

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 JAIME E. VALLE ARROYO, DECEASED;  
DAMARIS VALLE OLIVERAS, ADMINISTRATOR

} Claim No. LIB-II-088

} Decision No. LIB-II-108

Against the Great Socialist People's  
Libyan Arab Jamahiriya

Oral hearing held on February 23, 2012.

Counsel for Claimant:

Neal M. Sher, Esq.

FINAL DECISION

This claim filed under Category E of the January Referral arises from the alleged physical injuries suffered by claimant's decedent, Jaime E. Valle Arroyo, as a result of the attack at Lod Airport in Israel on May 30, 1972.

By its Proposed Decision dated November 17, 2011, the Commission denied this claim on the ground that claimant had failed to meet its burden of proof in establishing that the injury claimed herein meets the Commission's standard for physical injury in this program. Specifically, the claimant estate failed to establish that Mr. Valle Arroyo suffered "a discernible physical injury, more significant than a superficial injury", that he received medical treatment for his alleged injuries, or that his injuries are verified by medical records. The Commission further found that the claimant had failed to establish the continuous nationality of Ana Yolanda Valle Olivera, one of the beneficiaries of the Estate.

On December 20, 2011, the claimant filed an objection and requested an oral hearing. On January 4, 2012, the claimant submitted further evidence in support of its objection, including the birth certificate and current voter registration card of Ana Yolanda Valle Olivera to establish her continuous nationality and a 1974 Decision of the Superior Court of Puerto Rico, San Juan Division distributing ex-gratia funds received by Puerto Rico from Japan for the benefit of Puerto Ricans involved in the Lod Airport attack. The hearing on the objection was held on October 17, 2011. During the hearing counsel for the claimant requested additional time to submit further evidence to the Commission, which request was granted. Under cover of letter dated August 4, 2012, the claimant submitted additional documentation including newspaper articles, documents from the Israel Archives, and the sworn statement of a Dr. Santiago Girona dated August 3, 2012.

#### DISCUSSION

As an initial matter, the Commission finds that the submission of evidence of nationality pertaining to Ana Yolanda Valle Olivera is sufficient to establish that she has been a U.S. national continuously since the death of Mr. Valle Arroyo. Accordingly, based on this finding and its previous jurisdictional findings in the Proposed Decision, the Commission finds that the claimant has satisfied the jurisdictional requirements under Category E of the 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”).

Merits

The Commission determined and set forth the standard for physical injury under Category E of the January Referral in *Claim of* 5 U.S.C. §552(b)(6) Claim No. LIB-II-039, Dec. No. LIB-II-015 (2010), namely, that a claimant must establish that he or she suffered a discernible physical injury, more significant than a superficial injury, as a result of an incident referred to in the Pending Litigation; that he or she received medical treatment for the physical injury within a reasonable time; and verify his or her injury by medical records, in order to establish a compensable claim. The Commission has applied this standard consistently to all physical injury claims within its jurisdiction in this program.

Prior to the Commission's Proposed Decision the claimant estate submitted the sworn statement of Damaris Valle Oliveras—decedent's sister—in which she recalls her memory of Mr. Valle Arroyo's injuries, describing them in general terms, and a newspaper article merely identifying Mr. Valle Arroyo as being among those injured. The additional evidence submitted by the claimant estate consisted of newspaper articles, documents from the Israel Archives, the sworn statement of Dr. Girona dated August 3, 2012, and the 1974 Decision of the Superior Court of Puerto Rico, San Juan Division, noted above. The newspaper articles and documents from the Israel Archives—in a similar fashion to the previous newspaper article submitted—merely identify Mr. Valle Arroyo as being among those injured. In his sworn statement, Dr. Santiago Girona states that when Mr. Valle Arroyo arrived in Puerto Rico he had “bandages [on] his head, back and arms”; that “[h]e couldn't walk without assistance”; and, although he did not personally treat Mr. Valle Arroyo, he personally knows that he was “injured with

multiple wounds in his body as a result of the terrorist attack.” The 1974 Superior Court decision also provides evidence that Mr. Valle Arroyo was wounded and provides a rating of the severity of effect of this attack on him relative to others who were affected as a result of the Lod Airport attack.

At the outset, the Commission notes that in this program, those claimants who suffered a significant physical injury at Lod Airport, and who were treated in Israel, have usually been able to produce hospital records—at a minimum hospital discharge records—to substantiate their claims of physical injury. However, such evidence is lacking in the present claim. Nonetheless, the Commission, considering the evidence that has been submitted in the present claim, takes particular note of the 1974 Superior Court decision. In its decision, the court described the process by which it determined the quantum of compensation to be paid to each claimant. The court explained that it had appointed several doctors—specializing in areas such as internal medicine, surgery, neurology, and psychiatry—to serve as “Special Commissioners,” tasked with determining the relative degree, expressed in terms of points, of the physical and/or emotional damage suffered by each claimant as a result of the attack. The Special Commissioners were provided a questionnaire designed to determine the degree of the effect of the Lod airport attack on each claimant based upon “the medical, medical psychiatric, medical surgical experiences that the affected persons went through during their exposure to the incident, during their post-incident stay in Tel Aviv, and since their return to Puerto Rico up to the present... .”

