decision at 19-20. Claimant would have us combine circumstantial evidence (observational testimony by those without any medical training) to show that he was addicted to morphine in the immediate aftermath of his time in Iraq along with *a lack* of evidence that he had previously been addicted to morphine to show that it was Iraq’s deprivation of his medications that led to his addiction.

That is not enough to show the relevant causal connection—and certainly is not enough to show the *extent* to which the decedent actually suffered compensable post-detention “serious personal injuries.” Prior to the Proposed Decision, the evidence Claimant Estate had submitted to prove the post-detention allegations consisted solely of declarations from the decedent’s family members and a billing statement that the

decedent had visited a psychologist for two months just before his death, a billing statement that contained no details about any treatment. There is thus no non-testimonial evidence at all that decedent was addicted to morphine in the time immediately after his release, nor is there any evidence connecting any such addiction to Iraq's depriving him of medications. While the Proposed Decision noted that "[w]e have no reason to doubt the declarants' veracity," medical records are key when a claimant seeks to make a claim that is based on a medical condition such as drug addiction, especially one that is said to be so serious that it eventually leads to death.

The Claimant Estate has not provided any additional evidence on objection or taken any other steps to address the Proposed Decision's conclusion that the evidence previously submitted was insufficient. We must therefore affirm our determination that Claimant Estate has failed to meet its burden to show that Iraq's acts in depriving the hostage of medications led to his addiction (and in turn, also to his death three years later).<sup>5</sup> Moreover, even if we were to assume that the deprivation of medications led to some level of addiction, there is no evidence of the *extent* of injury due to that addiction. Since the Proposed Decision assumed a certain level of post-detention emotional injury attributable to the deprivation of medications and there is no medical evidence of the extent of any further injury, we affirm the Proposed Decision's conclusions about the lack of evidence of any injury resulting from the deprivation of medications.

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<sup>5</sup> See 45 C.F.R. § 509.5(b) (2013) ("The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim."); *cf. also* Claim No. LIB-II-150, Decision No. LIB-II-115 (2012) (denying claim because claimant failed to establish either the extent of the injury actually suffered as a result of the attack or that the severity of the injury was more than superficial).



## CONCLUSION

In sum, Claimant has proven that (a) an Iraqi guard shot at the decedent and knocked his teeth out with the butt of a gun, and (b) Iraqi officials deprived him of medications while he was in the U.S. ambassador's residence in Baghdad. Given (1) the factors we take into account in determining compensation in this program,<sup>6</sup> (2) the comparative-continuum approach for determining compensation within the zero to \$1.5 million continuum,<sup>7</sup> and (3) the fact that we are making awards in this program in broad categories,<sup>8</sup> we continue to believe \$1 million is the appropriate amount to award Claimant. The only four claimants in this program to have been awarded more than \$1 million all suffered horrendous experiences with multiple assaults and coercive interrogations for weeks on end, and the Commission awarded them the recommended maximum, \$1.5 million. *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). While we know that no monetary "compensation" we could award could ever truly make claimants whole, \$1 million (two-thirds of the amount those four claimants received) is the proper amount for this Claimant in the context of this program.

Therefore, for the reasons discussed above and in the Proposed Decision, and based on the evidence and information submitted in this claim, the award entered in the Proposed Decision in this claim is restated below, and will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of Title I of the International Claims

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<sup>6</sup> *See* Proposed Decision at 18-19

<sup>7</sup> *See supra* 4-5.

<sup>8</sup> *See* Claim No. IRQ-I-022, *infra*, at 8-10.

Settlement Act (22 U.S.C. §§ 1626-27). This constitutes the Commission's final determination in this claim.

AWARD

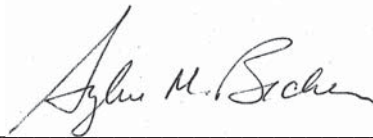
Claimant is entitled to an award in the amount of One Million Dollars (\$1,000,000.00).

Dated at Washington, DC, April 22, 2015  
and entered as the Final Decision  
of the Commission.



