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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

AHIMSA WICKREMATUNGE, in her individual capacity and in her capacity as the legal representative of the estate of LASANTHA WICKREMATUNGE,

Plaintiff,

v.

NANDASENA GOTABAYA RAJAPAKSA,

Defendant.

Case No. 2:19-cv-02577-R-RAO

DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT PURSUANT TO RULES 12(b)(1) AND 12(b)(6), *FORUM NON CONVENIENS*, AND INTERNATIONAL COMITY

Date: Monday, September 16, 2019
Time: 10:00 am
Location: Roybal Federal Building and U.S. Courthouse
Judge: Hon. Manuel L. Real

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INTRODUCTION

This lawsuit does not belong in U.S. court. Plaintiff, a citizen and resident of Australia, challenges alleged acts by Defendant Gotabaya Rajapaksa, the former Defense Secretary of Sri Lanka, undertaken in Sri Lanka, under color of Sri Lankan law, against a citizen of Sri Lanka. As a threshold issue, this Court lacks jurisdiction because Mr. Rajapaksa is immune from suit for alleged conduct in his official capacity as Defense Secretary. Even if Plaintiff could surmount that bar, her claims would fail because Sri Lanka has by far the predominant interest in this litigation and provides an adequate alternative forum. Moreover, Plaintiff's assault on Sri Lanka's judiciary and denigration of its ongoing reconciliation process, designed to unite the nation after a violent civil war, raises serious concerns of international comity. That doctrine recognizes the unintended and potentially destructive consequences of this Court's rulings and counsels abstention

Plaintiff's claims fail for other reasons as well. Her Alien Tort Statute ("ATS") claims are impermissibly extraterritorial; she failed to exhaust Sri Lankan remedies under the Torture Victim Protection Act ("TVPA"); and she cannot state TVPA claims for torture or her own injuries. For any and all of these reasons, this lawsuit must be dismissed.

ARGUMENT

I. Defendant Is Immune Under the Doctrine of Foreign-Official Immunity

Plaintiff's version of immunity shortchanges the role of this Court. Under the law of this Circuit, this Court must conduct an "independent judicial determination" of Mr. Rajapaksa's claim of immunity and dismiss if "'all the requisites for such immunity exist[ ].'" *Doğan v. Barak* (*Doğan II*), 932 F.3d 888, 893-94 (9th Cir. 2019) (quoting *Samantar v. Yousuf*, 560 U.S. 305, 311 (2010)). *Doğan II* held that "[c]ommon-law foreign sovereign immunity extends to individual foreign officials for 'acts performed in [their] official capacity if the effect of exercising jurisdiction would be to enforce a rule of law against the state[.]'" *Id.* (citation omitted). Plaintiff attempts

to distinguish *Doğan II* on two grounds: first, that the State Department has not taken a position in this case, and second, that "the foreign state had not authorized or ratified the defendant's conduct." Opp. 4-5. These arguments cannot displace binding circuit precedent.

First, as to Plaintiff's assertion that "the State Department has not filed an SOI in this case," *id.* at 4, "[d]istrict courts are empowered to determine common law sovereign immunity without input from the Executive Branch," and "'the government need not, and should not, speak in every case.'" *In re Terrorist Attacks on Sept. 11, 2001*, 122 F. Supp. 3d 181, 186 & n.7 (S.D.N.Y. 2015) (quoting Harold Hongju Koh, *Foreign Official Immunity After Samantar: A United States Government Perspective*, 44 Vand. J. Transnat'l L. 1141, 1161 (2011)). An SOI could provide *additional* grounds to recognize Mr. Rajapaksa's immunity, but its presence or absence has no bearing on whether "the requisites for . . . immunity exist." *See Doğan II*, 932 F.3d at 893 (quoting *Samantar*, 560 U.S. at 311) (undertaking independent analysis even though there was an SOI); *see also In re Terrorist Attacks*, 122 F. Supp. 3d at 187 (recognizing immunity where "[n]either [the defendant] nor Saudi Arabia ha[d] sought a[n SOI] from the State Department").

