

**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-014
	}	
	}	Decision No. IRQ-I-027
Against the Republic of Iraq	}	

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 Iraq in August 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 grabbed him, threw him against a wall and sprayed the wall around him with bursts of gunfire, and that this led to severe mental and emotional injuries, some of which persist to this day. We conclude that Claimant has established that Iraqi officials did inflict these injuries on him and that he is entitled to \$1,000,000.00 in additional compensation.

**BACKGROUND AND BASIS OF CLAIM**

Claimant alleges that he was employed in Iraq as a banking consultant when Iraq attacked Kuwait on August 2, 1990. He claims that Iraq effectively held him hostage at his hotel for about one week before he managed to leave the country across the Iraqi-

Jordanian border. This claim focuses on one incident at the border crossing on August 8, 1990, when Iraqi soldiers allegedly shoved Claimant against a wall and then aimed and discharged their machine guns a few feet from Claimant's head. Claimant's experiences and injuries are further detailed in the Merits section below.

Claimant joined a federal lawsuit suing Iraq for, among other things, hostage-taking and intentional infliction of emotional distress. That case was pending when, in September 2010, the United States and Iraq concluded an *en bloc* (lump-sum) settlement agreement. See *Claims Settlement Agreement Between the Government of the United States of America and the Government of the Republic of Iraq*, Sept. 2, 2010, T.I.A.S. No. 11-522 ("Claims Settlement Agreement" or "Agreement"). The Agreement, which came into force in May 2011, covered a number of personal injury claims of U.S. nationals arising from acts of the former Iraqi regime occurring prior to October 7, 2004. Exercising its authority to distribute money from the settlement funds, the State Department provided compensation to numerous individuals whose claims were covered by the Agreement, including some, like Claimant, whom Iraq had taken hostage or unlawfully detained following Iraq's 1990 invasion of Kuwait. According to the State Department, this compensation "encompassed physical, mental, and emotional injuries generally associated with" being held hostage or subject to unlawful detention.<sup>1</sup> Claimant states that the amount of the payment he received was based on a formula, consistently applied to all of the hostages, of \$150,000 plus \$5,000 per day of detention. Pursuant to this formula, Claimant received \$185,000.

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

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

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

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

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

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

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

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

## DISCUSSION

### Jurisdiction

The 2012 Referral’s statement of the category of claims defines the Commission’s jurisdiction. *See* 22 U.S.C. § 1623(a)(1)(C). Thus, the Commission has jurisdiction to entertain only claims of individuals who (1) are U.S. nationals; and (2) “already received compensation under the Claims Settlement Agreement from the Department of State<sup>¶</sup> for [their] claim of hostage-taking, and such compensation did not include economic loss based on a judgment against Iraq[.]” 2012 Referral, *supra*, ¶ 3. Claimant satisfies both requirements, and the Commission thus has jurisdiction over this claim.

*Nationality*

This claims program is limited to “claims of U.S. nationals.” Here, that means that a claimant must have been a national of the United States at the time the claim arose and continuously thereafter until May 22, 2011, the date the Agreement entered into force. *See* Claim No. IRQ-I-001, Decision No. IRQ-I-005, at 5 (2014) (Proposed Decision). Claimant satisfies the nationality requirement. He has provided a copy of his U.S. passport from the time of the hostage-taking (valid from August 1989 to August 1999) and his current voter registration card.

*Compensation from the Department of State*

Claimant also satisfies the second jurisdictional requirement. He has submitted a copy of a Release he signed on August 9, 2011, indicating his agreement to accept \$185,000 from the Department of State in settlement of his claim against Iraq. He has also submitted a copy of an electronic notification from the Department of State that he received this sum on October 4, 2011. Claimant further stated under oath in his Statement of Claim, and the Commission has confirmed to its satisfaction, that this compensation did not include economic loss based on a judgment against Iraq.

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

Merits

The 2012 Referral requires a claimant to satisfy three conditions to succeed on the merits of his or her claim. Claim No. IRQ-I-005, Decision No. IRQ-I-001 (2014) at 7-8 (Proposed Decision). First, the claimant must have suffered a “serious personal injury,” which may be “physical, mental, or emotional.” In order to satisfy this standard, the

injury must have arisen from one of the four acts specifically mentioned in the Referral—*i.e.*, sexual assault, coercive interrogation, mock execution, or aggravated physical assault—or from some other discrete act, separate from the hostage experience itself, that is comparable in seriousness to one of those four acts—that is, an act of a similar type or that rises to a similar level of brutality or cruelty as the four enumerated acts. *Id.* at 7.

