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June 24, 2005

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**JOSE OSCAR CHAVEZ, ANA PATRICIA CHAVEZ, ET AL V. NICOLAS CARRANZA**  
**U.S. D.C. No. 03-2932 MIP**  
**Our File No. 25514**

Dear Counsel:

I am forwarding to you at this time the following documents filed with the Court on this date:

1. Answer and Affirmative Defenses;
2. Affidavit of the Defendant;
3. Motion of the Defendant, Nicolas Carranza, for Judgment on the Pleadings and, in Addition Thereto, or in the Alternative, for Summary Judgment;
4. Defendant's Memorandum In Support of Defendant's Motion for Summary Judgment; and,
5. Defendant's Statement of Material Facts That Cannot Be Disputed

Please feel free to call, if you have any questions.

Sincerely yours,

FARGARSON & BROOKE



Robert M. Fargarson

RF/ca

cc: Mr. Nicolas Carranza

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

---

**ANA PATRICIA CHAVEZ, CECILIA  
SANTOS, JOSE FRANCISCO CALDERON,  
JANE DOE and JOHN DOE,**

**Plaintiffs,**

**VS.**

**NO. 03-2932 MIP**

**NICOLAS CARRANZA,**

**Defendant.**

---

**ANSWER AND AFFIRMATIVE DEFENSES**

---

**NOW COMES** the Defendant, Nicolas Carranza, and for his pleas, answer and affirmative defenses to the Second Amended Complaint herein filed, respectfully shows and states to the Court the following:

**FIRST DEFENSE**

1. The Complaint fails to state a claim upon which relief can be granted to the Plaintiffs against the Defendant in this cause.

**SECOND DEFENSE**

2. For affirmative defense to the claims of the Plaintiff, the Defendant herein alleges that the claims of the Plaintiff are time-barred, because they were not timely filed in accordance with the statutory period permitted by law and statutes, to file such claim or demands. The Defendant states that, pursuant to the Torture Victim Protection Act of 1991 (Pub. L. 102-256, March 12, 1992, 106 Statute 73) or the Alien Protection Act, the claims and demands should have been

**IN THE UNITED STATE DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

---

**JOSE OSCAR CHAVEZ, ANA PATRICIA  
CHAVEZ, HAYDEE DURAN, CECILIA  
SANTOS, JOSE FRANCISCO CALDERON,  
JANE DOE I, JANE DOE II and JOHN DOE,**

**Plaintiffs,**

**VS.**

**NO. 03-2932 MIP**

**NICOLAS CARRANZA,**

**Defendant.**

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**ANSWER AND AFFIRMATIVE DEFENSES**

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**NOW COMES** the Defendant, Nicolas Carranza, and for his pleas, answer and affirmative defenses to the Second Amended Complaint herein filed, respectfully shows and states to the Court the following:

**FIRST DEFENSE**

1. The Complaint fails to state a claim upon which relief can be granted to the Plaintiffs against the Defendant in this cause.

**SECOND DEFENSE**

2. For affirmative defense to the claims of the Plaintiff, the Defendant herein alleges that the claims of the Plaintiff are time-barred, because they were not timely filed in accordance with the statutory period permitted by law and statutes, to file such claim or demands. The Defendant states that, pursuant to the Torture Victim Protection Act of 1991 (Pub. L. 102-256, March 12, 1992, 106 Statute 73) or the Alien Protection Act, the claims and demands should have been

made within ten (10) years from the occurrence and the claims made by the Plaintiff were not made until approximately eighteen (18) years following the occurrences.

Furthermore, the Defendant Carranza has not personally secreted himself or hidden from civil or law enforcement authorities, but has permanently resided in the City of Memphis, Tennessee, since 1985. He has, likewise, had regular employment, a permanent residence address in Memphis, Tennessee, and has been a naturalized citizen of the United States since 1991. He has, therefore, been continuously available for service of process in Memphis, Tennessee, since 1985 and has not tried to conceal his identity or location during such period of time.

### **THIRD DEFENSE**

3. The Defendant further relies upon the Doctrine of Laches as a defense to the various Plaintiffs' failures to file the claims against him made in this cause. The Plaintiff, Cecilia Santos, has resided in the United States in either New York or California since 1983 and could have pursued legal action against the Defendant well within the statutory period of time, which she failed to do, until she heard about a case involving Vides Casanova and made contact with the Center of Justice and Accountability through a friend in the summer of 2003.

The Plaintiff, Jose Calderon, is a resident of San Francisco, California, citizen of the United States since 1986, and a resident of the United States since February of 1981 and has obviously had access to the United States Courts. The Defendant had not committed any acts to prevent Plaintiff Calderon from taking any legal action.

The Plaintiff, John Doe, has resided in Sweden since April of 1986. During the same period of time, the Defendant Carranza has resided in the United States and has not committed any act to prevent John Doe from pursuing actions in a timely fashion. Nevertheless, John Doe, allegedly did not take any action until he saw something on the news and contacted the Center

for Justice and Accountability at the beginning of 2004, well beyond the statutory period of time for commencing legal action. The Defendant has not committed any acts to prevent Plaintiff John Doe from taking any legal action.

The Plaintiff, Ana Patricia Chavez, is a resident of Van Nuys, California and a permanent resident of the United States. She has resided in the United States for more than twenty-four (24) years as of December of 2004 and, as a resident of the United States, had access to the Courts of the United States. The Defendant Carranza has not concealed himself during that period of time nor committed any acts to prevent this Plaintiff from commencing legal action against him within the period of time provided by the statutes.

Plaintiff, Jane Doe, previously identified as Jane Doe II, is the only Plaintiff that is a resident of El Salvador. Jane Doe's claim is based upon the death of her husband, which occurred in November of 1980. The Defendant Carranza has not taken any action to conceal himself during the period of time that the Plaintiff's cause of action arose and has likewise not taken any action to hinder Jane Doe or prevent Jane Doe from commencing legal action within the statutory period of time, which she did not do.

#### **FOURTH DEFENSE**

4. The Defendant Carranza affirmatively states that he has not undertaken any action to personally conceal or hide the claims of the Plaintiffs or to prevent them from commencing legal action against him during the entire period of time he has been in the United States and available for service of process and legal action in the Courts of the United States.

#### **FIFTH DEFENSE**

5. The Complaint and claims of the Plaintiffs pursue remedies in violation of the sovereign laws of El Salvador, which should be given full faith and credit under laws of the United States of America or, otherwise, the United States of America should grant comity to the

sovereign laws of El Salvador. The Defendant alleges that, on January 16, 1992, a Peace Accord was signed by the governing bodies of El Salvador and the opposing guerilla organizations to the government of El Salvador. The Peace Accord was the result of the participation of member nations of the United Nations and sponsored by the United Nations, and the United States of America was a participant in reaching the Peace Accord. In March of 1993, the Legislature of El Salvador signed into law an Amnesty Agreement. The Amnesty Agreement precluded criminal and civil liability for anyone who had committed a political or common crime prior to 1992.