Second, Plaintiff's argument that Sri Lanka has not requested immunity or ratified Mr. Rajapaska's actions has the law backward. Mr. Rajapaska has common-law immunity unless and until Sri Lanka waives it. *See Wultz v. Bank of China Ltd.*, 32 F. Supp. 3d 486, 497 (S.D.N.Y. 2014).[1] There is no such waiver. Plaintiff's reliance on

[1] Plaintiff suggests that this Court should find waiver because "Sri Lankan law enforcement agencies have . . . purported to investigate the attack, torture, and murder of Lasantha as a criminal act," Opp. 5 (citing FAC ¶¶ 45-52), but this position is contrary to the law. In *Wultz*, the court rejected the argument that "Israel waived immunity by encouraging Plaintiffs to bring the underlying lawsuits," reasoning that "no evidence suggests that Israel *intended* to waive Shaya's immunity with respect to *this Court's* jurisdiction." 32 F. Supp. 3d at 497 (second emphasis added).

Hilao v. Marcos, 25 F.3d 1467 (9th Cir. 1994), is thus misplaced. There, "[t]he Filipino government expressly denied that Marcos's conduct had been performed in an official capacity and urged that the lawsuits be allowed to proceed." *Doğan II*, 932 F.3d at 895-96 (citing *Hilao*). Plaintiff's effort to liken this case to *Yousuf v. Samantar (Samantar II)*, 699 F.3d 763 (4th Cir. 2012), is even further off the mark. There, the United States had issued a suggestion of *non-immunity*, in part because there was no foreign government from which immunity could derive. *Doğan II*, 932 F.3d at 897 (citing *Samantar II*). Here, a recognized government remains in place in Sri Lanka.

Doğan II is dispositive. Plaintiff alleges acts undertaken by Mr. Rajapaksa in connection with a core sovereign function: the command of security forces based on his "power to direct investigations involving 'national security' and 'terrorism,'" as well as his "sweeping powers" under various "wartime measures." FAC ¶ 21. Like the Israeli Defense Minister's command of a military operation in *Doğan II*, these are official acts attributable to the state. *See* 932 F.3d at 890-91, 893-94. Plaintiff attempts to portray the alleged conduct as private, referring to Decedent's "murder" and asserting that Mr. Rajapaksa "used government and security forces to commit his crimes." Opp. 4-5. But *all* TVPA and ATS suits allege acts that could be characterized as outside an official's authority and contrary to law. *Compare* FAC ¶ 1 (alleging that Mr. Rajapaksa "had command responsibility over [the security forces] who carried out the torture and assassination" of Decedent), *with Doğan II*, 932 F.3d at 891 (alleging that the Defense Minister "commanded the forces" that committed extrajudicial killing). Plaintiff thus invokes a *jus cogens* exception to conduct-based immunity, which the Ninth Circuit rejected in *Doğan II*. *See* 932 F.3d at 897. Such an exception "would effectively eviscerate the immunity for *all* foreign officials," because determining whether a *jus cogens* violation occurred "is inextricably intertwined with the merits of the underlying claim." *Doğan v. Barak* (*Doğan I*), No. 2:15-cv-8130, 2016 WL 6024416, at *10 (C.D. Cal. Oct. 13, 2016), *aff'd*, 932 F.3d 888.

Plaintiff's effort to formulate an alternative common-law test—whether "the established policy of the State Department [would] recognize" immunity—is likewise fruitless. *See* Opp. 4 (quoting *Samantar*, 560 U.S. at 312). The State Department has recognized immunity in many similar cases against former officials,[2] as have courts independently analyzing similar claims. *E.g.*, *Doğan II*, 932 F.3d at 893-94; *In re Terrorist Attacks on Sept. 11, 2001*, 122 F. Supp. 3d at 188 (former Saudi official immune from assault, battery, and wrongful death claims).

Finally, Plaintiff's argument that "Defendant is (and was at all relevant times) a U.S. citizen, 'enjoying the protections of U.S. law, and thus should be subject to the jurisdiction of the courts,'" is a non-starter. *See* Opp. 5 (citation omitted). *Samantar II* provides Plaintiff no support. In a suit against a permanent resident of Virginia, the State Department issued a suggestion of *non-immunity*, noting that "'U.S. residents like Samantar who enjoy the protections of U.S. law ordinarily should be subject to the jurisdiction of our courts, particularly when sued by U.S. residents' or naturalized citizens such as two of the plaintiffs." *Id.* at 767 (citation omitted). Here, there is no suggestion of non-immunity; Plaintiff is neither a U.S. resident nor citizen; and Plaintiff alleges, at most, that Mr. Rajapaksa occasionally visited this country during the relevant period, not that he was a resident "enjoying the protections of U.S. law."

