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

CASE NO: 1:10-cv-21951 Ungaro/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.

OPPOSITION TO DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

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INTRODUCTION

Paramilitary commander Carlos Mario Jiménez Naranjo ("Defendant") led his forces in violent campaigns in the Middle Magdalena region of Colombia, perpetrating massacres, forced disappearances, torture, killings, and widespread displacement. Among the victims were peace activists and human rights defenders Alma Rosa Jaramillo and Eduardo Estrada Gutierrez ("Decedents"), who were brutally killed by forces under Defendant's command. Decedents' relatives, Jesús Cabrera Jaramillo, Jane Doe, and John Doe ("Plaintiffs"), sued Defendant in this federal court, after his extradition and thirty-three year sentence for drug trafficking rendered justice unavailable in Colombia. Their Second Amended Complaint ("SAC") brings claims for torture; extrajudicial killing; cruel, inhuman or degrading treatment; war crimes; and crimes against humanity under the Torture Victim Protection Act (TVPA), 28 U.S.C. § 1350, note, and Colombian law, *Ley 599 de 2000*.

Defendant attempts to dismiss the SAC on two narrow grounds: (1) state action with respect to Alma Rosa Jaramillo's TVPA claims; and (2) supplemental jurisdiction with respect to Plaintiffs' Colombian law claims.[1] Neither supports dismissal. First, the SAC pleads additional facts, consistent with the Court's prior order ("Order") (D.E. 101), to directly link state actors to the torture and killing of Alma Rosa Jaramillo. Second, the mere citation to Colombian law in the SAC does not render such claims "novel" or "complex." Defendant fails to cite "adequate record support" to warrant declining supplemental jurisdiction over Plaintiffs' Colombian claims. *See Mamani v. Berzain*, 21 F. Supp. 3d 1353 (S.D. Fla. 2014).

BACKGROUND

Between 1998 and 2005, Defendant led a paramilitary force of 7,000 as the commanding officer of the *Bloque Central Bolivar* ("BCB") and high commander of its national umbrella organization, *Autodefensas Unidades de Colombia* ("AUC"). ¶¶ 12, 49.[2] The AUC controlled broad segments of the Colombian state and civil society, holding sway over elected officials, judges, and business leaders. For example, the former Police General under President Uribe was on Defendant's payroll. ¶¶ 21, 48.

[1] Defendant does not move to dismiss TVPA claims relating to the torture and killing of Eduardo Estrada. *See* Defendant Jimenez's Motion to Dismiss Plaintiff's Second Amended Complaint ("Mem.") at 4-7.

[2] All references to paragraph (¶) refer to the Second Amended Complaint.

The AUC's influence extended to local governments and municipalities. The BCB controlled all aspects of government in Middle Magdalena, fielding its own candidates and supporting individuals running for municipal positions. ¶ 25. By 2000, the BCB had become the equivalent of a local government: it "worked closely with and at the direction of local government"; "controlled the selection of mayors, judges and directors of public hospitals, as well as other municipal officials through corruption"; and implemented a broader strategy "to develop a political wing charged with identifying and placing members to occupy positions in local government." ¶¶ 29-30. By 2001, several current and former local officials were closely connected to the BCB's network of political and military operatives through which the Defendant maintained control in the region, including ex-Mayor Loher Diaz; Diaz's wife, Nilly Janit Mateus Orduna, who was also the chief administrator of a government hospital; Mayor Marcelo Rincones; and Judge Roberto Carballo. ¶¶ 30-32, 41-43.

In 2001, members of the BCB summarily executed Alma Rosa Jaramillo and Eduardo Estrada. In their different capacities, Decedents were active in the Program for Peace and Development ("PDP"), an organization that worked to build sustainable alternatives to the drug trade. ¶¶ 33, 35, 41. Their work with the PDP made them targets: between 1997 and 2009, the BCB killed twenty-seven PDP leaders. ¶ 34. Ms. Jaramillo was further vulnerable because she campaigned against the BCB's candidate in the 2000 mayoral race after she made public the corruption scam in which he was involved in by filing a high-profile criminal corruption case against the local officials connected to the BCB. ¶¶ 41-43. Likewise, Estrada's potential mayoral candidacy against a BCB candidate placed him at risk. ¶ 36.

