

**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 TO DISMISS

Carlos Jimenez Naranjo (“Defendant”) (“Jimenez”) respectfully moves the court to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b) for the following reasons:

1. THE COMPLAINT MUST BE DISMISSED WHERE IT FAILS TO STATE A CLAIM.

As recently addressed in *Mamani v. Berzain*, 2011 WL 3795468, Case No. 09-16246 (11th Cir. Aug. 29, 2011), a complaint fails to state a claim upon which relief may be granted where it does not allege any specific factual allegations as to the defendant. Here, the complaint must be dismissed as it fails to offer any nexus between Jimenez and his subordinates who allegedly committed the unlawful acts;

2. THE COURT LACKS PERSONAL JURISDICTION OVER JIMENEZ.

The complaint fails to establish personal jurisdiction over Jimenez.

The court lacks jurisdiction over Jimenez where Jimenez is not in the United States voluntarily and where he has never had any continuous and systematic contacts with the State of Florida. Jimenez was involuntarily extradited to the United States against his will and continues to remain in the United States as a temporary parolee to be prosecuted in two specific criminal cases. See, *United States v. Jimenez et. al*, 10-008-RMC, District of Colombia, (SEALED) and *United States v. Jimenez, et. al.*, 07-207-CR-Lenard, (SEALED). Both of these cases are now consolidated and being prosecuted in the Southern District of Florida.

INTRODUCTION

Prior to being extradited to the United States, in 2008, Jimenez lived his entire life in Colombia.

On June 14, 2010, Jesus Cabrera Jaramillo (“Jaramillo”), Jane Doe, and John Doe (together “Plaintiffs”) filed a complaint against Jimenez to recover damages pursuant to the Alien Tort Statute, 28 U.S.C. § 1350, and TVPA, Pub. L. No. 102-256, 106 Stat. 73. D.E. No. 1. These claims are based on two separate events:

- (1) the killing and torture of Jaramillo’s mother, Alma Rosa Jaramillo, and
- (2) the killing of a relative of Jane Doe and John Doe named Eduardo Estrada.

D.E. No. 1 at 8-9, ¶ 31-41.

The complaint does not allege that Jimenez personally injured or killed Alma Rosa Jaramillo or that he is a Colombian government official or military officer. Rather,

plaintiffs only allege that Jimenez was the leader of a paramilitary group in Colombia. D.E. No. 1 at 4, ¶ 10. Plaintiff's further allege that the individuals who committed these killings and torture were subordinates or soldiers of Jimenez, D.E. No. 1 at 8-9, ¶ 33, 40. Plaintiffs do not allege that Jimenez directed, ordered or was personally involved in any manner with any these subordinates or soldiers who allegedly committed killings and torture.

Plaintiffs fail to factually support their unsubstantiated claims. Instead, the complaint is replete with suggestions and innuendo. To be more precise, the complaint leaves it to the reader's imagination to figure out how Jimenez was specifically involved in the two specific incidents which serve as the basis of this complaint.

In an effort to compensate for the complaint's shortcomings, plaintiffs proceed to fill the huge factual gaps in their complaint with legal conclusions that Jimenez exercised "all aspects of command and control" over the thousands of paramilitaries in the organization, had the "authority and practical ability to exert control," and had "effective control" over the individuals who committed these acts. D.E. No. 1 at 9-10, ¶ 44. Jimenez allegedly "conspired with these officers and soldiers" who committed these acts, "conspired and acted in concert . . . pursuant to a common plan, design, and scheme," and "knowingly joined and participated in carrying out this common plan, design, and scheme." D.E. No. 1 at 10-11, ¶ 48. The complaint also states that Jimenez is "jointly and severally liable for the actions of his co-conspirators, all of which were actions undertaken in pursuit of a common plan, design and scheme . . ." D.E. No. 1 at 11, ¶ 49.