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Anuj C. Desai, Commissioner



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Sylvia M. Becker, Commissioner

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

<p>In the Matter of the Claim of</p>  <p>5 U.S.C. §552(b)(6)</p>   <p>Against the Republic of Iraq</p>	<p>}</p> <p>}</p> <p>}</p> <p>}</p> <p>}</p> <p>}</p> <p>}</p> <p>}</p> <p>}</p> <p>}</p> <p>}</p>	<p>Claim No. IRQ-I-007</p> <p>Decision No. IRQ-I-013</p>
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Counsel for Claimant:	Daniel Wolf, Esq. Law Offices of Daniel Wolf
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**PROPOSED DECISION**

Claimant Estate brings this claim against the Republic of Iraq (“Iraq”) based on injuries the Estate’s decedent suffered while he was held hostage in Iraq from August to October 1990. The United States Department of State has already provided the Estate compensation for the decedent’s experience as a hostage. The Estate now seeks additional compensation based on a claim that the decedent suffered injuries from (1) Iraq denying him access to pain medication and (2) an Iraqi official shooting at and physically assaulting him. We conclude that Iraq did in fact inflict those injuries on the Claimant Estate’s decedent and that the Estate is entitled to \$1 million in additional compensation.

## BACKGROUND AND BASIS OF CLAIM

Claimant Estate alleges that in March 1990 its decedent (whom we will refer to as the “decedent” or the “hostage”) moved to Iraq to work at a brass refinery plant. The hostage was trapped in Iraq after Iraq invaded Kuwait on August 2, 1990. Over most of the next few months, he was confined to the residence of the U.S. Ambassador to Iraq and was eventually permitted to leave Iraq on October 23, 1990. This claim focuses on two allegations about his time in Iraq: (1) that throughout his time in captivity, Iraq prevented him from receiving his medications, thereby causing him to suffer significant injuries that eventually led to his death; and (2) that an Iraqi policeman detained him overnight, and during that time, an Iraqi guard shot at and violently assaulted him. The hostage died in 1993, about three years after being released. His experiences and injuries are detailed in the Merits section below.

Claimant Estate was part of a group of plaintiffs that sued Iraq in federal court in 2001 for, among other things, hostage-taking and wrongful conduct, seeking damages for a variety of injuries. *See Vine v. Republic of Iraq*, 459 F. Supp. 2d 10 (D.D.C. 2006). 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 claimants whose claims

were covered by the Agreement, including claims by individuals (or, if dead, their estates) that Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this compensation "encompassed physical, mental, and emotional injuries generally associated with" being held hostage or subject to unlawful detention.<sup>1</sup> Claimant Estate states that the amount of the payment it received was based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention. Pursuant to this formula, Claimant Estate received \$565,000.

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

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

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

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

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

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

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

Claimant Estate submitted a timely Statement of Claim under the 2012 Referral, along with exhibits supporting the elements of its claim, including evidence of the decedent’s and the Estate beneficiaries’ U.S. nationality, the Estate’s receipt of

compensation from the Department of State for its claim of hostage-taking, and the decedent's alleged personal injuries.

## DISCUSSION

Having reviewed all the documents Claimant Estate has submitted, we conclude (1) the Claimant Estate that brought this claim is in fact the proper claimant to bring a claim arising from <sup>5 U.S.C. §552(b)(6)</sup> experiences in Iraq; (2) this Commission has jurisdiction over the claim; and (3) the Claimant Estate is entitled to additional compensation under the terms of the 2012 Referral.

### Proper Claimant

Having reviewed the estate-related documents in this claim, we conclude that the <sup>5 U.S.C. §552(b)(6)</sup>, has the legal right to bring a claim arising out of <sup>5 U.S.C. §552(b)(6)</sup> experiences in Iraq and is thus the proper claimant before this Commission.<sup>2</sup>

### 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 those who (1) are U.S. nationals; and (2) "already received compensation under the Claims Settlement Agreement from the Department of State<sup>1</sup> for [their] claim of hostage-taking, and such compensation did not include

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<sup>2</sup> These documents are: (1) Order for Administration of Intestate Estate and Appointment of Personal Representative issued by the Circuit Court, Columbia County, of the State of Oregon on July 10, 2002 ("2002 Order"), which appoints <sup>5 U.S.C. §552(b)(6)</sup> the personal representative of the estate of <sup>5 U.S.C. §552(b)(6)</sup>

(2) a July 9, 2002 document entitled "Petition for Administration of Intestate Estate and Appointment of Personal Representative" by <sup>5 U.S.C. §552(b)(6)</sup> (3) an accompanying document entitled "Information to Heirs," and (4) <sup>5 U.S.C. §552(b)(6)</sup> death certificate.

economic loss based on a judgment against Iraq[.]” 2012 Referral, *supra*, ¶ 3. Because the Claimant here is the estate of a former hostage, not the hostage himself, we must address another question, one of first impression in this program: are estates of hostages who died prior to the effective date of the Claims Settlement Agreement eligible to bring claims under the 2012 Referral? We conclude that estates may bring such claims and that the Claimant Estate here has satisfied the requirements of nationality and prior compensation. In sum, the Commission thus has jurisdiction over this claim.

