

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

JESUS CABRERA JARAMILLO, in his individual)	
Capacity, and in his capacity as the personal)	
Representative of the estate of Alma Rosa)	
Jaramillo,)	
)	
JANE DOE, in her individual capacity, and in)	
her capacity as the personal representative of)	CASE NO: 1:10-CV-21951
the estate of Eduardo Estrada, and)	UNGARO/TORRES
)	
JOHN DOE, in his individual capacity,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CARLOS JIMENEZ NARANJO,)	
)	
Defendant.)	
_____)	

MOTION FOR SANCTIONS

Carlos Jimenez Naranjo (“Jimenez”), by and through his undersigned counsel, respectfully moves this court to consider the imposition of _____ on Jane Doe and John Doe (together “Plaintiffs”) and counsel for Jane Doe and John Doe, pursuant to Federal Rule of Civil Procedure 11. In support, Jimenez states as follows:

INTRODUCTION

Plaintiffs brought several civil claims against Jimenez under the Alien Tort Statute, 28 U.S.C. § 1350, and the Torture Victim Prevention Act, Pub. L. No. 102-256, 106 Stat. 73.

On August 11, 2010, before Jimenez secured legal representation, Plaintiffs filed a motion to proceed anonymously. D.E. No. 45. Plaintiffs requested permission from the court to proceed anonymously “due to the real danger of physical harm to Jane Doe

and John Doe and their family members if they proceed under their real identities.” D.E. No. 45 at 1.

In their motion, Plaintiffs fail to cite to a single specific threat by anyone, directed towards John Doe or Jane Doe. Plaintiffs rely exclusively on generalized statements of fact related to human rights abuses in Colombia in reports by the U.S. State Department and an activist organization to support the claim that John Doe and Jane Doe face some substantial, concrete threat.

Furthermore, Plaintiffs have, and continue, to publicize this case in the newspapers and on the internet around the world. As recently as November 19, 2011, Jesus Cabrera Jaramillo, who is also represented by counsel for John Doe and Jane Doe, interviewed with reporters from the Miami Herald. Weaver, Jay, et al., *Miami federal lawsuit accuses Colombian warlord of murders in homeland*, MIAMI HERALD (Nov. 19, 2011), available at <http://www.miamiherald.com/2011/11/19/2510496/miami-federal-lawsuit-accuses.html>¹. The article does not shy away from clearly identifying John Doe and Jane Doe as relatives of Eduardo Estrada, despite the fact that individuals in Colombia who purportedly pose a very real danger to both can freely access and read the article.

It is apparent that Plaintiffs filed the motion for anonymity for reasons beyond any real danger of physical harm. Rule 11 requires substantially more assurances from a party who files such a pleading. Counsel for Jimenez has spent considerable time and resources researching and drafting this motion, as well as background information in an

¹ See also the article printed in Spanish. Weaver, Jay, et al., *Demandan en Miami a ex jefe paramilitar*, EL NUEVO HERALD (Nov. 19, 2011), available at <http://www.elnuevoherald.com/2011/11/19/1068702/demandan-en-miami-a-ex-jefe-paramilitar.html>.

effort to unravel the effects of Plaintiffs' spurious motion, so that Jimenez can properly defend himself in this action.

As such, Jimenez requests that the court issue an order to show because why sanctions on John Doe and Jane Doe and their counsel should not be imposed to deter any future repetition of this conduct.

ANALYSIS

Rule 11 places obligations on attorneys who file motions with the court. By presenting the court with a motion, an attorney certifies that to the best of the attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, (1) the legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law; and (2) the motion is not presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation. Fed. R. Civ. P. 11(b)(1), (2) (also providing two additional requirements not relevant to this analysis).

If the court determines that the Rule has been violated, the court may impose sanctions on any attorney, law firm, or party that violated the rule or is responsible for the violation. Fla. R. Civ. P. 11(c)(1).

District courts have broad discretion in imposing sanctions under Rule 11. *Fox v. Acadia State Bank*, 937 F.2d 1566, 1569 (11th Cir. 1991). Sanctions are designed to discourage dilatory or abusive tactics and help streamline the litigation process by lessening frivolous claims or defenses. *United States v. Milam*, 855 F.2d 739, 741 (11th Cir. 1988). In scrutinizing the conduct of the parties and counsel, courts rely on an

objective standard of reasonableness under the circumstances which is more stringent than mere good faith. *Aetna Ins. v. Meeker*, 953 F.2d 1328, 1331 (11th Cir. 1992).

I. WHERE PLAINTIFFS FAIL TO COME FORWARD WITH ANY SPECIFIC, CREDIBLE THREAT AGAINST JOHN DOE AND JANE DOE, PLAINTIFFS' MOTION FOR ANONYMITY IS NOT WARRANTED BY EXISTING LAW.