The Defendant alleges that the allegations and claims of the Plaintiffs are, therefore, barred under the sovereign law of El Salvador following the Peace Accord Agreement ratified by the government of El Salvador and that the United States of America should not ignore the sovereign laws of El Salvador but should give them full faith and credit and recognize them as comity between nations, especially since the United States was a proponent and participant in the Peace Accord, along with the El Salvador government. The Defendant alleges that, under the Doctrine of Comity, and the Doctrine of Full Faith and Credit, which should recognize the sovereign laws of a nation, the claims should be barred or non-existent.

#### SIXTH DEFENSE

6. For further affirmative defense to the claims of the Plaintiffs herein, the Defendant alleges that the claims of the respective Plaintiffs made eighteen to twenty (18-20) years following the occurrence of the events, denies the Defendant of due process of law and equal protection of the law. While the claims are allegedly civil remedies in nature, the language of the claims involve criminal conduct and, due to the lapse of time, witnesses with knowledge of the full facts and circumstances, who could testify and give credible evidence of the facts have died, moved or otherwise been displaced and, during such period of time, the Defendant Carranza has been a resident and citizen of the United States and the passage of time and

distance from El Salvador now prevents him from being able to offer the best possible witnesses and defenses and denies him due process of law and equal protection of law with the right to produce competent evidence in his defense and he relies upon a denial of due process and equal protection of the law in full bar of the claims of the Plaintiffs.

#### **SEVENTH DEFENSE**

7. Now, responding to the general allegations of the respective Plaintiffs' complaints' herein, the Defendant admits the nature of the Plaintiffs' claims but denies the merit of such claims and further denies that he is responsible to the Plaintiffs for damages upon the basis of the claims made or the acts complained of by the Plaintiffs.

8. Responding to Paragraph 2 of the Plaintiffs' Complaint, the Defendant Carranza admits that he was a member of the Salvadoran military, but denies all other allegations of Paragraph 2 of the Second Amended Complaint.

9. Responding to Paragraph 3 of the Plaintiffs' Complaint, the Defendant denies the Plaintiffs' claim of his liability and denies that the Court should exercise jurisdiction because the causes of action are not timely but are time-barred or barred by the statute of limitations, the Doctrine of Laches and further barred by the Doctrine of Full Faith and Credit, which should be given to the sovereign laws of El Salvador as hereinabove stated in Defendant's affirmative defenses.

10. Responding to Paragraph 4 of the Plaintiffs' Complaint, the Defendant admits that he is a resident of Memphis, Tennessee and the Defendant admits that venue would be proper, if the Plaintiffs had proper causes of action, which is denied.

11. Answering Paragraph 6, the Defendant admits the allegations with regard to the position he held, but otherwise denies all other allegations contained in the subsection, and he

especially denies the allegations with regard to the allegations of his power and authority and strict proof is demanded.

12. Answering Paragraph 7, the Defendant admits the allegations concerning his position, but denies all other allegations contained therein and demands strict proof thereof.

13. Responding to Paragraph 8 of the Complaint, the Defendant does not have any personal knowledge and denies all allegations and demands strict proof.

14. Responding to Paragraph 9 of the Complaint, the Defendant does not have any personal knowledge and denies all allegations and demands strict proof.

15. Responding to Paragraph 10 of the Complaint, the Defendant does not have any personal knowledge and denies all allegations and demands strict proof.

16. Responding to Paragraph 11 of the Complaint, the Defendant does not have any personal knowledge and denies all allegations and demands strict proof.

17. Responding to Paragraph 12 of the Complaint, the Defendant does not have any personal knowledge and denies all allegations and demands strict proof.. The Plaintiff John Doe has resided in Sweden and, during such period of time, he has not been harmed or threatened in the many years he has been there. It is, therefore, believed that his fears are fictional, rather than real, but in any event, the Defendant has not taken any action to prevent the said John Doe from using appropriate legal processes available to him in the United States of America, where the Defendant resides.

18. The allegations of Paragraph 13 are denied and strict proof demanded so as to make issue for trial, except the Defendant admits his position.

19. The allegations of Paragraph 14 are denied and strict proof demanded so as to make issue for trial.



20. Responding to the allegations of Paragraph 15, the Defendant admits the existence of the civil war between the forces of the government of El Salvador and communists, and guerilla forces backed by communists to take control of the country of El Salvador. All other allegations are denied and strict proof demanded so as to make issue for trial, with the exception that it is also admitted that various groups prepared reports about the strife in El Salvador and it is admitted that there was a Peace Accord agreed upon in January of 1992 as hereinabove set forth in the Defendant's affirmative defenses.

21. The allegations of Paragraph 16 are denied and strict proof demanded, although it is not denied that members of the FDR were killed.

22. The allegations of Paragraph 17 are admitted as to a Coup and Junta. All other allegations are denied and strict proof demanded.

23. The allegations of Paragraph 18 are denied and especially, the conclusions are denied and strict proof thereof demanded.

24. The allegations of Paragraph 19 are admitted as to information regarding the identity of the persons named only. All other allegations are denied and strict proof demanded.

25. The allegations of Paragraph 20 are denied with regard as to who was responsible for the deaths of the individuals and who committed the acts.

26. With regard to the allegations of Paragraph 21, the language used by the Truth Commission is not denied; however, all other allegations are denied, except such language, and strict proof thereof demanded.

27. Paragraph 22 is denied and strict proof demanded so as to make issue for trial.

28. With regard to the allegations and claims of the Plaintiff, Ana Patricia Chavez, in Paragraphs 23, 24, 25, 26, 27, 28, 29 and 30, said allegations are denied and strict proof

demanded. The Defendant denies any personal knowledge of the events and further denies that he ordered any such actions alleged by the Plaintiff.

29. Responding to the allegations of the Plaintiff, Cecilia Santos, in the allegations of Paragraphs 31, 32, 33, 34, 35, 36, 37 and 38, the Defendant denies any personal knowledge of the events alleged and further denies that he ordered or conspired with others to commit such actions or events and demands strict proof of each and every allegation therein contained so as to make issue thereon for trial.

30. With regard to the claims and allegations of the Plaintiff, Francisco Calderon, the Defendant does not have any personal knowledge of such allegations or claims and, therefore, denies each and every allegation made in Paragraphs 39, 40, 41, 42 and 43, so as to make issue thereon for trial.

31. Responding to the allegations and claims of the Plaintiff, Jane Doe, the Defendant does not have any personal knowledge or special knowledge concerning her allegations so as to be able to admit them, so each and every allegation made by such Plaintiff in Paragraphs 44, 45, 46, 47, 48 and 49 are denied and strict proof demanded.

