

**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,)	JURY TRIAL
)	
Defendant.)	

**DEFENDANT'S RESPONSES TO PLAINTIFFS' STATEMENT OF MATERIAL FACTS &
DEFENDANT'S ADDITIONAL STATEMENT OF UNDISPUTED FACTS**

NOW COMES the Defendant, Nicolas Carranza, by and through his Counsel of record herein, and submits his Responses to the Plaintiffs' Statement of Material Facts. Defendant submits these responses for the sole and limited purpose of responding to Plaintiffs' Motion for Partial Summary Judgment. Defendant does not waive his objections as to hearsay, double-hearsay, triple-hearsay, denial of due process, and all of the other objections he has set forth in his Motion to Dismiss, Answer, and as will be made, if this matter goes to trial. The Plaintiffs' tendered statement of facts highlight the prejudice to the Defendant of being denied the opportunity to fully respond to tendered facts involving alleged incidents which allegedly occurred more than twenty-three (23) years prior in time and for which the Plaintiffs admit the Defendant had no direct knowledge or participation. Consequently, the Defendant cannot even investigate the truthfulness of the allegations or find witnesses as to the alleged incidents to which he was not present or aware. For the limited purpose stated, the Defendant responds as follows:

1. Guillermina and Humberto Chavez were teachers in Ahuachapan and members of the teachers' union known as "ANDES," which worked for the improvement of lives for teachers.

[Deposition of Ana Patricia Chavez Penate (“Chavez Dep.”) at 13-16; attached to the accompanying memorandum at Exh. A]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

2. On July 26, 1980, Ms. Chavez was in her parents’ home for a weekend visit. Early that morning, Ms. Chavez saw in the corridor of the house a man dressed in civilian clothes, wearing a mask, and carrying a rifle. [Chavez Dep. at 20-21, 23]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

3. When this man saw Ms. Chavez’ mother, Guillermina, walk out of the bathroom, he grabbed her and threw her onto a bed. [Chavez Dep. at 20]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

4. More armed men, dressed similarly, then began coming into the house. [Chavez Dep. at 21]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

5. One of the men that had invaded the house threw Ms. Chavez on the bed next to her mother. [Chavez Dep. at 21]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

6. The men then began beating Guillermina Chavez. They opened all the drawers in the bedroom wardrobe, and demanded to see “propaganda and money.” [Chavez Dep. at 21]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

7. The men took Ms. Chavez to a separate room with her infant daughter, where she heard her mother continue to be beaten. [Chavez Dep. at 24-25]

RESPONSE: Admitted. (as per Plaintiff's testimony).

8. Ms. Chavez then heard gunshots, and when she had heard no more noise, left her room, went to her mother's bedroom, and found her mother's lifeless body on the bed. [Chavez Dep.at25]

RESPONSE: Admitted. (as per Plaintiff's testimony).

9. Ms. Chavez left the house to find her father and her partner, Omar. A neighbor told her that "there was a young man that was dead outside her house." [Chavez Dep. at 27]

RESPONSE: Admitted. (as per Plaintiff's testimony).

10. Ms. Chavez went to the neighbor's house and discovered that the young man was Omar, who had been fatally shot by the death squad. [Chavez Dep. at 27]

RESPONSE: Admitted. (as per Plaintiff's testimony).

11. Ms. Chavez returned to her house and found her father dead in the corridor with several gunshot wounds. [Chavez Dep. at 28-29]

RESPONSE: Admitted. (as per Plaintiff's testimony).

12. During the early 1980s, deaths squads, like the one that killed Guillermina and Humberto Chavez, acted together with government actors to carry out attacks on the civilian population. The U.N. Truth Commission found that "[t]he State of El Salvador ... is responsible for

having taken part in, encouraged and tolerated the operations of the death squads.” [Report of the United Nations Truth Commission on El Salvador (“Truth Commission Report”), at 137 (Bates number PL 0168) (relevant excerpts attached to the accompanying memorandum at Exh. B)]

RESPONSE: Denied. The first sentence or part of the statement of fact contains information that is not known or established in view of the fact that the identity of the individuals involved has never been established or known.

The Truth Commission, which was an extra judicial condition, “in the second sentence.”. However, “state of El Salvador” is non-specific.

13. The death squads were able “to insinuate themselves ... perniciously into the formal State structure.” [Truth Commission Report at 132 (PL 0161)]

RESPONSE: Admitted that the statement “is from the extra judicial Truth Commission report.” The truth of the statement is denied as being questionable and hearsay.