The relative weight of the respective elements is not indicated in the Court’s decision. Thus, based on this description, the injury rating determined by the Superior

Court is a blend of determinations encompassing both physical and psychological injuries. Indeed, the Court appears to include in the calculation of psychological harm not only the direct psychological trauma suffered by individuals as a result of their exposure to the terrible events at Lod Airport, but also mental pain and anguish suffered by individuals as a result of the death of close relatives. The lack of distinction between the physical and psychiatric components of the reported ratings is important in the present program because the Commission has previously held that claims based on psychiatric or mental suffering are not compensable as “physical injuries” under Category E of the January Referral Letter.<sup>1</sup>

Counsel has been unable to shed any light on the factors that comprise Mr. Valle Arroyo’s specific rating. In an effort to determine the appropriate weight that should be afforded to this 1974 Decision, the Commission has closely scrutinized the findings of the Superior Court with respect to each Lod Airport victim who is also a claimant here. The Commission has reviewed the Superior Court’s final determination in light of the claims made here, including all of the evidence submitted, and each of the Commission’s decisions on those claims in the present program. Of particular relevance here is the fact that while claims associated with Superior Court ratings of wounded victims ranging between 625 points and 1,900 points have been found compensable under the Commission’s physical injury standard, not all claims within this rating range have been found to be compensable in this program.

For example, one particular claim decided by the Commission in this program was rated at 975 points by the Superior Court. Here, the Commission determined that the injury identified in the contemporaneous medical report, which had been submitted by

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<sup>1</sup> See, *Claim of 5* U.S.C. §552(b)(6) Claim No. LIB-II-128, Decision No. LIB-II-031 (2012).

the claimant, failed to meet the Commission's test for physical injury. Presumably, the rating of the Superior Court in that case was more heavily weighted on the psychological harm suffered by the claimant, rather than physical harm. In addition, a claimant designated under the Superior Court's decision as having been "unwounded"—indicating that this points rating was based solely on psychological injuries—rated higher than Mr. Valle Arroyo.

In light of its analysis of the Court's decision, the Commission finds that the mere rating of the Superior Court without more detailed evidence supporting the severity of the physical injury allegedly suffered by Mr. Valle Arroyo is, in and of itself, insufficient to support a determination by the Commission that the *physical* injuries he allegedly suffered were more than superficial.

With regard to the newspaper articles and documents from the Israel Archives submitted by claimant, the Commission finds these documents unhelpful in its determination of the extent and treatment of the injuries alleged to have been suffered by Mr. Valle Arroyo because they merely indicate that the claimant was injured without any indication of the nature or severity of that injury. Similarly, the Commission finds that while the sworn statement of Dr. Girona indicates that claimant suffered injuries, it is insufficient to establish the extent or nature of the injuries or the treatment received by Mr. Valle Arroyo for such injuries.

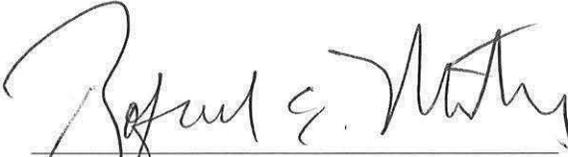
#### CONCLUSION

The Commission concludes, based on the evidence and information submitted in this claim as supplemented, that the claimant estate has not met its burden of proof in establishing that Mr. Valle Arroyo's injuries were discernible and more significant than

superficial or that he received treatment for those injuries within a reasonable time as set out in the Commission's standard for compensable physical injury.<sup>2</sup> Accordingly, the denial set forth in the Proposed Decision in this claim must be and is hereby affirmed. This constitutes the Commission's final determination in this claim.

Dated at Washington, DC, October 26, 2012  
and entered as the Final Decision  
of the Commission.

  
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Timothy J. Feighery, Chairman

  
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Rafael B. Martinez, Commissioner

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<sup>2</sup> Section 509.5(b) of the Commission's regulations provides:

The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

45 C.F.R. § 509.5(b) (2010).



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 ICOSA 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 30, 2010, the Commission received a Statement of Claim asserting a claim under Category E of the January Referral Letter, together with exhibits supporting the elements of the claim. This submission included evidence of the U.S. nationality of Mr. Valle Arroyo and that of the beneficiaries of his estate; a copy of a Death Certificate reflecting the date and place of Mr. Valle Arroyo's death; and evidence relating to his presence at the terrorist incident at Lod Airport in Israel on May 30, 1972 as well as the injuries he allegedly suffered.

According to the Statement of Claim, Mr. Valle Arroyo suffered an unspecified injury to his upper back and shrapnel injuries to his head, face, arm, and buttocks during the Lod airport attack. In support of this assertion, a sworn statement from the decedent's sister, Damaris Valle Oliveras, and a copy of a contemporaneous newspaper report have been submitted.