Lastly, plaintiffs conclude that Jimenez “substantially assisted members of the [paramilitary organizations], or persons or groups acting in coordination with the [paramilitary organizations] or under its control, who personally committed” these acts. D.E. No. 1 at 11, ¶ 50. The complaint asserts all of these legal conclusions without support of any factual allegations related to the two incidents, which form the foundation of their complaint.

On July 9, 2010, plaintiffs served Jimenez with the complaint along with a summons at the federal detention center in Miami, Florida. D.E. No. 11. Jimenez is being held involuntarily in pre trial detention by the Bureau of Prisons at FDC – Miami.

The complaint asserts jurisdiction over Jimenez by merely alleging that Jimenez is in the custody of the United States government facing criminal charges, D.E. No. 1 at 4, ¶ 7, and was extradited to the United States, D.E. No. 1 at 4, ¶ 9. No other relationship to the United States exists in the complaint. All acts alleged in the complaint occurred in the country of Colombia.

Pursuant to diplomatic agreement between the country of Colombia and the United States, the Colombian government extradited Jimenez against his will to the United States only to face federal criminal charges, in the two aforementioned criminal prosecutions. He is in the United States under a specific parole authorization of the Department of Justice and will be deported to Colombia upon completion of a sentence.

Before being extradited, Jimenez had little to no contact with Florida or the United States. Jimenez has never had any extensive or pervasive contact with the United States. Jimenez has never personally conducted any business in the United States, never owned any real property in the United States, and never acted in any way

to establish any meaningful connection with the United States. Jimenez has never considered Florida or the United States his residence and does not intend to establish residency in the United States. Jimenez is a citizen and resident of Colombia and his here only to be prosecuted by the United States with the concurrence of the Colombian government. When the United States government releases Jimenez from custody, he will be deported back to Colombia.

ANALYSIS

A party may assert a defense of lack of personal jurisdiction and failure to state a claim upon which relief may be granted by motion. Fed. R. Civ. P. 12(b)(2), (6). The party may move the court before answering the complaint. Fed. R. Civ. P. 12(b).

I. THE COMPLAINT MUST BE DISMISSED WHERE IT FAILS TO STATE A CLAIM.

The complaint alleges that plaintiffs suffered damages pursuant to ATS and TVPA.

A plaintiff may seek relief under ATS only if:

- (1) plaintiff is an alien;
- (2) plaintiff is suing for a tort; and
- (3) the tort was committed in violation of the law of nations.

Sinaltral v. Coca-Cola Co., 578 F.3d 1252, 1261 (11th Cir. 2009).

A plaintiff may seek relief under ATS only if:

- (1) an individual who, under actual or apparent authority, or color of law, of any foreign nation;
- (2) subjects an individual to torture, or
- (3) subjects an individual to extrajudicial killing.

Pub. L. No. 102-256, 106 Stat. 73; *Baloco ex rel. Tapia v. Drummond Co.*,
640 F.3d 1338, 1345 (11th Cir. 2011).

The complaint must be dismissed where plaintiffs have failed to allege that Jimenez committed a tort in violation of the law of nations, torture, or extrajudicial killing.

A. PLAINTIFFS' COMPLAINT MUST CONTAIN SUFFICIENT ALLEGATIONS TO STATE A CLAIM FOR RELIEF PLAUSIBLE ON ITS FACE.

A complaint must contain a short and plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). To survive a motion to dismiss, the complaint must have sufficient factual allegations which, if accepted as true, state a claim of relief that is plausible on its face. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). While the pleading does not have to contain detailed factual allegations, the plaintiff is obligated to provide more than just labels or conclusions, or a "formulaic recitation of the elements of the cause of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). Factual allegations must raise a right of 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 couched as factual allegations as true. *Twombly*, 550 U.S. at 555. Legal conclusions may provide a framework for the complaint but the conclusions must be supported by factual allegations. *Iqbal*, 129 S. Ct. at 1950.