32. Responding to the allegations of the Plaintiff designated John Doe, the Defendant is without personal knowledge or special knowledge concerning the allegations of Paragraphs 50, 51, 52, 53, 54, 55 and 56, so each and every allegation contained therein is denied and strict proof thereof demanded. The Defendant admits, however, that he did see the said John Doe in a jail cell and inquired as to "why he was there". The Defendant otherwise denies the statement "We kill guerilla fighters" as claimed by said Plaintiff. The Defendant also states that he released the said Plaintiff John Doe from his jail cell and allowed him to talk to representatives of the press freely and allowed him to say anything he wanted to say and that, on an additional occasion, the Defendant released said Plaintiff from his jail cell on two (2) occasions to be

interviewed by representatives of the United States Naval Intelligence and the United States Federal Bureau of Investigation in a private residence, where he was alone with the aforesaid representatives.

33. The allegations of Paragraph 58 are believed to be true, and the Defendant alleges that the only information and belief is that he understands that the said Plaintiff has been a resident of Sweden since the mid-1980s.

34. Paragraph 59 is denied and strict proof demanded.

35. With regard to Paragraph 60 of the Plaintiffs' Complaint, the Defendant admits his title and positions alleged, but denies all other allegations.

36. With regard to Paragraph 61, the Defendant admits his title but denies all other allegations contained in the Complaint and the conclusions made by the Plaintiffs.

37. The allegations of Paragraph 62 of the Plaintiffs' Complaint are denied.

38. The allegations of Paragraph 63 of the Plaintiffs' Complaint are denied.

39. The allegations of Paragraph 64 of the Plaintiffs' Complaint are denied.

40. The allegations of Paragraph 65 of the Plaintiffs' Complaint are denied.

41. The allegations of Paragraph 66 of the Plaintiffs' Complaint are denied and strict proof thereof demanded.

42. The allegations of Paragraph 67 of the Plaintiffs' Complaint are denied and strict proof thereof demanded.

43. The allegations of Paragraph 68 of the Plaintiffs' Complaint are denied.

44. Responding to the allegations of Plaintiffs' claim that the statute of limitations should be equitably tolled, the Defendant adopts and reiterates his prior pleadings herein and alleges that the Plaintiffs could have commenced an action in the United States within the period of time allowed by statutes, but failed to do so. He further alleges that he did nothing to prevent the

Plaintiffs from exercising any lawful, legal rights, which they possessed. The allegations of Paragraph 69 are, therefore, denied and strict proof demanded.

45. The allegations of Paragraph 70 are denied and strict proof demanded.

46. The allegations of Paragraph 71, 72, 73, 74 and 75 are denied, with the exception that March of 1994 was a time of election after the Peace Accord. The other allegations are denied.

47. The allegations of Paragraph 76 are denied.

48. The allegations of Paragraph 77 are denied.

49. The allegations of Paragraph 78 are denied.

50. Responding to the allegations concerning the absence of remedies in El Salvador, the allegations of Paragraph 79 are denied, with the exception that in March of 1993, the Salvadoran Legislature adopted a broad, unconditional amnesty and peace accord. It is admitted that the Amnesty Agreement and Peace Accord abolished claims for civil or criminal liability for individuals who had participated in the commission of political crimes and common crimes prior to January 1, 1992 and it is admitted that the law precludes all liability under the laws of El Salvador for those responsible for the abuses perpetrated against the Plaintiffs, whoever they are. Consequently, since a Peace Accord is recognized by the Plaintiffs to be a proper law of El Salvador, the Courts of the United States should recognize, by comity, the sovereign laws of El Salvador and not permit Plaintiffs to bring causes of action, which could not be brought in El Salvador and to recognize the law and give it full faith and credit as the law of the nation, rather than attempting to undermine the law for any reason.

51. Responding to the Plaintiff Ana Patricia Chavez' claim for relief, the Defendant adopts, reiterates and incorporates by reference all of his prior pleadings herein and denies the allegations of the Plaintiff in regard to Paragraph 80, 81, 82, 83, 84, 85, 86 and 87 and demands strict proof thereof so as to make issue thereon for trial.

52. Responding to the Plaintiff Ana Patricia Chavez' second claim for relief, the Defendant adopts, reiterates and incorporates by reference all of his affirmative defenses herein contained and, in addition thereto, denies the allegations of Paragraphs 88, 89, 90, 91, 92, 93, 94 and 95.

53. With regard to the third claim for relief of Plaintiff Ana Patricia Chavez, the Defendant adopts, reiterates and incorporates by reference all of his affirmative defenses and prior pleas and defenses stated herein and, in addition thereto, denies the allegations of Paragraphs 96, 97, 98, 99, 100, 101, 102, 103 and 104 and demands strict proof thereof.

54. With regard to the fourth claim for relief of Plaintiff Ana Patricia Chavez, the Defendant adopts, reiterates and incorporates by reference all of his affirmative defenses stated herein and his general pleas and, in addition thereto, denies the allegations of Paragraphs 105, 106, 107, 108, 109, 110 and 111 and demands strict proof thereof.

55. Now, responding to the fifth claim for relief of Plaintiff Cecilia Santos, the Defendant adopts, reiterates and incorporates by reference his prior affirmative defenses hereinabove set forth and his general pleas and denies the allegations of Paragraphs 112, 113, 114, 115, 116, 117, 118, 119 and 120.

56. Responding to the allegations of the sixth claim for relief of Plaintiff Francisco Calderon, the Defendant adopts, reiterates and incorporates by reference all of his affirmative defenses and general pleadings and defenses hereinabove set forth and, in addition thereto, denies the allegations of Paragraphs 121, 122, 123, 124, 125, 126, 127 and 128 and demands strict proof thereof.

57. Responding to the allegations of the seventh claim for relief of Plaintiff Francisco Calderon, the Defendant herein adopts, reiterates and incorporates by reference his prior pleas hereinabove set forth, including his affirmative defenses and his general pleadings and, in

addition thereto, denies the allegations of Paragraphs 129, 130, 131, 132, 133, 134, 135, 136 and 137 and demands strict proof thereof.

58. Responding to the allegations of the Plaintiff Jane Doe, constituting her eighth claim for relief, the Defendant herein reiterates, restates, readopts and incorporates by reference and reaffirms his affirmative defenses and general pleadings hereinabove set forth and, in addition hereto, denies the allegations of Paragraphs 138, 139, 140, 141, 142, 143, 144 and 145 and demands strict proof thereof so as to make issue thereon for trial.

59. Responding to the Plaintiff Jane Doe's allegations in her ninth claim for relief, the Defendant adopts, restates, reaffirms and incorporates by reference and reiterates his prior affirmative defenses and general pleadings hereinabove set forth and, in addition thereto, denies the allegations of Paragraphs 146, 147, 148, 149, 150, 151 and 152 and demands strict proof thereof.

