

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

In the Matter of the Claim of	}	
	}	
	}	
	}	
5 U.S.C. §552(b)(6)	}	Claim No. IRQ-I-018
	}	
	}	Decision No. IRQ-I-009
	}	
Against the Republic of Iraq	}	

Counsel for Claimant:

Daniel Wolf, Esq.  
Law Offices of Daniel Wolf

FINAL DECISION

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

## BACKGROUND

Claimant brought a claim against the Republic of Iraq (“Iraq”) based on injuries he suffered as a result of being held hostage in Iraq between August and December 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-018, Decision No. IRQ-I-009 (2014) (“Proposed Decision”). Accordingly, the Commission awarded Claimant \$1.25 million in additional compensation—an amount just below the recommended maximum for awards in this program.<sup>1</sup>

The Commission based its determination of the appropriate level of compensation on a variety of factors, including the State Department’s recommendation of the maximum award for compensable claims under the Referral. Applying these factors, the Commission noted that “Claimant suffered several incidents of brutality causing multiple personal injuries,” injuries that required treatment including “laser eye surgery and dental restoration.” Proposed Decision, *supra*, at 13. The Commission cited, among other things, that Claimant continues to experience “significant vision problems in his left eye.” *Id.* For

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<sup>1</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.

these reasons, the Commission held that Claimant was entitled to \$1.25 million in additional compensation, more than 80% of the maximum amount recommended by the State Department.

On April 28, 2014, the Claimant filed a notice of objection and requested an oral hearing. On August 29, 2014, Claimant submitted a brief in support of his objection. The Commission held an oral hearing on September 18, 2014; the hearing consisted solely of argument by Claimant's counsel, and the Claimant presented no witnesses for examination.

Claimant contends that he is entitled to \$1.5 million—the maximum amount recommended by the State Department in the 2012 Referral. He makes two arguments in support of this contention. First, he argues that the Commission employed a flawed methodology in interpreting the State Department's recommended cap. On this point, he notes that the Commission used a comparative-continuum approach, reserving the State Department's maximum of \$1.5 million for the claimants in this program who sustained the severest injuries and then awarding Claimant an amount proportionate to that maximum based on the severity of Claimant's injuries relative to those of other claimants. Instead of using a comparative-continuum approach, Claimant argues that the Commission should have used a cut-off approach, under which the Commission first determines what Claimant's damages would be in the absence of a cap, and if, and only if, that amount exceeds the \$1.5 million cap, then reduce the award to \$1.5 million. Claimant argues that, under his preferred cut-off approach, he should receive \$1.5 million. Second, Claimant argues that, even accepting the Commission's comparative-continuum methodology, "[t]he experiences that [he] endured and the personal injuries [he] suffered as a result were comparable in severity to" those endured by the two other claimants who were awarded the \$1.5 million maximum. Because his injuries were "somewhere in the same ballpark[]" as

those other claimants, Claimant contends that he should be awarded that same level of compensation.

## DISCUSSION

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

Claimant's first argument is that the Commission erred by interpreting the State Department's recommended maximum as establishing a continuum from zero to \$1.5 million based on the relative severity of a claimant's injuries, rather than a cut-off maximum for all claimants who would, in the absence of the cap, otherwise be entitled to more than \$1.5 million. As he put it in his brief, "the Commission calculated [his] award[] by placing [his] injuries along a continuum of severity in which (1) the stratum corresponding to a \$1.5 million award at the top of the continuum is reserved for the one or two claimants who sustained the severest injuries, and (2) the various strata below are occupied with claimants whose injuries are proportionately less severe." According to Claimant, "[i]n using the \$1.5 million capped amount that [two other claimants] were awarded—rather than the amounts [they] would have been awarded absent that cap—as the benchmark for determining the comparative valuation of Claimants' damages, the Commission misapprehended the nature of the Department's recommended cap and committed legal error." Instead, Claimant argues, the Commission should first determine the amount to which he (and, by extension, every other claimant in this program) would be entitled in the absence of the cap and then, if that amount is above \$1.5 million, reduce it to \$1.5 million.

Other claimants represented by Claimant's attorney have made the same argument, and in a recent decision, we rejected it. After carefully considering all of the arguments in favor of Claimant's proposed cut-off approach, we explicitly reaffirmed the comparative-

continuum approach that we implicitly used in determining Claimant's compensation. *See* Claim No. IRQ-I-003, Decision No. IRQ-I-006, at 8-18 (2014) (Final Decision). In that decision, the Commission held that "the Referral's recommendation to award 'up to but no more than \$1.5 million per claim' is best understood to recommend the creation of a continuum from zero to \$1.5 million, with amounts to be awarded within that range based on an assessment of claimant's injuries within this program." *Id.* at 18.