B. PLAINTIFFS' CLAIMS FAIL TO ALLEGE THAT JIMENEZ COMMITTED ANY PLAUSIBLE UNLAWFUL ACT.

The complaint alleges that Jimenez must compensate plaintiffs pursuant to eight different claims of relief, including extrajudicial killings, torture, cruel, inhuman, or degrading treatment, war crimes, and crimes against humanity. In support of these claims of relief, the plaintiffs rely on two separate incidents. Plaintiffs do not allege that Jimenez was present at either incident. Plaintiffs do not allege that Jimenez ordered, directed, participated with or committed the unlawful acts. Plaintiffs fill these factual gaps in their complaint by asserting legal conclusions as to Jimenez being the leader of his organization. The complaint must be dismissed where plaintiffs fail to allege that Jimenez committed any plausible unlawful act.

Only two weeks ago, our Eleventh Circuit came to the same conclusion in a case involving similar details as those presented here. In *Mamani v. Berzain*, 2011 WL 3795468, Case No. 09-16246 (11th Cir. Aug. 29, 2011) ("*Mamani*"), the plaintiffs, Bolivian citizens, brought claims under ATS against the former president and former defense minister of Bolivia. *Mamani*, at *1. The district court granted the defendants' motion to dismiss in part but concluded that the majority of the plaintiffs had pleaded facts sufficient to state a claim under ATS. The defendants appealed. *Mamani*, at *2 n.2. Just as in this case, the plaintiffs in *Mamani* did not allege that defendants personally killed or injured anyone. *Mamani*, at *1. The plaintiffs brought their claims against the defendants for ordering security forces to attack and kill numerous unarmed civilians. *Mamani*, at *4. There, the plaintiffs alleged in conclusory fashion that the defendants had (1) exercised command responsibility over, conspired with, ratified, and aided and abetted subordinated in the military to commit the relevant acts; (2) met with military commanders to plan attacks on unarmed civilians; and (3) known or reasonably

should have known the pattern and practice of systematic attacks against civilians by subordinates under their command. *Mamani*, at *4. Further, plaintiffs alleged that the defendants had failed to take all necessary measures to investigate and prevent these abuses. *Mamani*, at *4.

The trial court analyzed the complaint pursuant to the standards previously outlined in *Iqbal* and concluded that the plaintiffs had failed to state a claim under ATS. *Mamani*, at *6. The court explained that it was not enough for the plaintiffs to allege that the defendants “knew or should have known” about the violent acts and failed to prevent them. *Mamani*, at *4. The court highlighted that even though the plaintiffs had alleged that the defense minister accompanied security forces on helicopters and directed them where to fire their weapons, the plaintiffs had failed to allege that “a connection exists between the Defense Minister’s directing of where to fire weapons and the death of the plaintiffs’ decedents.” *Mamani*, at *5. The court went on to explain that, even though some security forces may have committed some wrongful acts, the court did not accept that “present international law embraces strict liability akin to respondent superior for national leaders at the top of the long chain of command. . .” *Mamani*, at *5. “Plaintiffs have not pleaded facts sufficient to show that anyone -- especially these defendants, in their capacity as high-level officials -- committed extrajudicial killings within the meaning of established international law.” *Mamani*, at *6.

The court concluded that it simply was not enough for the plaintiffs to only allege a mere possibility that the particular defendants in the case had committed unlawful acts. *Mamani*, at *7.

In contrast to *Mamani*, this complaint fails to personally Jimenez in any tort.

As to the incident related to Eduardo Estrada, the complaint only alleges that Jimenez's subordinate committed all of the relevant acts. D.E. No. 1 at 8, ¶ 33-34.

As to the incident related to Alma Rosa Jaramillo, the complaint only alleges that a group of Jimenez's paramilitary soldiers removed Jaramillo from a car and nothing more. D.E. No. 1 at 8-9, ¶ 40-41. The factual allegations only infer that those soldiers ultimately committed the relevant acts. D.E. No. 1 at 8-9, ¶ 40-41.