60. Responding to the allegations of Plaintiff John Doe's tenth claim for relief, the Defendant herein reiterates, adopts and incorporates by reference and reaffirms and restates his affirmative defenses and general pleadings in response hereto and, in addition thereto, denies the allegations of Paragraphs 153, 154, 155, 156, 157, 158, 159, 160 and 161 and demands strict proof thereof.

61. Responding to the Plaintiff John Doe's eleventh claim for relief, the Defendant adopts, reiterates, restates and incorporates by reference his affirmative defenses and general pleadings hereinabove set forth and, in addition thereto, denies the allegations of Paragraphs 162, 163, 164, 165, 166, 167 and 168 and demands strict proof thereof so as to make issue thereon for trial.

62. Responding to the Plaintiffs' prayer for relief herein, the Defendant denies that Plaintiffs are entitled to the relief sought by them and demands strict proof thereof.

63. All of the matters neither here and above expressly denied, admitted or explained are now denied to the same extent as if strictly controverted.

NOW, having responded to the Plaintiffs' Complaint herein, the Defendant prays judgment of the Court that he be dismissed.

Respectfully Submitted,



ROBERT M. FARGARSON (#8420)  
FARGARSON & BROOKE  
Attorneys for Defendant  
65 Union Avenue, 9<sup>th</sup> Floor  
Post Office Drawer 3543  
Memphis, Tennessee 38173-0543  
(901) 523-2500

**CERTIFICATE OF SERVICE**

I, Robert M. Fargarson, do hereby certify that a copy of the foregoing was forwarded, via U.S. Mail, postage prepaid, and via facsimile, on this the 24<sup>th</sup> day of June, 2005, to:

Attorney David R. Esquivel, Esq.  
AmSouth Center  
315 Deaderick Street, Suite 2700  
Nashville, TN 37238-3001

Counsel for Plaintiffs

Matthew J. Eisenbrandt, Esq.  
870 Market Street, Suite 684  
San Francisco, CA 94102

Counsel for Plaintiffs

Carolyn Patty Blum, Esq.  
291 West 12th Street  
New York, NY 10014

Counsel for Plaintiffs



ROBERT M. FARGARSON

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

---

**ANA PATRICIA CHAVEZ, CECILIA  
SANTOS, JOSE FRANCISCO CALDERON,  
JANE DOE and JOHN DOE,**

**Plaintiffs,**

**VS.**

**NO. 03-2932 MIP**

**NICOLAS CARRANZA,**

**Defendant.**

---

**AFFIDAVIT OF THE DEFENDANT**

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STATE OF TENNESSEE    )  
COUNTY OF SHELBY    )

I, Nicolas Carranza, Defendant in the above captioned matter, do hereby make this Affidavit in support of my Motion for Summary Judgment.

I am a resident citizen of Memphis, Shelby County, Tennessee.

I have resided in the United States of America since 1985 and I became a naturalized citizen of the United States of America in 1991.

I obtained a real estate license and worked in real estate for several years for Tom Rochford, who owned a real estate company.

In 1992, I began working at the Memphis Brooks Museum of Art, as a security guard, after which I became a console operator to protect the premises by means of a closed circuit camera system, which showed various areas and locations upon the premises and the actions of visitors, who came on the premises.



After serving in the capacity of Security Console Operator, I was promoted to Supervisor of Security. I then became Chief of Security and later Manager of the Museum Facilities until I retired in 2001.

Since 1985, I have not been known by any aliases nor have I undertaken to change my identity or to secrete myself or hide. I have resided at the same address, 6530 Red Birch Drive, in Memphis, Tennessee, 38115, since April of 1985. I have not tried to hide my identity. I have a Social Security number, Tennessee driver's license and listed in the phone book at the same address in Memphis, Tennessee for twenty (20) years.

I do further state that the only Plaintiff involved in this lawsuit of whom I have any awareness is John Doe, who stated in his deposition that he has been a resident of Sweden since the mid-1980s. I only remember him because he confessed to the killing of a United States Naval attaché in El Salvador and he was interviewed by news media and journalists. I do recall allowing him to leave his cell and freely speak to a news journalist. He was not under any compulsion by me and could have revoked his confession at that time. He was later allowed to speak with a Salvadoran Magistrate or Judge and was also permitted to talk to a United States FBI agent and a United States Intelligence Officer. He was not compelled or coerced to say anything, but he again confessed to the murder.

I have not had any personal contact and do not know any of the other Plaintiffs and my contact with John Doe was very limited. I have not threatened or coerced any of the Plaintiffs nor have I asked or requested anyone to threaten or coerce the Plaintiffs. I have been in the United States since 1985 and have not undertaken, in any manner, to prevent any Plaintiff from pursuing any legal remedy they might have chosen to take.

The above statements are true to the very best of my knowledge, information and belief.

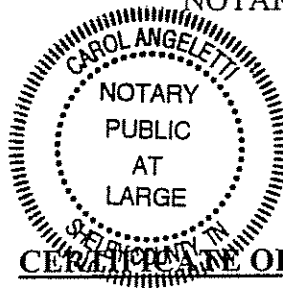
This the 23<sup>rd</sup> Day of June, 2005.

Nicolas Carranza  
NICOLAS CARRANZA

SWORN TO AND SUBSCRIBED before me this the 23<sup>rd</sup> day of June, 2005.

Carol Angeletti  
NOTARY PUBLIC

My Commission Expires:  
**MY COMMISSION EXPIRES:**  
**January 29, 2008**



**CERTIFICATE OF SERVICE**

I, Robert M. Fargarson, do hereby certify that a copy of the foregoing was forwarded, via U.S. Mail, postage prepaid, and via facsimile, on this the 24<sup>th</sup> day of June, 2005, to:

Attorney David R. Esquivel, Esq.  
AmSouth Center  
315 Deaderick Street, Suite 2700  
Nashville, TN 37238-3001

Counsel for Plaintiffs

Matthew J. Eisenbrandt, Esq.  
870 Market Street, Suite 684  
San Francisco, CA 94102

Counsel for Plaintiffs

Carolyn Patty Blum, Esq.  
291 West 12th Street  
New York, NY 10014

Counsel for Plaintiffs

Robert M. Fargarson  
ROBERT M. FARGARSON

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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**ANA PATRICIA CHAVEZ, CECILIA  
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JANE DOE and JOHN DOE,**

**Plaintiffs,**

**VS.**

**NO. 03-2932 MIP**

**NICOLAS CARRANZA,**

**Defendant.**

---

**MOTION OF THE DEFENDANT, NICOLAS CARRANZA, FOR JUDGMENT  
ON THE PLEADINGS AND, IN ADDITION THERETO OR IN THE ALTERNATIVE,  
FOR SUMMARY JUDGMENT**

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**NOW COMES** the Defendant, Nicolas Carranza, and moves the Honorable Court for judgment on the pleadings of the parties pursuant to the Federal Rules of Civil Procedure, Rule 12(c) and, in addition thereto or in the alternative, for summary judgment, pursuant to Rule 56, Federal Rules of Civil Procedure and, as ground for said Motion, respectfully states:

1. The pleadings of the Plaintiffs demonstrate on their face that the claims of each Plaintiff are time-barred, pursuant to the Statute of Limitations.