14. Members of the Salvadoran Security Forces had already formed and participated in death squads by 1980, with the support of the corresponding official institutions. [Dec. of Prof. Terry Karl (“Karl Dec.”), at ¶11 (attached to the accompanying memorandum at Exh. C)]

RESPONSE: Admitted to be a part of information provided by “Karl Dec”. However, her information is hearsay, non-specific in nature and does not provide sufficient identity of the individuals involved to constitute legal proof.

15. The death squads were organized from within government Security Forces or were linked directly to the Security Forces. [Karl Dec. at ¶10]

RESPONSE: Admitted to be a part of information provided by “Karl Dec”. However, her

information is hearsay, non-specific in nature and does not provide sufficient identity of the individuals involved to constitute legal proof.

B. Cecilia Santos

16. In 1980, Cecilia Santos was a mathematics student at the National University of El Salvador and also worked full time in the Salvadoran government at the Ministry of Education. [Deposition of Cecilia Santos (“Santos Dep.”) at 14-16 (attached to the accompanying memorandum at Exh. D)]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

17. On September 25, 1980, Ms. Santos was in the restroom at a shopping mall in San Salvador when she heard a “big sound,” like an explosion. [Santos Dep. at 26]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

18. Shortly thereafter, two private security guards entered the restroom and began questioning Ms. Santos about the sound. [Santos Dep. at 29]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

19. Ms. Santos did not know anything about the sound or what caused it. [Santos Dep. at 29]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

20. These guards took Ms. Santos to the shopping mall’s administration office and accused her of having planted a bomb, offering what appeared to be a box of cigarettes as proof. [Santos

Dep. at 30-32]

RESPONSE: Admitted. (as per Plaintiff's testimony).

21. Ms. Santos did not know anything about the box of cigarettes; she did not smoke and had not taken the box into the restroom with her. [Santos Dep. at 35]

RESPONSE: Admitted. (as per Plaintiff's testimony).

22. A person in the administration office of the shopping mall made a phone call, and after about 30 minutes, two men dressed in civilian clothes came to the office and took Ms. Santos away in a taxi. [Santos Dep. at 37-38]

RESPONSE: Admitted. (as per Plaintiff's testimony).

23. After about a 20 minute drive, Ms. Santos and these men arrived at the headquarters of the National Police. [Santos Dep. at 39-40]

RESPONSE: Admitted. (as per Plaintiff's testimony).

24. One of the men took her by the arm and led her through the main entrance of the National Police headquarters. [Santos Dep. at 40-41]

RESPONSE: Admitted. (as per Plaintiff's testimony).

25. Inside the headquarters, she was turned over to the Corporation of National Investigation, or "CAIN," a subsection of the National Police agency. [Santos Dep. at 42-44]

RESPONSE: Admitted. (as per Plaintiff's testimony). Carranza was not familiar with the National Police and did not know the name "CAIN" and whether it was a proper name.

26. Ms. Santos was blindfolded and led through a tunnel. She crossed a larger room where she heard the sounds of many people moaning and groaning on the floor. She reached a room where she was told to sit at a school desk. [Santos Dep. at 47-5 1]

RESPONSE: Admitted. (as per Plaintiff's testimony).

27. There were several men in this room, one of whom told Ms. Santos: "It will be easy if you cooperate with us." [Santos Dep. at 53]

RESPONSE: Admitted. (as per Plaintiff's testimony).

28. One man interrogated Ms. Santos, asking her to identify her family members, co-workers, and fellow students, while another man groped her by pressing on her breasts and legs, and trying to put his hand inside her blouse and skirt. [Santos Dep. at 54-55]

RESPONSE: Admitted. (as per Plaintiff's testimony).

29. Later in the interrogation, one of her interrogators pulled her partially out of the chair and forced an object into her vagina. [Santos Dep. at 58]

RESPONSE: Admitted. (as per Plaintiff's testimony).

30. When Ms. Santos screamed in pain, an interrogator said: "That's nothing. That's just to test." [Santos Dep. at 58]

RESPONSE: Admitted. (as per Plaintiff's testimony).

31. Another interrogator added: "Do you remember where you are? This is the National

Police Headquarters, and here we decide what is going on, what can ... happen to you.” [Santos Dep. at 58]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

32. Ms. Santos was then asked whether she knew how to prepare a bomb. [Santos Dep. at 58-59]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

33. When she replied that did not, her interrogator replied, “You have to know, because you are in the University.” [Santos Dep. at 59]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

34. The man then dipped a Q-Tip into a bottle of sulphuric acid and inserted it into Ms. Santos’ nose. [Santos Dep. at 59]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

35. He also dropped acid onto Ms. Santos’ right hand, which caused it to blister almost immediately. [Santos Dep. at 59-60]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

36. When Ms. Santos asked for something to relieve the pain caused by the acid, her captor replied: “Did you forget? You are not in a hotel. You are in the police headquarters.” [Santos Dep. at 60]

RESPONSE: Admitted. (as per Plaintiff’s testimony).

