



Agreement, or that the injury sustained by Mr. Ortiz Martinez satisfied the Commission's standard for physical injury.

On July 21, 2011, Ms. Torres-Linares filed an objection and requested an oral hearing. By letter dated November 30, 2011 the Commission requested that Ms. Torres-Linares submit evidence in support of her objection no later than January 4, 2012; however, no further evidence was submitted. The hearing on the objection was held on January 25, 2012. During the Oral Hearing Ms. Torres-Linares' counsel incorporated by reference the hearing brief, which he had submitted in support of claims numbered LIB-II-128, 129, 130, and 131.

In the hearing brief referenced by counsel, and during the hearing, counsel argued that the terms of the January Referral do not require that the Commission reject claims for post-traumatic stress disorder ("PTSD") and, furthermore, that there is substantial medical and legal authority establishing that PTSD is itself a physical injury.

## DISCUSSION

### *Standing*

As an initial matter, the Commission notes that the claimant has now submitted a Resolution issued by the Commonwealth of Puerto Rico, Court of First Instance, Manati Part dated February 15, 2011, which appointed Rosa Maria Torres-Linares as the Judicial Administrator of the estate of Mr. Ortiz Martinez. On the basis of this evidence, the Commission finds that the claimant has standing to pursue the claim, and that the proper claimant is the ESTATE OF HERMINIO ORTIZ MARTINEZ, DECEASED; ROSA MARIA TORRES-LINARES, ADMINISTRATOR.

*Nationality*

In its Proposed Decision the Commission determined that the claimant failed to satisfy the nationality requirement because documents identifying the legal heirs of Mr. Ortiz Martinez had not been submitted. The claimant has now supplemented the record to include the aforementioned Resolution issued by the Commonwealth of Puerto Rico, Court of First Instance, Manati Part dated February 15, 2011 identifying the legal heirs of Mr. Ortiz Martinez. Based on its review of that Resolution, the Commission determines that during the pertinent time period an interest in this claim has been held by the following: Herminio Ortiz Martinez, Rosa Maria Torres-Linares, Migma Mercedes Ortiz Escobar, Rosa Amalia Ortiz Colón, Luis Roberto Ortiz Muñoz, Herminio Ortiz Muñoz, María Josefina Ortiz Torres, and Jorge Alberto Ortiz Torres.

To meet the nationality requirement, the claimant has provided the following: copies of the birth and death certificates issued for the claimant's decedent, Herminio Ortiz Martinez, and a copy of the birth certificate and current passport of Rosa Maria Torres-Linares. However, claimant has failed to submit any evidence establishing the U.S. nationality of the remaining individuals identified above. Accordingly, the Commission reaffirms its finding that this claim fails to satisfy the nationality requirement.

*Physical Injury*

In its Proposed Decision in this claim, the Commission determined that the January Referral contemplates a distinction between "physical" and "personal" injuries and precludes it from awarding compensation for anything other than physical injuries. Further, the Commission noted that the distinction between physical and mental injuries

is well-established in both international conventions and decisions of international tribunals.

Counsel argues, however, that the January Referral does not define the term “physical injury,” and that the Commission therefore has the discretion to determine—based on the weight of the medical and legal authority—that PTSD constitutes a physical injury under Category E. As support for his argument, counsel cites the opinion of a Dr. Grasso wherein he states that “the predictable brain changes seen in PTSD are consistent with PTSD being a physical injury,” explaining that PTSD “causes alterations in brain chemistry that lead to changes in brain structure, just as other physical injuries ... cause measurable injuries and alterations.”

Before addressing counsel’s legal arguments in support of claimant’s objection, the Commission must first note that no indication is given anywhere in the record of this claim that Dr. Grasso or any other medical practitioner actually examined Mr. Ortiz Martinez and detected in him “changes in brain structure” of any kind, let alone changes that could be said to have resulted from the Lod Airport attack. Therefore, even if the Commission were to accept Dr. Grasso’s opinion as valid in principle—which, as discussed below, the Commission does not—the record before it in this case lacks any evidence that would enable it to determine that Mr. Ortiz Martinez actually suffered an injury meeting its physical injury standard. On this basis alone, the claim must be denied.