II. The FAC Should Be Dismissed for *Forum Non Conveniens*

In this case, an Australian citizen and resident has sued a Sri Lankan citizen and resident for acts that allegedly occurred in Sri Lanka. The only reason this case is here

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[2] *See, e.g.*, Suggestion of Immunity, *Doğan v. Barak*, No. 2:15-cv-08130-ODW-GJS (C.D. Cal. June 10, 2016), ECF No. 48 (recognizing conduct-based immunity for former Israeli Minister of Defense as to security actions in his official capacity); Statement of Interest and Suggestion of Immunity, *Rosenberg v. Lashkar-E-Taiba*, No. 1:10-cv-05381-DLI-CLP (E.D.N.Y. Dec. 17, 2012), ECF No. 35 (recognizing conduct-based immunity for two former Directors General of the Inter-Services Intelligence of Pakistan for alleged involvement in terrorist attacks).

is that Plaintiff managed to obtain "gotcha" service while Mr. Rajapaksa was visiting. That is no reason to adjudicate it in a venue that is neither reasonable nor convenient. The case should be dismissed for *forum non conveniens*. Sri Lanka is an adequate alternative forum, and the public- and private-interest factors strongly favor dismissal.

A. Sri Lanka Is an Adequate Forum

Plaintiff does not dispute that the first prong of the adequate-forum analysis is satisfied: Mr. Rajapaksa is "amenable to service of process" in Sri Lanka, and "the entire case and all parties can come within [Sri Lanka's] jurisdiction." MTD 8. Instead, she argues that Sri Lanka does not offer her a satisfactory remedy. Opp. 6-9.

The standard for determining whether a foreign forum offers a satisfactory remedy is deliberately permissive and "easy to pass." MTD 9. The question is whether the foreign forum provides *some remedy* for Plaintiff's alleged harms—not whether Plaintiff can present the *same* claims or receive the *same* remedy as here. *See Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 254-255 (1981). Sri Lanka meets this standard.

First, Plaintiff argues that her claims are "time-barred" in Sri Lanka and thus a remedy is "unavailable." Opp. 6. But her claims are also time-barred here, under the TVPA's and ATS's ten-year statutes of limitations. Only if she successfully invokes equitable tolling can she proceed in *either* forum. In any event, this Court has authority to impose conditions on dismissal as it sees fit, including with regard to the statute of limitations in Sri Lanka if appropriate.

Second, to meet the standard, Sri Lanka need not recognize U.S.-style "civil claims for extrajudicial killing, crimes against humanity, or torture." Opp. 7. Sri Lanka need only provide some *remedy* for Plaintiff's alleged harms. Indeed, even though New Zealand had "legislated tort law out of existence," the Ninth Circuit found it an adequate forum for wrongful-death claims because it offered a far narrower form of administrative relief. *Lueck v. Sundstrand Corp.*, 236 F.3d 1137, 1143 (9th Cir. 2001) (citation omitted). Plaintiff does not dispute that she could plead her claims in a civil

action for wrongful death, assault, or battery in Sri Lanka. That is all that is required.[3]

Third, Plaintiff identifies no reason why suing here would prevent any "reprisals" in Sri Lanka. Opp. 8. She does not live in Sri Lanka, nor does she dispute that she could file her claims "*in absentia*." *Id.* And Plaintiff claims that fears of reprisal "will prevent witnesses from testifying *regardless of the forum*." Opp. 10 (emphasis added). More fundamentally, Mr. Rajapaksa has not held political office in Sri Lanka for a decade. As a former defense secretary and current presidential candidate, he has influence, but no executive or military authority. And the current government, which displaced the government in which he served, has indicted him.

Fourth, Plaintiff wrongly impugns the independence of Sri Lanka's courts. Whatever its record a decade ago, Sri Lanka's judiciary has recently weathered critical tests to its independence.[4] The State Department noted last year that "Sri Lankan 'law provides for an independent judiciary, and the government generally respect[s] judicial independence and impartiality.'" MTD 10. As to human-rights cases, the Department observed, in language Plaintiff's expert omits, "prosecutions were rare *but increasing*, as were prosecutions for government corruption and malfeasance."[5] *Cf.* Ratner Decl.

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[3] Plaintiff argues that Sri Lankan tort claims inadequately recognize the "gravity" of her TVPA and ATS claims. Opp. 7 (citing *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp. 2d 289, 337 (S.D.N.Y. 2003)). But "the requirement is that an alternative forum 'permit[] litigation of the subject matter of the dispute,' not that it attach names to the causes of action that seem to 'recognize the gravity' of the claims." *Mastafa v. Australian Wheat Bd. Ltd.*, 2008 WL 4378443, at *7 (S.D.N.Y. Sept. 25, 2008) (disavowing *Presbyterian*). And the *Presbyterian* Court's musings in *dicta* that remedies under Canadian law might not have enough "gravity" are contrary to *Lueck*.