37. Later in the interrogation, while one man monitored her heart rate with a stethoscope, another man attached wires around the fingers of Ms. Santos' right hand and administered electric shocks. [Santos Dep. at 63]

RESPONSE: Admitted. (as per Plaintiff's testimony).

38. While the shocks were administered, the interrogators placed pictures of different faces in front of Ms. Santos and asked her to identify them. [Santos Dep. at 65]

RESPONSE: Admitted. (as per Plaintiff's testimony).

39. Later, Ms. Santos, with the assistance of one of her interrogators, signed a blank piece of paper. [Santos Dep. at 67]

RESPONSE: Admitted. (as per Plaintiff's testimony).

40. Ms. Santos' torture and interrogation lasted the entire night of September 25, 1980, from approximately 7:30 p.m. until the early morning of September 26. [Santos Dep. at 72]

RESPONSE: Admitted. (as per Plaintiff's testimony).

41. Afterwards, one of Ms. Santos' interrogators took her to a man in a green uniform, who was to place her in a cell. Her interrogator instructed the man in uniform that "[s]he is in the deposit of the Ministry of Defense." [Santos Dep. at 70]

RESPONSE: Admitted. (as per Plaintiff's testimony). If she was in the "deposit of the Ministry of Defense", why has she not sued the Minister of Defense? Carranza never knew or heard of Ms. Santos until December 10, 2003, when the incident lawsuit was filed.

C. Francisco Calderon

42. Paco Calderon was a school principal in the city of Ahuachapan and a member of the teachers' union known as "ANDES." [Deposition of Jose Francisco Calderon ("Calderon Dep.") at 15-16 (attached to the accompanying memorandum at Exh. E)][Calderon Dep. at 15-16]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

43. In June 1980, Paco Calderon was arrested at a military roadblock when he attempted to get rid of flyers he was holding that instructed the population about what to do in the event of a general strike or natural disaster. [Calderon Dep. at 18-21]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

44. Upon his release, Paco Calderon immediately moved to San Salvador to live with his daughter and his adult son, Francisco Calderon. [Calderon Dep. at 26-27]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

45. On September 11, 1980, Francisco Calderon was getting ready for bed around 10:00 p.m. when he heard the loud sound of boots kicking his front door. [Calderon Dep. at 31]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

46. Francisco Calderon came to the front door and looked out to see uniformed members of the National Police wearing bulletproof vests. [Calderon Dep. at 32]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

47. The police demanded that Francisco Calderon open the door, and he complied.

[Calderon Dep. at 32-33]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

48. Immediately after the door was opened, several men in civilian clothes entered the house. [Calderon Dep. at 33]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

49. One of these men, who was wearing a mask and carried a G3 military-issued rifle, forced Francisco Calderon to lie down on the floor, stepped on him with his boot, and pointed the rifle at his back. [Calderon Dep. at 33]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

50. Francisco Calderon heard his father try to get his sister out of the house, but men on the roof prevented their escape. [Calderon Dep. at 34]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

51. As Paco Calderon came down the corridor toward the living room, Francisco Calderon said to his father, "They are going to kill me." [Calderon Dep. at 34]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

52. The armed men attempted to carry Paco Calderon outside. [Calderon Dep. at 35]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

53. Apparently fearing for his life, “that he was going to be cut to pieces all along the highway,” according to his son, Paco told the armed men: “It’s best that you kill me here, you sons of bitches.” [Calderon Dep. at 36]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

54. The armed men broke the light bulbs in the living room, then fired five gunshots from the G3 rifles into Paco Calderon’s body. [Calderon Dep. at 36]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

55. Francisco Calderon thought that he would be shot next, but instead the armed men left the house while firing shots into the air. [Calderon Dep. at 37]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

D. Jane Doe (Erlinda Revelo, Viuda de Franco)

56. In 1980, Manuel Franco was thirty-five years old, a professor at the National University, and a prominent leader of the Democratic Revolutionary Front (FDR). [Truth Commission Report at 58 & n.136 (PL 0068, 0262) (Exh. B)]

RESPONSE: Admitted. (as per the extra judicial Truth Commission Report).