The complaint offers very few, if any, other factual allegations connecting Jimenez to these two incidents. The complaint does allege more generally that Colombia was in a state of internal armed conflict for a long period of time. D.E. No. 1 at 6, ¶ 18. That, Jimenez was allegedly involved in this armed conflict and commanded as many as 7,000 men, D.E. No. 1 at 4, ¶ 10. However, beyond those general factual allegations, the complaint fails to provide any specific factual allegations that directly connect Jimenez to these events. There are no allegations stating that Jimenez directed or ordered any subordinate as to their actions. There are no allegations that Jimenez was even aware of their actions prior to the alleged acts. The complaint is completely devoid of any concrete connection between Jimenez and the alleged acts.

Well aware of these inadequacies in their complaint, plaintiffs attempt to bolster their claims with otherwise impermissible legal conclusions. The complaint alleges that Jimenez had "dominion" over the land and people where these allegations occurred. D.E. No. 1 at 7, ¶ 28. Jimenez and his subordinates allegedly "acted in concert" with the Colombian government and Jimenez's paramilitary groups acted as the "*de facto* government" over the area. D.E. No. 1 at 9, ¶ 43. Jimenez allegedly had both the "authority and practical ability to exert control" over his subordinates and had "effective

control over the direct perpetrators of these abuses." D.E. No. 1 at 10, ¶ 44. Jimenez allegedly "knew or reasonably should have known" of the human rights abuses against the general civilian population of Colombia by paramilitary subordinates "under his command." D.E. No. 1 at 10, ¶ 45. The individuals who committed these alleged acts "operated under [Jimenez's] direct command and control." D.E. No. 1 at 10, ¶ 45.

The complaint goes on to allege that, as the leader of a non-governmental paramilitary groups and the groups status as the "*de facto* government," Jimenez had a "duty under customary international law" to protect civilians, to prevent violations of international and local law by subordinates under his command, and to ensure that all subordinates under his command were trained in international and local law. D.E. No. 1 at 10, ¶ 46. Jimenez allegedly also had a "duty to investigate, prevent, and punish violations of international and Colombian law" committed by subordinates under his command. D.E. No. 1 at 10, ¶ 47. Without providing any factual allegations, the complaint concludes summarily that Jimenez violated each and every one of these duties.

The complaint summarily presumes, that Jimenez "conspired with officers and soldiers" who committed the alleged relevant acts. D.E. No. 1 at 10, ¶ 48. Jimenez allegedly "conspired and acted in concert" with the officers and soldiers "pursuant to a common plan, design, and scheme" to commit these alleged relevant acts against civilians. D.E. No. 1 at 10-11, at ¶ 48. Jimenez allegedly "knowingly joined and participated in carrying out this common plan, design and scheme." D.E. No. 1 at 11, at ¶ 48.

The complaint concludes that Jimenez is “jointly and severally liable for the actions of his co-conspirators” and is “jointly and severally liable for the actions of those he aided and abetted.” D.E. No. 1 at 11, at ¶ 50. The complaint then goes on to list each claim for relief and list allegations that track the legal elements of each claim. D.E. No. 1 at 11-18.

As a result, out of the 12 pages that comprise the statement of facts, over 11 of those pages are composed of generalized and conclusory allegations that provide little to no connect to Jimenez and his actions. The court is not bound to accept these legal conclusions couched as factual allegations as true. *Twombly*, 550 U.S. at 555. “[U]nwarranted deductions of fact’ in a complaint are not admitted as true for the purpose of testing the sufficiency of plaintiff’s allegations.” *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1260 (11th Cir. 2009); see also *In re Terrorist Attacks on September 11, 2001*, 740 F. Supp. 2d 494, 514 (S.D.N.Y. 2010) (“Therefore, for plaintiffs to state a claim for violation of international law under ATS, the factual allegations pled must support a reasonable inference that the defendant purposefully aided and abetted, conspired with, or materially supported al Qaeda in the commission of an act of terrorism . . .”). The remaining allegations do not allege that Jimenez did anything short of being the superior of the individuals who committed the relevant acts. Where the complaint fails to allege sufficient factual allegations to state any claim for relief, the complaint must be dismissed.

