

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

JESUS CABRERA JARAMILLO,  
JOHN DOE, and JANE DOE,  
Plaintiffs,

CASE NO. 10-21951-CV-EGT

vs.

CARLOS MARIO JIMENEZ  
NARANJO,  
Defendant.

**DEFENDANT JIMENEZ'S REURGING OF  
AND SUPPLEMENT TO PREVIOUSLY  
FILED MOTION TO DISMISS**

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CARLOS MARIO JIMENEZ NARANJO ("Jimenez"), by and through undersigned counsel, pursuant to S.D. Fla. L.R. 7.1(b) and Fed. R. Civ. P. 12(b), respectfully reurges his previously filed Motion to Dismiss Plaintiffs' Complaint, D.E. 60, and further moves to dismiss all claims arising under the Alien Tort Statute ("ATS"), 28 U.S.C. § 1350, for lack of subject matter jurisdiction in light of *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013).

On September 11, 2011, Jimenez moved to dismiss the Complaint for:

- (1) Failure to state a claim where complaint fell far short of the pleading standards under Fed. R. Civ. P. 8(a)(2) as outlined in *Mamani v. Berzain*, 654 F.3d 1148 (11th Cir. 2011), and
- (2) Lack of personal jurisdiction where Jimenez is not a resident of Florida, has no minimum contacts with Florida, was involuntarily extradited to Florida, and allegedly committed all relevant acts in Colombia, not Florida.

D.E. 60.

On March 13, 2012, the Court issued an order staying the case pending the outcome of *Kiobel*, which was on appeal to the Supreme Court and presented issues having a dispositive impact on Plaintiffs' claims. The Court also ruled that all outstanding motions were moot, including Jimenez's motion to dismiss. D.E. 73.

After Plaintiffs moved for reconsideration, D.E. 75, the Court entered a new order allowing Plaintiffs to proceed on their claims arising under the Torture Victim Protection Act ("TVPA"), 28 U.S.C. § 1350, note § 2(a), but continuing the stay on all ATS claims.

D.E. 80.

The Court never ruled on the merits of Jimenez's motion to dismiss including (1) whether the Court has personal jurisdiction over Jimenez and (2) whether the Plaintiffs' complaint meets the pleading standards under Fed. R. Civ. P. 8.

On April 17, 2013, the Supreme Court issued an opinion in *Kiobel*. *Kiobel*, 133 S.Ct. at 1659. As such, Jimenez reurges all grounds for dismissal presented in his previously filed motion, D.E. 60.

In addition to the two grounds previously argued and briefed, Jimenez moves to dismiss all ATS claims for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1); *Kiobel*, 133 S.Ct. at 1669. ATS does not confer jurisdiction over claims for violations of law which wholly occur outside the United States. *Kiobel*, 133 S.Ct. at 1669. All allegations in support of Plaintiff's ATS claims occurred in Colombia and do not touch and concern the territory of the United States. As such, all ATS claims must be dismissed.

Per S.D. Fla. L.R. 7.1(b), counsel for Jimenez states the following in support of notification of expiration:

- (1) Defendant's Motion to Dismiss for Lack of Jurisdiction and/or Failure to State a Claim, D.E. 60 (served and filed on 09/11/11);
- (2) Response in Opposition to Defendant's Motion to Dismiss for Lack of Jurisdiction and/or Failure to State a Claim, D.E. 62 (served and filed on 09/29/11); Affidavit re: Response in Opposition to Motion to Dismiss, D.E. 63 (served and filed on 09/29/11);
- (3) Reply to Response in Opposition to Motion to Dismiss for Lack of Jurisdiction and/or Failure to State a Claim, D.E. 64 (served and filed on 11/10/11).

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

Respectfully submitted,

/S/

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