

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
EASTERN DIVISION**

DAVID BONIFACE,

NISSANDÈRE MARTYR, and

JUDERS YSEMÉ,

Plaintiffs,

v.

JEAN MOROSE VILIENA
(a.k.a. JEAN MOROSE VILLIENA),

Defendant.

Case No. 1:17-cv-10477-ADB

**STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT OF PLAINTIFFS
DAVID BONIFACE, NISSANDÈRE MARTYR AND JUDERS YSEMÉ**

1. On July 28, 2007, the day after his brother Ecclesiaste Boniface was killed, David Boniface filed a complaint with the Haitian authorities. Declaration of Bonnie Lau (“Lau Decl.”) Ex. 1 [Boniface Dep.] at 72:13-73:4.

2. Starting in 2007, David Boniface, Juders Ysemé, and Nissage Martyr filed complaints related to the 2007 killing of Ecclesiaste Boniface, the 2008 attack on the radio station, or the 2009 mass arson with (1) the prosecutors for Grand-Anse, (2) the Jérémie court of first instance, (3) the investigating judge for the civil court of Jérémie, (4) the Les Irois police precinct, and (5) the Jérémie office of the Haitian National Police. Lau Decl. Ex. 1 [Boniface Dep.] at 78:25-83:19; Lau Decl. Ex. 2 [Juders Ysemé Dep.] at 23:6-9, 75:11-23, 79:23-80:8, 89:1-14; Declaration of Brian Concannon, Jr. (“Concannon Decl.”) ¶ 4 and Ex. A [Expert Report of Brian Concannon, Jr. (“Concannon Report”)] ¶ 59.

3. Starting in 2008, David Boniface, Juders Ysemé, and Nissage Martyr filed reports with (1) the Inter-American Commission on Human Rights and (2) MINUSTAH (the UN peacekeeping mission in Haiti). Lau Decl. Ex. 1 [Boniface Dep.] at 42:14-43:7, 79:14-82:15; Lau Decl. Ex. 2 [Juders Ysemé Dep.] at 14:7-15:16, 89:1-25, 90:22-93:15; Concannon Report ¶ 115.

4. On July 14, 2008, Defendant Jean Morose Viliena (“Defendant” or “Viliena”) obtained lawful permanent resident status allowing him to travel to and reside in the United States. Lau Decl. Ex. 3 [Viliena Nov. 1, 2021 Dep.] at 21:12-15; Lau Decl. Ex. 4 [Viliena Passport Pages] (showing exit and entry stamps between Haiti and the United States starting July 14, 2008); Lau Decl. Ex. 5 [Email from Peter Haley] (confirming that Viliena was issued a U.S. lawful permanent resident card “effective July 14, 2008”); First Am. Answer ¶¶ 8-9, Dkt. 131

(“Defendant . . . admit[s] that he currently resides at Malden, Massachusetts.”); *id.* at ¶¶ 52, 64 (“Defendant . . . admit[s] that he became a resident of the United States . . .”).

5. In September 2008, Defendant was arrested in Haiti for his role in the murder of Ecclesiaste Boniface and in the attack on the radio station. Concannon Report ¶ 70 (“On September 29, 2008, Defendant was arrested upon the order of Investigating Judge Frank Drice.”); Lau Decl. Ex. 6 [Concluding Order of Indictment, No. 736/08 (Ct. First Instance Jérémie Jan. 25, 2010)] at Plaintiffs_0000090-92; Lau Decl. Ex. 7 [Viliena Jan. 11, 2022 Dep.] at 170:6-11, 170:24-171:1; Lau Decl. Ex. 8 [Open Letter from Viliena] at Viliena Second Supp Production 000043.

