

The first Amended Complaint was filed on February 23, 2004, which added John Doe as a Plaintiff.

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

With regard to the remaining Plaintiffs, Ana Patricia Chavez brings her claim on two (2) events that occurred on July 26, 1980.

Ana Patricia Chavez has been a resident of California and a legal permanent resident of the United States since 1980.

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 1982.

The original Plaintiff, José 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.

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.

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.

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.

STATUTORY BAR/LACHES/ESTOPPEL

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(c) 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 the Plaintiffs 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 made. 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.

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 and are barred.

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 in Full Faith and Credit to the acts and laws of other sovereign nations.

The Defendant, Nicolas Carranza, filed a pretrial a Motion to Dismiss, and a Motion for Summary Judgment and trial motions for Directed Verdict at the end of the Plaintiffs' proof and at the end of the introduction of evidence based upon the Statute of Limitations within which the Plaintiffs had legal 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.

The Court erred by failing to apply the statutory bar and sustain the Defendant's Motions to Dismiss and Rule 56 of the Federal Rules of Civil Procedure Motion for Summary Judgment, which should have been sustained since there were no material issues of material fact, or law that would support any of the Plaintiffs' claims.

The learned Trial Judge found that the fear of Plaintiffs to file a lawsuit as alleged in Plaintiffs' Amended Complaint and Affidavits in Opposition to Defendant's Motion for Summary Judgment was sufficient to toll the statute for more than ten (10) years.

However, at the trial of the case, all of the Defendants stated they did not know they could file a lawsuit until contacted by lawyers from the Center for Justice and Accountability, who solicited each of them to pursue claims against Nicolas Carranza specifically.

Those facts beg the questions..."How can a person fear what they do not even know they have a right to?" and "How can the Doctrine of Equitable Tolling apply to ignorance of the law for which there is usually no excuse, as well as, known maxim of law?"

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.

There is no question that the El Salvador Peace Accord and Amnesty Law was the result of assistance from the United Nations, Western Hemisphere Neighbor Nations, including the United States. In essence, it was a treaty between differing political groups and was a treaty foreclosing legal action against participants in either faction or group.

This action ignores the treaty and agreement structured by representatives of the United Nations and refuses to give value or recognition to it.

Plaintiffs' argued that to do so would make the law a nullity. That is simply not true. It would only make it inapplicable to sovereign nations having a treaty or valid agreement, which El Salvador had.

The Plaintiffs have failed to exhaust their remedies under the laws of El Salvador where the alleged causes of action occurred. The Amnesty Law alleged by the Plaintiffs was not enacted until more than ten (10) years after the occurrences or causes of action alleged by the Plaintiffs occurred and they have not pled any facts about actions taken against the Defendant in El Salvador but simply make the conclusionary statement that the Amnesty Law foreclosed their alleged claims or causes of action.

HEARSAY EVIDENCE

The Defendant contends that the trial Court erred by admitting hearsay evidence that was without any legal basis for admission pursuant to Plaintiffs' counsel's erroneous reliance upon the exceptions to the hearsay Rule for "ancient documents" and "public records". The Plaintiffs' witnesses Robert White and Terry Karl represented to the jury that a highly redacted and unsigned document was allegedly prepared by Brian Bosch, as the former U.S. military attaché and that he represented that the Defendant agreed with the killing of six (6) FDR leaders. Defense counsel has now located Attaché Bosch and he has prepared an affidavit denying the

contents and truth of the statements therein and further denying that he prepared the document. The Court allowed this type of highly inflammable hearsay evidence regarding acts by unknown third parties, including but not limited to, guerillas, members of the military and revolutionaries from other countries. Additionally, the Court allowed highly inflammatory evidence of horrible conduct and crimes that took place years after the Defendant was no longer associated with the El Salvador military and even after the Defendant had been moved out of the country for several years.