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

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

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

First, Claimant asserts that his experience and conditions of confinement were "not dissimilar to those endured by" claimants 1 and 2. For example, he notes that he was "severely beaten in five separate incidents spanning a two-month period," and that, like claimants 1 and 2, he "was subjected to no less than four mock executions as well as another terrifying incident in which an angry Iraqi officer put a gun to [Claimant's] head and threatened his life." Further, Claimant notes that, like claimants 1 and 2, he "was subjected to filthy and unsanitary conditions of confinement, given dirty water to drink, fed

a rancid, maggot-infested and meager diet that caused him to lose 25 pounds, and denied vital medication to treat the severe case of dysentery and amoebic colitis that resulted from his being forced to eat contaminated foods.” Based on the experiences alone, he argues that the other two claims are indistinguishable from his claim or, alternatively, that the distinctions are “too slight” to warrant a difference in compensation.

Claimant also argues that his long-term physical injuries are, if anything, even more severe than claimant 1 and that his long-term mental injuries were comparable to claimant 2.

The thrust of Claimant’s argument is that, in the context of this program, his experience and injuries are sufficiently similar to claimants 1 and 2 that he too should be awarded the same amount as they were, \$1.5 million. Claimant acknowledges that there are some differences that might warrant the Commission treating him differently from claimants 1 and 2. In particular, Claimant recognizes that they suffered more incidents of violence. Given our comparative-continuum approach, this difference alone might suffice to justify awarding claimants 1 and 2 \$250,000 (or 20%) more than Claimant.

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

Essentially, Claimant argues that if we are making awards on a continuum from zero to \$1.5 million, it is important not to make distinctions that are too fine given how horrendous all the claimants’ experiences and injuries were. Doing so will effectively

force us to compare incomparables.

We agree. A detailed comparison of the claims is unnecessary to our broader task in this program. As we have noted in other claims awarding compensation in this program, “[a]ssessing the value of intangible, non-economic damages is particularly difficult” and “assessing the *relative* value of personal injury claims ... is especially challenging where, as here, the claimants have alleged both physical and mental injuries, of varying number and degree, arising from highly individual circumstances.” Claim No. IRQ-I-022, Decision No. IRQ-I-008 (2014), Proposed Decision at 16-17.

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

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

Accordingly, in light of the discussion above, and based on the evidence and information submitted in this claim, the Commission withdraws the portion of its Proposed Decision that awarded Claimant \$1.25 million and issues the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of Title I of the International Claims Settlement Act, 22 U.S.C. §§ 1626-1627 (2012). This constitutes the Commission's final determination in this claim.

AWARD

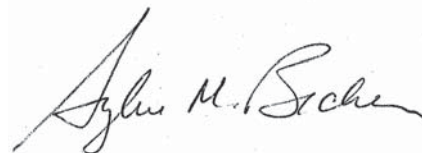
Claimant is entitled to an award in the amount of One Million Five-Hundred Thousand Dollars (\$1,500,000.00).

Dated at Washington, DC, March 12, 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



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

Claimant brings this claim against the Republic of Iraq (“Iraq”) based on injuries he suffered while being held hostage in Iraq between August and December 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 claims that Iraqi officials brutally beat him and repeatedly threatened him with death. We conclude that they did and that the Claimant is entitled to \$1,250,000 in additional compensation.

**BACKGROUND AND BASIS OF CLAIM**

Claimant alleges that, prior to Iraq’s invasion of Kuwait, he was working for Bechtel and living on the construction site of a dam in northern Iraq. Following Iraq’s attack on Kuwait in August 1990, he claims that local authorities confined him to the construction site’s camp for approximately three weeks. They then sent him to Baghdad where he was detained at a hotel for approximately two days. Claimant says he was then

sent to two liquid propane gas (LPG) plants in southern Iraq and held as a “human shield” until December 1990, when he was sent back to Baghdad and eventually released. He asserts that during this time he was held in disgraceful conditions, brutally beaten, and threatened with death. Claimant’s experiences and injuries are detailed in the Merits section below.

Claimant then sued Iraq in federal court in 2001 for, among other things, hostage-taking and wrongful conduct, seeking damages for a variety of injuries including bodily injury and severe emotional distress. *See* <sup>5 U.S.C. §552(b)(6)</sup>

. 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

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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.

