

**FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, DC 20579**

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| In the Matter of the Claim of | } | |
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| ESTATE OF HIRAM PADILLA ROBLES, DECEASED; | } | Claim No. LIB-III-095 |
| XIOMARA PADILLA MATIAS, ADMINISTRATOR | } | |
| | } | Decision No. LIB-III-038 |
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| Against the Great Socialist People's Libyan Arab Jamahiriya | } | |
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| Counsel for Claimant: | Israel Melendez, Esq. Vissepo & Melendez |
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PROPOSED DECISION

Claimant Estate brings this claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") for mental pain and anguish suffered by Hiram Padilla Robles (the "estate-decedent") as a result of the death of the estate-decedent's half-brother, Juan Padilla Ortiz (the "victim"), who was killed in the terrorist attack at Lod Airport in Israel on May 30, 1972. Because Claimant Estate has established that Mr. Robles was, as of the date of the November 2013 Referral, a living close relative of Mr. Ortiz and satisfies all other legal requirements entitling the Claimant Estate to an award of compensation from this Commission, the Claimant Estate is entitled to an award of \$200,000.00.

BACKGROUND AND BASIS OF THE PRESENT CLAIM

Claimant Estate alleges that Mr. Robles' half-brother, Mr. Ortiz, was killed in the terrorist attack at Lod Airport in Israel on May 30, 1972, and that Mr. Robles had a close

relationship with him and was deeply affected by his death. Claimant Estate says it is thus entitled to compensation from Libya.

In August 2008, the United States and Libya concluded an agreement that settled numerous claims of U.S. nationals against Libya. Included among those settled claims were all claims for mental pain and anguish based on wrongful death arising out of various terrorist attacks, including the one at Lod Airport. *See Claims Settlement Agreement Between the United States of America and the Great Socialist People's Libyan Arab Jamahiriya* (“Claims Settlement Agreement”), 2008 U.S.T. Lexis 72, entered into force Aug. 14, 2008; *see also* Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999 (Aug. 4, 2008). Thus, although neither Mr. Robles nor the Claimant Estate had brought a lawsuit against Libya, the U.S. and Libya settled any claim they might have had arising out of that terrorist attack. In October 2008, the President issued an Executive Order, which, among other things, directed the Secretary of State to establish procedures for claims by U.S. nationals falling within the terms of the Claims Settlement Agreement. *See* Exec. Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008).

The Secretary of State has statutory authority to refer “a category of claims against a foreign government” to this Commission. *See* International Claims Settlement Act of 1949 (“ICSA”), 22 U.S.C. § 1623(a)(1)(C)(2012). The Secretary has delegated that authority to the State Department’s Legal Adviser, who, by letters dated December 11, 2008, and January 15, 2009, referred several categories of claims to this Commission in conjunction with the Libyan Claims Settlement Agreement.

On March 15, 2010, Mr. Robles filed a claim under Categories B and C of the January 15, 2009 State Department referral letter.¹ However, those categories of claims only covered claimants who had been plaintiffs in the Pending Litigation cases listed in an appendix to the 2009 Referral. As Mr. Robles had not been a plaintiff in any of those Pending Litigation cases, he withdrew those claims. On May 27, 2010, he filed a new claim under Category E of the 2009 Referral, a category that did not require claimants to have been a plaintiff in one of the Pending Litigation cases. The Commission denied this claim because, while Category E of the 2009 Referral included claims for wrongful death arising out of the Lod Airport attack, Mr. Ortiz's wrongful-death claim had already been paid by the U.S. Department of State to Mr. Ortiz's estate. *See* Claim No. LIB-II-067, Decision No. LIB-II-032 (2011).

The Legal Adviser subsequently referred an additional set of claims to the Commission on November 27, 2013.² One category of claims, Category E, states as follows:

This category shall consist of claims of U.S. nationals for mental pain and anguish who are living close relatives of a decedent whose death formed the basis of a death claim compensated under the Claims Settlement Agreement, provided that (1) the claimant was not a plaintiff in the Pending Litigation; (2) the claimant is not eligible for compensation from the associated wrongful death claim, and the claimant did not receive any compensation from the wrongful death claim; (3) the claim meets the standard adopted by the Commission for mental pain and anguish; and (4) the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement, and does not qualify for any other category of compensation in this referral. We believe and recommend that a fixed amount of \$200,000 would be an appropriate level of compensation for a claim that meets the applicable standards under this Category.

¹ *Letter dated January 15, 2009, from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* ("2009 Referral").