Furthermore, unlike in *Mamani*, where there was a clear connection with the defendants (president and defense minister) and the government, the complaint in this case makes no such connection. Plaintiffs’ complaint alleges that the Colombian

government “knew of, and at times directly participated in” unlawful acts of paramilitary groups. D.E. No. 1 at 6, ¶ 22. Political officials in Colombia are also allegedly “associated” with these paramilitary groups. D.E. No. 1 at 6, ¶ 22. From these allegations, plaintiffs draw the conclusion that, therefore, Jimenez must be a state actor for the purposes of their ATS and TVPA claims.

However, as *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. 2009) explained:

Colombia's mere “registration and toleration of private security forces does not transform those forces' acts into state acts.” Allegations the Colombian government tolerated and permitted the paramilitary forces to exist are insufficient to plead the paramilitary forces were state actors. The plaintiffs make the naked allegation the paramilitaries were in a symbiotic relationship with the Colombian government and thus were state actors. Nevertheless, in testing the sufficiency of the plaintiff's allegations, we do not credit such conclusory allegations as true. We demand allegations of a symbiotic relationship that “involves the torture or killing alleged in the complaint to satisfy the requirement of state action.” There is no suggestion the Colombian government was involved in, much less aware of, the murder and torture alleged in the complaints. The plaintiffs' “formulaic recitation,” that the paramilitary forces were in a symbiotic relationship and were assisted by the Colombian government, absent any factual allegations to support this legal conclusion, is insufficient to state an allegation of state action that is plausible on its face.

Sinaltrainal, 578 F.3d at 1266 (citations omitted).

Plaintiffs cannot evade their pleading obligations by merely alleging that the Colombian government may have generally known of and sometimes may have participated in paramilitary activities. The complaint must allege specifically that the Colombian government officials were involved in the killings of Jaramillo and Estrada. Where the complaint fails to even infer any such connection, the complaint must also fail to state a claim.

As previously discussed, this complaint is largely based on the same type of legal conclusions as rejected in *Mamani* and *Sinaltrainal*, supra. This complaint fails to assert that Jimenez committed any sort of plausible unlawful act. The plaintiffs' complaint does not allege that Jimenez killed or injured anyone. The complaint is based on two separate and distinct incidents and does not allege Jimenez was present at either one.

Just as in *Mamani*, the plaintiffs attempt to connect Jimenez to these incidents through a chain of command argument. In fact, in *Mamani*, the complaint went further than the complaint in this case and tried to connect the defendants with the individuals responsible for the overt acts by alleging specific events where the two interacted. The complaint in this case does not even attempt to allege such a connection. In conclusory fashion, plaintiffs allege that since each of the individuals directly responsible for these relevant acts is one of the 7,000 individuals under Jimenez's alleged command, Jimenez must have directed, conspired, and aided and abetted the relevant acts.

As significant, the court in *Iqbal* recognized that these types of legal conclusions were not sufficient to state a claim under Rule 8. For that same reason, the complaint in this case must be dismissed.

II. THE COURT LACKS PERSONAL JURISDICTION OVER JIMENEZ.

The plaintiff has the burden of establishing a *prima facie* case of personal jurisdiction over a nonresident defendant. *Meier ex rel. Meier v. Sun Intern. Hotels*, 288 F.3d 1264, 1268-69 (11th Cir. 2002). The complaint must contain a short and plain statement of the grounds for the court's jurisdiction. Fed. R. Civ. P. 8(a)(1).

The plaintiff meets its burden by presenting enough evidence to withstand a motion for directed verdict. *Meier*, 288 F.3d at 1269. Where the defendant submits evidence, showing that the court does not have personal jurisdiction over the defendant, the burden shifts to plaintiff to produce evidence to the contrary. *Meier*, 288 F.3d at 1269.