On July 16, 2001, Defendant's subordinates shot and killed Eduardo Estrada. ¶ 37. Local police did not assist Estrada, and government soldiers passed by without offering help. ¶ 39. On June 28, 2001, Defendant's subordinates abducted, tortured, and killed Alma Rosa Jaramillo. ¶¶ 45-46. Local police refused to help when Alma Rosa Jaramillo's sister asked them for assistance after finding and identifying the mutilated corpse. ¶ 46. Four current and former local officials, named defendants in Alma Rosa Jaramillo's criminal corruption case, were involved in directing BCB members to kill her and conspiring with Defendant's subordinates to have her killed. ¶¶ 43, 46.

The former head of the BCB's military wing, Julian Bolivar, and the former head of its political wing, Ernesto Baez, have attested to Defendant's knowledge of and responsibility for

Decedents' murders. Decedents were killed as part of Defendant's overall strategy to gain and maintain control over Middle Magdalena. ¶ 50. Despite the attempts of Decedents' families, the Colombian government failed to investigate or prosecute Defendant for Decedents' deaths. ¶ 48. Defendant is currently serving a 33-year prison sentence at the Miami Federal Detention Center. ¶ 58. His extradition to the United States in 2008 foreclosed Plaintiffs' legal options against him in Colombia. ¶ 59.

ARGUMENT

I. THE SAC PLAUSIBLY ALLEGES THAT ALMA ROSA JARAMILLO WAS TORTURED AND KILLED UNDER ACTUAL OR APPARENT COLOR OF LAW

The TVPA applies to torture and extrajudicial killing committed "under actual or apparent authority, or color of law, of any foreign nation." 28 U.S.C. § 1350, notes. "When a claim requiring state action is based on conduct by a private actor, 'there must be proof of a symbiotic relationship between a private actor and the government that involves the torture or killing alleged in the complaint to satisfy the requirement of state action.'" Order at 20 (quoting *Romero v. Drummond Co.*, 552 F.3d 1303, 1317 (11th Cir. 2008); *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1266 (11th Cir. 2009)). Applying that standard to Plaintiffs' prior complaint, the Court found the color of law requirement satisfied as to Eduardo Estrada. Order at 23. *See also West v. Atkins*, 487 U.S. 42, 49 (1988) ("The traditional definition of acting under color of state law requires that the defendant . . . have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.'") (citation omitted). As to Alma Rosa Jaramillo, however, the Court held that more was required at the pleading stage to plausibly infer that state actors were "directly or materially" involved in Jaramillo's torture and killing by the BCB. Order at 23.[3]

The SAC remedies such deficiencies, pleading additional facts from which the Court may infer a symbiotic relationship between state actors and the BCB in connection with Alma Rosa Jaramillo's torture and killing. The SAC pleads at least two viable theories of state action.

First, in addition to city councilman Payares, who identified Alma Rosa Jaramillo to the paramilitaries as a military target, the SAC alleges that four local government officials (a sitting

[3] For example, as the Court held, while the Amended Complaint alleged that a city councilman told the BCB that Alma Rosa Jaramillo was a guerilla sympathizer, it did not directly link that councilman to Jaramillo's torture or killing. Order at 23-24.

Mayor, a sitting Judge, an ex-Mayor, and the chief administrator of a government hospital) were directly involved in Alma Rosa Jaramillo's torture and killing. ¶¶ 41-43.

As averred in the SAC, the former mayor of Morales, Loher Diaz, and his wife and chief administrator of the government hospital, Nilly Janit Mateus Orduna, "were closely connected to the BCB." "BCB members who murdered Alma Rosa Jaramillo had served as mayoral bodyguards to Diaz." ¶¶ 41, 43. Around October 28, 2000, Diaz transitioned power to his close ally and political successor: Marcelo Rincones became the new mayor of Morales. ¶¶ 42-43.[4] During the election campaign, Alma Rosa Jaramillo campaigned for Rincones's opponent. ¶ 42.

A few months after the election, Alma Rosa Jaramillo filed a high-profile criminal corruption case against Rincones, Orduna, Diaz, and a sitting judge, Roberto Carballo. ¶ 43. This public exposure presented a direct challenge to their political positions and to Defendant's control of local government, since all four "belonged to the same political group as, and were closely connected to, members of [Defendant's] BCB block." ¶ 32. The BCB "worked closely with and at the direction of local government" in Morales, and it "controlled the selection of mayors, judges and directors of public hospitals, as well as other municipal officials ***through corruption***." ¶¶ 29-30 (emphasis added). Shortly after she filed a high-profile corruption case against them, Rincones, Carballo, Orduna, and Diaz helped direct Alma Rosa Jaramillo's murder, conspiring with BCB members, including Diaz's former mayoral bodyguards, to have her killed. ¶¶ 43, 46.