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

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

Here, Claimant alleges that Iraqi officials subjected him to a mock execution and that this act led to a variety of emotional injuries. To prove these allegations, Claimant has submitted, *inter alia*, a copy of the declaration he filed in his federal district court suit, dated November 15, 2002; two declarations prepared for this proceeding, dated June 24, 2013, and November 26, 2013; affidavits by three doctors who have treated Claimant since very shortly after his escape from Iraq and over the following years; medical

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

healthcare records, including from shortly after his escape from Iraq as well as from a recent evaluation at the Mayo Clinic; a detailed affidavit by a college friend of Claimant which, among other things, describes a conversation with Claimant a few weeks after Claimant returned to the United States; and an article Claimant wrote in 1996 that includes a brief mention of the relevant events. Except where noted, the facts we outline below are those established by this evidence.

Baghdad: Claimant was working in Baghdad as a consultant on a banking project when Iraq attacked Kuwait on August 2, 1990. He was living in a hotel, and immediately after the attack, Iraqi officials told him not to leave the hotel. The Iraqi military established a presence around the hotel, and Claimant states that he became very anxious and afraid for his life. On August 5, 1990, someone claiming to be a U.S. State Department official telephoned one of Claimant's U.S. colleagues and advised Claimant's group to get out of Baghdad as soon as possible.

Travel from Bagdad to the Jordanian Border: Claimant and his colleagues then hired cars and drivers to take them to the Jordanian border, and arranged for some Jordanian business associates to meet them on the other side of the border. On August 8, 1990, Claimant and his three American colleagues, as well as an American oil worker and two British nationals, traveled in three cars to the border. The trip to the border took "five or six nerve-wracking hours."

Mock Execution and Departure from Iraq: At the border checkpoint, armed Iraqi soldiers escorted Claimant and his colleagues into an inner courtyard. A television there was playing a rousing speech that Saddam Hussein was giving. Claimant states that the speech whipped the Iraqi soldiers there into a frenzy, so much so that the soldiers chanted

cries of “Allahu Akbar,” stabbed their fists into the air and, at the conclusion of the speech, erupted into a fury that included shouting, screaming, pushing, and shoving each other and anyone else within reach. Claimant describes what happened next as follows:

Suddenly and without warning, the soldiers began shooting off bursts of gunfire from their AK-47s continuously for about seven or eight terrifying minutes – spraying bullets . . . into the air, in all directions and seemingly all around without a thought about where those bullets would end up. In the midst of the initial chaos, I found myself separated from my colleagues. I was suddenly grabbed, pushed away from where I was standing and shoved hard against one of the walls of the courtyard. A group of soldiers appeared in front of me, raised their weapons, and, without warning, opened fire on me.

The image of these soldiers facing me, and the deafening noise of their weapons, and the sound of the cartridges dropping onto the concrete floor, and the smell of the gunpowder, were indelibly burned into my brain. I was mentally and physically frozen, bewildered, and in a state of abject and paralyzing terror that cannot in any way be compared with anything I have ever felt in my life. As “cinematic” as it may sound, I remember feeling almost transported out of the moment, as if this was not really happening to me, and as if time itself had slowed to a crawl. The soldiers “haloed” me with their gunfire, sending up a cloud of dirt and dust and cement chips from the floor in front of me and the wall on both sides of my head and torso. Their firing, and their aim, was intentional and accurate and continued on for what must have been a minute or more – not just one quick burst, but a steady stream of gunfire. My mind and body essentially shut down and I became oblivious, or perhaps resigned, to the fate I had been imagining in my head over the past week in Baghdad. The mock execution was terrifying beyond belief. No bullets penetrated my body, but the brutal assault scarred me for life.

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Once they finally stopped their shooting, the soldiers were unable to contain themselves – erupting into laughter, taunting and screaming and spitting into my face, sending the same message to me as Saddam had on television to the world.

An Iraqi officer then marched Claimant into an office and ordered him to give up his passport. Claimant then returned to his colleagues and waited for hours in fear. Eventually Claimant’s Jordanian business contacts arrived and were able to convince the



Iraqis to let the entire group cross the border. Claimant remained in a state of shock as they drove for hours to reach Amman; from there, Claimant flew to London. Claimant states that he had feelings of paranoia, flashbacks, anxiety, night sweats, nightmares and symptoms of post-traumatic stress disorder (“PTSD”) and that he began to exhibit bizarre behavior. Back in the United States, Claimant saw his doctor and a psychiatrist, received treatment, and took disability leave for seven months. At the end of that period, his employer let him go.

Injuries Alleged: Claimant has suffered substantive psychological injuries. Although he had some mental health problems before he left Iraq, he states that they took a marked turn for the worse immediately after the mock execution. Since then, he has seen a series of psychiatrists and been receiving psycho-therapeutic treatment and taking anti-anxiety and anti-depressant medications. Claimant states that the mock execution led to PTSD with symptoms including major depression, anxiety, panic attacks, flashbacks, nightmares, insomnia, startle-response, paranoia, hyper-vigilance, irritability, and avoidance and concentration problems, and that all these problems persist even today. In 2011, Claimant began to experience seizure-like attacks of severe intensity that have included week-long periods of vertigo, headaches, nausea, hearing and vision loss. Claimant recently spent time at the Mayo Clinic to address these issues, but he believes the psychological wound from the mock execution will never go away.

