

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 26, 2010, the Commission received from the claimant a Statement of Claim, in which the claimant asserted 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 Carmen Enid Crespo Martinez and that of the beneficiaries of the estate; a copy of the "Report of the Death of an American Citizen" issued by the Department of State on July 6, 1972 reflecting the date and place of Ms. Crespo Martinez's death; and evidence of her

presence at the terrorist attack at Lod Airport in Israel on May 30, 1972. The claimant states that Ms. Crespo Martinez was killed as a result of the Lod Airport attack. The claimant further states that she was single at the time of her death, had never married, and had no children. The claimant also provided supplemental information, including further evidence of the U.S. nationality of the beneficiaries of the estate of Ms. Crespo Martinez, which was received by the Commission on March 9, 2011, April 12, 2011, and September 12, 2011.

DISCUSSION

As an initial matter, the Commission notes the Resolution submitted by the claimant which was issued by the Court of First Instance of Puerto Rico, Superior Division of Camay, dated October 15, 2010, and which appointed Miguel Armando Crespo Martinez as the Judicial Administrator of Ms. Crespo Martinez's estate. Accordingly, the Commission finds that the ESTATE OF CARMEN ENID CRESPO MARTINEZ, DECEASED; MIGUEL ARMANDO CRESPO MARTINEZ, 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.¹

The claimant has submitted to the Commission a Declaration of Heirs issued on January 15, 2010, by the Commonwealth of Puerto Rico, Court of First Instance, Division of Camuy, and a Declaration of Heirs *Nunc Pro Tunc* (correcting the spelling of a named heir) issued by the Court of First Instance on April 12, 2010. The Declaration of Heirs *Nunc Pro Tunc* identifies the heirs of Carmen Enid Crespo

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).

Martinez at the time of her death in 1972 as her parents, Marciano Crespo Gonzalez and Carmen Maria Martinez Camacho. Because her parents have since also died, the Commission must consider information regarding their estates, which the claimant has provided. A Declaration of Heirs issued on November 1, 2000, by the Commonwealth of Puerto Rico, Court of First Instance, Division of Camuy, identifies the heir of Carmen Maria Martinez Camacho as Miguel Armando Crespo Martinez. An amended Declaration of Heirs issued on March 24, 1977, by the Commonwealth of Puerto Rico, Court of First Instance, Division of Arecibo, identifies Marciano Crespo Gonzalez's heirs as Rafael Crespo Padilla, Jaime Luis Crespo Padilla and Miguel Armando Crespo Martinez. The claimant has submitted evidence establishing that one of these heirs, Jaime Luis Crespo Padilla, died on December 3, 2005. A Declaration of Heirs *Nunc Pro Tunc* issued on September 3, 2010, by the Commonwealth of Puerto Rico, Court of First Instance, Division of Camuy, identifies Jaime Luis Crespo Padilla's heirs as Nydia Crespo Ramos, Jaime Luis Crespo, Jr., Ivan Crespo, Albert Crespo, Rafael Crespo Rodriguez, Maritza Crespo and Yesenia Crespo Valentin.

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: Carmen Enid Crespo Martinez, Marciano Crespo Gonzalez, Carmen Maria Martinez Camacho, Miguel Armando Crespo Martinez, Rafael Crespo Padilla, Jaime Luis Crespo Padilla, Nydia Crespo Ramos, Jaime Luis Crespo, Jr., Ivan Crespo, Albert Crespo, Rafael Crespo Rodriguez, Maritza

Crespo and Yesenia Crespo Valentin. To meet the nationality requirement, the claimant has provided birth certificates, and either current U.S. passports, 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 its Statement of Claim, the claimant sets forth a claim for wrongful death based on the death of Ms. Carmen Enid Crespo Martinez 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 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 Statement of Claim and accompanying documents, Ms. Crespo Martinez was one of a group of religious pilgrims traveling to Israel on May 30, 1972. She had just turned twenty years old. The claimant states that Ms. Crespo Martinez 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 asserts Ms. Crespo Martinez was “killed by machine gunfire and grenade blasts that fractured her skull and lacerated her brain.” She died on the scene as a result of these injuries. The evidence submitted fully supports claimant’s allegations. A copy of the “Report of the Death of an American Citizen” issued by the Department of State on July 6, 1972 confirms that Ms. Crespo Martinez died at Lod Airport on the date of the incident. The report also cites an Israeli death certificate issued for Ms. Crespo Martinez on June 2, 1972, which states the cause of death and notes that her 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 Ms. Crespo Martinez 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 CARMEN ENID CRESPO MARTINEZ, DECEASED;
MIGUEL ARMANDO CRESPO MARTINEZ, ADMINISTRATOR is entitled to
compensation in this claim.

COMPENSATION

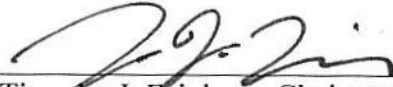
In *Claim of ESTATE OF VIRGEN MILAGROS FLORES* the Commission held that, in this program, \$10 million is an appropriate amount of compensation for claims of wrongful death that meet the Commission's standard under Category E, and that interest is not to be applied. Accordingly, the Commission determines that the claimant, ESTATE OF CARMEN ENID CRESPO MARTINEZ, DECEASED; MIGUEL ARMANDO CRESPO MARTINEZ, 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 ICSEA. 22 U.S.C. §§ 1626-27 (2006).

AWARD

Claimant ESTATE OF CARMEN ENID CRESPO MARTINEZ, DECEASED;
MIGUEL ARMANDO CRESPO MARTINEZ, ADMINISTRATOR is entitled to an
award in the amount of Ten Million Dollars (\$10,000,000.00).

Dated at Washington, DC, October 17, 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**
NOV 30 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).