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. For Claimant, this was \$810,000 total.

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 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>1</sup> 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. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 5-6 (2014) (Proposed Decision).

Claimant satisfies the nationality requirement. He has provided copies of two U.S. passports: one from the time of the hostage-taking (valid from December 1989 to December 1999) and his current one (valid from March 2005 to March 2015).

*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 6, 2011, indicating his agreement to accept \$810,000 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 September 9, 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

To receive compensation in this program, a claimant must satisfy three requirements: (1) he must have suffered a “serious personal injury” (which may be “physical, mental, or emotional”); (2) Iraq (as defined in footnote 1 of the Referral) must have “knowingly inflicted” the injury on claimant; and (3) the severity of the serious personal injury must constitute a “special circumstance warranting additional compensation.” 2012 Referral, *supra*, ¶ 3.

Here, Claimant has alleged that Iraqi forces subjected him to numerous physical assaults and sadistic treatment, and that he was forced to live under deplorable conditions for an extended period of time. In support of these claims, Claimant has submitted extensive documentation including two sworn statements from Claimant himself describing his ordeal and his alleged personal injuries (one dated June 2004 from his federal court litigation and the other dated June 2013); a letter dated November 8, 1990 from Claimant’s then treating physician recommending that he be repatriated as soon as possible for medical care; the contemporaneous letters and treatment notes from physicians who treated him following his release; billing records associated with a laser eye surgery he underwent in 1991; several CT scan images of his brain taken in 2011; and a Social Security Administration decision dated April 17, 1998.

The facts we describe below are those established by the evidence Claimant submitted. Where the evidence is insufficient to establish any particular allegation, we note that fact below.

Claimant’s Initial Confinement: Claimant was working for Bechtel on the construction of a dam in northern Iraq when Iraq invaded Kuwait on August 2, 1990. He

soon learned that the border had been closed. Two days later, local authorities confined him and his colleagues to the construction camp where they had been living. For the next three weeks, Claimant remained there, where he was guarded by “secret police.” On or about August 27, 1990, Claimant was bussed to Baghdad where he was detained in the Mansour Melia Hotel for approximately two days.

Claimant’s Detention at the Khor al-Zubeir LPG Plant: Claimant was then transferred to the Khor al-Zubeir LPG plant near the Kuwaiti border, and the Iraqi authorities held him there as a “human shield.” His living conditions were abhorrent. When he first arrived at Khor al-Zubeir, he was kept by himself just outside the plant proper. For the first three days of that period, he was held in a “stifling room without food or drinking water.” He was then joined by other foreign hostages. Though the Iraqi authorities did begin to provide food and water, “the food was disgusting and the water was foul and unfiltered.” Part of that time, there was no running water or soap for basic sanitation. In early September, the Iraqi authorities moved Claimant to a “work camp within the plant perimeter” where the conditions were equally appalling: the “sanitation was dismal, [the hostages’] bedding was filthy, [their] water was unfit to drink, and [their] food was often rancid.” Claimant states that before long he “began suffering from dysentery.” Together with his pre-existing chronic amoebic colitis condition, this led to “constant pain.”

In addition to the inhumane living conditions, the Iraqi authorities at Khor al-Zubeir also subjected him to psychological terror and brutal physical assaults. The Claimant states that, on one occasion, “several of the guards ordered [him] to stand against a wall” and “took turns aiming handguns and AK-47s at [him] and pulling the

trigger.” He recalls that while the chamber of the guard’s gun was usually empty, “every few times the gun would fire and the bullet would hit just above [his] head, whereupon the guards would all break out laughing.” On another occasion, he was singled out and forced to sit in a chair at gunpoint for almost 30 minutes before a crowd of hostages. The “visiting Iraqi colonel” who held the gun to Claimant’s head said “something like, ‘When we get attacked you will all be killed and you will be the first one executed, in front of all the others, like so.’”

The guards also beat him repeatedly. During one particular beating, the guards “beat [him] savagely with pieces of metal pipe and cable... on [his] injured ankle [and] about the head, damaging several of [his] teeth and inflicting corneal and lens damage to [his] left eye that has impaired [his] vision ever since.” As a result, he “was unable to move from [his] quarters for several days....” On two occasions, the “beatings entailed blows to [his] head hard enough to make [him] see ‘stars.’”