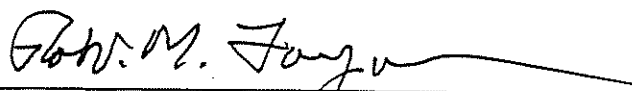
2. The pleadings of the Plaintiffs demonstrate on their face that the claims of the Plaintiffs are barred under the sovereign laws of the nation of El Salvador, where the alleged causes of action accrued and that the United States of America should give full faith and credit to the sovereign legal laws of the nation of El Salvador by reason of the accord of nations and comity between nations and the common law doctrine of full faith and credit adhered to by the United States of America and recognized in the Constitution of the United States of America, which precludes the causes of action alleged and claimed by the each Plaintiff.

3. In the alternative, the Defendant alleges that there is no genuine issue of material fact of law regarding each of the affirmative defenses of the Defendant with regard to the Complaint and that the Defendant has not committed any act or engaged in any conduct to deprive the Defendant of access to the Courts of the United States or El Salvador and he has been a resident citizen of the United States since 1985 and a naturalized citizen of the United States since 1991 and has not secluded himself, assumed another identity or otherwise avoided the ordinary processes of law during such period of time.

4. In support of the Motion, the Defendant relies upon the following:
- a. The Second Amended Complaint of the Plaintiffs;
  - b. The Defendant's Answer to the Second Amended Complaint of the Plaintiffs;
  - c. The Defendant's Statement of Undisputed Facts;
  - d. The Defendant's Affidavit;
  - e. Certain portions of the deposition testimony of the respective Plaintiffs; and,
  - f. The Defendant's Memorandum in Support of the Defendant's Motion for Summary Judgment.

**WHEREFORE, AND FOR ALL OF WHICH**, the Defendant moves the Honorable Court for an Order Granting the Defendant's Motion for Judgment on the Pleadings or in the Alternative for Summary Judgment in this cause.

Respectfully Submitted,



ROBERT M. FARGARSON (#8420)  
FARGARSON & BROOKE  
Attorneys for Defendant  
65 Union Avenue, 9<sup>th</sup> Floor  
Post Office Drawer 3543  
Memphis, Tennessee 38173-0543  
(901) 523-2500

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315 Deaderick Street, Suite 2700  
Nashville, TN 37238-3001

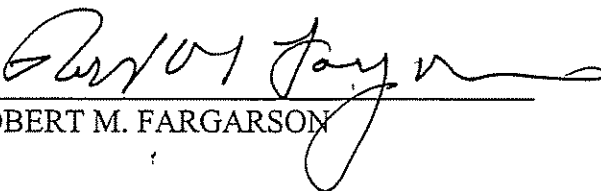
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\_\_\_\_\_  
ROBERT M. FARGARSON

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

---

**ANA PATRICIA CHAVEZ, CECILIA  
SANTOS, JOSE FRANCISCO CALDERON,  
JANE DOE and JOHN DOE,**

**Plaintiffs,**

**VS.**

**NO. 03-2932 MIP**

**NICOLAS CARRANZA,**

**Defendant.**

---

**DEFENDANT'S MEMORANDUM IN SUPPORT OF  
DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN  
THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

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**NOW COMES** the Defendant, Nicolas Carranza, and files his Memorandum of Law in support of his Motion for Judgment on the pleadings, pursuant to Rule 12 of the Federal Rules of Civil Procedure, or in the alternative, Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

**FACTS OF THE CASE**

The facts deemed necessary by the Defendant to support his Motions necessitate only limited facts about the case, because the Defendant contends that the lawsuit filed against him has not been timely made and, for that reason, is barred by the Statute of Limitations. In addition, he contends that the Plaintiffs' causes of action are otherwise barred by the Doctrine of Comity between nations and the Doctrine of According Full Faith and Credit to the acts and laws of other sovereign nations.

Based upon those principles, the issues in these Motions concern the time of the occurrences, which form the basis of the Plaintiffs' claims and causes of action, and the time of filing their lawsuit. In addition, the basis for other facts is in regard to the issue of Comity and the doctrine recognizing and according Full Faith and Credit to the laws of another sovereign nation which defendant contends is another critical issues in this case.

With that in mind, it should be noticed that the initial Complaint was not filed in this Court until December 10,2003 by the present Plaintiffs, Jose Oscar Chavez, Ana Patricia Chavez, Cecilia Santoa, Jose Francisco Calderon, Jane Doe II and others now dropped from the case. (See Complaint)

The first Amended Complaint was filed on February 23, 2004, and added John Doe as a Plaintiff. (See Complaint)

A second Amended Complaint has just been filed on June 22, 2005, and does not add any additional parties, but removes original Plaintiffs Haydee Duran, Jose Oscar Chavez and Jane Doe I from the lawsuit. (See Complaint)

With regard to the remaining Plaintiffs, Ana Patricia Chavez brings her claim because of alleged events that occurred on July 26, 1980. (Complaint p. 3)

Ana Patricia Chavez has been a resident of California and a legal permanent resident of the United States since 1980. (Chavez depo p. 8-9)

The original Plaintiff, Cecilia Santos, is a resident of the State of New York and a naturalized citizen of the United States. She has resided in the United States since June of 1983. Her claims are based on occurrences that occurred in September and October, 1980. (Santos Complaint, p. 3; depo. p. 9-10)

The original Plaintiff, Jose Francisco Calderon, is a resident of San Francisco, California, and a naturalized citizen of the United States. He has resided in the United States since February of 1981. His claims are based on occurrences that took place in September of 1980. (Complaint p. 3; depo. p. 7)

The original Plaintiff, Jane Doe II, is the only party to the lawsuit that still resides in El Salvador. Her claims are based on occurrences that occurred in November of 1980. (Complaint, p. 4; depo. p. 9)

The Plaintiff, John Doe, who became a party to the lawsuit in February of 2004 in the first Amended Complaint, is a resident of Sweden, having moved and resided there since 1986. His claims are based on occurrences that took place in 1983. (Complaint p. 4; depo p. 13)

The Plaintiffs claims against the Defendant are made pursuant to the Torture Victim Protection Act, (Pub. L. 102-256, 106 Statutes 73) 1992 and the Alien Tort Claims Act, 28 U.S.C. § 1350.

The Defendant, Nicolas Carranza, has filed his Motions based upon the Statute of Limitations within which period of time the Plaintiffs could file causes of action and, in addition, the Doctrine of Comity and the Doctrine of Full Faith and Credit, which the Courts of the United States of America should accord to the laws of the sovereign nation of El Salvador.

