

**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,)**

No. 03-2932 M1/P

Plaintiffs,)

JURY TRIAL

v.)

NICOLAS CARRANZA,)

Defendant.)

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION
FOR SUMMARY JUDGMENT**

I. INTRODUCTION

During the early 1980s, the Plaintiffs suffered severe human rights abuses in El Salvador. At that time, the defendant, Colonel Nicolas Carranza, served as one of the top commanders in the Salvadoran military, first as the Subsecretary of Defense and Public Security in 1980 and later as the Director of one of the three branches of the Salvadoran Security Forces, the Treasury Police, from June 1983 to May 1984. The Plaintiffs bring claims under the Alien Tort Claims Act (“ATCA”), 28 U.S.C. § 1350, and the Torture Victim Protection Act (“TVPA”), 28 U.S.C. § 1350 note, against Col. Carranza because he is responsible for the abuses they suffered. The Plaintiffs do not contend that Col. Carranza was the direct perpetrator of the torture, extrajudicial killings, and crimes against humanity that are the subject of this lawsuit. Instead, the Plaintiffs allege that Col. Carranza is liable for these acts under the theory of command responsibility – the doctrine in domestic and international law that holds commanders accountable when they allow their subordinates free reign to commit human rights abuses with impunity.

As is required in a cause of action alleging command responsibility, the Plaintiffs' complaint sets forth a two-tiered theory of liability: (1) that the Plaintiffs or their relatives were the victims of certain predicate acts, consisting of torture, extrajudicial killing, or crimes against humanity; and (2) that Col. Carranza is responsible for each of these acts under the doctrine of command responsibility. By this motion, the Plaintiffs move for summary judgment on two of the three predicate acts in the first tier of liability – torture and extrajudicial killing. There are no material facts to dispute the Plaintiffs' claims that they were either themselves tortured or that their relatives were killed without judicial process. Plaintiffs, therefore, are entitled to judgment as a matter of law on these predicate acts.

The entry of summary judgment is not only proper under the standards of Fed. R. Civ. P. 56, but also would serve the interest of trial efficiency. By their nature, the Plaintiffs' claims will require significant factual and legal elaboration at trial. ATCA and TVPA claims are relatively rare in United States courts, and the jury will confront a complex body of facts and law in rendering its verdict. By granting summary judgment on the predicate acts of torture and extrajudicial killing, the Court will eliminate a majority of the questions that the jury otherwise would be required to answer at trial and thereby significantly narrow the issues that the jury will be required to consider. This will allow the jury to focus on the central issue that governs the parties' dispute – whether Col. Carranza should be held liable as a commander for the torture and killings that the Plaintiffs have endured.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Ana Patricia Chavez

In July 1980, Ana Patricia Chavez was studying to be a secretary in San Salvador. Deposition of Ana Patricia Chavez Penate (“Chavez Dep.”) at 11, 14 [attached hereto at Exh. A]. She and her partner, Omar, and their infant daughter lived in San Salvador during the week, but

spent every weekend with Ms. Chavez' parents, Guillermina and Humberto Chavez, in the town of Ahuachapan. Id. at 11-13, 19. 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." Id. at 13-16.

On July 26, 1980, Ms. Chavez was in her parents' home for a weekend visit. Early that morning, she saw in the corridor of the house a man dressed in civilian clothes, wearing a mask, and carrying a rifle. Id. at 20-21, 23. When this man saw Ms. Chavez' mother, Guillermina, walk out of the bathroom, he grabbed her and threw her onto her bed. Id. at 20. More armed men, dressed similarly, then began coming into the house. Id. at 21. One of the men that had stormed into the house threw Ms. Chavez on the bed next to her mother. Id. at 21. The men then began beating Guillermina Chavez. They opened all the drawers in the bedroom wardrobe, and demanded to see "propaganda and money." Id. At this point, the men took Ms. Chavez to a separate room with her infant daughter, where she heard her mother continue to be beaten. Id. at 24-25. Ms. Chavez then heard gunshots. When she heard no more noise, Ms. Chavez left her room, went to her mother's bedroom, and found her mother's lifeless body on the bed. Id. at 25.