Courts undertake a two step analysis to determine whether there is personal jurisdiction over the defendant. First, there must be a determination whether there is a basis for jurisdiction under the particular state's long arm statute. *Meier*, 288 F.3d at 1269. Only, if there is a basis under that statute, then a determination is made as to whether sufficient minimum contacts exist to satisfy the due process clause of the Fourteenth Amendment. This analysis is done to insure that a particular suit does not offend traditional notions of fair play and substantial justice. *Meier*, 288 F.3d at 1269. Our courts have applied this two step analysis of personal jurisdiction in cases involving ATS and TVPA claims. See, e.g., *Bauman v. DaimlerChrysler*, 644 F.3d 909, 919 (9th Cir. 2011); *Mother Doe I v. Al Maktoum*, 632 F. Supp. 2d 1130, 1134-35 (S.D. Fla. 2007).

As such, this complaint must be dismissed where the court does not have personal jurisdiction over Jimenez.

A. FLORIDA'S LONG-ARM STATUTE DOES NOT PROVIDE A BASIS FOR PERSONAL JURISDICTION OVER JIMENEZ.

The reach of Florida's long-arm statute is a question of Florida law and, therefore, federal courts review the issues from the perspective of Florida's Supreme Court. *Meier*, 288 F.3d at 1271. Florida Statute 48.193 defines the requisite minimum contacts for personal jurisdiction over a nonresident.

A nonresident defendant submits himself to the "specific jurisdiction" of Florida courts when the cause of action in the case arises from the defendant's specific activities, including operating a business or conducting business within the state, committing a tort in the state, and owning property in the state. Fla. Stat. 48.193(1)(a)-(h). A nonresident defendant also subjects himself to the "general jurisdiction" of the courts when engaging in "substantial and not isolated activity" in the state. Fla. Stat. 48.193(2).

1. JIMENEZ IS NOT A RESIDENT OF FLORIDA FOR THE PURPOSES OF PERSONAL JURISDICTION.

Florida courts define a resident as an individual who is physically present in Florida and also has the intent to make Florida his residence. *Snyder v. McLeod*, 971 So. 2d 166, 169 (Fla. 5th DCA 2007). Temporary residence in Florida without the present intent to make Florida one's legal residence is not enough. *Snyder*, 971 So. 2d at 169. Even though, Jimenez may be physically present in the United States, Jimenez has never intended to make Florida his residence and does not intend to do so in the future. The only reason that Jimenez finds himself in Florida is because federal government agents handcuffed him in Colombia and involuntarily brought him to the United States. The only reason Jimenez remains in Florida is because the United States government forces him to remain here against his will and restrains him from returning to Colombia.

Before his extradition, Jimenez never lived in Florida, owned property of conducted business in the State of Florida. Furthermore, he will be forcibly removed from the United States upon completing his obligation to the United States.

Aware of this almost certain fate, Jimenez has never, and does not currently, consider Florida his place of residence. Jimenez still considers Colombia his home and

intends to return there whether it is by force or by choice. Consequently, Jimenez is not a resident of Florida for the purposes of personal jurisdiction. See *discussion in Stifel v. Hopkins*, 477 F.2d 1116, 1126 (6th Cir. 1973) (holding that an individual who is incarcerated may establish domicile in the state where he is incarcerated but is not precluded from maintaining his previous domicile).

2. THE COURT NEITHER HAS GENERAL NOR SPECIFIC JURISDICTION OVER JIMENEZ.

The court does not have "specific jurisdiction" over Jimenez. All of the relevant acts in the complaint occurred in Colombia. The complaint does not allege that Jimenez committed any acts listed in Fla. 48.193(1) in Florida that give rise to any of the causes of action.