## LAW OF THE CASE

### 1. The Claim Is Barred By The Statute Of Limitations.



The relevant statute of limitations is contained in what is commonly known as the "Torture Victim Protection Act" of 1991, also codified in 28 U.S.C. § 1350. Section 2 © which clearly states the Statute of Limitations, which is as follows:

"No action shall be maintained under this section unless it is commenced within ten (10) years after the cause of action arose."

The claims of each Plaintiff recited in the Complaint clearly occurred well over twenty (20) years prior to the commencement of this action in Federal Court. Consequently, no cause of action exists on the part of the Plaintiffs against the Defendant, Nicolas Carranza, because they were not timely filed as required.

The Defendant acknowledges that the issue of the Statute of Limitations was previously raised with regard to the original Complaint and First Amended Complaint and denied by the Court. The Plaintiffs' Response to the Motion relied upon a case in the United States District Court from the Southern District of Florida, known as Juan Romagoza Arce, et al., Plaintiffs, vs. Jose Guillermo Garcia, et al., Defendants, Docket No. 99-8364, a copy of which was provided to the Honorable Court by Plaintiffs' Counsel in its Response to the Motion to Dismiss.

The District Court of Florida has now been reversed by the United States Court of Appeals for the Eleventh Circuit. The Opinion of the Court of Appeals is dated February 28, 2005 and a copy of said Opinion, which is now a published Opinion, is provided to the Court as Exhibit 1 to the Plaintiffs' Motion.

It should be noted that the two Defendants in the Arce case are members of the Salvadoran military. Jose Garcia was Minister of Defense from 1979 to 1983 and Carlos Casanova was the Director General of El Salvador's National Guard during the same period of time. Both of the Defendants moved to the United States in August of 1989, and they resided in the United States as permanent residents.

The actions against those Defendants were commenced on February 22, 2000, and are based upon the same laws that the Plaintiffs rely upon and contend apply in the pending matter before this Honorable Court against Nicolas Carranza.

While the Arce opinion now reported in 400 Federal Reporter Third Series 1340, speaks for itself, the Defendant wishes to point out several important points to the Court. The Arce case is a close parallel to the matter pending before this Honorable Court. The facts of the case are similar and concern claims under the same statutes relied upon by the Plaintiffs in this case.

Secondly, the defendants in the Arce case relied upon the Statute of Limitations.

Thirdly, to overcome the Statute of Limitations the Plaintiff relied upon the doctrine of equitable tolling of the Statute of Limitations.

The events in the Arce case resulted from the Plaintiff Arce's claim that he was kidnapped by government soldiers on about December 12, 1980 and was tortured until January 5, 1981. The Opinion recites facts concerning the torture. Arce arrived in the United States in 1983.

The Plaintiff Gonzalez claims that she was abducted by Salvadorian soldiers on December 26, 1979 and detained for 2 weeks enduring such detention the facts of her torture and ordeal are described. She arrived in the United States in 1997.

The third Plaintiff Mauricio claims he was kidnapped on June 13, 1983 and held at national police quarters. He also details the conditions of his detentions.

The opinion further reports that Defendant Garcia was a minister of defense of El Salvador from 1979 to 1983 and that Carlos Cassanova was the director general of El Salvador's National Guard during the same period. Both defendants moved to the United States in August of 1989 and have since have been residing in the country as permanent residents.

The opinion recites that on February 22, 2000 the several Plaintiffs brought action against Garcia and Cassanova in the United States District Court. In response to the Plaintiffs' claims the Defendant filed an answer raising subject matter jurisdiction, and Statute of Limitations. The Federal District Judge denied the Motion for Judgment on the Pleadings or dismissal and a jury trial resulted in an award of damages to the Plaintiffs. The opinion is an appeal by the Defendants to the Circuit Court of Appeals and the opinion of the Court focused on subject matter jurisdiction, and whether the Plaintiffs' asserted causes of action were within the Statute of Limitation. The Appellate Court concluded that while jurisdiction existed the Plaintiffs failed to file a cause of action within the proper time and the cause was reversed and dismissed.

The Court of Appeals discussed the issue of the statute of limitations and the doctrine of equitable tolling of the statute of limitations.

To the plaintiffs' claim that a civil war and power of the Salvadorian military resulted in extraordinary circumstances sufficient to toll the statute of limitations because of conditions in El Salvador the Court stated at p. 1348.

"Initially, the situation in El Salvador seems irrelevant because most of the Plaintiffs and all the Defendants were in the United States in the 1980s. Moreover, the Plaintiffs failed to muster sufficient evidence of the *Defendant's involvement*. Instead, the Plaintiffs focus on the ambient situation in El Salvador. But given the particular facts of this case, the fact that other people or entities may have hindered the Plaintiff is by itself insufficient to equitable tolling. Therefore the lack of cooperation from the Salvadorian government from 1983 (when the Defendants left office) to 2000 (when the Plaintiffs filed suit) is not sufficient to toll the statute of limitations"...

The Court also opined on p. 1348 the following:

"Finally, we are not persuaded by the cases cited by the Plaintiffs. None is binding on this Court. More importantly, none stands for the premise that domestic turmoil constitutes 'extraordinary circumstance' (citing cases)".

The Plaintiffs also argued that the statute should be equitably tolled because the Defendants engaged in a pattern of denial about their personal responsibility for human rights abuses in El Salvador. The Court of Appeals disagreed and made the following statement on p. 1349:

"To begin denial does not rise to the level of misconduct usually required for equitable tolling. As stated above, Courts usually require some affirmative misconduct, such as deliberate concealment. (citing case)...Moreover, it is common for people to deny wrongdoing, particularly when they are not under oath or when they have no duty to disclose. Indeed, to accept Plaintiffs' argument would be to impose upon litigants and affirmative duty to disclose information before litigation begins."

The Plaintiff Gonzalez argued that the statute of limitation should be equitably tolled for her claims until 1997 when she left El Salvador and arrived in the United States. The Court stated that does not constitute an extraordinary circumstance, in large part because the Plaintiff's residence is largely within her control. Indeed nothing in the record suggests that anyone prevented her from coming to the United States earlier as her two co-plaintiffs did in 1983. Furthermore, although it would have involved logistical difficulties, it is quite possible that she could have commenced her suit in the United States court despite being in El Salvador. Indeed, from El Salvador she could have

contacted an attorney in the United States, any of the public interest organizations involved in this litigation, other nongovernmental organizations, or other entities.