[4] *See, e.g.*, Freedom House, *Freedom of the World 2019, Sri Lanka Country Report* (2019), https://freedomhouse.org/report/freedom-world/2019/sri-lanka (raising Sri Lanka's judicial independence score from two to three out of four).

[5] U.S. Dep't of Justice, *Sri Lanka 2018 Human Rights Report*, at 6, https://www.justice.gov/eoir/page/file/1145711/download (emphasis added). A finding from a U.S. Court denigrating that system, and that progress, would potentially undermine the progress and conflict with U.S. policy. *See infra* pp. 9-10.

¶ 18. This judgment merits deference. In any case, Plaintiff's general and largely dated criticisms do not clear the high bar of "powerful" and specific evidence that a forum is inadequate for judicial corruption. *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d 1163, 1179 (9th Cir. 2006). Overall appraisals of criminal justice systems—like those Plaintiff cites—"provide[] insufficient substance to condemn the adequacy of [that country's] courts"—especially "in the face of" conflicting expert evidence. *Id.*; *see also* de Silva Decl. ¶¶ 3.36-3.41 (noting Sri Lanka's judicial independence).[6]

Fifth, Plaintiff cannot show that her case would be so delayed that Sri Lanka offers "no remedy at all." *Piper Aircraft*, 454 U.S. at 254. Plaintiff claims that "cases such as hers . . . face significant delays of up to 30 years." Opp. 9. Having waited more than 14 years to sue, Plaintiff is hardly in a position to cite delay as a factor in her favor. Regardless, Plaintiff's claim of judicial delay, like her attack regarding judicial independence, is far too general to show that Sri Lanka's courts are inadequate. *Tuazon*, 433 F.3d at 1179. Indeed, the cited portions of her expert reports address only general delays in *criminal* cases. Mendez Decl. ¶¶ 20-24, Ratner Decl. ¶¶ 15, 19. Nor do the paragraphs addressing Decedent's death meet the specificity standard. They refer to delays in the investigation into his death, Mendez Decl. ¶ 25, Ratner Decl. ¶ 21, but that does not support claims that Plaintiff's civil suit will suffer delays of "up to 30 years"—especially given that Plaintiff has already "successfully petition[ed]" a Sri Lankan court to order an investigation in this very case, FAC ¶ 48.

B. Plaintiff's Choice of Forum Is Entitled to Little Deference

Because Plaintiff does not live in the United States, her choice of forum

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[6] *Hassen v. Nahyan*, 2010 WL 9538408 (C.D. Cal. Sept. 17, 2010), the only case Plaintiff cites, Opp. 9, found the UAE an inadequate forum because the defendants were members of the ruling family, *id.* at *19; the law barred criticism of them, *id.*; most judges were foreign "and thus subject to effective removal from office via deportation," *id.*; plaintiff resided in California, *id.* at *9; and the private convenience factors did not favor either party, *id.* at *21. Plaintiff makes no such showing here.

"deserves less deference," *Piper Aircraft*, 454 U.S. at 256, and Mr. Rajapaksa's burden to demonstrate inconvenience is correspondingly "reduced," *Lueck*, 236 F.3d at 1145. Plaintiff states that her choice of forum "was necessary to obtain jurisdiction over Defendant." Opp. 10. That is not correct. There is no dispute that Sri Lanka has jurisdiction over Mr. Rajapaksa. Plaintiff obtained "gotcha" jurisdiction by serving him here while he was visiting. That does not justify keeping the case here.

C. The Public and Private Interests Strongly Favor Dismissal

The public and private interests weigh strongly in Mr. Rajapaksa's favor. This case has no connection to California and strong connections to Sri Lanka, and Sri Lanka is an overwhelmingly more convenient forum for all involved. MTD 12-17.

As for public-interest factors, Plaintiff asserts that California has a stronger interest in this lawsuit because the State is "the nation's largest resettlement destination for torture survivors." Opp. 11. But Plaintiff does not live in California, and the State has no connection with alleged acts undertaken in Sri Lanka by one Sri Lankan resident against another. Moreover, unlike California, Sri Lanka has a strong interest in adjudicating a dispute that intersects with an ongoing criminal investigation there. Plaintiff's remaining public-interest arguments, *id*. at 11-12, provide no counterweight. She does not dispute that this case turns on Sri Lankan law, MTD 13, that it will burden the Court and jury, *id.*, and that litigating it here will be expensive, MTD 14. While claiming that Sri Lankan courts are more congested than this District, Opp. 11, Plaintiff does not dispute that Sri Lanka has implemented reforms to improve judicial efficiency and case management. MTD 11.