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." Id. at 27. 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. Id. Ms. Chavez then returned to her parents' home and found her father dead in the corridor with several gunshot wounds. Id. at 28-29.

During the early 1980s, deaths squads, like the one that killed Omar and Guillermina and Humberto Chavez, acted together with government agents to carry out attacks on the civilian population. The United Nations Truth Commission for El Salvador, which was formed by the United Nations after the end of the Salvadoran civil war and was comprised of three

independent, non-Salvadoran commissioners, investigated in great detail the relationship between death squads and the Salvadoran military. In its report, 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 Comm. Report”), at 137 (bates number PL 0168) [relevant excerpts attached hereto at Exh. B]. The death squads frequently operated in “coordination with the armed forces.” Id. at 134 (PL 0164). Terry Karl, Professor of Political Science at Stanford University and an expert witness on behalf of the Plaintiffs, has reached the same conclusion based on her extensive first-hand experiences and academic study of El Salvador. See Declaration of Prof. Terry Lynn Karl, at ¶ 11 (“[M]embers of the Salvadoran Security Forces had already formed and participated in death squads by 1980 - with the support of the corresponding official institutions.”) [attached hereto at Exh. C]. According to the U.N. Truth Commission, the death squads were able “to insinuate themselves ... perniciously into the formal State structure.” Truth Comm. Report, at 132 (PL 0161) [Exh. B].

B. Cecilia Santos

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 hereto at Exh. D]. 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. Id. at 26. Shortly thereafter, two private security guards entered the restroom and began questioning Ms. Santos about the sound. Id. at 29. Ms. Santos did not know anything about the sound or what caused it. Id. 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. Id. at 30-32. 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. Id. at 35.

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. Id. at 37-38. After about a 20 minute drive, Ms. Santos and these men arrived at the headquarters of the National Police. Id. at 39-40. One of the men took her by the arm and led her through the main entrance of the National Police headquarters where she was turned over to the Corporation of National Investigation, or “CAIN,” a subsection of the National Police agency. Id. at 42-44. 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. Id. at 47-51.

There were several men in this room, one of whom told Ms. Santos: “It will be easy if you cooperate with us.” Id. at 53. 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. Id. at 54-55. Later in the interrogation, one of her interrogators pulled her partially out of the chair and forced an object into her vagina. Id. at 58. When Ms. Santos screamed in pain, an interrogator said: “That’s nothing. That’s just to test.” Id. 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.” Id.

Ms. Santos was then asked whether she knew how to prepare a bomb. Id. at 58-59. When she said that she did not, her interrogator replied, “You have to know, because you are in the University.” Id. at 59. The man then dipped a Q-Tip into a bottle of sulphuric acid and inserted it into Ms. Santos’ nose. Id. He also dropped acid onto Ms. Santos’ right hand, which

caused it to blister almost immediately. Id. at 59-60. 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.” Id. at 60. 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. Id. at 63. While the shocks were administered, the interrogators placed pictures of different faces in front of Ms. Santos and asked her to identify them. Id. at 65. The electric shocks eventually caused Ms. Santos to faint. Id. at 64. Later, Ms. Santos, with the assistance of one of her interrogators, signed a blank piece of paper. Id. at 67.

Ms. Santos’ torture and interrogation lasted the entire night, from approximately 7:30 p.m. until the early morning of September 26. Id. at 72. 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 uniformed man that “[s]he is in the deposit of the Ministry of Defense.” Id. at 70. Ms. Santos spent eight nights in that cell, and was then transferred to the women’s prison in Ilopango, where she spent 32 months in confinement. Id. at 72, 81.

C. Francisco Calderon

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 hereto at Exh. E]. 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. Id. at 18-21. Paco Calderon was eventually released from custody, but he and his family feared that he might be the target of further government repression. Id. at 26-27. Upon his release, Paco Calderon moved to San Salvador to live with his daughter and his adult son, Francisco Calderon. Id. at 13, 26-27.