The Court also made an interesting statement at the conclusion of the case, which was that the doctrine of equitable tolling did not apply to the Plaintiffs' claims since they were time barred and the jury verdict was vacated and the Plaintiffs' claims were dismissed. Prior to the conclusion the Court made, this statement which this Defendant believes is apropos:

"After dismissing each of the Plaintiffs arguments for equitable tolling, we conclude by noting the dangerous precedent that this case could set if those arguments were accepted. From a United States perspective, there are many countries that oppress their citizens today and many countries that have oppressed their citizens in decades and centuries past. A lenient approach toward equitable tolling would mean that the United States Courts would hear claims dating back decades, if not centuries. In enacting a Statute of Limitations for the TVPA, Congress surely did not intend to permit such trial-by-excavation, at least not absent extraordinary circumstances. Courts would wind up with cases that were based not on witness' personal knowledge but instead on generalized testimony of human rights workers, diplomats, and assorted experts: Much of the evidence would pertain not to the particular incidence at the issue, but to the illegitimacy of an overall regime"...

Because the Arce v. Garcia, *supra* is parallel with regard to claims, facts and defenses, the claim should be dismissed for not being timely filed by granting Defendant's Motion for judgment on the pleadings or Defendant's Motion for summary judgment.

## **2. Motion to Dismiss upon the Ground of Comity or Full Faith and Credit of laws of foreign nations**

The Defendant contends that an additional and separate reason for the dismissal of the Plaintiffs' claims aside from the Statute of Limitations is the doctrine or principle of comity between states and nations and the doctrine of according full faith and credit to the official acts of foreign nations. It is not questioned or disputed that on January 1, 1992

the government of El Salvador and opposing guerilla forces and organizations in El Salvador signed a peace accord, sponsored and participated in by the United Nations and the United States of America. On January 1, 1992, following the peace accord, the Salvadorian Legislature adopted a broad and unconditional amnesty for individuals implicated in "political offenses" and/or civil or criminal liability for all individuals who in any way had participated in the commission of political crimes or common crimes committed prior to January 1, 1992.

With regard to the adoption of the amnesty law, the Defendant contends that the amnesty is a sovereign law or act of El Salvador for the overall benefit of the Salvadorian nation and the people of El Salvador. The Defendant, therefore, contends that the amnesty law is entitled to full faith and credit and is entitled to recognition in the United States and that under the Doctrine of Comity and granting full faith and credit to the official acts and official laws of a foreign nation as to acts done within the nation's own border, the courts of the United States should not exercise jurisdiction which circumvents the sovereign law of El Salvador. Thus, the courts of the United States should not exercise jurisdiction that circumvents the amnesty law.

In support of the Defendant's position, the Defendant relies upon the case of Bernstein v. Ban Heyghen Freres Societ Anonymy (1947) 163 FR2d. 246 (CERT. denied Oct. 13, 1947) In that case the Plaintiff brought an action against the Defendant for the conversion of the Plaintiff's property and for damages for his detention and imprisonment by Nazis officials in Germany. The Plaintiff contended that during his time of confinement and by means of duress and threats of bodily harm, he was compelled to sign documents that transferred his property to an individual named Boeger. It is

contended that before Boeger took possession of the property, he learned that the Plaintiff was Jewish and had been imprisoned for over two and a half years and been at the mercy of Nazi officials and that confiscation of Jewish property was a matter of general knowledge.

The Plaintiff's complaint was dismissed because the act of confiscation was within German territory during the time that the German government was a Nazi regime but that it was not subject to review in United States courts.

The Court determined that the most important question on Appeal for the Court to decide was whether the validity of the acts of a German government in 1937 was within the jurisdiction of the Courts of the state of New York. While the Opinion discusses the Plaintiff's Affidavit, the German regime, Nuremburg trials, and events thereafter, the focus is on the decision of the trial judge who deposes the attachment and dismissed the complaint upon the ground that the claim was for a wrongdoing by the German government and that since the event took place within German territory, it was not subject to be reviewed by the courts of the United States. On Appeal in the Court of Appeals the contention was made that even under German law the transfers, which were coerced from the Plaintiff would have been considered unlawful because a law legalizing the confiscation of property because of race or religion was passed after the transfer.

In response to that argument the Court made the following statement:

"...However, even though we assume that a German Court would have held the transfer unlawful at the time it was made that would be irrelevant. We have repeatedly declared, for over a period of at least thirty years that a Court of the forum will not undertake to pass upon the validity under the municipal law of another state of the acts of the officials that state reporting to act as such. We have held that this was a necessary corollary of decisions of the Supreme Court and if we have been mistaken, the Supreme Court must correct it."

Later in the Opinion on p.249, the Court made the following statement:  
"Therefore, the Plaintiff's difficulty lies, not in any defect in the law of New York as the conflict of laws; but because of the other doctrine which we have mentioned: ie that no court will exercise its jurisdiction to the validity of the official acts of another state"...

Although there is a long discussion of the matter, the sum and substance is that the trial court was affirmed.

While this case is not similar to the case before the Court, it does recognize the principle the Defendant relies upon and that is that one nation should not abrogate or attempt to interpret the acts and laws of a foreign nation, but should accord them full faith and credit or comity. Since these cases could not take place in El Salvador, they should not be allowed to take place in the United States of America.

### **3.Standard for Review**

The Defendant is aware that in a Motion for judgment on the pleadings the Court must treat all well-pled allegations of the Complaint as true and likewise interpret all of the allegations in the light most favorable to the nonmoving party. Saylor B. Parker Seal Co., 975F2D252 (6<sup>TH</sup> Cir.1992), Schuer v. Rhodes, 416US.232, 236 (1974).

While a Federal Rule of Civil Procedure, Rule 12 (b) Motion to dismiss for failure of state of claim is directed solely toward the facts of the Plaintiff's claim for relief without concern for the merits of the controversy, a Rule 12 (c) Motion for judgment on the pleadings at least theoretically requires some scrutiny of merits of the controversy.

On ruling on a Rule 12 (c) Motion for judgment on the pleadings, the appropriate standard is a standard that is available to summary judgment, with the exception that the Court may consider only the contents of the pleadings and a Motion may be granted only where there are no genuine issues of material fact to be resolved and where the Defendant is entitled to judgment as a matter of law. Alexander v. City of Chicago (1993, CA7



Illinois) with regard to the Defendant's alternative motion for summary judgment, the Courts have considered summary judgment a salutary procedural device, the utilization of which in all appropriate cases should be encouraged rather than discouraged by the Federal Courts. Northwestern National Insurance Company v. Corley (1974,CA7 Illinois) 503 F2d 224.