Nor does Plaintiff counter the strong public interest of Sri Lankan courts in implementing their government's approach to internal rapprochement. MTD 14-15. Adjudicating this Sri Lankan dispute in California would threaten this process in ways this Court could not foresee. It not only would disparage the Sri Lankan judiciary, but also deprive it of the opportunity "pass judgment on behalf of its own people." *Id*.

(citing *In re Union Carbide Corp.*, 634 F. Supp. 842, 867 (S.D.N.Y. 1986)).

As for private-interest factors, Plaintiff concedes that neither party lives in California, that all the evidence and witnesses are in Sri Lanka, and that Sri Lankan courts are better able to compel the production of evidence and witnesses. Opp. 10. While claiming that fear of reprisal may deter some witnesses from participating, she admits this could happen "regardless of the forum." *Id.* As for cost, enforceability of any judgment, and other practical problems of trying this foreign dispute in California, Plaintiff baldly asserts that these factors "are in equipoise." Opp. 11. In fact, litigating this case in California would be extremely costly and difficult. MTD 17.

III. The FAC Should Be Dismissed Based on Principles of Comity

The same factors discussed with regard to *forum non conveniens* dictate dismissal based on comity, albeit for slightly different reasons. Comity, the "golden rule among nations," "rests on respect for the legal systems of members of the international legal community—a kind of international federalism—and thus 'serves to protect against unintended clashes between our laws and those of other nations which could result in international discord.'" *Mujica v. AirScan Inc.*, 771 F.3d 580, 605, 608 (9th Cir. 2014) (citation omitted).

Since its devastating, decades-long civil war, Sri Lanka has made national reconciliation a priority, and in 2015, "announced an ambitious transitional justice plan." FAC ¶ 58. The United States has encouraged Sri Lanka's commitment "to promote reconciliation, accountability, justice, and human rights in pursuit of lasting peace and prosperity."[7] Dismissal of this case is necessary to avoid interfering with Sri Lanka's chosen path toward national rapprochement and U.S. support for these efforts.

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[7] *See, e.g.*, U.S. Dep't of State, *Joint Statement from the Third United States-Sri Lanka Partnership Dialogue* (May 17, 2019), https://www.state.gov/joint-statement-from-the-third-united-states-sri-lanka-partnership-dialogue/.

IV. Plaintiff's Claims Are Barred for Multiple Other Reasons

A. The ATS Claims Fail Because They Are Entirely Extraterritorial

The FAC contains not a single allegation of domestic conduct. Under *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013), "that is simply the end of the matter." *AirScan*, 771 F.3d at 594 (citation omitted).

AirScan, 771 F.3d at 594 n.9, forecloses Plaintiff's argument that Mr. Rajapaksa's U.S. citizenship at the time of the alleged acts "establish[es] jurisdiction under the ATS," Opp. 13. Plaintiff casts *AirScan*'s contrary analysis as "dicta" because the defendants were corporations, not natural persons. Opp. 16. But *AirScan* discussed at length its conclusion that a "U.S. citizenship or corporate status" cannot rebut the presumption against extraterritoriality. *See* 771 F.3d at 594-96. "Reasoning central to a panel's decision" is not dicta. *Garcia v. Holder*, 621 F.3d 906, 911 (9th Cir. 2010).[8]

Plaintiff's reliance on a 1794 letter by Attorney General William Bradford (the "Bradford Letter"), Opp. 14, is also misplaced. As explained in *Kiobel*, the Bradford Letter does not demonstrate congressional intent that the ATS "provide a cause of action for conduct occurring in the territory of another sovereign." *Kiobel*, 569 U.S. at 124; *accord AirScan*, 771 F.3d at 596 (Bradford Opinion "too slender a reed" for a "broad assertion of ATS jurisdiction" over all U.S. citizens). Plaintiff's belief that the Supreme Court and Ninth Circuit "misinterpret[ed]" the Letter, Opp. 14 n.11, cannot displace binding precedent. *Hart v. Massanari*, 266 F.3d 1155, 1175 (9th Cir. 2001).