57. The FDR was formed in April 1980 as a coalition of democratic, popular organizations and political parties. [Truth Commission Report at n.139 (PL 0263)]

RESPONSE: Admitted. (as per the extra judicial Truth Commission Report).

58. On the morning of November 27, 1980, Mr. Franco left for a meeting of the FDR

leadership at a Jesuit school in the heart of San Salvador. Between 9:30 and 11:00 a.m., Mr. Franco and five other FDR leaders were abducted from their meeting in a military operation in which the perimeter of the school was secured by the Treasury Police. [Deposition of Erlinda Revelo, Viuda de Franco (“Revelo Dep.”) at 26-27 (attached to the accompanying memorandum at Exh. F); Truth Commission Report at 58-6 1 (PL 0068-73) (Exh. B)]

RESPONSE: Admitted that Jane Doe said he left to go to a meeting. The second sentence is denied. In pages PL0068-73, there are theories about what occurred but they are theories only and not actual established facts.

59. Later that day, Manuel Franco’s body was dumped on the side of the road on the outskirts of Apulo, El Salvador. [Truth Commission Report at 59 (PL 0070)]

RESPONSE: Admitted. Newspapers published photographs and these reports as well.

60. Ms. Revelo identified her husband’s body at a funeral home the next day, where she saw gunshot wounds to her husband’s mouth and thorax, as well as a well-defined burn surrounding his entire neck. [Revelo Dep. at 26, 31 (Exh. F); Truth Commission Report at n.136 (PL 0262) (Exh. B)].

RESPONSE: Admitted.

61. The abduction of the FDR leaders “was an operation carried out by one or more public security forces.” [Revelo Dep. at 58 (PL 0069)]

RESPONSE: Admitted that is what she claimed.

62. The Security Forces were responsible for the abduction, torture, and murder of Manuel

Franco and the other FDR leaders. “[T]he Security Forces of the government kidnapped and killed six of the FDR leadership,” and “[t]he evidence that the security forces are responsible for this action is overwhelming.” [Cable from Amb. White, Nov. 29, 1980, at 1 (PL 1423) (attached to the accompanying memorandum at Exhibit G)]

RESPONSE: The first paragraph is denied. The second paragraph from the Cable of Ambassador White is admitted to have been his accusation and statement. However, he never provided any evidence to Salvadoran Government Authorities making the investigation.

63. “Salvadoran National Police officials assigned to the investigation of the assassination of six FDR leaders in San Salvador on 27 November 1980 were boasting that the National Police had committed the assassinations. . . While National Police probably aided in the assassinations, the operation almost certainly contained elements of other Security Forces.” [Cable (redacted author), Dec. 4, 1980, at 1-2 (PL 1379-80) (attached to the accompanying memorandum at Exh. H)]

RESPONSE: Denied. The Report says “belief by National Police and Investigators’ but otherwise it is hearsay information without concrete facts.

E. John Doe (Daniel Alvarado)

64. In August 1983, while attending a soccer game in San Salvador, John Doe was abducted by men dressed in civilian clothes, but who carried military-issued rifles. [Deposition of Daniel Alvarado (“Alvarado Dep.”) at 26-28 (attached to the accompanying memorandum at Exh. I)]

RESPONSE: Admitted. (as per his testimony).

65. Mr. Alvarado’s abductors blindfolded him, tied him up, threw him onto the floor of a car, and sat on top of him. [Alvarado Dep. at 29]

RESPONSE: Admitted. (as per his testimony).

66. After being driven around for about 45 minutes, Mr. Alvarado was taken to the Treasury Police headquarters. [Alvarado Dep. at 29]

RESPONSE: Admitted. (as per his testimony).

67. In a clandestine cell, Mr. Alvarado's captors took his clothes off, gave him a pair of torn trousers, and connected wires to the big toes on his feet. [Alvarado Dep. at 30]

RESPONSE: Admitted. (as per his testimony).

68. They ran electrical current through his body, placed a hood over his head to keep him from breathing, laid him down on the floor, and beat him. [Alvarado Dep. at 31]

RESPONSE: Admitted. (as per his testimony).

69. Mr. Alvarado's captors called this form of torture, "the little airplane with its pilot."

[T]hey called it the little airplane with its pilot because they would lay you out on the floor face down, ... and they would place the hood over you and they would pull you back by it, a man would pull you back with the hood. At the same time, they would stand on you; they would beat you; they would insult you.

[Alvarado Dep. at 39]

RESPONSE: Admitted. (as per his testimony).