6. After being released from jail, Defendant left Haiti for the United States on January 27, 2009. Lau Decl. Ex. 4 [Viliena Passport Pages] at Viliena Fourth Supp. Production 000002, 000005 (showing exit stamp from Port-au-Prince and entry stamp from Miami dated January 27, 2009); Lau Decl. Ex. 7 [Viliena Dep.] at 179:3-7, 180:22-181:15 (acknowledging Viliena entered the United States on January 27, 2009, after being released from jail); Lau Decl. Ex. 9 [Viliena’s Responses to Request for Admissions] at Resp. No. 36 (admitting Viliena has resided in the United States since January 2009); Lau Decl. Ex. 2 [Juders Ysemé Dep.] at 84:14-85:6; Concannon Report ¶¶ 70-71.

7. Defendant left Haiti for the United States on November 27, 2009 and did not return to Haiti until August 20, 2012. Lau Decl. Ex. 4 [Viliena Passport Pages] (showing exit stamp from Port-au-Prince and entry stamp from Miami dated November 27, 2009, and entry stamp from Port-au-Prince dated August 20, 2012, with no other entry or exit stamps between); Lau Decl. Ex. 10 [Viliena’s Fifth Amended Answers to Interrogatories] at Answer No. 9 (stating Viliena was in Haiti October 27-30, 2009); Lau Decl. Ex. 7 [Viliena Dep.] at 132:11-134:24,

188:23-189:2, 189:13-14 (“I visited Haiti more often from 2013 I went to the United States in December 2009 and only came back in 2012 or 2013.”); Lau Decl. Ex. 8 [Open Letter from Viliena] at Viliena Third Supp Production 000024 (stating Viliena has resided in the United States for over twelve months as of March 15, 2011).

8. In August 2012, Defendant was appointed the Interim Executive Agent of Les Irois by then-President Martelly. Lau Decl. Ex. 3 [Viliena Dep.] at 35:18-20; Concannon Report ¶ 72.

9. On January 25, 2010, while Defendant was in the United States, the indictment in the combined criminal case for the attack on the radio station and the killing of Ecclesiaste Boniface was issued and a bench trial was ordered. Lau Decl. Ex. 6 [Concluding Order of Indictment, No. 736/08 (Ct. First Instance Jérémie Jan. 25, 2010)] at Plaintiffs_0000097.

10. Defendant remained in the United States and did not attend the bench trial in Jérémie on October 25, 2010. Lau Decl. Ex. 4 [Viliena Passport Pages]; Lau Decl. Ex. 11 [Judgment (Civ. Ct. Jérémie Oct. 25, 2010)]; Concannon Report ¶ 120.

11. The Jérémie court convicted six lower-level defendants for their involvement in the killing of Ecclesiaste Boniface and in the attack on the radio station. The Jérémie court stated that in absentia proceedings should be initiated against Defendant, but those proceedings never took place. Lau Decl. Ex. 11 [Judgment (Civ. Ct. Jérémie Oct. 25, 2010)]; Concannon Report ¶ 120.

12. After his appointment as Interim Executive Agent of Les Irois in August 2012, Defendant traveled more frequently to Haiti, though his travel documents show he still spent much of his time in the United States. Concannon Report ¶ 72 (citing Viliena’s passport pages showing entry and exit stamps, along with emails from airlines regarding travel to and from the

U.S. and Haiti); Lau Decl. Ex. 3 [Viliena Dep.] at 23:20-24:12; Lau Decl. Ex. 7 [Viliena Dep.] at 188:23-189:2.

13. After Defendant finished his term as interim mayor of Les Irois in 2015, he visited Haiti “maybe three to four times.” Lau Decl. Ex. 3 [Viliena Dep.] at 27:14-22.

14. Defendant did not appear before the court in Les Cayes, which on July 21, 2015 convicted five defendants for their roles in the killing of Ecclesiaste Boniface and the attack on the radio station. Lau Decl. Ex. 4 [Viliena Passport Pages] (showing exit stamp from Port-au-Prince dated March 25, 2015, and entry stamp from Port-au-Prince dated July 2, 2016, with no other entry or exit stamps between); Joseph Decl., Dkt. 20-1, Ex. C (July 21, 2015, Les Cayes Court of First Instance Judgment); Concannon Report ¶ 120.

