

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

JESUS CABRERA JARAMILLO, et al.,
Plaintiffs,

CASE NO. 10-21951-CV-EGT

vs.

CARLOS JIMENEZ NARANJO,
Defendant.

DEFENDANT JIMENEZ'S MOTION TO DISMISS AMENDED COMPLAINT

CARLOS MARIO JIMENEZ NARANJO ("Jimenez"), by and through undersigned counsel, pursuant to Fed. R. Civ. P. 12(b), respectfully moves to dismiss JESUS CABRERA JARAMILLO ("Jaramillo"), JOHN DOE, and JANE DOES' ("Plaintiffs") Amended Complaint, D.E. 91, for the following:

- 1. AMENDED COMPLAINT MUST BE DISMISSED WHERE THE COURT LACKS PERSONAL JURISDICTION OVER JIMENEZ.**
 - 2. AMENDED COMPLAINT MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM OF RELIEF PLAUSIBLE ON ITS FACE.**
 - 3. ALIEN TORT STATUTE ("ATS") CLAIMS MUST BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION WHERE NONE OF ALLEGATIONS IN COMPLAINT TOUCH AND CONCERN TERRITORY OF UNITED STATES.**
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- 1. AMENDED COMPLAINT MUST BE DISMISSED WHERE THE COURT LACKS PERSONAL JURISDICTION OVER JIMENEZ.**

Jimenez was involuntarily extradited to the United States against his will to face criminal charges. Agents with the Drug Enforcement Agency went to Colombia, placed Jimenez in handcuffs, and brought him on a plane to the United States to face those charges. Jimenez only continues to remain in the United States as a temporary parolee to serve sentences for convictions arising out of those charges.

The court lacks personal jurisdiction over Jimenez where Jimenez is not a resident of Florida, has never had any continuous and systematic contacts with Florida, and was involuntarily extradited to Florida where he remains against his will today. *Burnham v. Superior Court of California*, 495 U.S. 604, 610 n.1 (1990); *American Overseas Marine Corp. v. Patterson*, 632 So. 2d 1124, 1129-30 (Fla. 1st DCA 1994).

Plaintiffs have the burden of establishing a *prima facie* case of personal jurisdiction over a nonresident defendant. Fed. R. Civ. P. 8(a) (requiring that complaint contain short and plain statement for grounds on jurisdiction); *Meier ex rel. Meier v. Sun Intern. Hotels*, 288 F.3d 1264, 1268-69 (11th Cir. 2002).

Courts may establish jurisdiction over a non-resident alien where a plaintiff serves the defendant with a summons and complaint while the defendant is physically present in the forum. *Burnham v. Superior Court of California*, 495 U.S. 604, 638-40 (1990). However, that defendant must be **voluntarily** in the forum. *Burnham*, 495 U.S. at 639 (“For these reasons, as a rule the exercise of personal jurisdiction over a defendant based on his voluntary presence in the forum will satisfy the requirements of due process.”).

Jimenez is a non-resident alien who has **involuntarily** been brought into this Court’s jurisdiction. Jimenez is clearly in Florida against his will and continues to remain in Florida with similar restraint.

As such, the Court does not have personal jurisdiction over Jimenez and the amended complaint must be dismissed.

2. AMENDED COMPLAINT MUST BE DISMISSED FOR FAILURE TO STATE A CLAIM OF RELIEF PLAUSIBLE ON ITS FACE.

The amended complaint must be dismissed where it does not sufficiently and plausibly allege that Jimenez acted unlawfully against Plaintiffs. Fed. R. Civ. P. 8(a); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007).

Plaintiffs allege that Jimenez's subordinates committed tortious acts which resulted in damages against Plaintiffs. Plaintiffs fail to provide any clear and concrete factual nexus linking Jimenez to those tortious acts.

Plaintiffs' claims arise out of the killing of Eduardo Estrada and Alma Rosa Jaramillo. D.E. 91 at 8-10, ¶-32 to ¶-42. The amended complaint does not allege that Jimenez killed these individuals. Rather, Plaintiffs attempt to impute liability through the unsubstantiated conclusion that, since Jimenez was the "high commander" of 7,000 soldiers, including the subordinates purportedly responsible for these killings, Jimenez therefore must be liable.

Plaintiffs allege that Jimenez had "effective control" over the subordinates. D.E. 91 at 10, ¶-46. The subordinates allegedly operated under Jimenez's "direct command and direction." D.E. 91 at 10, ¶-46. Plaintiffs further allege that Jimenez "knew or reasonably should have known of the pattern and practice of gross human rights abuses" committed by his subordinates, including the killings of Estrada and Jaramillo. D.E. 91 at 10, ¶-46. Jimenez allegedly "conspired" and "acted in concert" with the subordinates pursuant to a "common plan, design, and scheme." D.E. 91 at 11, ¶-49. The complaint concludes that Jimenez is therefore "jointly and severally liable" for the killings that he "aided and abetted." D.E. 91 at 12, ¶-51.