70. Mr. Alvarado was "continuously tortured" in this manner from approximately 6:00 p.m. until approximately 1:00 or 2:00 in the morning. [Alvarado Dep. at 3 1-32]

RESPONSE: Admitted. (as per his testimony).

71. The captors accused Mr. Alvarado of being a guerrilla fighter and wanted the names of people who participated with the guerrillas. [Alvarado Dep. at 31]

RESPONSE: Admitted. (as per his testimony). Later it was confirmed that he was a member of the FPL, one of the bloodiest terrorist groups of communist guerillas responsible for many kidnappings and assassinations during the civil war. The FPL claimed responsibility for the assassination of Lt. Commander Schaufelberger.

72. They also accused him of responsibility for the death of a United States military advisor in El Salvador, Lt. Cmdr. Albert Schaufelberger. [Alvarado Dep. at 31]

RESPONSE: Admitted. (per the Plaintiff's testimony).

73. Mr. Alvarado had nothing to do with the assassination of Lt. Cmdr. Schaufelberger, who was killed at the University of Central America in San Salvador in May 1983. [Alvarado Dep. at 31-32]

RESPONSE: Admitted. (per the Plaintiff's testimony).

74. During his torture, Mr. Alvarado was told that he "had to cooperate," which meant that he had to give his captors names of other people or accept responsibility for the assassination of the United States military advisor. [Alvarado Dep. at 35]

RESPONSE: Admitted. (per the Plaintiff's testimony).

75. Mr. Alvarado identified the man in charge of his torturers as Maj. Ricardo Pozo, chief of the intelligence section ("S-2") of the Treasury Police and the head of the official Salvadoran

investigation into Lt. Cmdr. Schaufelberger's death. [Alvarado Dep. at 35-36; Deposition of Nicolas Carranza (Carranza Dep.), at 381 (relevant excerpt attached to the accompanying memorandum at Exh. J)]

RESPONSE: Admitted.

76. Maj. Pozo told Mr. Alvarado that his cooperation was necessary because there was a reward for finding the perpetrator of the Schaufelberger assassination, and that Maj. Pozo wanted to give the reward to "his boys," Mr. Alvarado's torturers. [Alvarado Dep. at 35 (Exh. I)]

RESPONSE: Admitted. (per Plaintiff's testimony) Carranza, however, did not know of any reward or was never made aware of a reward stated.

77. Maj. Pozo told Mr. Alvarado that he would cooperate sooner or later because "they worked in shifts, and after the ones that [were] torturing [him] were gone, another group would arrive." [Alvarado Dep. at 36]

RESPONSE: Admitted. (per the Plaintiff's testimony).

78. After his first day of torture, Mr. Alvarado was taken by car to his parents' home, which his captors searched while Mr. Alvarado, unbeknownst to his parents, was outside in the car. [Alvarado Dep. at 38]

RESPONSE: Admitted. (per the Plaintiff's testimony).

79. The Treasury Police officers then returned Mr. Alvarado to the clandestine cell, where they tortured him again for approximately 24 hours. In that session, the torturers applied "the little airplane without the pilot," which consisted of tying Mr. Alvarado's hands behind his back, hanging

him from the ceiling, placing the hood over his head, administering electric shocks, and beating him. [Alvarado Dep. at 39-40]

RESPONSE: Admitted. (per the Plaintiff's testimony).

80. On the fourth day after his capture, Mr. Alvarado was again tortured, this time by hanging him upside down by his feet. [Alvarado Dep. at 40]

RESPONSE: Admitted. (per the Plaintiff's testimony).

81. The torturers did not call this form of torture by a particular name, but it consisted of the same cruel methods — "electric shock, the hood, beatings." [Alvarado Dep. at 41]

RESPONSE: Admitted. (per the Plaintiff's testimony).

82. After four days, Mr. Alvarado could not withstand further torture, and he signed a statement, which he did not read, and which he later discovered attributed to him responsibility for the Schaufelberger murder. [Alvarado Dep. at 41-42]

RESPONSE: Admitted. (per the Plaintiff's testimony).

83. The following day, Mr. Alvarado was taken before the media at Treasury Police headquarters, an event at which Col. Carranza presided, and was forced to say that he had killed Lt. Cmdr. Schaufelberger. According to Mr. Alvarado, "I was told that I had to say that I had killed the advisor and that if I didn't do so, that they would continue with the torture or~ something might happen to my parents." [Alvarado Dep. at 45]

RESPONSE: Denied. Mr. Alvarado had the opportunity to say anything he wanted to the news media. He stated to the news media that he was a member of the FPL and he confessed to

killing Lt. Commander Schaufelberger. Admitted that the last sentence is what he stated in his deposition.