*Eligibility of Estates to Bring Claims Under the 2012 Referral*

The language of the Referral does not explicitly address the question of whether a former hostage’s estate can bring a claim in this program. The language does suggest, however, that the drafters only contemplated individuals—the former hostages themselves—bringing claims. For example, the Referral defines the category of claims as “claims of *U.S. nationals* [for injuries] knowingly inflicted upon *them*” (emphasis added). The implication is that the “U.S. nationals” who are claimants would be the very individuals who suffered the injuries. An estate certainly could be a “U.S. national,” but it is an odd usage of language to think of an estate as having had a “serious personal injur[y] knowingly inflicted upon [it],” especially where, as here, the estate did not even exist at the time of the alleged injuries. Similarly, the Referral sets as one of its conditions for compensation that “*the claimant* has already received compensation . . . for *his or her* claim of hostage-taking” (emphases added). The use of the possessive adjectives “his” and “her” and the omission of “its” again seem to contemplate the claimant being a natural person. This language thus also suggests that the drafters of the Referral simply did not think about estates as claimants.



Of course, the failure to explicitly consider the possibility of estates as claimants is not dispositive of the question. Though the language might be read, by negative implication, to preclude claims brought by estates, we have other reasons to think that the Referral does not categorically bar estates as claimants in this program. For one, this program is limited to those the State Department has already compensated for a hostage-taking claim, and Claimant here (*i.e.*, the hostage's estate) was among those that the State Department paid. The State Department clearly provided compensation to estates for hostage-taking, and thus, at least for that compensation, made no distinction between a hostage who survived until the conclusion of the Claims Settlement Agreement and one who did not. One could certainly argue that because the State Department was fully aware of at least this Estate Claimant (if not others) and nonetheless used the "injuries . . . inflicted upon them" and "his or her" language in the Referral, this strengthens the negative-implication argument from that language; despite this, however, it seems most likely that the State Department simply did not think about potential estate claimants at all when drafting the Referral and thus did not consider the way in which that language could be read to implicitly exclude estates.

Indeed, in circumstances in which the State Department has consciously thought about this issue, it has clearly indicated in a Referral that a category of claims was to be limited to claimants "who are living." *See, e.g.* Claim No. LIB-I-024, Decision No. LIB-I-016 (2010); Claim No. LIB-I-029 Decision No. LIB-I-013 (2010). Moreover, in previous programs without such language, we have allowed estates to bring claims where the victim died prior to the effective date of the relevant agreement. *See, e.g.*, Claim No. LIB-I-013, Decision No. LIB-I-032 (2010); Claim No. LIB-I-046, Decision No. LIB-I-

036 (2010). Indeed, it may well have been that the State Department was aware of this prior—and recent—precedent on the question. Finally, we can see no reason why the State Department would make a distinction between a former hostage who is living and the estate of a deceased hostage in this program, a point that makes us even more reluctant to create a bar when the State Department has not explicitly done so. In sum, given (1) the circumstances of this program, (2) prior Commission precedent explicitly permitting victims’ estates to bring personal injury claims, (3) the fact that the State Department itself has already awarded compensation to the very estate bringing this claim, and (4) the Referral’s language strongly suggesting the State Department did not even contemplate the question, we conclude that an estate is not barred from bringing a claim in this program based on injuries suffered by its decedent where, as here, the decedent died prior to the effective date of the Claims Settlement Agreement.