² *Letter dated November 27, 2013, from the Honorable Mary E. McLeod, Acting Legal Adviser, Department of State, to the Honorable Anuj C. Desai and Sylvia M. Becker, Foreign Claims Settlement Commission* ("2013 Referral" or "November 2013 Referral").

Id. at ¶ 7. Attachment 1 to the 2013 Referral lists the suits comprising the Pending Litigation.

On December 13, 2013, the Commission published notice in the *Federal Register* announcing the commencement of this third Libya claims program pursuant to Title I of ICOSA and the 2013 Referral. *Notice of Commencement of Claims Adjudication Program*, 78 Fed. Reg. 75,944 (2013). The Claimant Estate subsequently filed a Statement of Claim seeking compensation under Category E of the 2013 Referral and evidence supporting that claim.

DISCUSSION

As an initial matter, the Commission notes that the Claimant Estate has submitted the death certificate of Hiram Padilla Robles which states that Mr. Robles died on July 13, 2014. The Commission also notes that the Superior Court of Bayamon, Court of First Instance, Commonwealth of Puerto Rico issued a Resolution dated November 12, 2015, appointing Xiomara Padilla Matias as the Administrator of Mr. Robles' estate for this claim before the Commission. Accordingly, the Commission determines that this evidence satisfactorily establishes that Ms. Matias has standing to pursue the present claim on behalf of the Estate of Hiram Padilla Robles, and that the proper claimant is the ESTATE OF HIRAM PADILLA ROBLES, DECEASED; XIOMARA PADILLA MATIAS, ADMINISTRATOR.

Jurisdiction

Under subsection 4(a) of the ICOSA, the Commission's jurisdiction here is limited to the category of claims defined in the 2013 Referral; namely, the claims of individuals who (1) are U.S. nationals; (2) were not a named party in any of the Pending Litigation cases referred to in Attachment 1 of the 2013 Referral; (3) have a close relative whose

death formed the basis of a death claim compensated under the Claims Settlement Agreement; (4) are not eligible for compensation from the associated wrongful-death claim, and did not receive any compensation from the wrongful-death claim; and (5) have not received any compensation under any other distribution under the Claims Settlement Agreement, and do not qualify for any other category of compensation under the 2013 Referral. 2013 Referral, *supra*, ¶ 7.

Nationality

This claims program is limited to “claims of U.S. nationals.” Here, this means that a claimant must have been a national of the United States continuously from the date the claim arose until the date of the Claims Settlement Agreement. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, at 4 (2015).

Claimant-Estate satisfies this requirement. Since the estate-decedent, Hiram Padilla Robles, was living as of the date of the Claims Settlement Agreement, and his claim did not transfer to his estate until after the 2013 Referral, the Commission need only examine Mr. Robles’ nationality alone. *See, e.g.*, Claim No. LIB-II-180, Decision No. LIB-II-079, at 5 (2011). To meet the nationality requirement, the Claimant Estate has provided copies of Mr. Robles’ Puerto Rico birth certificate, Puerto Rico death certificate, Puerto Rico voter registration card, and U.S. Department of Veterans Affairs membership card. Based on this evidence, the Commission finds that this claim was held by a U.S. national at the time Mr. Ortiz was killed on May 30, 1972, and was so held continuously until the effective date of the Claims Settlement Agreement.

Pending Litigation

To be eligible for compensation under Category E of the 2013 Referral, the claimant must not have been a named party in any of the Pending Litigation cases listed in Attachment 1 of the 2013 Referral. 2013 Referral, *supra*, ¶ 7. Claimant Estate,

through its administrator and its counsel, have represented to the Commission under penalty of 18 U.S.C. § 1001, a statute akin to a perjury statute, and the Commission has verified, that Mr. Robles, Claimant Estate's decedent, (as well as the Claimant Estate) was not a named party in any of the Pending Litigation cases listed in Attachment 1 of the 2013 Referral. Claimant Estate's claim thus satisfies this requirement.

Death Claim Compensated Under the Claims Settlement Agreement

Category E of the 2013 Referral also requires that the death for which Claimant Estate seeks mental-pain-and-anguish compensation have been the basis of a death claim compensated under the Claims Settlement Agreement. Here, this element of jurisdiction has been satisfied: the State Department awarded compensation for the wrongful-death claim of Mr. Ortiz, the estate-decedent's half-brother, under the Claims Settlement Agreement. *See* Claim No. LIB-II-067, Decision No. LIB-II-032, *supra* at 4-5.