84. After the press conference, Mr. Alvarado was returned to the clandestine cell. The following day, he was tortured again with the electric shocks and the hood. [Alvarado Dep. at 47]

RESPONSE: Admitted. (as per Plaintiff's testimony). Alvarado never informed Carranza that he had been tortured or in a clandestine cell.

85. During this torture session, Mr. Alvarado suffered a nervous breakdown. [Alvarado Dep. at 48]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

86. After being held in the clandestine cells for 18 days, Mr. Alvarado was transferred to another prison cell within the more public part of the Treasury Police headquarters. [Alvarado Dep. at 37, 52]

RESPONSE: Admitted. (as per testimony of the Plaintiff).

87. Several weeks later, Mr. Alvarado was taken to a private home where he was questioned by two representatives of the United States government: one from the United States Navy and the other a member of the FBI. [Alvarado Dep. at 58]

RESPONSE: Admitted.

88. The following day, the U.S. representatives administered a polygraph examination that confirmed that Mr. Alvarado had been tortured and that he did not participate in the Schaufelberger

assassination. [Alvarado Dep. at 63; Cable from Amb. Edwin Corr, April 24, 1986 (describing the results of Mi. Alvarado's polygraph examination) (PL 1580) (attached to the accompanying memorandum as Exh. K)]

RESPONSE: Admitted. The reports, however, are hearsay. The reports and information also confirm that the Plaintiff was a member of the FPL.

DEFENDANT'S ADDITIONAL STATEMENT OF UNDISPUTED FACTS

As additional statements of undisputed facts, the Defendant submits the following:

1. The Defendant was not a "direct perpetrator" of any alleged act or crime allegedly subject of this lawsuit. (Plaintiffs' Memorandum in Support of Motion for Summary Judgment, p. 1).

RESPONSE:

2. Plaintiffs do not have any evidence that the Defendant gave any Order or command to others to carry out or approve the alleged acts, harms or crimes claimed by Plaintiffs in this lawsuit. (Plaintiffs' Memorandum in Support of Motion for Summary Judgment, Plaintiffs' depositions.)

RESPONSE:

3. The Defendant has been a citizen of the United States, and resident of Memphis, Shelby County, Tennessee, for more than 19 consecutive years. (Answer and Carranza Affidavit.)

RESPONSE:

4. All of the incidents of alleged harm, crime or torture claimed by the Plaintiffs in this lawsuit were performed by masked or unidentified and non-uniformed persons, but for the allegations by Mr. Alvarado, who admits that Mr., Carranza did not know why Alvarado was

incarcerated. (Plaintiffs' Memorandum in Support of Motion for Summary Judgment, pp.1-12, Alvarado depo., pp. 55-57.).

RESPONSE:

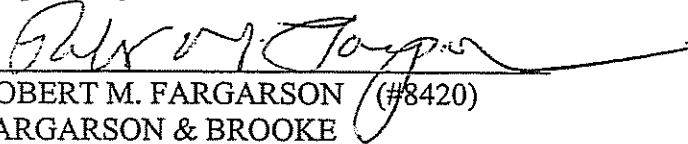
5. Mr. Carranza had Alvarado taken to be questioned by U. S. government officials and news media representatives about Alvarado's involvement in the murder of Lt. Cmdr. Schaufelberger. (Plaintiffs' Memorandum in Support of Motion for Summary Judgment, pp. 9-12; Alvarado depo., pp. 57-58).

RESPONSE:

6. Mr. Carranza did not attempt to influence or coerce Alvarado in what information he provided to the news media or the U. S. government representatives. (Alvarado depo., pp. 57-58.)

RESPONSE:

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 27th day of July, 2005, to:

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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)	
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VS.)	NO. 03-2932 MIP
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NICOLAS CARRANZA,)	JURY TRIAL
)	
Defendant.)	

**DEFENDANT'S RESPONSE TO PLAINTIFFS'
MOTION FOR PARTIAL SUMMARY JUDGMENT**

NOW COMES the Defendant, Nicolas Carranza, by and through his Attorneys of Record herein and responds to the Plaintiffs' Motion for Partial Summary Judgment and respectfully states to the Court the following:

1. The Motion of the Plaintiffs for Partial Summary Judgment should be denied by the Court based on the Defendant's Responses to Plaintiffs' Requests for Admissions; the Defendant's Responses to the Plaintiffs' Statement of Material Facts & Defendant's Additional Statement Of Undisputed Facts; and, the Response of the Defendant to the Plaintiffs' Brief, the pleadings and entire record in this cause.

