

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

JESUS CABRERA JARAMILLO, et al.,  
Plaintiffs,

CASE NO. 10-21951-CV-EGT

vs.

CARLOS JIMENEZ NARANJO,  
Defendant.

**DEFENDANT JIMENEZ'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED  
COMPLAINT**

Defendant, CARLOS JIMENEZ NARANJO ("Jimenez" or "Defendant"), by and through undersigned counsel, pursuant to Fed. R. Civ. P. 12(b)(6), respectfully moves to dismiss Plaintiffs, JESUS CABRERA JARAMILLO ("Jaramillo), JANE DOE, and JOHN DOEs' (together "Plaintiffs") Second Amended Complaint ("Complaint"), D.E. 109.

**1. ALL CLAIMS BASED ON COLOMBIAN LAW PRESENTED PURSUANT TO SUPPLEMENTAL JURISDICTION MUST BE DISMISSED WHERE ALL RAISE NOVEL AND COMPLEX ISSUES OF FOREIGN LAW**

All claims, at least in part, require translation, interpretation, and implementation of claims and defenses rooted in Colombian laws, written in Spanish, and applied in the non-jury legal system of Colombia. Where such a monumental task gives rise to numerous "novel and complex issues" of foreign law, all claims must be dismissed. 28 U.S.C. § 1367.

The Complaint alleges that all claims are "actionable under the laws of Colombia, including Ley 599 de 2000." D.E. 109 at 12, ¶-64; 13, ¶-73; 14, ¶-80; 15, ¶-87; 16, ¶-95; 17, ¶-106; 17, ¶-111. In fact, Plaintiffs' Third, Sixth, Seventh, and Eighth Claims

exclusively rely on violation of Colombian law to support each claim. D.E. 109 at 14,¶-80; 16,¶-95; 17,¶-106; 17,¶-111.

Citing to 28 U.S.C. § 1367, the Complaint further alleges that the Court has “supplemental jurisdiction” over these foreign law claims because “they form part of the same case or controversy” as the remaining claims under the Torture Victim Protection Act (“TVPA”). D.E. 109 at 2,¶-6.

Courts do have jurisdiction over ancillary claims “so related to claims in the action within such original jurisdiction that they form part of the same case or controversy”. 28 U.S.C. § 1367(a). However, courts may decline jurisdiction if, among other reasons, the claim raises a “novel or complex issue of State law” or in other exceptional circumstances. 28 U.S.C. § 1367(c)(1), (4).

In TVPA cases, courts customarily decline to exercise supplemental jurisdiction over claims based on laws in a foreign country. *Estate of Amergi ex rel. Amergi v. Palestinian Authority*, 611 F.3d 1350, (11th Cir. 2010) (affirming district court’s decision to decline supplemental jurisdiction over wrongful death claim based on Israeli law); *Romero v. Drummond Co., Inc.*, 552 F.3d 1303, 1318 (11th Cir. 2008) (affirming district court’s decision to decline supplemental jurisdiction over wrongful death claims based on Colombian law); *see also In re Chiquita Brands Int’l*, 792 F. Supp. 2d 1301, 135-57 (S.D. Fla. 2011) (same).

Courts decline jurisdiction because of the “extraordinary inconvenience and expenditure of judicial resources” required to try a foreign law claim written in a different language in a United States court. *Estate of Amergi*, 611 F.3d at 1366; *but see Mamani*

*v. Berzain*, 21 F. Supp. 3d 1353, 1378-79 (S.D. Fla. 2014) (requiring support for such dismissal on the record).

After initial review of “Ley 599 de 2000”, the Complaint appears to refer to “Código Penal de Colombia,” or the entire 318-page Colombian Penal Code written in Spanish legalese. Exhibit A (“Codigo Penal de Colombia, Ley 599 de 2000”). Without knowing which section and subsection that Plaintiffs base their claims on, there is no way to ensure that Plaintiffs have in fact sufficiently pled a civil cause of action based on the foreign criminal code.<sup>1</sup>

Moreover, proceeding with claims based on foreign laws, written in a foreign language, designed for implementation in a foreign court without a jury system would require all parties to expend an inordinate amount of resources consulting with highly trained legal translators and Colombian legal experts to translate all applicable laws into intelligible English and review the other party’s translations to ensure accuracy.