Other Compensation

Category E of the 2013 Referral is limited to claims where the claimant is not eligible for compensation from the associated wrongful-death claim; the claimant did not receive any compensation from the wrongful-death claim; the claimant has not received any compensation under any other distribution under the Claims Settlement Agreement; and the claimant does not qualify for any other category of compensation under the 2013 Referral. 2013 Referral, *supra*, ¶ 7. Claimant Estate, through its administrator and its counsel, have represented under penalty of 18 U.S.C. § 1001 that Mr. Robles is not eligible for compensation from the associated wrongful-death claim; that he did not receive any compensation from the wrongful-death claim; that he has not received any compensation under any other distribution under the Claims Settlement Agreement; and that he does not qualify for any other category of compensation under the 2013 Referral.

The Commission has no reason to doubt these representations.³ Since Mr. Robles' estate did not even exist until his death in 2014, it is difficult to see how these representation would not be equally true with respect to the Claimant Estate as well. We thus assume these representations would apply to the Claimant Estate itself, and we find that Claimant Estate thus satisfies these final jurisdictional requirements.

In summary, therefore, the Commission concludes that this claim is within the Commission's jurisdiction pursuant to the 2013 Referral and is entitled to adjudication on the merits.

Merits

Claimant Must Have Been Living at the Time of the 2013 Referral

To be eligible for compensation under Category E, the 2013 Referral states that a claimant must be a "living" close relative of a decedent. The Commission has previously held that a claimant must have been living as of the date of the relevant referral from the State Department as well as at the time of the incident which served as the basis of the Pending Litigation case and caused the mental pain and anguish. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 6. As noted above, Mr. Ortiz was killed on May 30, 1972, and the referral at issue here was made on November 27, 2013. Claimant Estate has therefore satisfied this requirement, as evidenced by Mr. Robles' death certificate, which states he was born on March 27, 1951 (prior to the incident), and died on July 13, 2014 (after this 2013 Referral). *Cf.*, Claim No. LIB-II-180, Decision No. LIB-II-079, *supra*, at 5-6.

Claimant Must Be a Close Relative of the Decedent

The 2013 Referral Letter also requires a Category E Claimant to be a "close relative" of the decedent whose death formed the basis of the compensated death claim.

³ *Cf.* Claim No. LIB-II-067, Decision No. LIB-II-032, *supra* at 6, fn. 6.

The Commission has previously held that, in this category of claims, the term “close relatives” comprises those relatives who are immediate family to the decedent: spouses, children, parents, and siblings. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 6-7. The Commission has also previously held that when interpreting the term “close relatives” in this category of claims, the term “siblings” includes half-siblings who demonstrate they had the same familial relationship to the decedent as that generally associated with the relationship between full biological siblings. *See* Claim No. LIB-III-027, Decision No. LIB-III-017 at 6-7 (2015). *Cf.*, Claim No. LIB-III-010, Decision No. LIB-III-012 at 6-7 (2015); Claim No. LIB-II-059, Decision No. LIB-II-075 at 5 (2011). Claimant Estate has established that the estate-decedent, Mr. Robles, was Mr. Ortiz’s half-brother, as evidenced by Mr. Robles’ birth certificate and Mr. Ortiz’s birth certificate, which list the same father. As described in more detail in the next section, in addition to the documentary evidence submitted showing Mr. Robles’ relationship to Mr. Ortiz, Claimant Estate has also provided evidence that Mr. Robles had a close, sibling relationship with Mr. Ortiz. We thus find that Claimant Estate meets the requirement that its decedent be a “close relative” of the victim.

Mental Pain and Anguish Standard

The 2013 Referral Letter requires that a claim meet “the standard adopted by the Commission for mental pain and anguish.” 2013 Referral ¶ 7. In adjudicating claims under this category of the 2013 Referral, the Commission has presumed that all spouses, children, parents, and full siblings of a decedent suffered mental pain and anguish. *See* Claim No. LIB-III-028, Decision No. LIB-III-014, *supra*, at 7. While Claimant Estate does not enjoy this presumption because the estate-decedent, Mr. Robles, was Mr. Ortiz’s half-brother, it has provided compelling evidence, including a newspaper article with a picture of Mr. Robles carrying Mr. Ortiz’s coffin at Mr. Ortiz’s funeral, as well as a

picture of Mr. Robles at the wake for Mr. Ortiz. The Claimant Estate has also provided Mr. Robles' February 16, 2010 affidavit describing his close relationship with Mr. Ortiz. Claimant Estate has thereby provided evidence of Mr. Robles' close, sibling relationship with Mr. Ortiz and has thus satisfied the standard adopted by the Commission for mental pain and anguish. *See* Claim No. LIB-III-027, Decision No. LIB-III-017, *supra* at 7; *see also*, Claim No. LIB-III-010, Decision No. LIB-III-012, *supra*, at 7.