2. The Plaintiffs acknowledge that the Defendant was not a perpetrator or participant of any of the acts which caused the Plaintiffs or their family members harm or injury. As a matter of fact, the Plaintiffs are not able to offer any proof that the Defendant Carranza was even aware of the occurrences, except with regard to John Doe. With regard to John Doe, the records thus far indicate that he was not threatened by Defendant Carranza, nor did he even complain of acts of torture or mistreatment to Carranza at any time when he was in his presence.

3. The actual individuals causing the harm to everyone other than John Doe, is not absolutely known and is subject only to hearsay, speculation and conjecture.

THEREFORE, the Motion for Partial Summary Judgment on behalf of the Plaintiffs is irrelevant and should be denied.

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 27th day of July, 2005, to:

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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,)	JURY TRIAL
)	
Defendant.)	

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

NOW COMES the Defendant, Nicolas Carranza, by and through his Attorneys of Record herein and submits his Memorandum in Opposition to the Plaintiffs' Motion for Partial Summary Judgment and respectfully states to the Court the following:

Without reciting a detail of the facts or claims of the Plaintiffs, the aim of the respective Plaintiffs in this lawsuit is to hold the Defendant Nicolas Carranza liable and responsible under "The Doctrine of Command Responsibility" for certain acts and events that happened to them or relatives. In other words, that Nicolas Carranza is liable under an alleged civil doctrine of vicarious liability, if masked non-uniformed and unidentified individuals supposedly acted under his "command" to cause the alleged 1979 through 1981 injurious acts. Defendant submits the Plaintiffs' case and claims are tendered by reliance upon hearsay, double-hearsay, triple-hearsay, irrelevance, denial of due process, and all of the other objections Defendant has set forth in his Motion to Dismiss, Answer, and as will be made if this matter goes to trial. The Plaintiffs' Motion highlights the prejudice to the Defendant of being denied the opportunity to fully respond to tendered facts involving alleged incidents, which allegedly occurred more than twenty-three (23)

years prior in time and for which the Plaintiffs admit the Defendant had no direct knowledge or participation. Consequently, the Defendant cannot even investigate the truthfulness of the allegations or find witnesses as to the alleged incidents to which he was not present or aware.

1. In these particular cases, the individuals committing the acts claimed by Ana Patricia Chavez were armed men, dressed in civilian clothes, wearing a mask and carrying rifles. Their identities are unknown and have never been revealed. At this late date, it is not likely that they could be revealed. (Chavez depo., pp. 20-21).

Nevertheless, the Plaintiffs presume from the hearsay report from the United Nations Truth Commission on El Salvador and the expert opinion of Professor Terry Karl, that the individuals who committed those acts were Security Forces of the El Salvador government and further presume that, at the time, they were under the "command" of the Defendant Nicolas Carranza. (Plaintiffs' Statement of Fact 12).

The Plaintiffs have no proof of the exact or precise identity of the individuals causing harm to the Chavez family. The Plaintiffs have no proof that Nicolas Carranza ordered any harm to be done to the Chavez family. The Plaintiffs have no proof that Nicolas Carranza knew about the occurrence to the Chavez family. The Plaintiffs have no concrete proof of who the individuals were that caused harm to the Chavez family.

2. The Plaintiff, Cecilia Santos, was taken into custody by two (2) private security guards. She was accused by the security guards of having planted a bomb. An individual in the security office called two (2) men dressed in civilian clothes who took Mrs. Santos away in a taxi. Ms. Santos states she was taken to the National Police Headquarters, where acts of indignities were committed against her. (Santos depo., pp 29-44).

None of the individuals are identified by Ms. Santos. She states that her interrogator instructed a man in uniform that she is in the deposit of the Ministry of Defense who at the time

would not have been Nicolas Carranza. Santos cannot identify any individual who took her into custody or questioned her. She has no evidence that Nicolas Carranza was involved in her being taken into custody; being taken to National Police Headquarters; ordering anything to be done to her; or, even knowing that she was in custody. (Santos depo., p. 70)

Again, the Plaintiffs are simply presuming that because she was taken to National Police Headquarters and some hearsay statement was made about deposit of the Ministry of Defense, Nicolas Carranza should be held accountable.

3. The Plaintiff, Francisco Calderon, claims that on September 11, 1980, he heard loud knocking on the front door and looked out to see uniform members of the National Police wearing bulletproof vests. He was told to open the door, which he did. At that time, several men in civilian clothes entered the house. One of the men, wearing a mask and carrying a G3 military-issued rifle, forced Francisco Calderon to lay down on the floor. They then killed Paco Calderon with gun shots. The identity of the men in civilian clothes wearing masks and carrying military-issued rifles is not known. (Calderon depo., pp 31-36).

