

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 EUGENIA LÓPEZ DE MARTINEZ,
DECEASED;
HÉCTOR VICENTE PÉREZ LÓPEZ,
ADMINISTRATOR

Against the Great Socialist People's
Libyan Arab Jamahiriya

Claim No. LIB-II-066

Decision No. LIB-II-069

Counsel for Claimant:

Joshua M. 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 Eugenia López de Martinez (the "claimant"), based upon the wrongful death of Ms. López de Martinez as a result of the terrorist incident at Lod Airport in Tel Aviv, 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. *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 March 12, 2010, the Commission received from the claimant a completed Statement of Claim in which the claimant asserts a claim under Category E of the January Referral Letter, along with exhibits supporting the elements of its claim. This submission included evidence of: the U.S. nationality of the claimant's decedent, the late Eugenia López de Martinez, and of the beneficiaries of her estate; her presence at the scene of the terrorist incident; and her alleged wrongful death as a result of injuries sustained during the incident.

The claimant states that Eugenia López de Martinez was present in the terminal at Lod Airport in Tel Aviv, Israel on May 30, 1972, when three terrorists armed with automatic rifles began shooting and throwing hand grenades at passengers gathered in the baggage claim area. According to the Statement of Claim and accompanying exhibits,

Ms. López de Martínez suffered severe internal injuries during the attack caused by grenade blasts and machine gun fire, and died at the scene as a result of these injuries.

DISCUSSION

As a threshold matter, the Commission has reviewed the Amended Resolution¹ issued by the Superior Court of Puerto Rico, Arecibo Section, on September 12, 1973, indicating that Ms. López de Martínez died intestate and identifying the heirs to her estate. Specifically, the court identified the following persons as her heirs: “her son Héctor Vicente Pérez López, and her widower Julio Martínez Torres, in the usufructuary portion of surviving spouse.”² The claimant estate has also provided a copy of a Judgment issued on October 20, 2010 by the Puerto Rico General Court of Justice, Court of First Instance, Superior Division of Arecibo, appointing Héctor Vicente Pérez López as administrator of the estate. Documentation submitted by the claimant reflects that both of the above-named individuals are U.S. nationals by birth. Based on this review, the Commission finds that the ESTATE OF EUGENIA LÓPEZ DE MARTINEZ, DECEASED; HÉCTOR VICENTE PÉREZ LÓPEZ, 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

¹ According to the claimant, the initial Resolution, issued on October 16, 1972, mistakenly referred to the decedent’s son, Héctor Vicente Pérez López, as “Héctor Vicente López Hernández.” Claimant asserts that the Amended Resolution was intended to correct this. An examination of both resolutions (copies of which have been provided with this claim) confirms that this appears to be the only substantive difference between the two documents.

² Documentation provided by the claimant indicates that Julio Martínez Torres died on March 26, 1997. Under P.R. Laws Ann. tit. 31, § 2411, this would appear to leave Mr. Pérez López as the sole heir to decedent’s estate, a point also made by the claimant in a brief filed with this claim.

wrongful death or physical injury resulting from one of the Covered Incidents; and (3) were not plaintiffs in a Pending Litigation 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 the claim.³

To meet the nationality requirement, the claimant has provided the birth certificate of the claimant's decedent, Eugenia López de Martinez, indicating her place of birth in Utuado, Puerto Rico, a copy of the Report of the Death of an American Citizen issued by the U.S. Department of State for Ms. López de Martinez, copies of Mr. Pérez López's birth certificate and current U.S. passport, a copy of the marriage certificate for Julio Martínez Torres and Eugenia López de Martinez noting Mr. Martínez Torres' birth

³ 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).

in Puerto Rico, a Social Security Administration benefit form for Mr. Martínez Torres, dated May 17, 2010, verifying his U.S. citizenship, and a signed letter to claimant's attorney from the U.S. Department of State indicating that, in response to his inquiry, there was no record of Mr. Martínez Torres (or any of the other numerous individuals that were the subject of the inquiry) having renounced his U.S. citizenship.⁴

