

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 MOTION TO
DISMISS FOR LACK OF PROSECUTION**

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CARLOS MARIO JIMENEZ NARANJO ("Jimenez"), by and through undersigned counsel, pursuant to Fed. R. Civ. P. 41(b), respectfully moves to dismiss all claims under the Torture Victim Prevention Act ("TVPA"), 28 U.S.C. § 1350, note § 2(a), in JESUS CABRERA JARAMILLO, JOHN DOE, and JANE DOE's (together "Plaintiffs") Complaint where Plaintiffs have altogether failed to do anything to prosecute those claims for over a year.

On March 13, 2012, the Court ordered the stay of the entire case pending the resolution of a potentially dispositive issue in *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013), which was on appeal to the Supreme Court. D.E. 74.

On April 10, 2012, Plaintiffs filed a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e), requesting permission to proceed in the case despite *Kiobel*. D.E. 75. On June 26, 2012, the Court granted Plaintiffs' motion in part, allowing Plaintiffs to proceed on claims arising under TVPA but still imposing a stay on all other claims. D.E. 80.

Since the reopening of the case on June 26, Plaintiffs have not filed a single pleading or engaged in any discovery, making absolutely no effort to prosecute the TVPA claims that they themselves sought and obtained permission from this Court to pursue. D.E. 75; D.E. 80; Fed. R. Civ. P. 41(b) (providing defendant may move to dismiss case where plaintiff "fails to prosecute").

Courts have dismissed cases pursuant to Rule 41(b) where a plaintiff failed to file anything for as little as six months. See, e.g., *Munoz v. Ramirez*, 2009 WL 151548 (S.D. Fla. 2009) (finding dismissal proper under Rule 41(b) where plaintiff did not take

any action for **six months** and made no inquiry regarding its status); *Salmon v. City of Stuart*, 194 F.2d 1004, 1004 (5th Cir. 1952) (affirming dismissal pursuant to Rule 41(b) where plaintiff failed to take any action for **one year and three months**); *Lopez v. Smurfit-Stone Container Enterprise*, 289 F.R.D. 103, 105 (W.D.N.Y. 2013) (finding dismissal proper under Rule 41(b) where plaintiff failed to take any action to prosecute for over **half a year**); *Hickman v. Fox Television Station*, 231 F.R.D. 248, 253 (S.D. Tex. 2005) (“While short delays in a case are normal, and, thus, generally tolerated by courts, delays in proceedings that last for more than one year and effectively cause the action to come to a standstill are entirely unacceptable because they clog the docket, subvert the court’s efficiency, and unnecessarily waste judicial resources.”).

Where Plaintiffs have failed to affirmatively prosecute their TVPA claims for over a year and appear to no longer seek any judicial relief under those claims, all such claims must be dismissed.

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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