Rule 56 of the Federal Rules of Civil Procedure provides that a summary judgment should be sustained if there are no material issues of material fact or law that would support a party's claim. Summary judgment is appropriate if 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any' when viewed in the light most favorable to the non-moving party, 'show that there is no genuine issue as to any material fact.' *Chaplin v. Nations Credit Corp.*, 307 F.3d 368, 371-72 (5th Cir. 2002) (quoting *Anderson v. Liberty Lobby, Inc.* 477 U.S. 242, 249-501 (1986)); *see also* FED. R. CIV. P. 56(c). A genuine issue of material fact exists only when there is evidence sufficient for a rational trier of fact to find for the non-movant. *See Perez v. Region 20 Educ. Serv. Cir.*, 307 F.3d 318, 323 (5th Cir. 2002). "When the non-moving party bears the burden of proof on a claim, the moving party may obtain summary judgment without providing evidence that negates the non-moving party's claim." *Perez*, 307 F.3d at 323. Further, if the moving party establishes that there is no genuine issue, "the burden shifts to the non-moving party to produce evidence of the existence of a genuine issue for trial." *Diamond Offshore Co. v. A&B Builders, Inc.*, 302 F.3d 531, 540 (5th Cir. 2002).

"Where 'the summary judgment evidence establishes that one of the essential elements of the plaintiff's cause of action does not exist as a matter of law, . . .

all other contested issues of fact are rendered immaterial.” *Hammond v. Coleman Co., Inc.*, 61 F. Supp. 2d 533, 535 (S.D. Miss. 1999) (quoting *Celotex Corp. v. Catrelt*, 477 U.S. 317, 323 (1986)).

Summary Judgment “mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a), which is that the trial judge must render verdict if there can be but one reasonable conclusion as to the outcome. *Anderson v. Liberty Lobby, Inc.*, 477 US 242, 250-51, 106 S. CT. 2505, 2511, 91L. Ed 2d 202 (1986). A genuine issue exists where the evidence before the Court is of such a nature that a reasonable jury could return a verdict in favor of the nonmoving party. *Id.* at 248. The Court must deny summary judgment when a genuine issue of material fact exists or where the court concludes that a full or more complete factual development is necessary. *Kennedy v. Silus Mason Company.*, 334 US 249, 68 S. CT. 1031, 92 L. Ed. 1347 (1948). The Courts role under Rule 56 is merely limited to assessing the threshold issue of whether a genuine issue exists as to material facts to require a trial. *Anderson v. Liberty Lobby* 477 US at 249. All reasonable inferences must be drawn in favor of the nonmoving party. *Id.* at 255. Of course, in this diversity case, substantive law of the State of Tennessee applies in regard to the validity of Plaintiff’s claims. *Erie R. R. v. Tompkins.* 304 US 64 (1938).

The Defendant states that the claims of the Plaintiffs, if any, are barred by the appropriate Statute of Limitations concerning such allegations and alleged claims, pursuant to “Torture Victims Protection Act of 1991” (Pub. L. 102-256 March 12, 1992, 106 Statute 73), which limits claim to ten (10) years after the cause of action arose which complaint shows on its face that the acts complained of accrued in 1979-1980. .

**WHEREFORE, AND FOR ALL OF WHICH,** the Defendant prays that this

Honorable Court sustain his Motion for Judgment on the Pleadings or Summary Judgment and that the complaint be dismissed against him with costs assessed against the Plaintiffs. Since the claims are barred by the applicable law and Defendant is entitled to summary judgment as a matter of law.

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

I, Robert M. Fargarson, do hereby certify that a copy of the foregoing was forwarded, via U.S. Mail, postage prepaid, and via facsimile, on this the 24<sup>th</sup> day of June, 2005, to:

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Counsel for Plaintiffs



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ROBERT M. FARGARSON

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
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**ANA PATRICIA CHAVEZ, CECILIA  
SANTOS, JOSE FRANCISCO CALDERON,  
JANE DOE and JOHN DOE,**

**Plaintiffs,**

**VS.**

**NO. 03-2932 MIP**

**NICOLAS CARRANZA,**

**Defendant.**

---

**DEFENDANT'S STATEMENT OF MATERIAL FACTS THAT CANNOT BE DISPUTED**

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**NOW COMES** the Defendant, Nicolas Carranza, pursuant to Rule 56 of the Federal Rules of Civil Procedure, and in support of his Motion in the Alternative for Summary Judgment, submits his statement of material facts that cannot be disputed, as follows:

1. The claims of the Plaintiff Ana Patricia Chavez is the result of an event that occurred on July 26, 1980 (Complaint, p.3).

1(a) Plaintiff Ana Patricia Chavez has resided in Van Nuys, California, for twenty-four (24) years prior to her deposition taken on December 7, 2004. She is a permanent resident of the United States. (Chavez deposition, pp.8-9).

2. The claims of the Plaintiff José Calderon are the result of an event that occurred on September 11, 1980 (Complaint, p.3).

2(a) Plaintiff José Calderon has resided in San Francisco, California, since February of 1981 and has been a citizen of the United States since 1986. (Calderon deposition, p.7).

2(a) Plaintiff José Calderon has resided in San Francisco, California, since February of 1981 and has been a citizen of the United States since 1986. (Calderon deposition, p.7).

3. The claims of the Plaintiff Jane Doe are the result of an event that occurred on November 27, 1980 (Complaint, p.4).

3(a) Plaintiff Jane Doe is the only Plaintiff who now resides in El Salvador (Jane Doe deposition, p.9).

4. The claims of the Plaintiff John Doe are the result of events that occurred in August 1983 (Complaint, p.4).

4(a) Plaintiff John Doe has now resided in Sweden since April of 1986 (John Doe deposition, p.13).

5. The claims of the Plaintiff Cecilia Santos are the result of events that occurred in September – October, 1980 (Complaint, pp.9-10).

5(a) Plaintiff Cecilia Santos moved to New York from El Salvador in June of 1983 and has been in New York for twenty (20) years (Santos deposition, pp.9-10).

6. The Defendant, Nicolas Carranza, has been a resident of the United States since 1985 (Carranza Affidavit).

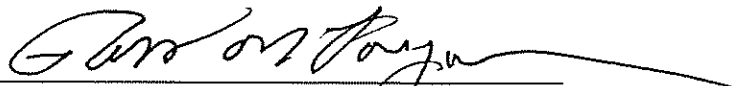
7. The Defendant, Nicolas Carranza, has been a naturalized citizen of the United States since 1991 (Carranza Affidavit).

8. The Defendant, Nicolas Carranza, has not concealed his identity or location since 1985 and has lived at the same residence since 1985 (Carranza Affidavit).

9. The Defendant, Nicolas Carranza, has not taken any action to prevent any of the Plaintiffs from pursuing legal remedies nor otherwise threatened any Plaintiff or caused any Plaintiff to be threatened if they elected to pursue legal remedies (Carranza Affidavit).

10. On January 1, 1992, the government of El Salvador and guerilla organizations or forces signed a peace accord sponsored or participated in by the United Nations. The legislature of El Salvador passed an amnesty law in March of 1993, which foreclosed civil and criminal liability for all persons who participated, in any way, in political crimes or common crimes committed before January 1, 1992 (Complaint pp.20, 23).

Respectfully Submitted,



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