*Nationality*

This claims program is limited to “claims of U.S. nationals.” In the context of an individual claimant, he or she must have been a national of the United States at the time the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force. *See* Claim No. IRQ-I-001, Decision No. IRQ-I-005 (2014), at 5 (Proposed Decision). It is also a well-established principle of the law of international claims, which has been applied by both this Commission and its predecessors (the War Claims Commission and the International Claims Commission), that the beneficiaries of an estate must also be U.S. nationals. *See, e.g.*, Claim No. LIB-II-065, Decision No. LIB-II-043 (2011), at 4-5; Claim No. Y-0660, Decision No. Y-1171 (1954); Claim No. W-9801, Decision No. W-2107 (1965); Claim No. G-2154, Decision No. G-1955 (1981);

Claim No. ALB-338, Decision No. ALB-321 (2008). Here, the hostage, <sup>5 U.S.C. §552(b)(6)</sup>  
, died on November 5, 1993, and he left only three heirs, his three sons:

<sup>5 U.S.C. §552(b)(6)</sup>

The evidence Claimant submitted establishes that <sup>5 U.S.C. §552(b)(6)</sup> was a U.S. citizen his entire life and that all three of his sons were U.S. citizens from birth through the effective date of the Claims Settlement Agreement (May 22, 2011). That evidence consists of: (1) the decedent <sup>5 U.S.C. §552(b)(6)</sup> Oregon birth and death certificates; (2) his son <sup>5 U.S.C. §552(b)(6)</sup> U.S. passport, which was issued on January 5, 2011, and expires on January 4, 2021, and which lists Oregon as his place of birth; and (3) an Oregon birth certificate and an Oregon birth registration card, social security cards, and current Oregon voting registration cards for <sup>5 U.S.C. §552(b)(6)</sup>.

The Claimant Estate has thus satisfied the nationality requirement.

#### *Compensation from the Department of State*

The Claimant Estate also satisfies the second jurisdictional requirement. It has submitted a copy of a Release signed on August 15, 2011, indicating its agreement to accept payment from the Department of State in settlement of the Estate's claim against Iraq. The Estate has also submitted a copy of an electronic notification from the Department of State that it received \$565,000 on June 18, 2012. Claimant Estate's representative further stated under oath in the Estate's Statement of Claim, and the Commission has confirmed to its satisfaction, that this compensation did not include economic loss based on a judgment against Iraq.

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

### Merits

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

The second requirement is that Iraq must have “knowingly inflicted” the injury. Thus, even where a hostage suffered a serious personal injury that satisfies the other requirements in the 2012 Referral, the Claimant must prove that Iraq knowingly inflicted the injury.<sup>3</sup>

The third requirement is that the Commission determine that the severity of the serious personal injury suffered constitutes a “special circumstance warranting additional compensation.” In making this determination, the Commission will consider the nature and extent of the injury itself (including the specific acts committed by Iraq giving rise to such injury), the extent to which the injury substantially limits one or more of the hostage’s major life activities (both in the immediate aftermath of the injury and on a

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<sup>3</sup> “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. *See id.* at 8.

The crux of the Estate's claim is two-fold: (1) Iraq prevented the hostage from getting access to medicines that he needed, thereby causing him injury; and (2) on one occasion when he left the residence of the U.S. Ambassador in Baghdad (where he had been staying) in search of medications, an Iraqi policeman threw him in jail, where an Iraqi guard shot at him and beat him with the butt of a gun, knocking some of his teeth out. To prove these allegations, Claimant Estate has submitted five declarations;<sup>4</sup> a contemporaneous letter from one of the hostage's colleagues in Iraq to their employer; a State Department cable; a bill for psychotherapy; newspaper articles; and a death certificate. Except where noted, the facts we outline below are those established by this evidence.

Arrival in Iraq and Need for Medication: The hostage moved to Iraq in March 1990 to work on a brass smelting project. Until the invasion, the hostage's wife was mailing him medications he had begun taking following a series of back operations to relieve chronic pain caused by an infection. After the surgeries, which began in 1985 and resulted in nerve damage, the decedent was put on a regimen of blood pressure medication, muscle relaxants, and pain killers. According to a declaration provided by one of his sisters, the hostage needed the drugs to manage "a back condition which would cause him excruciating pain if left untreated."