Claimant’s contention, in essence, is that the Commission has discretion to define the term “physical injury” to include PTSD, because the term “physical injury” was not expressly defined in the January Referral. Furthermore, claimant argues that the Commission should define “physical injury” to include PTSD because “[t]here is federal

authority which stands for the proposition that PTSD can and should be treated as a physical injury.” In particular, claimant refers to jurisprudence on the interpretation of the term “bodily injury”—which it analogizes to the term “physical injury”—found in both Article 17 of the Convention for the Unification of Certain Rules Relating to International Carriage by Air, Oct. 12, 1929, 49 Stat. 3000, 137 L.N.T.S. 11 (hereinafter Warsaw Convention)<sup>1</sup> and in domestic contracts for insurance.

In referring to jurisprudence interpreting the Warsaw Convention to support its objection, claimant relies on *Weaver v. Delta Airlines, Inc.*, 56 F. Supp. 2d 1190 (D. Mo. 1999) (*vacated voluntarily by the parties*, 211 F. Supp. 2d 1252 (2002)).<sup>2</sup> The *Weaver* court had held that PTSD was a compensable “bodily injury” under the Warsaw Convention, since PTSD “evidences actual trauma to brain cell structures,” and determined that the plaintiff’s claim therefore was “based on a definite diagnosis of a disorder that arises from physical injury that is medically verifiable.” Claimant argues that the reasoning in the *Weaver* decision reinforces the scientific evidence it has submitted.

Claimant’s argument that *Weaver* supports an interpretation of “physical injury” that encompasses PTSD is unpersuasive. As a California state court later noted, the *Weaver* court was the only court to have held that PTSD was a compensable “bodily injury” under the Warsaw Convention, and that this holding has been subject to later

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<sup>1</sup> The English translation of Article 17, as employed by the Senate upon offering its advice and consent to the Convention in 1934, reads as follows:

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Warsaw Convention, art. 17, *supra*, 49 Stat. at 3018.

<sup>2</sup> Counsel did not apprise the Commission of the fact that this decision was voluntarily vacated by the parties.

criticism. *Doe v. United Airlines, Inc.*, 73 Cal. Rptr. 3d 541, 549-51 (Cal. Ct. App. 2008). Furthermore, the *Weaver* court itself noted that in order for a mental injury to be “bodily injury” there must be a medically verifiable physical injury from which the disorder arises.<sup>3</sup> Thus, claimant’s citation to *Weaver* as authority for a favorable interpretation of the term “bodily injury” in the Warsaw Convention does not support a broader reading of the term “physical injury” in Category E of the January Referral Letter, but in fact reinforces the requirement in the Commission’s physical injury standard that there be a medically verifiable physical injury. As previously noted, the claimant has not submitted any evidence indicating such an injury in the present claim.

In the insurance context, claimant first cites a decision from the U.S. District Court for the District of Utah, in which the court noted that many state courts recognize that claims for emotional distress, when accompanied by “appreciable physical manifestations can qualify as [claims for] ‘bodily injury’ within the meaning of [an] insurance policy.” *American National Property and Casualty Company v. Jackson*, 2010 WL 2555120 (D. Utah, 2010) (citing *Garvis v. Employers Mut. Cas. Co.*, 497 N.W.2d 254 (Minn. 1993); and *Trinity Universal Ins. Co. v. Cowan*, 906 S.W.2d 124 (Tex. App. Austin 1995)). Claimant refers in particular to the court’s discussion of the physical impact of PTSD, specifically, that “symptoms of PTSD often include ... difficulty eating and sleeping, a racing heart and sweating.” Claimant also cites a Northern District of Texas decision wherein the court, applying domestic state law, found that “[t]he clear weight of authority holds that physical symptoms of emotional distress constitute a ‘bodily injury’ in the insurance context.” *Haralson v. State Farm Mutual Automobile Insurance Company*, 564 F.Supp.2d 616 (N.D. Texas, 2008). According to

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<sup>3</sup> *Weaver v. Delta Airlines, Inc.*, 56 F. Supp. 2d. 1190, 1192.

claimant, Dr. Grasso's medical opinion "fully supports the court findings that there are physical symptoms and manifestations of PTSD."

The Commission also finds this line of argument to be unpersuasive. While the U.S. District Court holdings cited by the claimant may be of some weight in some contexts, it is the Commission's view that they do not provide sufficient reason to disregard what the Commission concludes was the Department of State's clear intent to limit the claims covered by Category E of the January Referral Letter to those based on physical injuries.