15. The Les Cayes court stated that Defendant was “a fugitive” and ordered that in absentia proceedings be initiated against him. Concannon Report ¶ 120 (quoting Joseph Decl., Dkt. 20-1, Ex. C (July 21, 2015, Les Cayes Court of First Instance Judgment)); Lau Decl. Ex. 1 [Boniface Dep.] at 94:6-13 (noting that Les Cayes court declared Defendant a fugitive and authorized in absentia proceedings against him); Lau Decl. Ex. 2 [Juders Ysemé Dep.] at 75:11-77:7 (same).

16. In absentia proceedings were not initiated against Defendant, nor have any proceedings been initiated against him for his role in the mass arson. Lau Decl. Ex. 1 [Boniface Dep.] at 94:14-96:9 (testifying that neither *in absentia* proceedings nor proceedings for the mass arson were initiated against Defendant); Lau Decl. Ex. 2 [Juders Ysemé Dep.] at 77:8-10, 80:7-9 (same); Joseph Decl., Dkt. 20-1, Ex. C (July 21, 2015, Les Cayes Court of First Instance judgment); Concannon Report ¶¶ 112-13.

17. In August 2013, the civil court in Jérémie convicted twelve individuals, including Defendant’s father, for the 2009 mass arson in Les Irois, and awarded damages to Plaintiffs. Lau Decl. Ex. 2 [Juders Ysemé Dep.] at 85:10-88:20; Lau Decl. Ex. 12 [Judgment (Civ. Ct. Jérémie Aug. 13, 2013)] at Plaintiffs_0000060.

18. In July 2015, the trial court in Les Cayes found five individuals responsible for the 2007 killing of Ecclesiaste Boniface and the 2008 attack on the radio station, and assessed civil damages against them. Joseph Decl., Dkt. 20-1, Ex. C (July 21, 2015, Les Cayes Court of First Instance judgment); Concannon Report ¶ 112.

19. Plaintiffs have never been able to recover any portion of these awarded funds. Lau Decl. Ex. 2 [Juders Ysemé Dep.] at 23:17-24:6, 79:10-82:6, 87:16-88:23; Lau Decl. Ex. 1 [Boniface Dep.] at 54:12-56:20; Concannon Report ¶ 112.

20. Through the March 22, 2017 filing of this Complaint, “there is no record that Defendant had engaged with the Haitian proceedings despite the indictments against him for the killing of Ecclesiaste and the radio station attack.” Concannon Report ¶ 111.

Dated: March 28, 2022

Respectfully submitted,

DAVID BONIFACE, NISSANDÈRE
MARTYR, AND JUDERS YSEMÉ

By their attorneys,

/s/ Bonnie Lau

CENTER FOR JUSTICE &
ACCOUNTABILITY

Daniel McLaughlin (pro hac vice)

dmclaughlin@cja.org

Carmen K. Cheung (pro hac vice)

ccheung@cja.org

Elzbieta T. Matthews (pro hac vice)

ematthews@cja.org

One Hallidie Plaza, Suite 750
San Francisco, CA 94102
(415) 544-0444 (telephone)

MORRISON & FOERSTER LLP
Bonnie Lau (pro hac vice)
blau@mofocom
425 Market Street
San Francisco, California 94105
(415) 268-6511 (telephone)

MORRISON & FOERSTER LLP
Benjamin S. Kagel (pro hac vice)
bkagel@mofocom
Sarah J. Vandervalk (pro hac vice)
svandervalk@mofocom
12531 High Bluff Drive
San Diego, California 92130
(858) 720-5100 (telephone)

DENTONS US LLP
Philip A. O'Connell, Jr. (BBO# 649343)
philip.oconnelljr@dentons.com
Tony K. Lu (BBO# 678791)
tony.lu@dentons.com
One Beacon Street, Suite 25300
Boston, Massachusetts 02108
(617) 235-6802 (telephone)