On September 11, 1980, Paco Calderon was watching television in the living room of his son's home while his daughter studied. Francisco Calderon was getting ready for bed around 10:00 p.m. when he heard the loud sound of boots kicking his front door. Id. at 31. Francisco Calderon went to the front door and looked out to see uniformed members of the National Police wearing bulletproof vests. Id. at 32. The police demanded that Francisco Calderon open the door, and he complied. Id. at 32-33. Immediately afterward, several men in civilian clothes entered the house. Id. at 33. 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. Id. Francisco Calderon heard his father try to get his sister out of the house, but men on the roof prevented their escape. Id. at 34.

Francisco Calderon then heard his father walk into the living room and said to his father, "They are going to kill me." Id. at 34. When Paco Calderon saw his son on the floor, he said, "Not my son. I am Juan Francisco Calderon...." Id. at 35. The armed men attempted to carry Paco Calderon outside. Id. 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." Id. at 36. The armed men broke the light bulbs in the living room, then fired five gunshots from the G3 rifles into Paco Calderon's body. Id. Francisco Calderon thought that he would be shot next, but instead the armed men left the house while firing shots into the air. Id. at 37.

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

In 1980, Manuel Franco was a professor at the National University and a prominent leader of the Democratic Revolutionary Front ("FDR"). See Truth Comm. Report, at 58 & n.136 (PL 0068, 0262) [Exh. B]. The FDR was formed in April 1980 as a coalition of democratic, popular organizations and political parties. Id. at n. 139 (PL 0263). On the morning of

November 27, 1980, Manuel Franco's wife, Erlinda Revelo, bid her husband farewell for the day, as she normally did. Deposition of Erlinda Revelo, Viuda de Franco ("Revelo Dep.") at 26-27 [attached hereto at Exh. F]. 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. Truth Comm. Report, at 58-61 (PL 0068-73) [Exh. B]. Later that day, Manuel Franco's dead body was dumped on the side of the road on the outskirts of Apulo, El Salvador. Id. at 59 (PL 0070). 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 Comm. Report, at n. 136 (PL 0262) [Exh. B].

The U.N. Truth Commission concluded that the abduction of the FDR leaders "was an operation carried out by one or more public security forces." Id. at 58 (PL 0069). Contemporaneous reports from the United States Embassy in El Salvador confirm that the Security Forces were responsible for the abduction, torture, and murder of Manuel Franco. On November 29, 1980, the U.S. Ambassador to El Salvador, Robert White, informed the Secretary of State in a confidential cable that "the Security Forces of the government kidnapped and killed six of the FDR leadership" and that "[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 hereto at Exh. G]. A recently declassified, but heavily redacted, U.S. government document reports that the "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 hereto at Exh. H].

E. John Doe (Daniel Alvarado)

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 hereto at Exh. I]. Mr. Alvarado’s abductors blindfolded him, tied him up, threw him onto the floor of a car, and sat on top of him. Id. at 29. After being driven around for about 45 minutes, Mr. Alvarado was taken to the Treasury Police headquarters. Id.

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. Id. at 30. 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. Id. at 31. 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.

Id. at 39. Mr. Alvarado was “continuously tortured” in this manner from approximately 6:00 p.m. until approximately 1:00 or 2:00 in the morning. Id. at 31-32.

The Treasury Police officers accused Mr. Alvarado of being a guerrilla fighter and wanted the names of people who participated with the guerrillas. Id. at 31. They also accused him of responsibility for the death of a United States military advisor in El Salvador, Lt. Cmdr. Albert Schaufelberger. Id. 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. 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 Schaufelberger assassination. Id. at 35.

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. Id. at 35-36; Deposition of Nicolas Carranza (“Carranza Dep.”) at 381 [relevant excerpt attached at Exh. J]. 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]. 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.” Id. at 36.

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. Id. at 38. 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. Id. at 39-40. “They would pull down on my body and would do as if to tear my arms out of my shoulders.” Id. at 40. On the fourth day after his capture, Mr. Alvarado was again tortured, this time by hanging him upside down by his feet. Id. 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.” Id. at 41.