## DISCUSSION

As an initial matter, the Commission notes that the Resolution issued by the Commonwealth of Puerto Rico, Court of First Instance, Manati Part, dated May 18, 2011, appointed Damaris Valle Oliveras as the administrator and/or representative of Mr. Valle Arroyo's estate. Accordingly, the Commission finds that the ESTATE OF JAIME E. VALLE ARROYO, DECEASED; DAMARIS VALLE OLIVERAS, ADMINISTRATOR, is the proper claimant in this claim.

### Jurisdiction

Under subsection 4(a) of the ICOSA, 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.<sup>1</sup> Based on this precedent and its review of the Declaration of Heirs issued by the Commonwealth of Puerto Rico, Court of First Instance, Manati Part, on February 26, 2010, submitted by claimant, the Commission determines that during the pertinent time period an interest in this claim has been held by the following: Jaime Valle Arroyo, Irma Valle Arroyo, Damaris Valle Oliveras, Ariel Valle Olivera, Ana Yolanda Valle Oliveras, Jose Wilfredo Valle Oliveras, Edgardo Valle Olivera, Jorge Luis Valle Arroyo, Loida Valle Oliveras, Eli Valle Olivero, Jaime Doroteo Valle Olivera, and Amparo Melendez Alicea.

To meet the nationality requirement, the claimant has provided evidence — including copies of the birth and death certificates, current passports, birth certificates and current voter registration cards — of the continuous U.S. nationality during the pertinent time period for each of the aforementioned individuals except Ana Yolanda Valle Oliveras.<sup>2</sup> 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 with the exception of that portion inherited by Ana Yolanda Valle Oliveras.

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<sup>1</sup> 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).

<sup>2</sup> The Commission staff, by letters dated July 14, 2011 and September 20, 2011, requested, among other things, that the claimant provide evidence establishing that Ana Yolanda Valle Oliveras was a U.S. citizen prior to the death of Jaime Valle Arroyo. However, there has been no response to this request.

*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 physical injury based on the injuries allegedly sustained by Jaime Valle Arroyo 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 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 Physical Injury*

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* 5 U.S.C. §552(b)(6) 5 U.S.C. ; Claim No. LIB-II-039, Dec. No. LIB-II-015, that in order for a claim for §552(b)(6) physical injury pursuant to Category E to be considered compensable, a claimant:

- (1) must have suffered a discernible physical injury, more significant than a superficial injury, as a result of a Covered Incident; and
- (2) must have received medical treatment for the physical injury within a reasonable time; and
- (3) must verify the injury by medical records.

*Id.* at 6-7. The present Category E claim must likewise meet this standard to be compensable.

*Physical Injury*

According to the Statement of Claim and accompanying documents, Mr. Valle Arroyo suffered an unspecified injury to his upper back and shrapnel injuries to his head, face, arm, and buttocks during the Lod airport attack. As noted above, the evidence submitted in support of this claim merely consists of two documents. The first is the sworn statement of Damaris Valle Oliveras — decedent’s sister — in which she recalls her memory of Mr. Valle Arroyo’s injuries, and describes them in general terms. The Commission notes that she was fourteen years old when the incident occurred. She states

that Mr. Valle Arroyo received medical treatment both in Israel and, upon his return, in Puerto Rico; however, no medical records of any kind have been submitted. The second document is a Spanish-language newspaper article, accompanied by an English translation, in which Mr. Valle Arroyo is identified among a list of those injured, but there is no indication of the nature or relative severity of the injury. Taking the evidence either separately or together, the claimant has failed to establish that the claimant's decedent suffered "a discernible physical injury, more significant than a superficial injury," that he received medical treatment for his alleged injuries, or that his injuries are verified by medical records.

Section 509.5(b) of the Commission's regulations provides:

The claimant will have the burden of proof in submitting evidence and information sufficient to establish the elements necessary for a determination of the validity and amount of his or her claim.

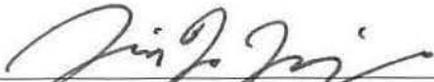
45 C.F.R. § 509.5(b) (2010).

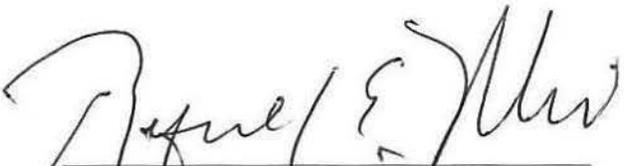
For the aforementioned reasons and based on the entirety of the evidence presented, the Commission finds that the claimant has not met its burden of proof in establishing that the injury claimed herein meets the Commission's standard for physical injury in this program.

In light of the foregoing, the Commission concludes that the claim of the ESTATE OF JAIME E. VALLE ARROYO, DECEASED; DAMARIS VALLE OLIVERAS, ADMINISTRATOR does not qualify for compensation under Category E of the January Referral Letter. Accordingly, while the Commission sympathizes with the the ordeal that Mr. Valle Arroyo must have endured during the terrorist attack in question, this claim based on injuries suffered as a result of that incident must be and is hereby denied.

The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

Dated at Washington, DC, November 17, 2011  
and entered as the Proposed Decision  
of the Commission.

  
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Timothy J. Feighery, Chairman

  
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Rafael E. Martinez, Commissioner

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).