Spanish legal terms do not easily translate into plain and common English words that could be readily understood by a jury. Legal terms in one Spanish-speaking country may not be applied in the same manner or given the same meaning in another country. Routine legal issues, such as determining the elements of all claims and defenses for summary judgment, and crafting jury instructions based on those elements in anticipation of trial, would result in long-fought battles between experts, and require numerous evidentiary hearings with testimony and judicial determinations on issues of complex foreign law.

---

<sup>1</sup> Based on this reason alone, all claims should be dismissed. Fed. R. Civ. P. 12(b)(6) (failure to state a claim upon which relief may be granted).

Even if there was a viable civil cause of action under the Colombian criminal code, it is entirely unknown whether Defendant would be able to rely on criminal or civil defenses against those claims. Furthermore, Plaintiffs' claims rely on a complex form of second liability called "command liability" that may or may not be available under Colombian civil or criminal law.

Where all claims based on Colombian law present significantly "complex and novel" legal issues which cannot be resolved without expending significant time and resources, and TVPA readily provides Plaintiffs a full and complete remedy under United States law in federal district court, all Plaintiffs' claims based on Colombian law must be dismissed. 28 U.S.C. § 1367(c).

**2. ALL TVPA CLAIMS BY JARAMILLO MUST BE DISMISSED WHERE COMPLAINT FAILS TO ALLEGE SUFFICIENT SYMBIOTIC RELATIONSHIP BETWEEN JIMENEZ AND STATE ACTORS INVOLVING SPECIFIC ALLEGED CONDUCT**

The Court dismissed all Jaramillo's TVPA claims in Plaintiffs' first Amended Complaint where the complaint failed to plead "sufficient facts to connect the actions of [a state actor] with the torturing and killing" of Jaramillo by Defendant's paramilitary group. D.E. 101 at 24. The Court further explained that it was "impossible to infer that [a state actor] had a **direct involvement** in [Jaramillo's] torture and killing, thereby precluding satisfaction of the color of law element in her case." D.E. 101 at 24 (emphasis added).

After dismissal, Plaintiffs moved to amend their complaint. D.E. 107. Plaintiffs allege that, after additional investigation, they have identified additional facts to sufficiently plead the "color of law" required under TVPA. D.E. 107 at 2. Plaintiffs' new

Complaint still fails to present sufficient factual allegations to support the “color of law” requirement under TVPA. The new Complaint now alleges:

- Jaramillo filed a criminal complaint against ex-mayor Loher Diaz, his wife, present mayor Marcelo Rincones, and Judge Roberto Caraballo. D.E. 109 at 9, ¶-43. Individuals who killed Jaramillo were body guards for the ex-mayor while he was in power. D.E. 109 at 9, ¶-43.
- Jaramillo had investigated and litigated several high-profile human rights cases including corruption and money laundering claims against the ex-mayor’s wife who was an administrator of a hospital. D.E. 109 at 8, ¶-41. Both the ex-mayor and his wife were connected to Defendant’s paramilitary group. D.E. 109 at 8, ¶-41.
- Jaramillo filed a slander suit against a city councilman, Manuel Payares, who had told Defendant’s paramilitary group that Jaramillo was a collaborator with a guerilla group. D.E. 109 at 9, ¶-42.
- After identifying Jaramillo’s remains, her sister asked the local police for help but the police refused to provide assistance. D.E. 109 at 9, ¶-46.

Without factual support, the Complaint concludes: “On information and belief, all four local government officials were involved in directing [Defendant’s paramilitary soldiers] to murder Alma Rosa Jaramillo.” D.E. 109 at 9, ¶-43.

It also makes the unsubstantiated legal conclusion: “On information and belief, local public officials in Morales, including Loher Diaz, Nilly Janit, Mateus Orduna, Marcelo Rincones, and Roberto Carballo, **conspired** with [Defendant’s] subordinates in the BCB to have Alma Rosa Jaramillo killed.” D.E. 109 at 9, ¶-46 (emphasis added).