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. Id. at 41-42. 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.” Id. at 45. 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. Id. at 47. During this torture session, Mr. Alvarado suffered a nervous breakdown. Id. at 48.

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. Id. at 37, 52. 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. Id. at 58. When Mr. Alvarado was unable to provide any accurate information about the Schaufelberger crime scene, they confronted him with the fact that he was lying about his participation in the crime. Id. at 60. In return for an agreement from the U.S. representatives that “[t]he government of the United States would guarantee [his] life and the lives of [his] family,” Mr. Alvarado told them the truth about his torture. Id. at 61. 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. Id. at 63; Cable from Amb. Edwin Corr, April 24, 1986 (describing the results of Mr. Alvarado’s polygraph examination) (PL 1580) [attached hereto at Exh. K].

Mr. Alvarado remained in a cell at Treasury Police headquarters for four months, until he was transferred to prison in Mariona on January 31, 1984. He remained in that prison for over two years, until April 23, 1986, when Mr. Alvarado, his wife, and son were allowed to flee El Salvador for exile in Sweden. Alvarado Dep. at 67-68 [Exh. I].

With respect to the foregoing evidence for all the Plaintiffs, there are no material facts in the record to dispute that the Plaintiffs either have been tortured or that their relatives were the victims of extrajudicial killings. In his response to interrogatories, the Defendant was unable to identify any individual with knowledge of these events. See Responses of Defendant, Nicolas Carranza, to Plaintiffs' First Set of Interrogatories, Nos. 3-7 [attached hereto at Exh. L].

III. ARGUMENT

A party may obtain summary judgment where the evidentiary material on file shows “that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c); Wade v. Knoxville Utilities Bd., 259 F.3d 452, 460 (6th Cir. 2001). When a moving party properly supports its motion for summary judgment, the non-moving party cannot rest on mere allegations, but must set forth specific facts in response showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). “The mere existence of a scintilla of evidence in support of the [nonmoving party’s] position will be insufficient; there must be evidence on which the jury could reasonably find for the [nonmoving party].” Id. at 252. “Rule 56 does not require that the relief granted to a successful movant always be dispositive of the full matter in controversy, because the Rule anticipates that a court may decide only some of the claims, or even merely parts of claims.” 11 Moore’s Federal Practice § 56.40[1], at p. 56-279 (3d. ed. 1998).

A. The Plaintiffs are entitled to summary judgment on their claims for torture.

The Plaintiffs' claims arise under two federal statutes: (1) the ATCA, which permits non-citizens to bring claims for torts "committed in violation of the law of nations;" and (2) the TVPA, which provides a cause of action for United States citizens and non-citizens who have suffered torture or extrajudicial killing. 28 U.S.C. § 1350; *id.* at note. Under both statutes, the elements of a cause of action for torture are the same:

- (1) One or more persons intentionally inflicted severe pain and suffering, whether physical or mental, on the victim;
- (2) The victim was in the person's custody or physical control;
- (3) The person who intentionally inflicted severe pain or suffering on the victim did so while acting under the actual or apparent authority, or color of law, of a foreign nation; and
- (4) The severe pain or suffering was inflicted for such purposes as obtaining from the victim or another person information or a confession, punishing the victim for an act he or another had committed or was suspected of having committed, intimidating or coercing the victim or another person, or discrimination of any kind.

28 U.S.C. § 1350, note; Filartiga v. Pena-Irala, 630 F.2d 876, 883 (2d Cir. 1980) (citing the definition of torture from the Declaration on the Protection of All Persons from Being Subjected to Torture, General Assembly Resolution 3452, U.N. Doc. A/1034 (1975)); Presbyterian Church of Sudan v. Talisman Energy, Inc., 244 F. Supp. 2d 289, 326 (S.D.N.Y. 2003) (defining torture for purposes of the ATCA). Several courts have recognized a defendant's liability for torture under the ATCA and TVPA. See, e.g., Hilao v. Estate of Marcos, 103 F.3d 767, 782-83 (9th Cir. 1996); Doe I v. Liu Qi, 349 F. Supp. 2d 1258, 1313-14 (N.D. Cal. 2004); Mehinovic v. Vuckovic, 198 F. Supp. 2d 1322, 1345-46 (N.D. Ga. 2002); Paul v. Avril, 901 F. Supp. 330, 335 (S.D. Fla. 1994); Xuncax v. Gramajo, 886 F. Supp. 162, 178, 184-85 (D. Mass. 1995).