As explained in its Proposed Decision in this claim, under Category E of the January Referral, the Commission may only provide compensation for claims for physical injury and wrongful death. The State Department's reference in the January Referral letter to compensation for "physical injury" claims, and not personal injury claims more broadly, makes clear that it drew a clear distinction between physical and mental injuries, and opted to provide compensation only for the former under this referral. This is consistent with the distinction previously made in the December Referral<sup>4</sup>, which specified that it covered only "claim[s] set forth as . . . claim[s] for injury other than emotional distress alone . . ."<sup>5</sup> Moreover, the term "physical injury" appears in the Libyan Claims Resolution Act (LCRA)<sup>6</sup>, which required certification of sufficient funds in any Libya settlement to compensate for "wrongful death or physical injury," as well as the *Letter from John D. Negroponte, Deputy Secretary of State, to the Honorable Mitch McConnell, United States Senate* (July 28, 2008) ("Negroponte

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<sup>4</sup> December 11, 2008 *Letter from the Honorable John B. Bellinger, III, Legal Adviser, Department of State, to the Honorable Mauricio J. Tamargo, Chairman, Foreign Claims Settlement Commission.*

<sup>5</sup> *Id.*, ¶ 3.

<sup>6</sup> Pub. L. No. 110-301, 122 Stat. 2999,

Letter”), which repeatedly referenced the State Department’s intent to provide compensation for “wrongful death or physical injury” claims.<sup>7</sup> For the Commission to award compensation for mental or psychiatric injuries would effectively erase the distinction between physical and mental injuries, contrary to the intent of the Department of State, Congress, and the President as expressed in the LCRA, the Negroponte Letter, and the January Referral. Accordingly, claimant’s argument on objection that the Commission should consider psychiatric injuries to be compensable as “physical injuries” under Category E of the January Referral is rejected.

Finally, at the oral hearing, the claimant responded to the Commission’s notation, in previous oral hearings, of the record of rulemaking associated with the James Zadroga 9/11 Health and Compensation Act of 2010 (“9/11 Act of 2010”). The Commission had noted that in the Final Rulemaking under the 9/11 Act of 2010, the Special Master—in response to comments arguing that PTSD claims should be covered under the Fund—stated that “the statute creating the Fund limits eligible injuries to those consisting of ‘physical harm’ ... the statutory language does not permit the Fund to cover individuals with only mental and emotional injuries.”<sup>8</sup> Claimant’s counsel asserts that he has spoken to the Special Master of the 9/11 Act of 2010, and that the Special Master had stated that “no medical or scientific expert opinion on the issue of whether PTSD should be considered a physical injury was presented... .” Counsel argues that since he has submitted expert testimony on this issue on behalf of the claimant in this case, the

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<sup>7</sup> The Negroponte Letter states, in part, the following: “The other pending terrorism cases against Libya by U.S. nationals for wrongful death or *physical injury* are listed in . . . this letter. . . . In determining whether the funds are adequate . . . we intend to require amounts sufficient so that these claimants are guaranteed compensation comparable to what we understand was provided for *physical injuries* in the LaBelle Discotheque settlement . . . without requiring U.S. claimants for wrongful death or *physical injury* to prove liability by Libya or individual economic damages.” (emphasis added).

<sup>8</sup> *James Zadroga 9/11 Health and Compensation Act of 2010, Final Rule*, 76 Fed. Reg. 54112, 54115 (2011)

determination of the Special Master should not be relevant to the Commission's decision on the claimant's objection.

It appears that counsel misunderstood the reason why the Commission raised the conclusion of the Special Master concerning the eligibility of PTSD sufferers under the 9/11 Act of 2010. The point made by the Commission was purely textual: namely, that the text of the 9/11 Act of 2010 limited eligible injuries to those claimants alleging *physical* harm, just as the text of the January Referral limits eligibility to those claimants asserting *physical* injuries. Thus, as is clear from the Final Rulemaking, the use of the word "physical" in the 9/11 Act of 2010 prompted the Special Master to give meaning to that word, for purposes of eligibility, by drawing a distinction between such injuries and mental injuries. For the same reason, the Commission has here concluded that it must attribute meaning to the State Department's use of the word "physical," as opposed to other possibilities—such as "personal" injuries, for example—by distinguishing between physical injuries on the one hand, and psychiatric or mental injuries on the other. Here again, claimant's arguments, and Dr. Grasso's opinion, do not persuade the Commission that the Department of State, in specifying "physical injury" in Category E of the January Referral, intended to include injuries that are psychiatric in nature.<sup>9</sup>

