

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

In the Matter of the Claim of

ESTATE OF JOSE ANTONIO RODRIGUEZ ZENO,
DECEASED; HERIBERTO RODRIGUEZ ZENO,
ADMINISTRATOR

Against the Great Socialist People's
Libyan Arab Jamahiriya

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} Claim No. LIB-II-074

} Decision No. LIB-II-057
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Counsel for Claimant:

Joshua Ambush, Esq.
Joshua M. Ambush, LLC

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the Estate of Jose Antonio Rodriguez Zeno (the "claimant"), based upon the wrongful death of Jose Antonio Rodriguez Zeno as a result of the terrorist incident at Lod Airport in Israel on May 30, 1972.

Under subsection 4(a) of Title I of the International Claims Settlement Act of 1949 ("ICSA"), as amended, the Commission has jurisdiction to

receive, examine, adjudicate, and render a final decision with respect to any claim 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.

22 U.S.C. § 1623(a)(1)(C) (2006).

On January 15, 2009, pursuant to a delegation of authority from the Secretary of State, the State Department's Legal Adviser referred to the Commission for

adjudication six categories of claims of United States nationals against Libya. *January 15, 2009, Letter from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission* (“January Referral Letter”).

The present claim is made under Category E. According to the January Referral Letter, Category E consists of

claims of U.S. nationals for wrongful death or physical injury resulting from one of the terrorist incidents listed in Attachment 2 (“Covered Incidents”), incidents which formed the basis for Pending Litigation in which a named U.S. plaintiff alleged wrongful death or physical injury, provided that (1) the claimant was not a plaintiff in the Pending Litigation; and (2) the claim meets the standard for physical injury or wrongful death, as appropriate, adopted by the Commission.

Id. at ¶ 7. Attachment 1 to the January Referral Letter lists the suits comprising the Pending Litigation and Attachment 2 lists the Covered Incidents.

The January Referral Letter, as well as a December 11, 2008 referral letter (“December Referral Letter”) from the State Department, followed a number of official actions that were taken with respect to the settlement of claims between the United States and Libya. Specifically, on August 4, 2008, the President signed into law the Libyan Claims Resolution Act (“LCRA”), Pub. L. No. 110-301, 122 Stat. 2999, and on August 14, 2008, the United States and Libya concluded the *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. On October 31, 2008, the President issued Executive Order No. 13,477, 73 Fed. Reg. 65,965 (Nov. 5, 2008), which, *inter alia*, espoused the

claims of U.S. nationals coming within the terms of the Claims Settlement Agreement, barred U.S. nationals from asserting or maintaining such claims, terminated any pending suit within the terms of the Claims Settlement Agreement, and directed the Secretary of State to establish procedures governing claims by U.S. nationals falling within the terms of the Claims Settlement Agreement.

On July 7, 2009, the Commission published notice in the *Federal Register* announcing the commencement of this portion of the Libya Claims Program pursuant to the ICSA and the January Referral Letter. *Notice of Commencement of Claims Adjudication Program*, 74 Fed. Reg. 32,193 (2009).

BASIS OF THE PRESENT CLAIM

On March 24, 2010, the Commission received from the claimant a Statement of Claim, in which the claimant asserts a claim under Category E of the January Referral Letter, along with accompanying exhibits supporting the elements of its claim. This submission included: evidence of the U.S nationality of Jose Antonio Rodriguez Zeno and that of the heirs of his estate; a copy of the "Report of the Death of an American Citizen" issued by the Department of State on July 14, 1972 reflecting the date and place of Mr. Rodriguez Zeno's death; and evidence establishing his presence at the terrorist incident at Lod Airport in Israel on May 30, 1972. The claimant asserts that Jose Antonio Rodriguez Zeno was killed during the Lod Airport attack.

DISCUSSION

As an initial matter, the Commission notes that the Resolution issued by the Commonwealth of Puerto Rico, General Court of Justice, Superior Court of Arcibo, dated December 13, 2010, appointed Heriberto Rodriguez Zeno as the Judicial

Administrator of Mr. Zeno's estate. Accordingly, the Commission finds that the ESTATE OF JOSE ANTONIO RODRIGUEZ ZENO, DECEASED; HERIBERTO RODRIGUEZ ZENO, ADMINISTRATOR, is the proper claimant in this claim.