Based on the undisputed material facts, the Plaintiffs suffered torture as defined by the ATCA and TVPA. Ms. Chavez was forced to lie next to her mother on a bed while her mother was viciously beaten and interrogated. She was also forced to hear her own mother's murder, which took place in the room next to her own. Being forced to listen while your parents are murdered constitutes the infliction of severe mental pain and suffering. Cf. Liu Qi, 349 F. Supp. 2d at 1318 (finding that a prisoner had been subjected to "mental torture" when she "was forced to witness the guards' severe mistreatment of a close friend"). Ms. Chavez' pain and suffering was compounded, shortly thereafter, when she discovered the bodies of her partner and her father, both of whom had been brutally assassinated.

As the perpetrators' questions about "money and propaganda" demonstrate, Ms. Chavez' torture was intended to punish her for acts that her mother allegedly had committed. Chavez Dep. at 21 [Exh. A]. Specifically, the perpetrators intended to punish Ms. Chavez for her mother's alleged possession of "propaganda" and for what they assumed to be her opposition to the repression by the Salvadoran authorities. This torture was also accomplished for the purpose of intimidating Ms. Chavez, who feared after she heard the shots that ended her mother's life that she and her infant daughter would be next. "Q. [A]fter the shots, what did you do then? A. I stayed there asking God that they wouldn't come in so that they wouldn't do us – do anything to us." Id. at 25. See Liu Qi, 349 F. Supp. 2d at 1317 (defining mental torture under the TVPA as "prolonged mental harm that is caused by the threat that either the victim or another will be imminently subjected to death or serious physical pain or suffering") (citing TVPA, § 3(b)(2), 28 U.S.C. § 1350, note).

With respect to the third element, which requires that the torture occur under "color of law," Ms. Chavez must show "some governmental involvement in the torture to prove a claim." Liu Qi, 349 F. Supp. 2d at 1314 (citing TVPA legislative history, H.R. Rep. No. 102-367(III),

reprinted in 1992 U.S.C.C.A.N. at 87). Courts have looked to 42 U.S.C. § 1983 jurisprudence as a guide to determine when a non-government individual is deemed to act under apparent authority or color of law. Doe v. Saravia, 348 F. Supp. 2d 1112, 1150 (E.D. Cal. 2004). The standard is met when the non-government individual acts with “significant state aid” or when there is a “substantial degree of cooperative action” between the non-government individual and the government. Id. (citations omitted). Prof. Karl, in her declaration and expert report, has found that the death squads “were organized from within government Security Forces or were linked directly to the Security Forces.” Dec. of Prof. Terry Lynn Karl, ¶ 10 [Exh. C]. In its report, the U.N. Truth Commission found that the death squads were able “to insinuate themselves ... perniciously into the formal State structure.” Truth Comm. Report, at 132 (PL 0161) [Exh. B]. Relying on the U.N. Truth Commission and the opinions of Prof. Karl, the U.S. District Court for the Eastern District of California recently found that the death squad assassination of Archbishop Oscar Romero in 1980 was undertaken under color of law. See Saravia, 348 F. Supp. 2d at 1149-50. As members of a death squad, those persons who participated in the Chavez killings were acting under color of law of the Salvadoran government. Therefore, the third element is met, and Ms. Chavez is entitled to summary judgment on her claim for torture.

Cecilia Santos’ confinement and interrogation also constitute torture as a matter of law. While in the custody of the National Police at its headquarters, Ms. Santos was sexually assaulted, had her hands burned with acid, and was administered electric shocks. Because it was accomplished in the National Police headquarters by members of the “CAIN” department, the torture was undertaken under the apparent authority, or color of law, of the government of El Salvador. See Santos Dep. at 70 (“She is in the deposit of the Ministry of Defense.”) [Exh. D]. By asking her to identify pictures of people, as well as the names of her co-workers and

classmates, the torturers acted with the purposes of intimidating Ms. Santos and extracting information from her. Id. at 54-55, 65. By questioning her regarding an alleged bombing, her captors tortured her for the purpose of punishment for an act she had allegedly committed. Id. at 58-59. Accordingly, Ms. Santos is entitled to summary judgment on her claim for torture.