Defendant contends that the SAC fails to plead "some clear and concrete fact that a state actor had 'direct involvement' in Jaramillo's torture and killing." Mem. at 6. But the SAC does just that: it alleges that Carballo, Orduna, Rincones, and Diaz, all current or former officials, ***directed BCB members to torture and kill*** Alma Rosa Jaramillo. ¶ 46. They had the opportunity to do so because of their close ties with the BCB; specifically, their positions in government were both dependent on and an extension of the Defendant's control of the region, maintained through corruption and backed up by the threat of brutal violence by Defendant's

[4] For reasons that can be established through discovery, Loher Diaz was prevented under Colombian electoral laws from seeking reelection and therefore handpicked a successor, Marcelo Rincones, to assume the post.

paramilitary forces, including the mayoral guards provided by the BCB. ¶¶ 29-30, 32, 41, 43.[5] They had the motivation to do so because her high profile corruption case against them directly challenged their lucrative political positions. ¶¶ 41, 43. And they did so: Defendant's subordinates tortured and killed Alma Rosa Jaramillo Laufourie in a brutal and public fashion, punishing her and sending a clear message to the Middle Magdalena community and the PDP in particular, that challenges to the BCB's political control of the region would not be tolerated. ¶¶ 29-32, 34, 44-46. No member of the national or local government did anything to prevent or punish such action because this act of cruel brutality was part and parcel of government policy at that time, supported and executed by local officials and paramilitaries. ¶¶ 20-25, 29-32, 41-46.

Second, the SAC alleges that local police refused to assist Alma Rosa Jaramillo's sister after she identified her sister's mutilated remains and asked police to help her. ¶ 46. As the Court found in relation to Eduardo Estrada, "the allegation that government [actors] offered no help when they passed shows a symbiotic relationship because it could reflect the government purposefully not participating to stop any abuse or aid victims of BCB." Order at 23 (citing *Aldana v. Del Monte Fresh Produce, N.A.*, 416 F.3d 1242, 1248 (11th Cir. 2005)). By affirmatively refusing to assist Alma Rosa Jaramillo's sister in any way, local police purposefully refused to aid victims of the BCB and "turned a blind eye on the acts of Defendant's subordinate." *Id*. That the police intentionally turned a blind eye is also supported by the allegation that the national police chief was on his payroll. ¶ 21.

Defendant cites *Aldana*, arguing police inaction suggests color of law only where police refused assistance "on or before the time that [the crime] occurred." Mem. at 7. But nothing in *Aldana* requires a temporal connection.[6] *Aldana* rejected police inaction as a viable theory because the complaint failed to allege facts "to infer the police made a *knowing* choice to ignore Plaintiffs' alleged plight" – the complaint alleged no facts indicating "knowledge or intent on the part of the police." 416 F.3d at 1248-49. By contrast, the SAC alleges that Alma Rosa

[5] As Defendant points out, Loher Diaz was no longer Mayor at the time of Alma Rosa Jaramillo's killing. Mem. at 6-7. However, three sitting local government officials were closely connected to the BCB and also took part in directing Jaramillo's death. ¶¶ 32, 41, 43, 46.

[6] Indeed, such a requirement would be odd: crime victims rarely seek police action before the commission of a crime, and likewise it is illogical to suggest that deliberate inaction by the police following the commission of a crime could not be under color of law.

Jaramillo's sister "asked local police officials for help, but the police refused to provide any sort of assistance." ¶ 46.

Twombly and *Iqbal* require plaintiffs to plead enough facts, taken as true, to "nudge[] their claims across the line from conceivable to plausible." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009). "Plausible" does not mean "probable." The SAC withstands Rule 12(b)(6) "even if it strikes a savvy judge that actual proof of these facts is improbable, and 'that a recovery is very remote and unlikely.'" *Twombly*, 550 U.S. at 556 (citation omitted). *See, e.g.*, *Aldana*, 416 F.3d at 1245 (state action requirement satisfied for purposes of motion to dismiss where complaint identified one public official, a mayor, by name and alleged that he "assisted" the paramilitaries in their wrongful conduct).

