

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 MIGUEL ENRIQUE MARTINEZ RIVERA,
DECEASED; LYDIA ESTHER MARTINEZ
VILLANUEVA, ADMINISTRATOR

Against the Great Socialist People's
Libyan Arab Jamahiriya

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} Claim No. LIB-II-080

} Claim No. LIB-II-103

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} Decision No. LIB-II-150

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PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by the Estate of Miguel Enrique Martinez Rivera ("claimant"), based upon the wrongful death of Mr. Martinez Rivera, as a result of the terrorist attack 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 U.S. nationals against Libya. *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* ("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 April 13, 2010, the Commission received a Statement of Claim which it docketed as Claim No. LIB-II-080, in which certain purported beneficiaries of the claimant estate asserted a claim under Category E of the January Referral Letter for the wrongful death of Mr. Martinez Rivera. On August 25, 2010, the Commission received a Statement of Claim which it docketed as Claim No. LIB-II-103, in which

different purported beneficiaries of the claimant estate asserted a claim under Category E of the January Referral Letter for the same wrongful death. Both Statements of Claim assert that Mr. Martinez Rivera was killed as a result of the Lod Airport attack, and both submissions included exhibits supporting elements of the claim. By letters dated May 11, 2011 and May 16, 2011, the two groups of purported estate beneficiaries requested that their claims be consolidated and that Lydia Esther Martinez Villanueva be designated the estate representative. By letter dated February 14, 2012, additional evidence in support of the claim was submitted.

DISCUSSION

As an initial matter, pursuant to the parties' request, the Commission hereby consolidates Claim No. LIB-II-080 and LIB-II-103. In addition, the Commission notes the Determination submitted by the claimant estate that was issued by the Court of First Instance of Puerto Rico, Superior Division of Arecibo, dated June 22, 2011, which appointed Lydia Esther Martinez Villanueva as the Judicial Administrator of Mr. Martinez Rivera's estate. Accordingly, the Commission finds that the ESTATE OF MIGUEL ENRIQUE MARTINEZ RIVERA, DECEASED; LYDIA ESTHER MARTINEZ VILLANUEVA, ADMINISTRATOR, is the proper claimant in this claim.

Jurisdiction

Under subsection 4(a) of the ICOSA, the Commission's jurisdiction under Category E 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

The claimant has submitted to the Commission a Declaration of Heirs issued in 1973 by the Superior Court of Puerto Rico that identifies the heirs of Mr. Martinez Rivera at the time of his death as his children, Isaac Elias Martinez Martinez, Ramon

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); and *Claim of ELISAVETA BELLO, et. al. against Albania*, Claim No. ALB-338, Decision No. ALB-321 (2008).

Enrique Martinez Rosa, Miguel Herminio Martinez Fernandez and Manuel Alberto Martinez Fernandez, and the decedent's widow, Lydia Esther Martinez Villanueva. Because Miguel Herminio Martinez Fernandez has since also died, the Commission must consider information regarding his estate, which the claimant has provided. A Declaration of Heirs issued on April 26, 2011 by the Commonwealth of Puerto Rico, Court of First Instance, Division of Arecibo, states that Miguel Herminio Martinez Fernandez died on January 2, 1990, and identifies Mr. Martinez Fernandez's heirs as his children Christian Miguel Martinez, Jessica Martinez Cruz and Erika Martinez Collazo, and his widow, Daphne M. Galarza Colon.

Based on its precedent and its review of the court-issued Declarations of Heirs, the Commission determines that, during the pertinent time period, an interest in this claim has been held by the following: Miguel Enrique Martinez Rivera, Isaac Elias Martinez Martinez, Ramon Enrique Martinez Rosa, Miguel Herminio Martinez Fernandez, Manuel Alberto Martinez Fernandez, Lydia Esther Martinez Villanueva, Christian Miguel Martinez, Jessica Martinez Cruz, Erika Martinez Collazo, and Daphne M. Galarza Colon.

To meet the nationality requirement, the claimant has provided birth certificates, and either U.S. passports, voter registration cards, or, where applicable, death certificates, for each of these individuals. Based on this evidence and other evidence in the record, the Commission determines that the claim was owned by a

U.S. national at the time of the incident, continuously through the effective date of the Claims Settlement Agreement.

Claim for Death or Injury Resulting From a Covered Incident

To fall within the category of claims referred to the Commission, the claimant must also 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 the Statements of Claim, the claimant sets forth a claim for wrongful death based on the death of Mr. Martinez Rivera during this terrorist attack. Accordingly, the Commission finds that the claimant has also 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 also satisfied this element of its claim.

In summary 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 Statements of Claim, Mr. Martinez Rivera was a high school teacher in Puerto Rico who traveled with his pregnant wife as part of a group of religious pilgrims traveling to Israel on May 30, 1972. The claimant states that Mr. Martinez Rivera was present in the terminal at Lod Airport in Tel Aviv, Israel on that date when three terrorists armed with automatic rifles began shooting and throwing hand grenades at passengers gathered in the baggage claim area. Claimant further states that Mr. Martinez Rivera used "his body as a shield to protect his pregnant wife from the bullets and grenade blasts" and was hit by a grenade blast and killed instantly. The evidence submitted includes a copy of the "Report of the Death of an American Citizen" issued by the Department of State on July 6, 1972, which confirms that Mr. Martinez Rivera died at Lod Airport on the date of the incident. The Report also cites an Israeli death certificate issued for Mr. Martinez Rivera on June 2, 1972, which states the cause of death and notes that his remains were repatriated to Puerto Rico on June 4, 1972. Numerous newspaper reports from the days following the incident, copies of which were provided with this claim, also confirm that Mr. Martinez Rivera was one of the fatalities in the attack.

Based on the evidence submitted, the Commission finds that the claimant's decedent's death meets the standard for wrongful death set forth above. Accordingly, claimant ESTATE OF MIGUEL ENRIQUE MARTINEZ RIVERA, DECEASED;

LYDIA ESTHER MARTINEZ VILLANUEVA, ADMINISTRATOR is entitled to compensation in this claim.

COMPENSATION

In *Claim of ESTATE OF VIRGEN MILAGROS FLORES* 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 MIGUEL ENRIQUE MARTINEZ RIVERA, DECEASED; LYDIA ESTHER MARTINEZ VILLANUEVA, 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 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).

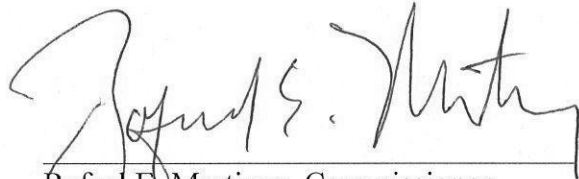
AWARD

Claimant ESTATE OF MIGUEL ENRIQUE MARTINEZ RIVERA,
DECEASED; LYDIA ESTHER MARTINEZ VILLANUEVA, ADMINISTRATOR is
entitled to an award in the amount of Ten Million Dollars (\$10,000,000.00).

Dated at Washington, DC, March 15, 2012
and entered as the Proposed Decision
of the Commission.



Timothy J. Feighery, Chairman



Rafael E. Martinez, Commissioner

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

April 16, 2012

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) (2011).