Mr. Calderon was forced to witness the killing of a parent, an act that clearly constitutes the infliction of severe mental pain and suffering. See Liu Qi, 349 F. Supp. 2d at 1318 (finding “mental torture” when a prisoner “was forced to witness the guards’ severe mistreatment of a close friend”). Laying on the floor with a military-issued G3 rifle in his back, Mr. Calderon heard the five shots that killed his father, who was immediately beside him in the room. Calderon Dep. at 36 [Exh. E]. Given that the perpetrators kept Mr. Calderon down on his living room floor by pointing a rifle at his back, there can be no doubt that he was in the custody of those who killed his father. The active involvement of National Police soldiers, who demanded that the front door be opened and allowed masked individuals to go into the house and kill Mr. Calderon’s father, rendered the entire operation an act under color of law. Id. at 32-33. Like, Ms. Chavez’ torture, Mr. Calderon’s torture was also accomplished for the purpose of punishing Mr. Calderon for his father’s presumed political beliefs and ideology. Given his father’s prior arrest for distributing fliers, the soldiers who forced Mr. Calderon to listen to his father’s murder intended to punish Mr. Calderon for the allegedly “subversive” acts that his father had committed. Also similar to Ms. Chavez, Mr. Calderon was in fear of his own imminent death. When his father walked into the living room, Mr. Calderon told him, “They are going to kill me.” Id. at 34. After the perpetrators shot his father five times, Mr. Calderon believed that he would die next. Id. at 37. Mr. Calderon therefore is entitled to summary judgment for the torture he endured for having witnessed his father’s murder.

Finally, there can be no question that Mr. Alvarado was tortured by his captors from the Treasury Police. For days on end, members of the Treasury Police inflicted a wide variety of physical tortures on Mr. Alvarado, including electrical shocks, beatings, and near asphyxiation. Mr. Alvarado was in the physical control of his captors, and these men acted under the actual authority, or color of law, of the government of El Salvador. In fact, Mr. Alvarado was able to identify one of his torturers by name – Maj. Ricardo Pozo, one of the highest ranking officers in the Treasury Police. Alvarado Dep. at 35-36 [Exh. I]. Col. Carranza has admitted that Maj. Pozo was a member of the Treasury Police during that time, and that Maj. Pozo was placed in charge of the investigation into the assassination of Lt. Cmdr. Schaufelberger. Carranza Dep. at 381 [Exh. J]. These tortures continued until Mr. Alvarado agreed to “cooperate” by signing a declaration in which he admitted to a crime he had not committed. Under these facts, Mr. Alvarado is entitled to judgment as a matter of law on his claim for torture.

B. The Plaintiffs are entitled to summary judgment on their claims for extrajudicial killing.

Under the ATCA and the TVPA, extrajudicial killing consists of the following three elements:

- (1) some unit or person deliberately killed the victim;
- (2) the unit or person killed the victim while acting under actual or apparent authority, or color of law of, any foreign nation; and
- (3) the killing was not previously authorized by a judgment of a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

28 U.S.C. § 1350, note; Cabello v. Fernandez-Larios, 157 F. Supp. 2d 1345, 1358 (S.D. Fla. 2001). Several courts have recognized a defendant’s liability for extrajudicial killing under the ATCA and TVPA. See, e.g., Hilao, 103 F.3d at 782-83; Saravia, 348 F. Supp. 2d at 1149; Xuncax, 886 F. Supp. at 178, 184-85.

