

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JUAN ROMAGOZA ARCE,
NERIS GONZALEZ, CARLOS MAURICIO, and
JORGE MONTES,

Plaintiffs,

v.

JOSE GUILLERMO GARCIA, an individual,
CARLOS EUGENIO VIDES CASANOVA, an
individual, and DOES 1 through 50, inclusive,

Defendants.

No. 99-8364-CIV-Hurley
Magistrate Judge Lynch

**PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE TO PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY JUDGMENT ON DEFENDANTS'
DE JURE COMMAND AUTHORITY, OR, ALTERNATIVELY, FOR
DETERMINATION OF FACTS WITHOUT SUBSTANTIAL CONTROVERSY**

INTRODUCTION

In their opening brief in support of their motion for partial summary judgment, plaintiffs undertook a detailed analysis to show that defendants possessed *de jure* command authority over the Salvadoran Military and Security Forces during 1979-83, thereby satisfying the first element of the doctrine of command responsibility.

Defendants' opposition to plaintiffs' motion fails to raise any genuine issue of material fact that would preclude granting partial summary judgment for plaintiffs. As an initial matter, defendants present this Court with no specific facts or evidence in opposition to plaintiffs' motion. This lack of hard evidence in itself prevents defendants from meeting their burden to show a disputed issue of material fact. Moreover, the vague, broad-brush argument that defendants put forward—that the Salvadoran armed forces were “disorganized, fractioned and factioned” during El Salvador’s civil war from 1979-89—is utterly irrelevant to plaintiffs’ summary judgment motion, which focuses on defendants’ *de jure* command authority and the duties flowing therefrom. Even if their random assertions about the civil war were accurate (which they are not), defendants fail to raise a genuine issue

of material fact as to their *de jure* command authority in this period over El Salvador's Military and Security Forces in 1979-83, and their authority to issue orders to, and to discipline, subordinates.

Since defendants have failed to carry their burden under the summary judgment standard, plaintiffs' motion should be granted, and this Court should rule as a matter of law that plaintiffs have satisfied their burden as to the first element of the doctrine of command responsibility. In the alternative, this Court should rule that the facts put forth by plaintiffs in their Statement of Material Undisputed Facts are without substantial controversy pursuant to Federal Rule of Civil Procedure ("FRCP") 56(d).

ARGUMENT

I. DEFENDANTS FAIL TO PRESENT A GENUINE ISSUE OF MATERIAL FACT TO DEFEAT SUMMARY JUDGMENT

In their moving papers, plaintiffs satisfied their burden under FRCP 56 by setting out detailed facts to establish defendants' *de jure* command authority over the Salvadoran Military and Security Forces during 1979-83. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (party seeking summary judgment "bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of [the record] which it believes demonstrate the absence of a genuine issue of material fact"). The burden then shifts to defendants to establish the existence of a genuine issue of material fact. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585-87 (1986); *Fitzpatrick v. City of Atlanta*, 2 F.3d 1112, 1116 (11th Cir. 1993). This burden on defendants is to "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586.

A. Defendants' Opposition Lacks The Specific Facts Or Evidence Necessary To Create A Genuine Issue Under FRCP 56

As a threshold matter, defendants fail to meet their burden because they have not backed up their arguments with any specific facts or evidence. "One who resists summary judgment must meet the movant's affidavits with opposing affidavits setting forth specific facts to show why there is an issue for trial." *Leigh v. Warner Bros., Inc.*, 212 F.3d 1210, 1217 (11th Cir. 2000) (citation and quotation omitted). Plaintiffs based their motion primarily on detailed admissions obtained from defendants in

trial and deposition. Defendants, by contrast, have provided no affidavits, deposition testimony, or other competent evidence permitted by FRCP 56(e) to support their opposition, relying instead on *ipse dixit* assertions in their brief.

This showing is insufficient to defeat summary judgment. Under FRCP 56, “[t]his court has consistently held that conclusory allegations without specific supporting facts have no probative value.” *Evers v. General Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985); *see also Farina v. Mission Invest. Trust et al.*, 615 F.2d 1068, 1075-76 (5th Cir. 1980) (granting summary judgment where non-moving party sought to rely solely on pleadings containing “broad statements of fact and law”). Moreover, on summary judgment, a court should not rely “upon factual assertions made in the briefs because ‘documents of this character are self-serving and are not probative evidence of the existence or nonexistence of any factual issues.’” *Godeaux v. Dynamic Indus., Inc.*, 864 F. Supp. 614, 619 n.10 (E.D. Tex. 1994) (citation omitted). Consequently, defendants have failed to meet their burden and plaintiffs are entitled to judgment as a matter of law.

B. Defendants’ Arguments Are Irrelevant To Plaintiffs’ Motion

Defendants ignore the limited scope of plaintiffs’ motion for partial summary judgment. Because defendants’ arguments are irrelevant to the issue of whether they possessed *de jure* command authority over the Salvadoran Military and Security Forces, they fail to present an issue of material fact to defeat summary judgment. *See United States v. Gilbert*, 920 F.2d 878, 883 (11th Cir. 1991) (“‘factual disputes that are irrelevant or unnecessary will not be counted’ [under FRCP 56]”) (citation omitted); *Gordon v. Terry*, 684 F.2d 736, 743 (11th Cir. 1982) (“to establish a genuine factual dispute, affidavits must set forth facts which are relevant to a viable legal theory”).