Apparently, the Plaintiff wants a presumption made that they were obviously somehow connected to Nicolas Carranza. Again, the Plaintiffs have no proof of who the men were. They have no proof that Nicolas Carranza knew anything about Paco Calderon, Francisco Calderon or what was taking place on September 11, 1980. The Plaintiffs have no proof the Defendant ordered something to be done to the Calderon family. The Plaintiffs have no proof that Nicolas Carranza knew the family or know anything about what was taking place on September 11, 1980.

4. The Plaintiff, Jane Doe (or Erlinda Revelo), does not have any first-hand information about what happened regarding her husband. She relies on hearsay information of the Truth Commission with the exception that she did identify her husband's body and saw injuries he had sustained. Her statement that the abduction of her husband "was an operation carried out by one or

more public Security Forces” is not based on first-hand knowledge but on hearsay information. The Plaintiff does not have any evidence concerning the identity of the individuals who abducted her husband. The Plaintiff does not have any evidence of the individuals who killed her husband. (Revelo depo., pp. 26-31; Truth Commission Report, pp. 58-61, 136)

The Plaintiff does not have any actual evidence of any connection between such individuals and Nicolas Carranza. The Plaintiff can only rely on the conjecture and theories of hearsay evidence. The Plaintiff has no evidence that Nicolas Carranza ordered the abduction of Plaintiff’s husband. The Plaintiff has no evidence that Nicolas Carranza ordered or knew about the abduction of her husband.

5. The Plaintiff, John Doe (or Daniel Alvarado) was taken into custody by men in civilian clothes. He is the only individual who identifies someone who participated in his treatment while in captivity, which was Ricardo Posa. Alvarado cannot testify that Defendant Carranza knew he was mistreated, abused or forced to say anything. He was not mistreated by Carranza and was allowed to talk to the news media on two (2) occasions and on each occasion, he confessed to the murder of Schaufelberger. He did not tell Carranza he was tortured or mistreated and he was allowed by Carranza to go to a private residence to speak to representatives of the FBI and the CIA. Alvarado cannot present any evidence that Carranza ordered his torture. He cannot present any evidence that Carranza knew about his alleged torture or mistreatment: As a matter of fact, in Alvarado’s deposition, he stated that he did talk to Carranza briefly, who asked him if he wanted to talk to journalists. The Plaintiff stated that he had not been threatened at all by Carranza. Both times that Plaintiff talked to journalists, he confessed to killing the United States Naval attaché. (Doe depo., pp. 55-58).

Out of all the Plaintiffs in the lawsuit, only one had any personal contact with Carranza, who permitted him to talk to the news media and who did not threaten him at all.

ARGUMENT

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.¹ 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.

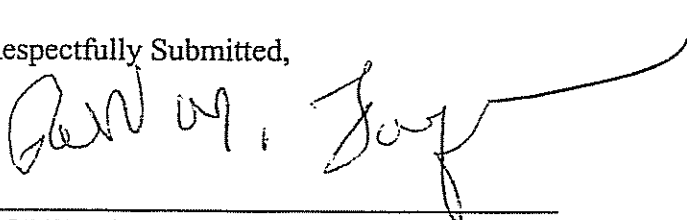
Consequently, while the Defendant is not making light of what happened to any of the Plaintiffs or their relatives, there is in reality no causal connection between the injuries and harm sustained by the Plaintiffs' claim that, while Carranza was not a participant or perpetrator, he did not exercise "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.

¹ See Usarei v. Rio Tinto PLC (C.D. CAL 2002) 221 F.Supp.1116.

CONCLUSION

Because the Defendant Carranza was unaware of the wrongs claimed by the Plaintiffs and the harm allegedly done to the Plaintiffs, an investigation would be irrelevant and would not have prevented the harm alleged and claimed by the Plaintiffs. Consequently, the Motion for Summary Judgment should be denied since it is irrelevant to an after-the-fact investigation.

Respectfully Submitted,



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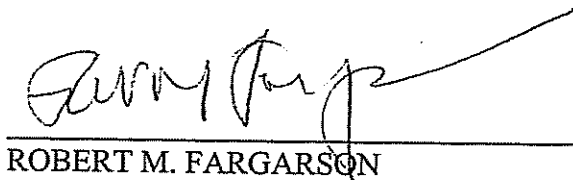
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