#### CONCLUSION

In summary, therefore, the Commission concludes, based on the evidence and information submitted in this claim as supplemented, that the claimant has not met its burden of proof, in that it again has not met either the nationality requirement or the

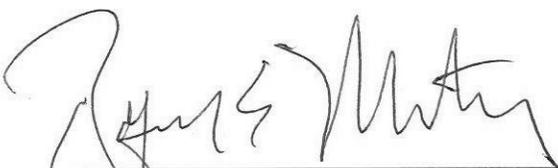
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<sup>9</sup> In this regard, the Commission notes that in the report relied upon by Dr. Grasso, the authors state that "PTSD is a *psychiatric* disorder." Institute of Medicine, Subcommittee on Posttraumatic Stress Disorder of the Committee on Gulf War and Health: Physiologic, Psychologic, and Psychosocial Effects of Deployment-Related Stress, *Post-Traumatic Stress Disorder (PTSD): Diagnosis and Assessment* (2006) at 2 (emphasis added.)

Commission's standard for physical injury.<sup>10</sup> In so holding, the Commission recognizes that claimant's decedent may have suffered for many years from a psychiatric disorder precipitated by the Lod Airport massacre. Nevertheless, it must affirm its determination that claims based on psychiatric or mental suffering alone are not compensable as "physical injuries" under Category E of the January Referral. 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, March 15, 2012  
and entered as the Final Decision  
of the Commission.

  
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Timothy J. Feighery, Chairman

  
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Rafael E. Martinez, Commissioner

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<sup>10</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).

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

In the Matter of the Claim of	}	
	}	
	}	
	}	
ROSA MARIA TORRES-LINARES	}	Claim No. LIB-II-132
	}	
	}	Decision No. LIB-II-049
	}	
Against the Great Socialist People's Libyan Arab Jamahiriya	}	
	}	
Counsel for Claimant:	}	Neal M. Sher, Esq.

PROPOSED DECISION

This claim against the Great Socialist People's Libyan Arab Jamahiriya ("Libya") is brought by ROSA MARIA TORRES-LINARES, based upon injuries said to have been sustained by Herminio Ortiz Martinez 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 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 July 1, 2010, the Commission received a Statement of Claim in which a claim under Category E of the January Referral Letter is asserted, along with accompanying exhibits supporting the elements of the claim. This submission included evidence of the U.S. nationality of Herminio Ortiz Martinez and that of the purported beneficiaries of his estate; a copy of a Death Certificate reflecting the date and place of the late Mr. Martinez'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 cover letter accompanying the Statement of Claim, Mr. Martinez suffered from deep depression, anxiety and Post Traumatic Stress Disorder (PTSD) due to his experiences during the Lod airport incident. In support of the claim, statements from the late Mr. Martinez's wife and children have been submitted.

## DISCUSSION

### *Standing*

As a threshold matter, claimant must establish that she is the proper claimant in this claim. In the case of claims brought on behalf of deceased victims, a claimant must provide the Commission with evidence that he or she is legally entitled to bring the claim. *Claim of ESTATE OF ELIZABETH L. ROOT, DECEASED; JAMES G. ROOT & DAVID H. ROOT, PERSONAL REPRESENTATIVES*, Claim No. LIB-II-040, Decision No. LIB-II-026 (2011). To this end, the Commission staff requested, by letters dated September 24, 2010 and May 5, 2011, that the claimant provide the Commission with evidence establishing the identity of the legal representative and the heirs of the estate. Claimant has failed to respond to these requests.<sup>1</sup> On this basis alone, the claim must fail.

### *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

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<sup>1</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).

Claims Commission and the International Claims Commission) that, for purposes of determining the nationality of a claim, the nationality of the injured party as well as the beneficiaries of his or her estate must be evaluated in order to establish that the claim has been held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement.<sup>2</sup>

To meet the nationality requirement, the claimants have provided the birth certificate for the claimants' decedent, Herminio Ortiz Martinez. The claimants, however, have not submitted any documents identifying the legal heirs of Mr. Martinez and, hence, the Commission is unable to determine if this claim has been held continuously by U.S. nationals.<sup>3</sup> Therefore, the Commission finds that this claim fails to satisfy the nationality requirement.

*Claim for Death or Injury Resulting From a Covered Incident*

The Commission held in *Claim of* 5 U.S.C. §552(b)(6), Claim No. LIB-II-039, Dec. No. LIB-II-015 (2010), that in order for a claim for 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. *Claim of* 5 U.S.C. §552(b)(6), *supra*, at 6-7. The claimant asserts that

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<sup>2</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>3</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).