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<sup>4</sup> Four of the declarations are from individuals who, although closely connected to the hostage by relation or employment, are not beneficiaries of the Claimant Estate: the December 17, 2007 declaration of the Estate decedent's former wife, <sup>5 U.S.C. §552(b)(6)</sup>, filed in the federal court litigation; the March 12, 2003 declaration of <sup>5 U.S.C. §552(b)(6)</sup> work colleague, Charles R. Hodde, also filed in the federal court litigation; the declaration of <sup>5 U.S.C. §552(b)(6)</sup>, a younger sister of the decedent; and the declaration of <sup>5 U.S.C. §552(b)(6)</sup> another younger sister of the decedent. The fifth is from the hostage's eldest son, <sup>5 U.S.C. §552(b)(6)</sup> U

Denial of Medication Following Iraq's Invasion: After Iraq invaded Kuwait in August 1990, the hostage remained at the project site for three days before moving to a hotel in Baghdad, where he remained for two weeks until he fled to the U.S. Ambassador's residence in Baghdad. Following Iraq's invasion of Kuwait, mail service ended and the hostage's wife thus had no means of getting him his medication. For the first few weeks at the Ambassador's residence, the hostage's co-workers were able to obtain some morphine for his use. However, when the morphine ran out, the hostage experienced a rapid deterioration in health shortly thereafter. According to a declaration provided by a fellow hostage and co-worker, Charles R. Hodde, the hostage's pain was "intolerable," and Mr. Hodde and the other hostages were afraid that the hostage would die from the pain and withdrawal from the medications. In a letter to their employer dated August 31, 1990, Mr. Hodde also stated that the hostage was "in frequent contact with the [U.S.] embassy, as they are attempting to obtain his prescribed medication."

At one point, the hostage called his wife from the Ambassador's residence and told her that he was worried about his medical situation. Although it is unclear exactly when, he also began to urge the State Department to negotiate his release on medical grounds. The State Department ultimately responded that it had no means of getting the hostage the drugs he needed, because the Embassy did not have the medications he needed, and there was no other way to get them.<sup>5</sup> Consequently, the State Department focused its efforts on negotiating the hostage's release on medical grounds.

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<sup>5</sup> An unclassified State Department cable from January 1992 provides general support for this aspect of the claim, although it does not provide evidence specific to the hostage. The cable states that "the majority of hostages did not have access to basic medical treatment"; "medicines were often unavailable"; and "Iraqi authorities often failed to deliver essential medicines passed to the Iraqi Foreign Ministry of Foreign Affairs for hostages with a specified illness." The cable does not identify any specific hostages that were prevented from receiving medication.

Physical Assault During Search for Medication: At some point in October 1990, the hostage left the diplomatic compound in order to try to find medicine, but became disoriented and lost. He flagged down a taxi, but rather than taking him where he wanted to go, the driver informed a nearby Iraqi policeman who then arrested the hostage and took him to a jail. The hostage spent the night there, and when he awoke the following morning, an Iraqi guard who was standing over the hostage thrust an AK-47 in the hostage's face. The hostage pushed it away "just as the guard fired several shots." During the scuffle, the guard struck the hostage in the mouth with the butt of his gun, knocking some of the hostage's teeth out. The hostage thought the guard was going to kill him, but he was fortunately able to return to the Ambassador's residence later that day.

Health Decline and Death Following Departure from Iraq: On October 23, 1990, the hostage was allowed to leave Iraq on a medical evacuation flight. When he returned home to Texas, his wife at the time observed that his arms were "black and blue from the morphine shots" and that he had become addicted to morphine. As a result of the beating he suffered in October 1990, the hostage required "extensive dental work, which he had done soon after his return to his home in Houston." According to his wife, the hostage was also admitted to a drug treatment center in January 1991, a few months after his return. He was released from the treatment center after 30 days, but apparently soon discovered that he could not control his pain with the drug dosages he had taken in the past. Over the following months he became increasingly aggressive, explosive, and reclusive. According to his wife, the hostage was diagnosed with post-traumatic stress disorder shortly after his time in the drug rehab center and, due to the addiction, was

placed on long term disability through his insurance coverage. His wife further claims that the hostage “never recovered from the ordeal, mentally, emotionally or physically,” and he wasted away over the next two years. He moved back to his family in Oregon and was divorced in April 1993. There is evidence that for the last few months before his death, the hostage regularly saw a clinical psychologist, including a visit on October 25, 1993, approximately one week before his death.

The hostage died on November 5, 1993. The death certificate listed the cause of death as an “overdose of heroin” that was “self inflicted.” According to both his ex-wife and a contemporaneous newspaper article reporting the hostage’s death, he had suffered a massive heart attack.