Jurisdiction

Under subsection 4(a) of the ICSA, the Commission's jurisdiction here is limited to the category of claims defined under the January Referral Letter; namely, claims of individuals who: (1) are U.S. nationals; (2) set forth a claim before the Commission for wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation case against Libya. January Referral Letter, *supra* ¶ 7.

Nationality

In the *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-I-001, Decision No. LIB-I-001 (2009), the Commission held, consistent with its past jurisprudence and generally-accepted principles of international law, that to meet the nationality requirement, the claimant must have been a national of the United States, as that term is defined in the Commission's authorizing statute, continuously from the date the claim arose until the date of the Claims Settlement Agreement. In the case of claims brought by estates on behalf of beneficiaries, it is 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 nationality of the injured party as well as the beneficiaries of his or her estate must be evaluated for

purposes of determining the nationality of a claim.¹ Based on this precedent and its review of the Declaration of Heirs issued by the Commonwealth of Puerto Rico, Court of First Instance, Superior Division of Arecibo, on January 19, 2010, submitted by claimant, the Commission determines that during the pertinent time period an interest in this claim has been held by the following: Jose Antonio Rodriguez Zeno, Joaquina Zeno Centeno, Rogelio Rodríguez Roman, Maria Mercedes Rodríguez Zeno, Heriberto Rodríguez Zeno, Mercedes Rodríguez Zeno, Carlos Rubén Martínez Rodríguez, José Antonio Martínez Rodríguez, Luis Alberto Martínez Rodríguez and Ramón Rodríguez Santiago.

To meet the nationality requirement, the claimant has provided the following: a copy of the Department of State's "Report of the Death of an American Citizen" for Jose Antonio Rodriguez Zeno; the birth certificates and current passports of Maria Mercedes Rodríguez Zeno, Heriberto Rodríguez Zeno, Mercedes Rodríguez Zeno, Carlos Rubén Martínez Rodríguez, José Antonio Martínez Rodríguez, Luis Alberto Martínez Rodríguez and Ramón Rodríguez Santiago; and the birth certificates of Joaquina Zeno Centeno and Rogelio Rodríguez Roman along with a letter from the Department of State confirming that Ms. Centeno and Mr. Roman had never renounced their U.S. citizenship. Based on this evidence and other evidence in the record, the Commission determines that this claim was owned by a U.S. national at the time of the incident continuously through the effective date of the Claims Settlement Agreement.

¹ See, e.g., *Claim of THE ESTATE OF JOSEPH KREN, DECEASED, against Yugoslavia*, Claim No. Y-0660, Decision No. Y-1171 (1954); *Claim of PETER KERNAST*, Claim No. W-9801, Decision No. W-2107 (1965); *Claim of RALPH F. GASSMAN and URSULA ZANDMER against the German Democratic Republic*, Claim No. G-2154, Decision No. G-1955 (1981); *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

Claim for Death or Injury Resulting From a Covered Incident

To fall within the category of claims referred to the Commission, the claimant must assert a claim for wrongful death or physical injury resulting from one of the Covered Incidents listed in Attachment 2 to the January Referral letter. January Referral Letter, *supra*, ¶ 7. This list includes the “May 30, 1972 attack at Lod Airport in Israel, as alleged in *Franqui v. Syrian Arab Republic, et al.* (D.D.C.) 06-cv-734.” *Id.*, Attachment 2, ¶ 1. In its Statement of Claim, the claimant sets forth a claim for wrongful death based on the death of Mr. Zeono during this terrorist attack. Accordingly, the Commission finds that the claimant has satisfied this element of its claim.

Pending Litigation

Finally, the January Referral Letter states that the claimant may not have been a plaintiff in the Pending Litigation. January Referral Letter, *supra*, ¶ 7. Attachment 2 to the January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident, which in this claim, as noted above, is the *Franqui* case. Claimant has provided a copy of the First Amended Complaint in *Franqui*, which demonstrates that neither the claimant estate, nor any of the beneficiaries, were plaintiffs in the Pending Litigation. Based on this evidence, the Commission finds that the claimant has satisfied this element of its claim.