Mr. Martinez suffered PTSD as a result of his experiences at the Lod airport.<sup>4</sup> As noted above, however, under subsection 4(a) of the ICSA, the Commission's jurisdiction is limited to the categories of claims defined in the January Referral Letter. Under Category E of the January Referral Letter, the Commission may only provide compensation for claims for physical injury and wrongful death. This specific reference to compensation for "physical injury" claims, and not "personal injury" claims more broadly, makes clear that the Secretary of State drew a clear distinction between physical and mental injuries, and opted to provide compensation only for the former under this referral. Thus, the January Referral Letter contemplates a distinction between the two types of injuries and precludes the Commission from awarding compensation for anything other than physical injuries. For the Commission to do otherwise would render the term "physical injury" (as opposed to "personal injury") effectively meaningless.<sup>5</sup> Moreover, insofar as the Commission is directed to apply "applicable principles of international law" in deciding the claims before it, *see* 22 U.S.C. § 1623(a)(2) (2006), the Commission notes that the distinction between physical and mental injuries is well-established in both international conventions<sup>6</sup> and decisions

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<sup>4</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).

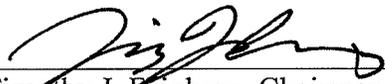
<sup>5</sup> That the term "physical injury" was intended to have a specific meaning is clear from the fact that the Referral Letter suggests that passage of the LCRA was predicated on assurances made to Congress that *physical injury* claimants would receive compensation comparable to the amount provided for *physical injuries* in the private settlement made by the Libyan government with victims of the 1986 Labelle Discotheque terrorist attack in Berlin, Germany. See December Referral Letter at pp. 1-2.

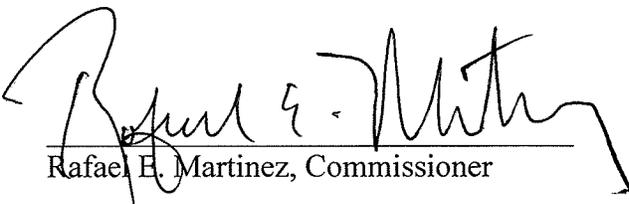
<sup>6</sup> *See, e.g.*, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1, *opened for signature* Dec. 10, 1984, S. TREATY DOC. NO. 100-20, at 3-5, 19, 1465 U.N.T.S. 85; Rome Statute of the International Criminal Court, arts. 6, 7, *opened for signature* July 17, 1998, 2187 U.N.T.S. 3; Geneva Convention Relative to the Treatment of Prisoners of War, *opened for signature* Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Convention on the Prevention and Punishment of the Crime of Genocide, art. 2, *entry into force* Jan. 12, 1951, Sen. Exec. Doc. 81-O, 78 U.N.T.S. 277.

of international tribunals<sup>7</sup>. Accordingly, the Commission further finds that this claim also fails to satisfy its physical injury standard.

In summary, the Commission finds that the claimant has failed to meet her burden to establish that she is the proper claimant in this claim, that the claim was held continuously by U.S. nationals from the date of injury through the date of the Settlement Agreement, or that the injury sustained by Mr. Martinez satisfies the Commission's standard for physical injury. In light of the foregoing, the Commission concludes that this claim does not qualify for compensation under Category E of the January Referral Letter. Accordingly, this claim must be and is hereby denied.

Dated at Washington, DC, July 12, 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).

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<sup>7</sup> See, e.g., Prosecutor v. Muhimana, Case No. ICTR-95-1B-T, Judgment and Sentence, ¶¶ 492-494 & n.454, ¶¶ 501-501 (citing, *inter alia*, Prosecutor v. Gacumbitsi, Case No. ICTR-2001-64-T, Judgment, ¶ 291); Prosecutor v. Krajišnik, Case No. IT-00-39-T, Judgment, ¶ 746 (citing Prosecutor v. Delalic ("The Čelebići case"), Case No. IT-96-21-A, Judgment, ¶¶ 424, 426); Prosecutor v. Bagosora, ICTR-98-41-T, Decision on Motions for Judgment of Acquittal, ¶ 34 & n.77; South West Africa (Eth. v. S. Afr.; Liber. v. S. Afr.), 1966 I.C.J. 6, 253 (July 18).