Analysis of Physical Assault: We have reviewed the documentation Claimant Estate has submitted and find the allegations of physical assault to be generally credible and consistent, and supported by the totality of the evidence. While Claimant Estate has not submitted any medical records connected to the assault, the evidence in the record (including several declarations and newspaper articles) supports the conclusion that on one occasion, the hostage left the Ambassador’s residence in search of medicine and was detained overnight by an Iraqi policeman; and that during that detention, an Iraqi guard shot at the hostage and beat him with the butt of a gun, knocking some of his teeth out. Claimant Estate’s account is also consistent with reports of physical assaults 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).



These facts suffice to establish a compensable claim in this program. First, being shot at and having one's teeth knocked out by the butt of a gun are together enough to constitute a "serious personal injury" within the meaning of the Referral. The hostage suffered an "aggravated physical assault" as we have interpreted that term. *See* Claim No. IRQ-I-025, Decision No. IRQ-I-011 (2014), at 12 & n.3 (Proposed Decision). The Claimant thus satisfies the Referral's first requirement.

Likewise, the facts clearly show that an Iraqi agent inflicted these injuries knowingly, the second requirement. Finally, Claimant Estate has also satisfied the third requirement, that the severity of the serious injuries constitute a "special circumstance warranting additional compensation[.]" The Iraqi agent's assault was serious, harsh, and intentional; it also required subsequent medical attention. These injuries are thus severe enough to constitute a "special circumstance" under the 2012 Referral.

Analysis of Deprivation of Medication: The Claimant Estate's allegation that Iraq deprived the hostage of his medications is also supported by the totality of the evidence. While there is little in the way of relevant medical records (just a one-page psychologist's billing statement from three years later, and even that document has nothing connecting it with the hostage's time in captivity), the rest of the evidence<sup>6</sup> is sufficient to establish that the hostage was in fact deprived of his medication. Beyond that fact, however, remains the question of what specific injuries can be attributed to that deprivation. We must unfortunately answer that difficult question without the benefit of any medical records.

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<sup>6</sup> This consists of Mr. Hodde's declaration and letter, the declarations of the hostage's family members, the 1990 newspaper article, and the State Department cable, stating among other things, stating that "Iraqi authorities often failed to deliver essential medicines passed to the Iraqi Foreign Ministry of Foreign Affairs for hostages with a specified illness"

Claimant Estate's allegations about the hostage's injuries can be put into two different categories: those he suffered while in Iraq and those he suffered after. For those injuries he suffered while in the U.S. Ambassador's residence in Baghdad, the allegations are directly connected to the lack of medications: because the hostage was unable to replenish his supplies of medications, he was forced to resort to morphine, the only drug available, to control his pain. Prior to getting the morphine, this led to injuries, both emotional and physical: the pain was "intolerable." After he began taking morphine, the drug may have dulled the pain but it also put him into a "stupor as though he were a drunk." Whether because he did not have his proper medications or because he took the morphine, these injuries can be attributed to Iraq's actions in depriving him of his needed medications.

All of the hostage's post-detention injuries are alleged to have been caused by his having become addicted to morphine. According to his ex-wife, he spent 30 days in a drug rehabilitation facility in January 1991, but remained addicted after that. It is this addiction, Claimant Estate says, that led to a downward spiral of emotional problems that eventually led to the hostage's divorce and, ultimately, his death in 1993.

Although this sequence of events does not strike us as implausible, we cannot conclude, as a legal matter, that Iraq caused the hostage's death three years after his detention without medical evidence directly tying the death to the deprivation of medications in Iraq. The only evidence Claimant Estate has submitted to prove these post-detention allegations are declarations from the hostage's family members—in particular, one from his ex-wife—and a billing statement from a psychologist showing two months of visits just before the hostage's death. We have no reason to doubt the

declarants' veracity, and we realize that these events took place more than two decades ago. Nonetheless, these declarations are insufficient to meet Claimant's burden to prove that Iraq's actions caused the hostage's post-detention injuries. *See* 45 C.F.R. § 509.5(b) (2013) ("The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.").

Notwithstanding the lack of medical evidence, however, we do conclude that Iraq's act of depriving the hostage of medications did cause him significant physical and emotional injuries during his time in captivity and most likely some emotional injuries afterwards. We also conclude that those injuries satisfy the Referral's standards for compensability.