Claimant’s Detention at the North Rumaila LPG Plant: On October 23, 1990, Iraqi forces transferred Claimant to another LPG plant in Southern Iraq, at North Rumaila. The living conditions there were just as bad if not worse: “no running water, flushing toilets or air conditioning.” Claimant “bunked in a building right next to a deafeningly loud compressor machine that made sleep almost impossible.” At one point, he was on the building’s roof when there was an explosion which “nearly knocked [him] off the roof and left [him] with several bleeding cuts from flying debris.”

The remainder of Claimant’s detention was “relatively uneventful,” although by December he “was an emotional wreck and had lost some 25 pounds in detention.”



Claimant's Release: On December 6, 1990, the Iraqi authorities sent Claimant back to Baghdad. At that point, they were preparing to release him and so he "was allowed to visit several hospitals to get attention to [his] injured eye, intestinal ailments and ankle." For the next few days, he remained in Baghdad worrying that he might not be permitted to leave, but he was then released. He flew to London, where he received more medical treatment, before returning to his home in Texas.

Injuries Alleged: Claimant says that he suffered injuries both during his captivity and after. Indeed, he claims that he still suffers from both physical and psychological injuries to this day. His physical injuries at the time were all over his body, including in particular to his head, eyes, teeth, ankle, and intestines. He continues to be partially blind in his left eye and claims to still have a deformity in his skull.

He also says that he still has severe and long-term psychic injuries. He asserts that he suffers from, among other things, "insomnia, nightmares, severe depression, anxiety attacks, apathy, impaired concentration, intrusive memories, fatigue, exaggerated startle response, social isolation, and feelings of hopelessness, helplessness[,] and futility." He further asserts that all of these injuries "have impaired [his] capacity to perform professional work, to the point of permanent and total disability."

Claimant has submitted substantial medical evidence supporting his physical injuries, evidence that is both contemporaneous and current. It consists of contemporaneous records from his doctors, hospital records from the eye surgery he had in 1991, as well as a recent (2011) brain scan.<sup>2</sup> An Administrative Law Judge in the

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<sup>2</sup> The first medical record dates back to Claimant's time in captivity. His physician, Ralph Herz M.D., sent a letter "To Whom It May Concern" stating that Claimant "has a long standing history of amoebic colitis" and "in November 1990 [a]ccording to his relatives, he has taken a turn for the worse and should be

Social Security Administration also found Claimant to be disabled, and Claimant has submitted that decision.<sup>3</sup>

The evidence supporting his emotional injuries, on the other hand, is more limited. It consists solely of his own declarations and recent CT scans of his brain, and even the scans lack any medical report explaining them.<sup>4</sup>

Analysis: The Commission has reviewed the documentation submitted with this claim and finds Claimant's assertions regarding his detention and physical assault by Iraqi forces to be generally credible and supported by the totality of the evidence. In particular, Claimant's sworn statements regarding his physical condition following his

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repatriated as soon as possible." Dr. Herz stated further that Claimant has experienced "acute flare-ups of this disease which require intensive care, including hospitalization."

He has extensive medical records supporting the injuries to his eyes. Upon his return to the United States, Claimant sought treatment from Richard S. Ruiz, M.D. for his eye injuries. In an April 2, 1992 letter, Dr. Ruiz stated that the Claimant initially contacted him on December 19, 1990, complaining of "blindness in his left eye, flashes of light, blurred vision...glare and seeing halos around objects" from an injury he suffered while held captive in Iraq. Dr. Ruiz further stated that he "performed cornea (laser) and lens implantation on July 17, 1991...result[ing] in partial restoration of vision" and that "[n]o further operations are planned as it would not help restore [Claimant's] vision in his left eye." Claimant's 1991 surgery is also supported by billing documents from the Hermann Hospital in Houston, Texas, where he had the surgery.

Although he does not claim that the injuries to his teeth persist, he also has contemporaneous evidence of broken teeth and other dental problems, all of which are consistent with having been beaten. Dr. John L. Walker, D.D.S., the dentist who treated Claimant, wrote a letter dated March 3, 1992 stating that he treated Claimant from December 23, 1990 until early January 1991 for "broken teeth incurred during [Claimant's] captivity in Iraq." Dr. Walker further states that such treatment included "extensive buildup of the lower left 1st molar and 2nd premolar with final crown restorations of these teeth as well as crown restorations of the upper and lower 2nd molars. The upper right central also required placement of a composite restoration."