COMPENSATION

Having concluded that the present claim is compensable, the Commission must next determine the appropriate amount of compensation. The 2013 Referral recommends a fixed amount of \$200,000 for claims that meet the applicable standard under Category E. 2013 Referral, *supra* ¶ 7. This is the same fixed amount that was recommended for compensable claims in the two other mental-pain-and-anguish categories of these Libyan claims programs, Category B of the 2013 Referral and Category B of the 2009 Referral. In its first decision addressing compensation for mental pain and anguish under the 2009 Referral, the Commission carefully reviewed its prior claims programs, as well as those of other tribunals and commissions that had adjudicated wrongful-death claims, including the September 11th Victim Compensation Fund of 2001. The Commission noted the nature and tragedy of the events associated with the Pending Litigation cases and determined that \$200,000 was an appropriate amount of compensation for mental-pain-and-anguish claims. *See* Claim No. LIB-II-044, Decision No. LIB-II-001, at 9-10 (2010). This fixed sum was therefore awarded to all claimants under the 2009 Referral with compensable mental-pain-and-anguish claims. The same \$200,000 fixed amount has been awarded to all other mental-pain-and-anguish claims in the 2013 Referral, *see* Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 7-9, including in other Category E claims, *see* Claim No. LIB-III-028, Decision No. LIB-III-

014, *supra*, at 7-8. The Commission has also previously determined, based on consideration of the applicable principles of international law and its own precedent, that it will not award interest in this category of claims. *Id.* Accordingly, Claimant Estate is entitled to an award of \$200,000.00, and this amount constitutes the entirety of the compensation to which the Claimant Estate is entitled in the present claim.

Finally, the Commission has reviewed Claimant-Estate's request for additional compensation. Claimant Estate argues that it should be awarded more than the \$200,000 awarded to all other mental-pain-and-anguish claimants because it has been so long since Mr. Ortiz's death and Mr. Robles' pain continued until his own death; the media coverage of Mr. Ortiz's death was traumatic; the nature of the death was shocking; and Mr. Robles and now the Claimant Estate have made considerable effort to pursue compensation. The Commission has previously addressed similar situations and rejected similar arguments made by other mental-pain-and-anguish claimants. *See, e.g.*, Claim No. LIB-III-010, Decision No. LIB-III-012, *supra*, at 8-9; Claim No. LIB-III-007, Decision No. LIB-III-008, *supra*, at 8-9; Claim No. LIB-II-125, Decision No. LIB-II-022 at 4-5 (2012).⁴

Claimant Estate also argues that it should be awarded greater compensation than has been awarded to other mental-pain-and-anguish claimants because Mr. Ortiz's full siblings "were compensated in a much higher amount under the Libya Claims Program." Claimant Estate has not provided us with any evidence about the amounts Mr. Ortiz's full siblings each received, and we have no other information about those amounts, because none of his full siblings have ever been before the Commission. The only payment related to Mr. Ortiz's death of which we are aware is a \$10 million payment made by the

⁴ *Cf.* Claim No. LIB-II-042, Decision No. LIB-II-018, Order dated April 15, 2013.

State Department to Mr. Ortiz's estate. If Mr. Ortiz's full siblings received more than \$200,000 (and, we reiterate, we have no evidence to that effect), we can only presume those payments were made because they were heirs of Mr. Ortiz's estate. *See* Claim No. LIB-II-067, Decision No. LIB-II-032, *supra* at 6. Moreover, in contrast to this mental-pain-and-anguish claim, the \$10 million covered any and all claims of Mr. Ortiz's estate and the heirs, including, among others, the wrongful-death claim, not just mental-pain-and-anguish claims. The amount of compensation that Mr. Ortiz's full siblings may have received from that payment is therefore not a basis for awarding additional compensation in this claim. In rejecting Claimant Estate's arguments for additional compensation, we do so understanding that no amount of money can truly "compensate" for the death of a loved one in such horrific circumstances.

In sum, we conclude that Claimant Estate is entitled to an award of \$200,000.00. 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

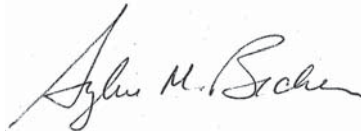
Claimant Estate is entitled to an award in the amount of Two Hundred Thousand Dollars (\$200,000.00).

Dated at Washington, DC, December 10, 2015
and entered as the Proposed Decision
of the Commission.

**This decision was entered as the
Commission's Final Decision on**
January 14, 2016



Anuj C. Desai, Commissioner



Sylvia M. Becker, Commissioner

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days of delivery of this Proposed Decision. Absent objection, this decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after delivery, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2015).