A party may seek to proceed anonymously if disclosure of his identify will subject him to extensive harassment and violence. *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. Unit A 1981). Though, “[t]he threat of hostile public reaction to a lawsuit, standing alone, will only with great rarity warrant public anonymity.” *Stegall*, 653 F.2d at 186. Speculative threats of harm are not enough. *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992) (“A plaintiff should be permitted to proceed anonymously only in those exceptional cases involving ... real danger of physical harm ...”).

In other words, courts look to whether there are actual threats of harm or injury to the parties seeking anonymity. *Compare Javier H. v. Garcia-Botello*, 211 F.R.D. 194, 196 (W.D.N.Y. 2002) (finding that plaintiffs' fears were reasonable where plaintiffs allege that defendants have previously threatened violence against them); *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1071 (9th Cir. 2000) (“What is relevant is that plaintiffs were threatened, and that a reasonable person would believe that the threat might actually be carried out.”) (finding that plaintiffs' fears were reasonable where defendants directed threats and interrogation specifically toward plaintiffs) *with Doe v. Kamehama Schools/Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1044-45 (9th Cir. 2010) (finding that plaintiffs' fears were unreasonable where, even though there had been random acts of violence against individuals like plaintiffs, actual threats directed towards plaintiffs were not credible); *Doe v. Merten*, 219 F.R.D. 387, 393 (E.D. Va.

2004) (finding that plaintiffs' fears were unreasonable where risk of deportation from disclosing names of plaintiffs-illegal aliens was too speculative); *Doe v. Shakur*, 164 F.R.D. 359, 362 (S.D.N.Y. 1996) (finding that plaintiff's fears were unreasonable where plaintiff failed to provide any specific details of death threats).

Plaintiffs in this case support their motion almost exclusively with unsubstantiated and speculative threats of harm. Plaintiffs rely on their own complaint and a report from the Department of Justice to first allege that Jimenez was a top leader of a specific paramilitary organization in Colombia. D.E. No. 23 at 2, ¶-2. Plaintiffs cite to a State Department report from 2002 and allege that the specific paramilitary organization was responsible for committing general acts of violence against Colombian civilians. D.E. No. 23 at 2, ¶-3. Citing to another State Department report from 2010, Plaintiffs allege that, despite the fact that the paramilitary organization disbanded in 2006, members of the organization continue to commit human rights abuses generally against civilians. D.E. No. 23, at 2, ¶-4. Plaintiffs also rely on a report by Human Rights Watch² describing how successor groups of the paramilitary organization continue to direct acts of violence against "human rights activists, trade unionists, journalists, and victims of [the paramilitary organization] who bring claims for justice or restitution of land." D.E. No. 23, at 2, ¶-5.

Plaintiffs fail to explain how these successor groups have any connection with Jimenez, or why those groups might commit violent acts on his behalf. More

² Human Rights Watch is an organization with questionable credibility. See Bernstein, Robert L., *Rights Watchdog, Lost in the Mideast*, NY TIMES, at A31 (Oct. 20, 2009), available at <http://www.nytimes.com/2009/10/20/opinion/20bernstein.html> (providing critical commentary of Human Rights Watch by a founder of the organization and active chairman for 20 years) ("Reporting often relies on witnesses whose stories cannot be verified and who may testify for political advantage or because they fear retaliation from their own rulers.").

importantly, not one of these sources cited to any threat of harm directed to John Doe or Jane Doe, specifically. Plaintiffs come close by submitting declarations from John Doe and Jane Doe describing the events surrounding the killing of their relative, Eduardo Estrada. D.E. No. 23, at 3, ¶-6. However, these declarations only state that, at the scene of the killing of Estrada, Jane Doe lost consciousness and awoke with the individual responsible for the killing standing over her. D.E. No. 23, at 3, ¶-6. As a result, these declarations do not cite to a single credible threat against John Doe or Jane Doe.

Plaintiffs' reliance on speculative threats is not enough. In fact, Jesus Cabrera Jaramillo, a co-plaintiff of John Doe and Jane Doe, proceeds in this action in his own name and appears to have not faced any real danger of physical harm. Jaramillo has agreed to be profiled on the website of counsel for Plaintiffs and in press releases. The Center for Justice and Accountability, *Estate and Family of Alma Rosa Jaramillo*, available at <http://www.cja.org/article.php?id=788>; The Center for Justice and Accountability, *Colombian Survivors Seek to Bring a Paramilitary Chief and Drug Trafficker to Justice* (Press Release), dated July 1, 2010, available at <http://www.cja.org/article.php?id=872>.

More recently, Jaramillo also has interviewed with the Miami Herald and El Nuevo Herald and agreed to permit the newspapers to quote him in their articles. Weaver, Jay, et al., *Miami federal lawsuit accuses Colombian warlord of murders in homeland*, MIAMI HERALD (Nov. 19, 2011), available at <http://www.miamiherald.com/2011/11/19/2510496/miami-federal-lawsuit-accuses.html>.