"General jurisdiction" requires far more wide-ranging contacts and is more difficult to establish. *American Overseas Marine Corp. v. Patterson*, 632 So. 2d 1124, 1127-28 (Fla. 1st DCA 1994). Courts have defined "substantial and not isolated activity" to mean continuous and systematic contacts with the state. *American Overseas Marine*, 632 So. 2d at 1127. Unilateral activity of another party or third person may not be considered when determining whether a defendant has sufficient contacts. *American Overseas Marine*, 632 So. 2d at 1130 (holding that defendants-vessels did not have sufficient contacts for general jurisdiction where vessels were at ports in Florida "only at the direction of the United States military, not by the choice of any of these defendants"). The defendant's contacts with the forum must be extensive and pervasive. *American Overseas*, 632 So. 2d at 1127-28. Substantial activity includes obtaining a drivers license in the state, adopting and using an address in the state, personally conducting business in the state, and traveling to the state on a regular

and consistent basis. See, e.g., *May v. Needham*, 820 So. 2d 430, 431 (Fla. 4th DCA 2002).

It is rare for courts to conduct general jurisdiction analysis related to nonresident individuals, as opposed to companies or corporations. In fact, the Supreme Court has doubted whether a court may even assert general jurisdiction over an individual, as opposed to a corporation. *Burnham v. Superior Court of California*, 495 U.S. 604, 610 n.1 (1990). It is even rarer for courts to consider whether it may have jurisdiction over a nonresident defendant who has been extradited to the forum state against his will.

In the years immediately prior to the plaintiff's filing of the complaint, Jimenez did not have any significant contacts with the state of Florida other than his incarceration in the federal detention center in Miami. The Colombian government physically gave him over to the United States government. Agents for the United States government handcuffed Jimenez in Colombia and unilaterally brought him against his will on a plane to the United States. But for these actions, Jimenez would not have any contacts in Florida whatsoever. Jimenez never voluntarily entered into Florida, rather, was transported here involuntarily by the United States government. Jimenez has never obtained any sort of identification in Florida, nor is it clear that he would be legally able to do so. Jimenez has not voluntarily adopted and used an address in Florida or personally conducted any business here. In the sole direction of both the Colombian and United States governments, Jimenez was physically restrained, arrested and brought into Florida, against his will.

Florida law never contemplated nor authorizes exercising jurisdiction over someone involuntarily brought into the State. For that reason, Florida law does not provide general jurisdiction over Jimenez.

B. JIMENEZ ALSO DOES NOT HAVE SUFFICIENT MINIMUM CONTACTS TO SATISFY DUE PROCESS REQUIREMENTS.

Due process requirements are only met as to a nonresident when the defendant has certain minimum contacts with the forum such that maintenance of the action would not offend traditional notions of fair play and substantial justice. *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 (1984). Even, if the cause of action does not arise out of the nonresident's contacts with the forum, due process is not offended when there are sufficient contacts between the forum and the nonresident. *Helicopteros*, 466 U.S. at 414. In *Helicopteros*, the Supreme Court has mandated that due process requires that those contacts must be both "continuous and systematic." *Helicopteros*, 466 U.S. at 416.

After *Helicopteros*, the Florida legislature amended its laws to harmonize state law with the Supreme Court's decision. *American Overseas Marine Corp. v. Patterson*, 632 So. 2d 1124, 1128 (Fla. 1st DCA 1994). The Florida legislature added section (2) of Fla. Stat. 48.193 discussed above, providing Florida courts "general jurisdiction" over nonresident defendants. *American Overseas Marine*, 632 So. 2d at 1128. Florida courts have interpreted that section of the statute to require the same "continuous and systematic" contacts that due process required under the Fourteenth Amendment. *American Overseas Marine*, 632 So. 2d at 1128. More often than not, if Florida courts do not have general jurisdiction over a nonresident, the nonresident also does not have sufficient minimum contacts to satisfy due process.