Rule 401 of the Federal Rules of Evidence states:

“‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

Rule 402 of the Federal Rules of Evidence states that irrelevant evidence is not admissible:

“All relevant evidence is admissible except as otherwise provided by the Constitution of the United States, by act of Congress, by these Rules, or by other rules prescribed by the Supreme Court, pursuant to statutory authority. Evidence which is not relevant is not admissible.” [*emphasis added*]

Rule 403 of the Federal Rules of Evidence provides for the exclusion of even relevant evidence on the ground of prejudice, confusion or waste of time and states the following:

“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of issues, or misleading the jury, or by consideration of undue delay, waste of time or needless presentation of cumulative evidence.”

TWELVE PERSON JURY

The Defendant believes that the case of Colgrove v. Battin (1973) 413 U.S. 149, 93 S.Ct. 2448, 37 L.Ed. 2d 522 is a case that deals with the subject matter involved in the Motion. The

Defendant does not contend that he has an exclusive right to demand twelve (12) jurors to try his case but, on the other hand, contends that the trial court has discretion and authority to permit twelve (12) jurors to sit as jurors and decide the case on the law and evidence. Juries of less than twelve (12) are discretionary with the court.

Federal Rule of Civil Procedure, Rule 48, provides for the number of jurors participating in a verdict and states the following:

“The Court shall seat a jury of not fewer than six and not more than twelve members and all jurors shall participate in the verdict unless excused from service by the Court pursuant to Rule 47(c). Unless the Plaintiffs otherwise stipulate, (1) the verdict shall be unanimous and (2) no verdict shall be taken from a jury reduced in size to fewer than six members.”

Consequently, the Defendant contends that the Court has the authority and the discretion to impanel a jury of twelve (12) jurors to decide the case by unanimous verdict.

ABSENCE OF PROXIMATE CAUSE

While the Defendant, Nicolas Carranza, cannot offer detailed evidence that the Plaintiffs are not telling the truth, he has again raised the issue of due process in view of the fact that the events alleged occurred over twenty (20) years ago, during which time he has resided in the United States and has been a resident of the United States.

The Plaintiffs concede that the Defendant Carranza was not a perpetrator of the injuries and harm claimed by the Plaintiffs and the essential ingredient of the claim of the Plaintiffs seems to be that Carranza was aware of the acts and did not investigate the claims of the Plaintiffs, find the malefactors and have them prosecuted. That raises an interesting question.

The claims made by the Plaintiffs under the ATCA and TVPA are essentially tort claims for damages due to the bodily harm or injurious effect of conduct. See Usarei v. Rio Tinto PLC

(C.D. CAL 2002) 221 F.Supp.1116.

Since they are tort claims, how could the investigation, discovery and prosecution of the perpetrators have prevented the harm already caused? In other words, the Plaintiffs are surely not claiming that the Defendant Carranza had specific scienter and could have prevented occurrences alleged by foreknowledge.

Consequently, while the Defendant is not making light of what happened to any of the Plaintiffs or their relatives, there is in reality no causal connection between the injuries and harm sustained by the Plaintiffs' claim that, while Carranza was not a participant or perpetrator, he did not exercise "command" authority and investigate the Plaintiffs' claims or complaints. While there is no proof that he was aware of the Plaintiffs' complaints, how would that have prevented the harm and wrong complained of by the Plaintiffs in this case. Additionally, it is basic tort law that there must be a causal relationship in connection between the act and injury. The injury to the Plaintiffs, even if known or made known, had already occurred before an investigation could be instituted.

SUMMARY JUDGMENT STANDARD

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).

CONCLUSION

Because of the errors committed against him stated above, the Defendant, Nicolas Carranza, respectfully requests that his Motions be granted and that the verdict of the jury be set aside and judgment be entered for the Defendant or in the alternative that he be granted a new trial.

Respectfully Submitted,

COUNSEL FOR DEFENDANT



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CERTIFICATE OF SERVICE

I, Robert M. Fargarson, do hereby certify that a copy of the foregoing is being served on all Plaintiffs by forwarding same, via U.S. Mail, postage prepaid and Facsimile Transmission on this the 1st day of February, 2006, to:

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