First, these injuries constitute "serious personal injuries" within the meaning of the Referral. The "discrete act" committed by Iraq was the deprivation of the hostage's medications. Although the evidence is not absolutely conclusive as to whether the deprivation was an affirmative act or one of omission, we view that as a distinction without a difference for the purposes of this claim. Given the hostage's medical condition—in particular the fact that he needed his medications to alleviate a state of constant, "intolerable" pain over a long period of time—we view the act of depriving him of medications as comparable, if not in brutality at least in cruelty, to an aggravated physical assault.

Second, Iraq "knowingly inflicted" these injuries on the hostage. Here, acting "knowingly" means to act with awareness that a circumstance exists or a consequence will occur in the ordinary course of events. *See* Claim No. IRQ-I-025, Decision No. IRQ-

I-011 (2014), at 14 (Proposed Decision). The question of whether Iraq acted knowingly here is close, but Claimant Estate has provided evidence from which we can infer that, at least, Iraqi officials knew that the hostage needed medications and failed to provide or facilitate access to them. Although we are not absolutely positive that Iraqi officials knew about the details about this particular hostage's medication needs, there is evidence that Iraq generally "fail[ed] to deliver essential medicines passed to the Iraqi Foreign Ministry," that the hostage's wife had been trying to get him the medications he needed, and that the U.S. Embassy had been "attempting to obtain [the hostage's] prescribed medication." Together, this evidence strongly suggests that, at the very least, Iraq knew that the hostage needed medications and failed to provide him with them or, if Iraq itself did not possess the medications, failed to facilitate the hostage's access to them within a reasonable time. At worst, Iraq may well have even affirmatively prevented those medications from getting through.

Finally, Claimant has also satisfied the third requirement, that the severity of the serious injuries constitute a "special circumstance warranting additional compensation[.]" The hostage's health deteriorated rapidly when his supply of pain medication ran out; his pain was "intolerable"; and his fellow hostages were concerned he might die from the pain and withdrawal from the medications. Therefore, the deprivation of medication in this particular situation constitutes a "special circumstance" under the 2012 Referral. Accordingly, Claimant Estate is entitled to compensation as set forth below.

#### COMPENSATION

In determining the appropriate level of compensation under the 2012 Referral, the Commission considers, 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 hostage was hospitalized as a result of his or her injuries, and if so, how long (including all relevant periods of hospitalization in the years since the incident); the number and type of any subsequent surgical procedures; the degree of permanent impairment, taking into account any disability ratings, if available; the impact of the injury or injuries on daily activities; the nature and extent of any disfigurement to outward appearance; whether the hostage witnessed the intentional infliction of serious harm on his or her spouse, child or parent, or close friends or colleagues; and the seriousness of the degree of misconduct on the part of Iraq. *See* Claim No. IRQ-I-001, Decision No. IRQ-I-005 (2014) (Proposed Decision), at 22.

Here, the decedent suffered physical harms that required subsequent dental surgery. The hostage also suffered terrible pain from the deprivation of his medication. We can also presume—and there is evidence to support the presumption—that the hostage suffered greater psychological harm after his captivity than he would have suffered had he not been deprived of his medications. That said, the thinness of the evidence—in particular the lack of any medical records—makes it difficult to make conclusions on two aspects of the claim: (1) the causal connection between Iraq’s act of depriving the hostage of medications and the Estate’s allegations about his subsequent addiction to morphine, downward emotional spiral and eventual death of a heart attack due to a heroin overdose three years later; and (2) the *extent* of the hostage’s physical injuries and medical treatment due to the Iraqi guard’s assault on him.

Nevertheless, the hostage suffered both physical and emotional injuries as a result of Iraq’s aggravated physical assault and deprivation of his medication. Accordingly, the

Claimant Estate is entitled to an award of \$1,000,000.00 and this amount (not including the amount already received from the Department of State) constitutes the entirety of the compensation that the Claimant Estate 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

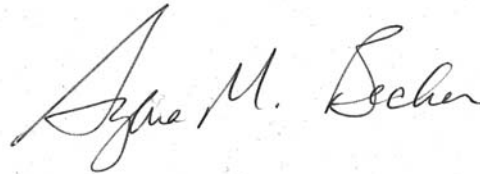
Claimant Estate is entitled to an award in the amount of One Million Dollars (\$1,000,000.00).

Dated at Washington, DC, May 8, 2014  
and entered as the Proposed Decision  
of the Commission.



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Anuj C. Desai, Commissioner



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Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2013).