<sup>3</sup> In his declaration, Claimant states that Bechtel "terminated [his] active employment and put [him] on disability with its [insurance] carrier" in 1994. He asserts that the "carrier sought reimbursement from the Social Security Administration on grounds that [Claimant] was totally incapacitated for work" and that he was "found to have been totally disabled by [his] vision impairment as of 1994 when [he] stopped working for Bechtel." In support of his assertion, Claimant has submitted a copy of the one-paragraph Social Security Administration Decision dated April 17, 1998, which does state that "based on the application filed on December 29, 1995, the claimant is entitled to a period of disability commencing on July 22, 1994[.]" It is silent, however, on the reasons for the disability and the level of disability.

<sup>4</sup> The images are annotated with an indication of the location of injuries allegedly due to Claimant having been hit in the head by the butt of one of his captors' guns. There is no indication of who annotated them or the basis on which the annotations support a connection with Claimant's captivity in Iraq.

detention are corroborated by the contemporaneous medical records detailing his treatment immediately following his release. The evidence in the record supports the conclusion that Claimant was repeatedly assaulted by Iraqi personnel and suffered physical injuries as a result.

The evidence thus substantiates Claimant's assertion that he suffered "serious personal injuries," the Referral's first requirement. Although the evidence does not corroborate each and every detail of Claimant's alleged mistreatment by Iraqi security personnel, we are persuaded that Claimant was in fact detained as a human shield at two locations and suffered "serious personal injuries" within the meaning of the 2012 Referral: the Referral expressly provides that "'serious personal injury' may include instances of serious physical, mental, or emotional injury arising from sexual assault, coercive interrogation, mock execution, or aggravated physical assault," and we interpret it also to encompass serious injury arising from acts of a similar type or that rise to a similar level of brutality or cruelty as one of the four enumerated acts. *See* Claim No. IRQ-I-005, Decision No. IRQ-I-001, at 7 (2014) (Proposed Decision). Claimant has thus satisfied this element of the Referral.

Claimant also satisfies the second requirement, that the injuries be "knowingly" inflicted by Iraq: these injuries were clearly inflicted with the full knowledge of Iraq and its agents. Claimant was deliberately targeted by Iraqi officials, who detained and assaulted him, thus causing his injuries. Claimant has therefore also satisfied the second requirement of the 2012 Referral.

Finally, the severity of Claimant's injuries constitutes a "special circumstance warranting additional compensation[,]" the Referral's third requirement. Iraqi forces

subjected Claimant to brutal and sustained ill treatment designed to maximize his pain and suffering. As a result of his detention, Claimant sustained significant injuries resulting in, among other things, dental reconstruction and laser eye surgery. He continues to suffer a vision impairment which, according to Dr. Ruiz, cannot be corrected by further treatment. The personal injuries Claimant suffered were severe, numerous, and prolonged, and their severity thus constitutes a “special circumstance” under the Referral. Therefore, Claimant has satisfied the Referral’s third requirement, that the severity of his serious personal injuries constitute a “special circumstance warranting additional compensation.”

Based on the evidence submitted, and in particular Claimant’s declaration and the contemporaneous medical evidence, we find that Claimant’s personal injuries meet the standard for compensability under the 2012 Referral. Accordingly, Claimant is entitled to compensation.

#### 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).

The Claimant seeks \$1.5 million in additional compensation, the maximum amount recommended by the State Department. Claimant suffered several incidents of brutality causing multiple personal injuries. As a result of his injuries, Claimant required laser eye surgery and dental restoration. Furthermore, Claimant continues to experience, at the very least, significant vision problems in his left eye. He has supported his assertions of injury with evidence including contemporaneous records of his medical treatment. Moreover, the evidence indicates that Iraqi officials acted with an intentional and calculated brutality. Having weighed all of the relevant factors, we conclude that Claimant is entitled to \$1.25 million.

Accordingly, the Commission determines that the Claimant is entitled to an award of \$1,250,000.00 and this amount (not including the amount already received from the Department of State) constitutes the entirety of the compensation that the Claimant is entitled to in the present claim.

The Commission hereby enters the following award, which will be certified to the Secretary of the Treasury for payment under sections 7 and 8 of the ICSEA. 22 U.S.C. §§ 1626-27 (2012).

AWARD

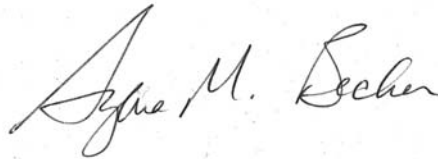
Claimant is entitled to an award in the amount of One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00).

Dated at Washington, DC, April 11, 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).