

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

CASE NO: 1:10-cv-21951 Torres

Jesús 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 the estate of Eduardo Estrada, and)
)
John Doe, in his individual capacity,)
)
Plaintiffs,)
)
v.)
)
CARLOS MARIO JIMÉNEZ NARANJO, also known as “Macaco,” “El Agricultor,” “Lorenzo González Quinchía,” and “Javier Montañez,”)
)
Defendant.)

PLAINTIFFS’ OPPOSITION TO DEFENDANT’S REURGING OF AND SUPPLEMENT TO PREVIOUSLY FILED MOTION TO DISMISS

INTRODUCTION

On June 14, 2010, Plaintiffs Jesús Cabrera Jaramillo, Jane Doe, and John Doe (collectively “Plaintiffs”) filed this lawsuit against Defendant Carlos Mario Jiménez Naranjo (“Defendant”) for the abduction and brutal slayings of Eduardo Estrada Gutierrez and Alma Rosa Jaramillo Lafourie, family members of the Plaintiffs. Plaintiffs bring claims under two federal statutes: the Alien Tort Statute, 28 U.S.C. § 1350 (“ATS”) and the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (“TVPA”). Their suit is brought in Florida because Defendant is in Florida, where he is presently serving a 33-year sentence for selling cocaine and laundering money in this country and in this State.

On September 11, 2011, Defendant (belatedly) moved to dismiss this case, which motion Plaintiffs timely and vigorously opposed. D.E. 60. On March 13, 2012, this Court

stayed this action *sua sponte* pending the Supreme Court's decision in *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013), and at the same time denied Defendant's Motion to Dismiss as moot. D.E. 74. The Court stated that it would consider amending its order if either party could make "a compelling showing" that it should do so. *See id.* Plaintiffs moved to amend the Court's order and lift the stay. D.E. 75. On June 26, 2012 the Court granted Plaintiffs' motion in part, lifting the stay of TVPA claims but maintaining the stay of ATS claims. D.E. 80. By contrast, the Defendant raised no objection to the dismissal of his motions as moot.

On July 1, 2013, more than one year later, Defendant filed a Reurging of and Supplement to Previously Filed Motion to Dismiss (Defendant's "Reurging and Supplement"). Defendant's Reurging and Supplement is improper and should be denied.

ARGUMENT

Defendant cannot escape the Court's decision to deny his motion as moot by simply "reurging" the Court to reconsider it. The Federal Rules of Civil Procedure do not provide for motions to "reurge" previously denied motions. *See* FRCP Rules 1-86. Even if they did, any "supplement" Defendant sought to file would be most inappropriate where, as here, the Court has already denied Defendant's original motion as moot. D.E. 74. Defendant's reliance on Rule 7.1(b)'s "Notification of Ninety Days Expiring" provision provides him no help, as that rule applies to motions that have been pending for 90 days. S.D. Fla. L.R. 7.1(b)(4)(A). The matters Defendant cites, however, are not pending. This Court denied them as moot on March 13, 2012.¹ D.E. 74.

Because the motion to dismiss has been denied as moot, if Defendant wants this Court to consider it, he must file it anew. *See, e.g., Schell v. OXY USA, Inc.*, No. 07-1268-JTM, 2012 WL 3939860, at *4 (D. Kan. Sept. 10, 2012) (denying motions as moot and noting: "Plaintiffs may refile these Motions at a later date if necessary"); *Cooey v. Bradshaw*, 216 F.R.D. 408, 408 (N.D. Ohio 2003) (denying motion as moot and noting: "Petitioner may refile this motion when and if such motion becomes appropriate").

¹ Moreover, if Defendant's Reurging and Supplement is, as its title would suggest, not a motion, then it is *prima facie* improper under the federal rules and the Court must deny it. *See* Fed. R. Civ. P. 7(1) ("A request for a court order must be made by motion.").

Finally, Defendant's Reurging and Supplement of a motion to dismiss claims brought under the ATS is improper because this Court has not yet lifted the stay of these claims.

CONCLUSION

Defendant's Reurging and Supplement should be denied in its entirety. If, however, this Court decides otherwise, Plaintiffs request time to respond to Defendant's supplemented motion to dismiss in light of *Kiobel*.

Dated: July 18, 2013

Respectfully submitted,

By: /s/ Julie C. Ferguson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiffs' Opposition to Defendant's Reurging of and Supplement to Previously Filed Motion to Dismiss was served by CM/ECF on July 18, 2013, on counsel or parties of record on the service list.

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