Based on this 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 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 Ms. Eugenia López de Martinez 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

⁴ Claimant has also submitted a copy of a marriage certificate evidencing the decedent's first marriage to Vicente Pérez Colon in 1942. In a brief filed with this claim, the claimant notes that Ms. López de Martinez divorced Mr. Pérez Colon, the father of Héctor Vicente Pérez López, prior to marrying Julio Martínez Torres in 1966, and that "[Mr. Pérez Colon] shares no interest in her Estate." The 1973 Amended Resolution, which explicitly refers to Mr. Pérez Colon, appears to confirm this fact. His nationality is therefore immaterial to the question of continuous nationality in the instant claim.

the January Referral Letter identifies the Pending Litigation cases associated with each Covered Incident and includes the *Franqui* case, which, as noted above, is the Pending Litigation related to this claim. 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. In addition, claimant, through its duly-appointed administrator Héctor Vicente Pérez López, has stated under oath in its Statement of Claim that it was not a plaintiff in the Pending Litigation against Libya. 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 for wrongful death under Category E must meet the "standard . . . 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 and accompanying documents, Eugenia López de Martinez died on May 30, 1972 while in the baggage claim area at Lod Airport in Tel Aviv, Israel; specifically, the claimant states that Ms. López de Martinez suffered fatal internal injuries after the attackers began firing and throwing hand grenades at waiting passengers. In support of its claim, the claimant has submitted a copy of a Report of the Death of an American Citizen issued by the U.S. Department of State on July 14, 1972, which confirms that Ms. López de Martinez died at Lod Airport on the date of the incident, and states that her remains were repatriated to Puerto Rico on June 4, 1972. The report also cites an Israeli death certificate issued for Ms. López de Martinez on June 2, 1972, which states the cause of death.

Additional documents submitted with this claim further confirm that Ms. López de Martinez died during the Lod Airport attack, including, *inter alia*: copies of two newspaper reports from the days following the incident, which specifically mention Ms. López de Martinez as one of the fatalities; a copy of a Puerto Rican Senate resolution from June 2009, commemorating the Lod Airport massacre and listing Ms. López de Martinez as one of those who died in the attack; and a photograph of a memorial marker in Israel dedicated to the memory of the Lod Airport victims, also listing Ms. López de Martinez as a victim of the attack.

Based on the evidence submitted, the Commission finds that this claim meets the standard for wrongful death. Accordingly, claimant ESTATE OF EUGENIA LÓPEZ DE MARTINEZ, DECEASED; HÉCTOR VICENTE PÉREZ LÓPEZ, ADMINISTRATOR, is entitled to compensation as set forth below.

COMPENSATION

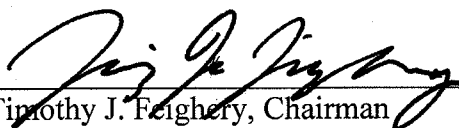
In the *FLORES* claim, the Commission held that in this program \$10 million is an appropriate amount of compensation for claims of wrongful death that meet the Commission's standard under Category E, and that interest is not to be applied. Accordingly, the Commission determines that the claimant, ESTATE OF EUGENIA LÓPEZ DE MARTINEZ, DECEASED; HÉCTOR VICENTE PÉREZ LÓPEZ, 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 ICOSA. 22 U.S.C. §§ 1626-1627 (2006).

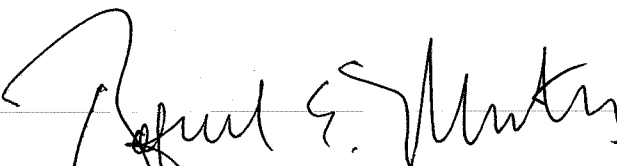
AWARD

Claimant ESTATE OF EUGENIA LÓPEZ DE MARTINEZ, DECEASED;
HÉCTOR VICENTE PÉREZ LÓPEZ, 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
Commission'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).