As already fully briefed by the Court in its previous order, on a motion to dismiss for failure to state a claim, all allegations in the complaint must be viewed as true and in light most favorable to Plaintiffs. D.E. 101 at 17-18. However, “conclusory allegations, unwarranted deductions of facts, or legal conclusions masquerading as facts will not prevent dismissal.” D.E. 101 at 17 (citations omitted).

Plaintiffs have the burden to allege some clear and concrete fact that a state actor had “**direct involvement**” in Jaramillo’s torture and killing. D.E. 101 at 24. The fact that Jaramillo filed criminal complaints against state actors or was involved in litigation against those state actors provides absolutely no support for a reasonable inference that those state actors were involved in her killing. Likewise, the fact that those state actors had a close connection with Defendant’s paramilitary group also fails to substantiate the required “**direct involvement**”.<sup>2</sup>

The Complaint unsuccessfully attempts to establish a stronger connection by further alleging that the individuals who killed Jaramillo were the body guards for the **ex-mayor**, Loher Diaz. The Complaint does not allege that these individuals worked for the mayor in power at the time of the killing. Rather, their connection was with a **former** mayor who was no longer in power. This connection to a **former** government official cannot provide support for a “color of law” connection at the time of the killing. D.E. 109 at 9, ¶-43 (“The BCB members who murdered Alma Rosa Jaramillo had served as

---

<sup>2</sup> These allegations provide nothing more than what was already alleged in Plaintiff’s first Amended Complaint dismissed by the Court. D.E. 91 at 9; see, e.g., D.E. 109 at 8-9; D.E. 101 at 24 (“ . . . , it is impossible to infer that the city councilman had a direct involvement in her torture and killing, thereby precluding satisfaction of the color of law element in her case.”).

mayoral bodyguards to Diaz, **before he transitioned power to his political ally,** Marcelo Rincones.”) (emphasis added).

The Complaint also unsuccessfully attempts to make a stronger connection by alleging that local police refused to help Jaramillo’s sister after she identified Jaramillo’s remains and asked for help. Failure of the police to investigate a killing, occurring long before police learned about the killing, and not occurring in their plain sight, does not establish “state action” under TVPA. *Aldana v. Del Monte Fresh Produce, N.A.*, 416 F.3d 1242, 1248 (11th Cir. 2005). Nothing in the complaint suggests that the police knew that the killing was going to occur at a certain date or time or were present at the scene at the exact time of the killing and purposefully turned a blind eye, or had any other **direct involvement** in the killing on or before the time that it occurred. *Aldana*, 416 F.3d at 1248.

Plaintiffs’ attempt to fill their huge evidentiary gap with unsubstantiated legal conclusions, including that government officials “were involved in directing” the killing and “conspired” with Defendant’s subordinates to have Jaramillo killed, does not cure the complaint’s fatal flaws. D.E. 109 at 9, ¶¶-43,46. Without presenting any factual allegations which support these bald legal conclusions, all of Jaramillo’s TVPA claims must be dismissed.

DATED: 01/27/15

Respectfully submitted,

By:       /s/Jonathan Tanoos        
JONATHAN TANOOS, FBN 88851  
1210 Washington Ave. #245  
Miami Beach, Fla. 33139  
T: (305) 373-1200  
F: (866) 864-1767  
E: [jon@tanooslaw.com](mailto:jon@tanooslaw.com)

      /s/Hugo Rodriguez        
HUGO RODRIGUEZ, FBN 312150  
Hugo Rodriguez & Associates  
1210 Washington Ave., Ste. 245  
Miami Beach, Fla. 33139  
T: (305) 373-1200  
F: (866) 864-1767  
E: [hugolaw@aol.com](mailto:hugolaw@aol.com)

**CERTIFICATE OF SERVICE**  
***Jaramillo vs. Jimenez Naranjo***  
**Case No. 10-21951-CV-EGT**

**Charlene Koski**  
[ckoski@wsgr.com](mailto:ckoski@wsgr.com)

**Leo Cunningham**  
[lcunningham@wsgr.com](mailto:lcunningham@wsgr.com)

**L. Kathleen Roberts**  
[kroberts@cja.org](mailto:kroberts@cja.org)

**Lee-Anne Mulholland**  
[lmulholland@wsgr.com](mailto:lmulholland@wsgr.com)

*Counsel for Plaintiffs, Jaramillo, John Doe, & Jane Doe*