The motion that defendants oppose is not the one plaintiffs filed. Defendants argue that (1) the plaintiffs were not injured as they allege, (2) the command structure of the armed forces was in “disarray,” (3) the armed forces were “disorganized, fractioned and factioned,” and (4) there were “outlaw renegade uniformed armed units” fighting against other uniformed units. Response to Plaintiffs’ Motion for Summary Judgment (“Response”) at 2. None of these unproven allegations has

any bearing on whether the defendants occupied positions of *de jure* command authority over members of the Military and Security Forces, the narrow issue raised by plaintiffs' motion.

Plaintiffs made clear in their moving papers that they sought summary judgment solely on the first element of the command responsibility doctrine. See Plaintiffs' Motion for Partial Summary Judgment of Defendants' *De Jure* Command Authority, or, Alternatively, for Determination of Facts Without Substantial Controversy ("Opening Brief") at 2, 8-9. Defendants' opposition, however, addresses the third element of this doctrine: whether defendants took all reasonable steps to prevent and punish subordinate offenders. Accordingly, defendants' opposition provides no justification for denying plaintiffs' motion. If plaintiffs' motion is granted, defendants will still have an opportunity at trial to present evidence to support their allegations regarding the remaining elements of the doctrine of command responsibility.

C. The Material Facts Set Forth By Plaintiffs Remain Uncontroverted

Defendants simply have not raised any disputed issue as to the detailed facts put forward by plaintiffs. Specifically, defendants' opposition contains no facts to controvert plaintiffs' showing that:

- Defendants occupied high ranking positions within the Salvadoran Military and Security Forces during 1979-83, viz. Minister of Defense and Director-General of the National Guard (see Plaintiffs' Statement of Material Undisputed Facts, ¶¶ 1, 17, 30);
- Defendants were properly appointed to their respective positions by persons with the authority to do so (*id.*, ¶¶ 1, 15, 17, 20, 29);
- Under Salvadoran law, military superiors were responsible for ensuring that their orders were properly executed and subordinates were properly disciplined (*id.*, ¶¶ 6, 26, 28);
- Defendants were empowered to receive reports from, issue orders to, investigate and discipline subordinate members of the Military and Security Forces (*id.*, ¶¶ 3, 5, 7-11, 13, 14, 19, 22, 26, 28);
- As Ministers of Defense, defendants were members of the High Command, worked with the Joint Chiefs of Staff to repress espionage and subversion, and were responsible for

formulating military strategy concerned with the defense of the government and for enforcing the laws with respect to the Armed Forces (*id.*, ¶¶ 2, 4, 5, 30);

- As Director General of the National Guard, defendant Vides Casanova was responsible for ensuring that all National Guard facilities, including detention centers, ran properly (*id.*, ¶ 23); and
- As Ministers of Defense, defendants were empowered to establish and staff military tribunals and courts martial (*id.*, ¶¶ 12, 27).

Defendants' opposition is silent on all these matters. Because the facts put forth by plaintiffs in their moving papers are uncontroverted, they should be deemed admitted and plaintiffs' motion should be granted. See Southern District of Florida Local Rule 7.5.

D. This Court Can Readily Resolve Disputes Of Law On Summary Judgment

Defendants' unsupported assertion that "[t]he Plaintiffs misstate the law of command responsibility or liability" (Response at 1) does not preclude granting the relief that plaintiffs seek. Defendants fail to spell out the supposed legal error in plaintiffs' motion. Moreover, to the extent defendants rely on a dispute of law to defeat summary judgment, their argument fails. It is well established that where a disputed issue is purely legal, it may appropriately be resolved through summary judgment. *Neff v. Amer. Dairy Queen Corp.*, 58 F.3d 1063, 1065 (5th Cir. 1995); see also *Decarion v. Monroe County*, 853 F. Supp. 1415, 1417-18 (S.D. Fl. 1994) (summary disposition appropriate where issues in dispute are "legal in nature").

II. IF PLAINTIFFS' MOTION IS DENIED, THIS COURT CAN DETERMINE THAT THE FACT OF DEFENDANTS' DE JURE COMMAND AUTHORITY IS WITHOUT SUBSTANTIAL CONTROVERSY

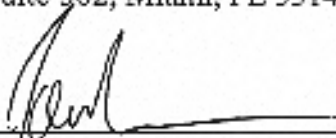
Even if plaintiffs' motion for partial summary judgment is denied, this Court can and should adjudge the facts surrounding defendants' *de jure* command authority to be "without substantial controversy" and established under FRCP 56(d). See Opening Brief at 11-12. Defendants have not disputed any of the specific facts put forth by plaintiffs in their moving papers. Accordingly, the fact of defendants' *de jure* command authority should "be deemed established, and the trial . . . conducted accordingly." FRCP 56(d).

CONCLUSION

Because defendants have failed to point to any genuine issue of material fact regarding their *de jure* command authority over the Salvadoran Military and Security Forces, partial summary judgment should be entered for plaintiffs.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to KURT R. KLAUS, JR., ESQ., 3191 Coral Way, Suite 502, Miami, FL 33145, this 27th day of March, 2001.

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