

**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.

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

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.

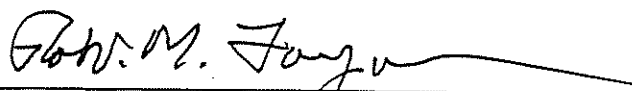
2. The pleadings of the Plaintiffs demonstrate on their face that the claims of the Plaintiffs are barred under the sovereign laws of the nation of El Salvador, where the alleged causes of action accrued and that the United States of America should give full faith and credit to the sovereign legal laws 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, 9th 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 24th day of June, 2005, to:

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

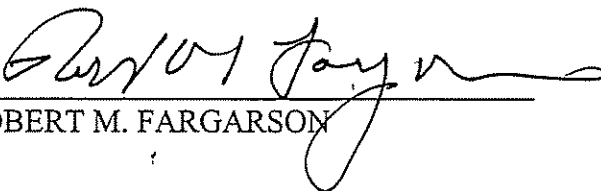
Counsel for Plaintiffs

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.

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

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 (6TH 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,



ROBERT M. FARGARSON (#8420)
FARGARSON & BROOKE
Attorneys for Defendant
65 Union Avenue, 9th 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 24th 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.

DEFENDANT'S STATEMENT OF MATERIAL FACTS THAT CANNOT BE DISPUTED

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).

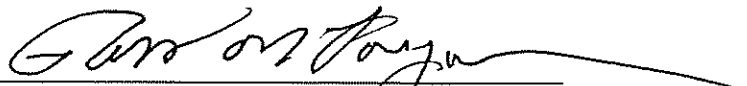
7. The Defendant, Nicolas Carranza, has been a naturalized citizen of the United States since 1991 (Carranza Affidavit).

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,



ROBERT M. FARGARSON (#8420)
FARGARSON & BROOKE
Attorneys for Defendant
65 Union Avenue, 9th 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 24th 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