Ms. Chavez lost both her parents when a death squad invaded their home. She witnessed men dressed in civilian clothing, wearing masks, and carrying rifles throw her mother onto her bed and beat her while demanding propaganda. After these men put Ms. Chavez in her own room, she was forced to listen to the gunshots that killed her mother. Later, she saw her mother's corpse on the bed, as well as her father's corpse in the corridor. As demonstrated above, the death squad members that killed Ms. Chavez' mother and father, because they operated with a "substantial degree of cooperation" with the Salvadoran government, acted under color of law. See Saravia, 348 F. Supp. 2d at 1150. Ms. Chavez' parents did not receive any sort of judicial process prior to these killings. The circumstances of their deaths, being gunned down by masked men in their home, are certainly not consistent with an execution pursuant to lawful process. Therefore, Ms. Chavez is entitled to summary judgment on her claim for the extrajudicial killing of her parents.

Mr. Calderon is also entitled to summary judgment on his claim for extrajudicial killing. On September 11, 1980, men dressed in civilian clothing, who were carrying military-issued G3 rifles and accompanied by members of the National Police, entered Mr. Calderon's home and killed his father. As discussed above, the involvement of uniformed soldiers, who demanded that the front door be opened and allowed masked men to go inside and kill Mr. Calderon's father, rendered the operation an act under color of law. Furthermore, these circumstances cannot be consistent with an execution that is carried out under lawful process, as that term is understood by any civilized person. Mr. Calderon's father received no judicial process to justify his killing. In the words of Mr. Calderon, the men who carried out the operation against his father "had assassinated him like a dog." Calderon Dep. at 39 [Exh. E].

Manuel Franco, Erlinda Revelo's husband and a prominent FDR leader, was assassinated by strangulation and multiple gunshot wounds to his mouth and thorax. His assassination

occurred at the hands of the Security Forces or persons acting in concert with the Security Forces, a fact that is well documented in the investigation conducted under the auspices of the United Nations and the contemporaneous findings of the United States Embassy in El Salvador. See Truth Comm. Report, at 58-62 (PL 0068-74) [Exh. B]; United States government cables (PL 1423, 1379-80) [Exhs. G, H]. The men who carried out these abductions and torture therefore acted under color of law of the Salvadoran government. Finally, there was no judgment of any Salvadoran court authorizing the killing. The circumstances of Manuel Franco's murder – that he was tortured prior to his death and that his corpse was left on the side of the road – are wholly inconsistent with a killing that has been authorized according to lawful process in a manner recognized by civilized peoples. Under these undisputed facts, the assassination of Manuel Franco constitutes an extrajudicial killing as a matter of law.

IV. CONCLUSION

The undisputed material facts demonstrate that Plaintiffs Ana Patricia Chavez, Cecilia Santos, Francisco Calderon, and John Doe (Daniel Alvarado), were tortured. The undisputed facts also prove that Guillermina and Humberto Chavez, Paco Calderon, and James Doe (Manuel Franco) were the victims of extrajudicial killings. Judgment is appropriate as a matter of law because the record contains overwhelming, undisputed evidence that the Plaintiffs were brutally tortured or their parents were killed without judicial process. To the Plaintiffs' knowledge, Col. Carranza was not present at any of these acts, and he has failed to develop any facts during discovery to contradict the Plaintiffs' sworn testimony. Furthermore, the entry of summary judgment will narrow significantly the issues that must be decided by the jury at trial.

For these reasons, the Court should grant summary judgment to the Plaintiffs in the following respects: that Plaintiff Ana Patricia Chavez has suffered torture and extrajudicial killing pursuant to her claims under the ATCA and TVPA; that Plaintiff Cecilia Santos has

suffered torture pursuant to her claim under the TVPA; that Plaintiff Francisco Calderon has suffered torture and extrajudicial killing pursuant to his claims under the TVPA; that Plaintiff Jane Doe (Erlinda Revelo, Viuda de Franco) has suffered extrajudicial killing pursuant to her claims under the ATCA and TVPA; and that Plaintiff John Doe (Daniel Alvarado) has suffered torture pursuant to his claims under the ATCA and TVPA.

Dated: June 24, 2005

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has this day been served upon the following counsel for the Defendant by depositing a copy thereof in the United States Mail, postage prepaid, this 24th day of June, 2005.

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