Analysis: Claimant is entitled to compensation in this program. First, Claimant suffered a “serious personal injury” within the meaning of the Referral. The 2012 Referral specifically provides that the phrase “serious personal injury” may include injuries arising from, inter alia, “mock execution.” The term “mock execution” means “a

simulated or feigned execution whereby a perpetrator commits an act or acts that sufficiently mimic an actual execution so as to trick or deceive the victim into holding a reasonable (but ultimately false) belief that his or her death is imminent.” Claim No. IRQ-I-024, Decision No. IRQ-I-012, at 13 (2014) (Proposed Decision).

Claimant has established that Iraq subjected him to a mock execution. The evidence establishes that Iraqi officials pushed Claimant against a wall, and a group of soldiers then opened fire and “haloed” him with bullets. Claimant resigned himself to dying and his belief that his death was imminent was reasonable in these circumstances. This haloing incident is thus a mock execution within the meaning of the 2012 Referral.

Claimant has corroborated the fact of his mock execution with several pieces of evidence, including the declaration of a friend who recounts a detailed conversation he had with Claimant in August 1990, a few weeks after Claimant returned to the United States, in which Claimant was traumatized and described the mock execution; the statements from psychiatrists and other mental health specialists who treated Claimant over a long period of years and state that Claimant described the mock execution to them, including one who notes that Claimant told him about the mock execution in September 1990, a month after the event; a 1996 article in Claimant’s law school newspaper which makes brief reference to the mock execution;<sup>3</sup> and medical records that document Claimant’s description of the mock execution. In sum, the evidence establishes that

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<sup>3</sup> The relevant portion of the article reads as follows: “I lived and worked in Baghdad as an international banking consultant during the two years between the end of the Iran-Iraq War and the beginning of the Gulf War, when I was taken hostage along with other westerners after the invasion of Kuwait. I escaped, however, in a harrowing desert adventure that I still don’t like to think about. Suffice it to say that you haven’t lived until you’ve been grabbed by Iraqi soldiers, held under guard, and shot at by a squad armed with AK-47’s.”

Claimant endured a mock execution and that the injuries he suffered because of it constitute “serious personal injuries” within the meaning of the Referral.

In regard to the second requirement of the 2012 Referral, the Commission finds that Iraq “knowingly inflicted” these injuries on Claimant. Iraqi officials clearly acted knowingly when they pushed Claimant against a wall and then opened fire, “haloing” him with bullets.

Finally, Claimant has also shown that the severity of his injuries constitutes a “special circumstance warranting additional compensation[.]” The claimants in this program have already received compensation from the State Department for injuries generally associated with having been held hostage. Here, Claimant’s experience goes well beyond that. He was grabbed and pushed hard against a wall, and then a group of soldiers raised their weapons and fired around him, “haloing” him with bullets. Iraqi officials intentionally frightened him into thinking he was about to be killed, and he has suffered mental and emotional injuries because of this event. The severity of the injuries Claimant has suffered because of this act is therefore a “special circumstance” under the 2012 Referral.

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

#### COMPENSATION

In determining the appropriate level of compensation under the 2012 Referral, the Commission considers such factors as the severity of the initial injury or injuries; the

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

Claimant's injuries are quite severe. Although he has not been hospitalized or institutionalized,<sup>4</sup> his psychological injuries have substantially interfered with his ability to enjoy life and to function at his full professional capability. The medical records and other evidence support his claim of severe and long-term psychological injuries, particularly PTSD with symptoms including major depression, anxiety, panic attacks, flashbacks, nightmares, insomnia, startle-response, paranoia, hyper-vigilance, irritability, and avoidance and concentration problems. Claimant's mental health ailments are

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<sup>4</sup> Claimant spent a number of months at the Mayo Clinic in 2013 for purposes of evaluation and treatment of vertigo, dizziness, hearing loss, headaches, and prolonged PTSD.

ongoing and continue to adversely affect his daily functioning, and he continues to seek therapy and take medication. While the evidence does link Claimant's experiences in Iraq with his mental injuries, it also describes other contributing, or potentially contributing, factors. Nonetheless, given the nature of what the Iraqi soldiers did to him, we can presume that he indeed suffered significant emotional trauma specifically as a result of the haloing in Iraq.

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

The Commission enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSA. 22 U.S.C. §§ 1626-27 (2006).

AWARD

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

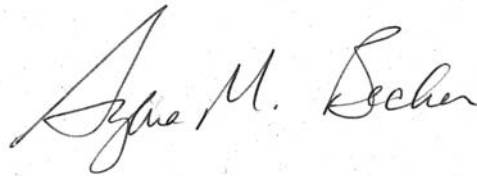
Dated at Washington, DC, August 14, 2014  
and entered as the Proposed Decision  
of the Commission.

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

**January 7, 2015**



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Anuj C. Desai, Commissioner



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Sylvia M. Becker, Commissioner

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