Plaintiffs' position in their motion for anonymity is completely disingenuous. On the one hand, Plaintiffs rely on generalized, speculative threats of harm against civilians in Colombia to seek anonymity for John Doe and Jane Doe. Yet, at the same time, a co-plaintiff in their case has proceeded in his own name for nearly a year and a half, eagerly publicized his involvement in the case, and has not faced any of those threats. See, e.g., *Kamehama Schools*, 596 F.3d at 1045 (pointing out that fear was unfounded where co-plaintiffs in the case had identified themselves and not been subject to any threats or harm).

Jaramillo serves as an actual indicator of how real any threats of danger might be for John Doe and Jane Doe. Plaintiffs have not come forward with any threats of serious harm directed toward Jaramillo and Jimenez is not aware of any.

Plaintiffs point out that John Doe and Jane Doe "genuinely fear for their lives." D.E. No. 23, at 3, ¶-8. That is beside the point. That fear, however genuine it might be, must be based on a "real danger of physical harm." *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992). It must also be reasonably believable that the threats on which that fear is based will be carried out. *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1071 (9th Cir. 2000).

Where Plaintiffs fail to provide any specific threat of real danger that the defendant might have directed toward John Doe or Jane Doe, Plaintiffs' motion is clearly not supported by existing law and warrants sanctions under Rule 11.

II. WHERE PLAINTIFFS CONTINUE TO PUBLICIZE THIS CASE IN THE NEWSPAPER AND OVER THE INTERNET, PLAINTIFFS' MOTION FOR ANONYMITY IS PRESENTED FOR AN IMPROPER PURPOSE.

Plaintiffs' position presented in their motion for anonymity is irreconcilable with their behavior outside of court. Plaintiffs and their counsel have, and continue, to issue press releases and statements to newspapers, and publish websites clearly identifying John Doe and Jane Doe as relatives of Eduardo Estrada and connecting them with the claims in this case.

Simultaneously, Plaintiffs come to court seeking permission for John Doe and Jane Doe to proceed anonymously. At the same time, Plaintiffs seek to announce to the world everything involving this case including their claims against Jimenez arising out of unsubstantiated accusations of human rights abuses. As a result, Plaintiffs bring their motion for anonymity for an improper purposes where clearly there are contrary to any real concern for the safety of John Doe and Jane Doe.

On July 1, 2010, just weeks after filing their complaint, counsel for Plaintiffs issued a press release announcing the lawsuit. The Center for Justice and Accountability, *Colombian Survivors Seek to Bring a Paramilitary Chief and Drug Trafficker to Justice* (Press Release), dated July 1, 2010, available at <http://www.cja.org/article.php?id=872>. In the release, counsel for Plaintiffs identifies John Doe and Jane Doe as relatives of Eduardo Estrada. The release accuses Jimenez of orchestrating the killing of Eduardo Estrada and explains that both John Doe and Jane Doe have brought claims for war crimes and crimes against humanity against Jimenez.

Counsel for Plaintiffs also prominently display on their website a brief of the case against Jimenez, including background and a summary of the legal proceedings. The Center for Justice and Accountability, *Cabrera v. Jimenez Naranjo – In Brief*, available at <http://www.cja.org/article.php?list=type&type=403>. In this brief, counsel for Plaintiffs again identify John Doe and Jane Doe as relatives of Eduardo Estrada and clearly state that both bring claims against Jimenez for the killing of Estrada. Plaintiffs regularly update this website with developments in the case, including an update as recent as March 2011.

Most recently, co-plaintiff Jesus Jaramillo and counsel for Plaintiffs interviewed with the Miami Herald and El Nuevo Herald. Weaver, Jay, et al., *Miami federal lawsuit accuses Colombian warlord of murders in homeland*, MIAMI HERALD (Nov. 19, 2011), available at <http://www.miamiherald.com/2011/11/19/2510496/miami-federal-lawsuit-accuses.html>. This article again identifies John Doe and Jane Doe as relatives of Eduardo Estrada and identify the claims that both bring against Jimenez. In a paragraph following a description of Estrada's connection to the case, Counsel for Plaintiffs, Almudena Bernabeu, boasts that Jane Doe, John Doe, and Jaramillo are "seeking justice in the United States because it cannot be obtained in Colombia."

The outright open publication in newspapers and over the internet of John Doe and Jane Doe's active pursuit of claims against Jimenez is diametrically opposed to the allegations that Plaintiffs present in their motion for anonymity. In their motion, Plaintiffs allege that John Doe and Jane Doe are in danger of real physical harm. Yet, counsel for Plaintiffs regularly announce that both plaintiffs seek claims against Jimenez which places them in that very same danger.