Plaintiff further claims that "[c]ourts post-*Kiobel* have recognized" the ATS's aim of "ensur[ing] accountability when a U.S. citizen engages in international torts in other nations' territory." Opp. 15. To the contrary, since *Kiobel*, *every* "federal appellate" court and *every* "district court except one" "has rejected the view" that ATS

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[8] Although Plaintiff cites the international law distinction "between corporations and natural persons," Opp. 16, *Kiobel* rested not on international law, but on an aversion to "unwarranted . . . interference in the conduct of foreign policy." 569 U.S. at 116.

jurisdiction exists when the sole contact with the United States is the defendant's citizenship. *AirScan*, 771 F.3d at 594 & nn.10-11 (citing cases).

Plaintiff's last refuge, a request for jurisdictional discovery seeking relevant conduct here by Mr. Rajapaksa, is likewise baseless. Opp. 15-16. A request for jurisdictional discovery fails when, as here, it rests "on little more than a hunch that it might yield jurisdictionally relevant facts." *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008). The FAC contains no allegation—even "on information and belief"—of relevant domestic conduct. Plaintiff's insistence that it is "*likely* that Defendant performed" *some* relevant "acts" here, Opp. 16 (emphasis added), is pure speculation. This "attenuated" claim, not even embodied in "bare allegations" of the FAC, cannot justify discovery. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1160 (9th Cir. 2006).

B. Plaintiff's Failure to Exhaust Local Remedies Bars Her TVPA Claims

Plaintiff does not—and cannot—deny her failure to exhaust remedies in Sri Lanka before suing here. MTD 21-22. Instead, she argues that "any remedy in Sri Lanka would be unobtainable." Opp. 17.[9] As shown above, that is incorrect. *Supra* pp. 5-8. Plaintiff's remedies in Sri Lanka are "adequate and available" under the TVPA, 28 U.S.C. § 1350 note, for the same reasons they are adequate under *forum non conveniens*. *See Corrie v. Caterpillar, Inc.*, 403 F. Supp. 2d 1019, 1025-26 (W.D. Wash. 2005) (applying *forum non conveniens* standard), *aff'd*, 503 F.3d 974 (9th Cir. 2007). Her failure to exhaust those remedies bars her TVPA claims.

C. Plaintiff Cannot Bring Claims for Torture or Her Own Injuries

The plain text of the TVPA forecloses two subsets of Plaintiff's claims: (1)

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[9] Plaintiff incorrectly asserts a "presumption" of exhaustion. Opp. 17. But the Senate committee report accompanying the TVPA states, in a portion that Plaintiff omits when citing it: "Once the defendant makes a showing of remedies abroad which have not been exhausted, the burden shifts to the plaintiff to rebut by showing that the local remedies were ineffective, unobtainable, unduly prolonged, inadequate, or obviously futile." *Hilao*, 103 F.3d at 778 n.5 (quoting S. Rep. No. 102-249, at 9-10 (1991)).

TVPA claims she purports to bring on Decedent's behalf for torture, in addition to extrajudicial killing, and (2) TVPA claims based on her own injuries.

Plaintiff is right that Congress created two causes of action under the TVPA—torture and extrajudicial killing—but wrong that her potential recovery "encompasses damages for both causes without limitation." Opp. 19. The relevant "limitation[s]" appear in the statute itself: a cause of action for torture is available to individuals who were tortured, and a cause of action for extrajudicial killing to the decedent's legal representative and "any person who may be a claimant in an action for wrongful death." 28 U.S.C. § 1350 note. Had Congress intended to permit a legal representative or wrongful-death claimant to sue for torture of another, it knew how to say so.

With respect to claims for her own injuries, Plaintiff notes the general principle that wrongful death and survival claims can proceed in the same action. Perhaps so, but that does not mean that the *TVPA* permits them. The TVPA provides a plaintiff who was not herself tortured with *one* cause of action, for extrajudicial killing on another's behalf. In seeking to recover for her own injuries, Plaintiff asks this Court to create a new, extra-textual cause of action for relatives of torture victims and those subject to extrajudicial killing. Such a request is properly directed to Congress.

CONCLUSION

For these reasons and as set forth in Mr. Rajapaksa's opening brief, the Court should dismiss the FAC in its entirety and with prejudice.

Dated: September 3, 2019 ARNOLD & PORTER KAYE SCHOLER LLP

By: /s/ John C. Ulin
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CERTIFICATE OF SERVICE

I certify that on September 3, 2019, I electronically filed the foregoing **DEFENDANT'S REPLY IN SUPPORT OF MOTION TO DISMISS** with the Clerk by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Maria Hansen

Maria Hansen