Not surprisingly, a due process inquiry analyzes the same factors as general jurisdiction to determine whether a nonresident has "continuous and systematic" contacts. Courts look to whether the defendant resides in the forum state, whether the defendant is physically present in that state, or whether they conduct business in that state. *Johannsen v. Brown*, 788 F. Supp. 465, 468 (D. Or. 1992). Even though an individual may have had extensive contacts in the forum State in the past, courts look to whether the contacts have been continuous and systematic and continue to be in the present. *In re Terrorist Attacks on September 11, 2001*, 718 F. Supp. 2d 456, 471 (S.D.N.Y. 2010) (finding that defendants did not have sufficient contacts where they had received an education in the United States, made significant donations to universities, and made significant investments in the United States).

As discussed above, Jimenez is in Florida, against his will, at the sole command of the United States government. Jimenez is not and never has been a resident of Florida, has never conducted any business in Florida, or adopted and used any address in Florida. His contacts in this forum have been both tenuous and involuntary, and do not satisfy the minimum contacts requirement of due process.

C. THE FEDERAL LONG-ARM STATUTE ALSO DOES NOT PROVIDE PERSONAL JURISDICTION OVER JIMENEZ.

For the same reason, the court does not have jurisdiction over Jimenez based on the federal long-arm statute. If a nonresident is not subject to general jurisdiction of any one state, Rule 4 permits a court to aggregate the nonresident's nationwide contacts to allow service of process. Fed. R. Civ. P. 4(k)(2); *Consolidated Development Corp. v. Sherritt*, 216 F.3d 1286, 1291 (11th Cir. 2000). However, Rule 4 only permits that service where (1) the claim at issue arises under federal law; and (2) exercising

jurisdiction is consistent with the Constitution and the laws of the United States. Fed R. Civ. P. 4(k)(2); *Consolidated Development*, 216 F.3d at 1291.

While plaintiffs' claims do arise under federal laws, jurisdiction is not consistent with due process as explained above. *Consolidated Development Corp. v. Sherritt*, 216 F.3d 1286, 1291 (11th Cir. 2000). Just as Jimenez has not had continuous or systematic contact with Florida, Jimenez's contact with other states is nonexistent as well.

D. *IN PERSONAM* JURISDICTION ALSO FAILS WHERE JIMENEZ IS NOT THE FORUM STATE VOLUNTARILY.

Courts may also assert personal jurisdiction over a nonresident defendant where plaintiffs serve 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."); *Santa Escolastica v. Pavlovsky*, 736 F. Supp. 2d 1077, 1081 (E.D. Ky. 2010) ("The Brennan opinion characterized the "tag" service or transient jurisdiction concept as "entitled to a strong presumption that it comports with due process" because it aligns with the "reasonable expectations" of a defendant voluntarily found in a forum.").

Jimenez is in Florida clearly against his will and continues to remain in Florida with similar restraint. Since his presence in Florida is anything but voluntary, it is irrelevant for the purposes of jurisdiction whether plaintiffs served him with a summons and complaint while he was physically present in this state.

CONCLUSION

As demonstrated in this motion to dismiss, the plaintiff's complaint must be dismissed where it fails to establish personal jurisdiction over Jimenez and also fails to state a claim upon which relief may be granted under each the ATS and TVPA.

The plaintiffs' are required plaintiffs to plead factual allegations that raise a right of relief above mere innuendo and speculation. The plaintiffs' complaint fails to establish any meaningful connection between Jimenez and the alleged acts. Where there are significantly wide gaps in their facts, plaintiffs rely on legal conclusions couched as factual allegations to make ends meet. The pleading rules do not tolerate these gaps. The complaint must also be dismissed for failure to state a claim.

Last, jurisdiction cannot be exercised over an individual who lacks any meaningful relationship or contacts with that jurisdiction. Only those with who voluntarily present themselves and voluntarily conduct activities are subject to jurisdiction. An unwilling extradition and compulsory incarceration woefully falls short of meeting this jurisdictional standard. The complaint must be dismissed for lack of personal jurisdiction.

I HEREBY CERTIFY that this pleading will be provided to all interested parties through the Court's CM/ECF system.

Respectfully submitted,

_____/S/_____
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