In summary, therefore, the Commission concludes on the basis of the foregoing that this claim is within the Commission’s jurisdiction pursuant to the January Referral Letter and is entitled to adjudication on the merits.

Merits

Standard for Wrongful Death

As stated in the January Referral Letter, to be eligible for compensation, a claimant asserting a claim under Category E must meet “the standard for physical injury or wrongful death, as appropriate, adopted by the Commission” for purposes of this referral. January Referral Letter, *supra*, ¶ 7. The Commission held in *Claim of ESTATE OF VIRGEN MILAGROS FLORES, DECEASED; CRUCITA FLORES SUÁREZ, PERSONAL REPRESENTATIVE*, Claim No. LIB-II-065, Dec. No. LIB-II-043 (2011), that in order for a claim for wrongful death pursuant to Category E to be considered compensable, a claimant must:

- 1) provide evidence sufficient to establish the fact of death in the form of a death certificate or other similar document; and
- 2) provide evidence sufficient to establish that the decedent died as the proximate result of a Covered Incident.

Id. at 12. The present Category E claim must likewise meet this standard to be compensable.

Wrongful Death

According to the Statement of Claim, the claimant’s decedent, Jose Antonio Rodriguez Zeno, died as a result of the injuries he sustained on May 30, 1972 at the Lod Airport in Israel. In support of its claim, the claimant has provided a copy of the “Report of the Death of an American Citizen” issued by the Department of State on July 14, 1972, and an Israeli death certificate issued for Mr. Zeno on June 2, 1972, both of which confirm that Mr. Zeno died at Lod Airport on the date of the incident. In

addition to the aforementioned official reports, claimant has also submitted numerous newspaper reports from the days following the incident; a copy of a Puerto Rican Senate resolution from June 2009, commemorating the Lod Airport massacre; and a photograph of a memorial marker in Israel dedicated to the memory of the Lod Airport victims, each of which specifically identify Mr. Zeno as one of the fatalities in the attack.

Based on the evidence submitted, the Commission finds that the claim meets the standard for wrongful death set forth above. Accordingly, claimant ESTATE OF JOSE ANTONIO RODRIGUEZ ZENO, DECEASED; HERIBERTO RODRIGUEZ ZENO, ADMINISTRATOR, is entitled to compensation in this claim.

COMPENSATION

In the *FLORES* claim, the Commission held that, in this program, \$10 million is an appropriate amount of compensation for claims of wrongful death that meet the Commission's standard under Category E, and that interest is not to be applied. Accordingly, the Commission determines that the claimant, ESTATE OF JOSE ANTONIO RODRIGUEZ ZENO, DECEASED; HERIBERTO RODRIGUEZ ZENO, ADMINISTRATOR, is entitled herein to an award of \$10,000,000.00 and that this amount constitutes the entirety of the compensation that the claimant is entitled to in the present claim.

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

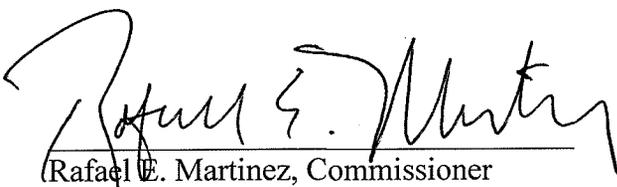
AWARD

Claimant ESTATE OF JOSE ANTONIO RODRIGUEZ ZENO, DECEASED;
HERIBERTO RODRIGUEZ ZENO, ADMINISTRATOR, is entitled to an award in the
amount of Ten Million Dollars (\$10,000,000.00).

Dated at Washington, DC, July 12, 2011
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

**This decision was entered as the
Commissioner's Final Decision on**
AUG 18 2011

NOTICE: Pursuant to the Regulations of the Commission, any objections must be filed within 15 days after service or receipt of notice 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 such service or receipt of notice, unless the Commission otherwise orders. FCSC Regulations, 45 C.F.R. § 509.5 (e), (g) (2010).