A complaint must raise a right to relief above mere speculation. *Twombly*, 550 U.S. at 555. This obligation requires more than a “sheer possibility” that the defendant has acted unlawfully. *Iqbal*, 129 S. Ct. at 1949. “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 129 S. Ct. at 1949.

While the court must take all factual allegations as true, the court is not bound to accept legal conclusions or deductions of fact couched as factual allegations as true. *Twombly*, 550 U.S. at 555; *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1260 (11th Cir. 2009); *Mamani*, 654 F.3d at 1153. Legal conclusions may provide a framework for the complaint but the conclusions must be supported by factual allegations. *Iqbal*, 129 S. Ct. at 1950.

Plaintiffs’ amended complaint relies almost exclusively on conclusory statements rather than factual allegations. Plaintiffs fail to allege with any specificity that Jimenez ordered any individual to kill Estrada and Jaramillo. Not a single specific factual allegation links Jimenez to these killings. Plaintiffs seek to impute liability merely based on Jimenez’s position within the organization as the leader. Assertions that Jimenez “knew or should have known” are not sufficient. *Mamani v. Berzain*, 654 F.3d 1148, 1153-54 (11th Cir. 2011).

Furthermore, under *Iqbal*, Plaintiffs’ attempt to fill in the gaps in their amended complaint with legal conclusions is not enough. *Iqbal*, 129 S. Ct. at 1950. The amended complaint alleges that Jimenez “conspired” and “acted in concert” pursuant to a “common plan, design, and scheme.” These legal conclusions are not supported by

any specific factual allegations and must be disregarded in determining the sufficiency of the complaint. *Sinaltrainal*, 578 F.3d at 1260; *Mamani*, 654 F.3d at 1153.

Ultimately, the amended complaint altogether fails to allege with any plausibility that Jimenez acted unlawfully against Plaintiffs. Rule 8(a) and *Iqbal* require much more. As such, the amended complaint must be dismissed.

3. ALIEN TORT STATUTE (“ATS”) CLAIMS MUST BE DISMISSED FOR LACK OF SUBJECT MATTER JURISDICTION WHERE NONE OF ALLEGATIONS IN COMPLAINT TOUCH AND CONCERN TERRITORY OF UNITED STATES.

ATS does not provide a cause of action to aliens for violations of law of nations that occur outside the United States. *Kiobel v. Royal Dutch Petroleum*, 133 S. Ct. 1659, 1669 (2013).

All factual allegations in support of Plaintiffs’ ATS claims in the amended complaint occurred in Colombia. Plaintiffs allege that Jimenez’s subordinates from Colombia tortured and killed Plaintiffs who are also from Colombia in Middle Magdalena, Colombia. D.E. 91 at 2, ¶-2. These killings arose out of large scale, internal armed conflict between guerrilla groups and the Colombian government. D.E. 91 at 6, ¶-19. Plaintiffs allege that the Colombian government introduced and used paramilitary groups, including Jimenez’s army of 7,000 men, to fight this internal armed conflict. D.E. 91 at 6, ¶-19.

Eduardo Estrada was killed allegedly because he was believed to be a candidate running against the political party that Jimenez’s paramilitary group favored. D.E. 91 at 8, ¶-33. Alma Rosa Jaramillo was killed allegedly because she worked for a mayoral candidate who successfully ran in opposition to the political party that Jimenez’s

paramilitary group favored. D.E. 91 at 9, ¶-39. Both killings, as alleged in the amended complaint, were motivated by politics and the internal armed conflict in Colombia.

These allegations do not “touch and concern” the territory of the United States, as required in *Kiobel*. Except where ATS claims touch and concern the United States with “**sufficient force**,” ATS cannot be used to establish jurisdiction between foreign nationals for conduct that wholly occurs in another country. *Kiobel*, 133 S. Ct. at 1669; see, e.g., *Chen Gang v. Zhao Zhizhen*, 2013 WL 5313411 (D. Conn. Sept. 20, 2013) (dismissing ATS claims pursuant to *Kiobel* where all parties were not from the United States and all acts alleged occurred outside the United States) (providing comprehensive string cite of cases dismissing ATS claims post-*Kiobel*).

All parties alleged in the complaint are from Colombia and all acts occurred wholly in Colombia, arising out of a long-term internal armed conflict in that country. Any purported attenuated and incidental effects of the killings on drug trafficking in the United States do not have “sufficient force” to touch and concern the United States, as contemplated in *Kiobel*. As such, Plaintiffs’ ATS exclusively extraterritorial claims must be dismissed for lack of subject matter jurisdiction.

I HEREBY CERTIFY that a copy of the foregoing was delivered to all interested parties via CM/ECF system.

Respectfully submitted,

/S/
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