In sum, the SAC easily satisfies the edict of *Twombly* and *Iqbal* in pleading ample factual allegations that more than plausibly suggest that Alma Rosa Jaramillo was tortured and executed under actual or apparent color of law. The SAC states that four local government officials (three current, one former) directed her torture and execution as part of Defendant's system of control to which they consented and through which they profited. SAC ¶¶ 41-43. A city councilman, similarly connected with this state-sanctioned network of corruption and violence through which the Defendant maintained control of the region, identified her as a military target to the Defendant's subordinates. ¶ 42. Former mayoral bodyguards provided by the paramilitaries to the mayor's office physically tortured her to death. ¶¶ 45-46. And finally, the police, also part of Defendant's network of corruption, refused to aid the family in any way after her body was discovered and identified. ¶ 46. For these reasons, Defendant's Motion to Dismiss should be denied.

II. THE COURT SHOULD EXERCISE SUPPLEMENTAL JURISDICTION OVER PLAINTIFFS' COLOMBIAN CLAIMS

Plaintiffs properly bring pendant claims under Colombian law for torture, extrajudicial killing, war crimes, crimes against humanity, and cruel, inhuman or degrading treatment.[7] The Court has supplemental jurisdiction over these claims under 28 U.S.C. § 1367(a) because these claims "form part of the same case or controversy" as Plaintiffs' federal claims. Defendant provides no support for his blanket argument that Plaintiffs' Colombian claims present "novel"

[7] Plaintiffs' claims for torture and extrajudicial killing under Colombian law are coextensive with their claims under the TVPA. SAC Counts 1, 2, 4, 5.

or "complex" issues. Nor is there any requirement to delineate specific provisions of Colombian law to satisfy Plaintiffs' notice obligations under Federal Rule of Civil Procedure 44.1.

A. Jurisdiction is Proper Under 28 U.S.C. § 1367

The Court has supplemental jurisdiction over pendant claims that "form part of the same case or controversy" as Plaintiffs' federal claims. 28 U.S.C. § 1367(a); *see also United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966) (supplemental jurisdiction exists where the federal and pendant claims "derive from a common nucleus of operative fact."). Plaintiffs' Colombian claims meet that standard. Each rests on the same set of facts, implicate the same perpetrators and witnesses, and involve the same evidence as their claims under the TVPA. *See Palmer v. Hosp. Auth. of Randolph Cnty.*, 22 F.3d 1559, 1566 (11th Cir. 1994) (section 1367(a) is satisfied if "each claim [federal and pendant] involves the same facts, occurrences, witnesses, and evidence."). The Court therefore has the power to hear these claims, pursuant to 28 U.S.C. § 1367(a).

The Court may nevertheless decline supplemental jurisdiction over Plaintiffs' pendant claims, but only if:

> (1) the claim raises a novel or complex issue of State law, (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction, (3) the district court has dismissed all claims over which it has original jurisdiction, or (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). In federal question cases such as this one, "supplemental jurisdiction *must* be exercised in the absence of any of the four factors of section 1367(c)." *Palmer*, 22 F.3d at 1569; *see also Parker v. Scrap Metal Processors, Inc.*, 468 F.3d 733, 743 (11th Cir. 2006) (same). Moreover, even if one of the 1367(c) factors is present, the Court may nevertheless exercise jurisdiction after considering "judicial economy, convenience, fairness to the parties, and whether all the claims would be expected to be tried together." *Palmer*, 22 F.3d at 1569 (citing *Gibbs*, 383 U.S. at 725-26).

Defendant asks the Court to conclude that the Colombian claims in the SAC raises "novel" or "complex" issues because the Colombian system is foreign and requires translation. Mem. at 2-4. The Southern District of Florida recently rejected this very argument in *Mamani*. The defendants in *Mamani* argued on the complaint alone that Bolivian claims would present "novel or complex" issues. The court disagreed, holding: "Without adequate record support, the

Court declines Defendants' invitation to forgo exercising supplemental jurisdiction over Plaintiffs' state-law claims on the ground that they involve 'novel or complex' issues of Bolivian law." 21 F. Supp. 3d at 1378-79.

Consequently, it is at most premature to reject jurisdiction over Plaintiffs' Colombian law claims on the basis Defendant suggests. The Court can revisit this question at a later stage, with the benefit of discovery and expert submissions. *See Gibbs*, 383 U.S. at 727 ("[T]he issue whether pendent jurisdiction has been properly assumed is one which remains open throughout the litigation. Pretrial procedures or even the trial itself may reveal a substantial hegemony of state law claims, or likelihood of jury confusion, which could not have been anticipated at the pleading stage."); *Mamani*, 21 F. Supp. 3d at 1378-79 (deferring decision in the absence of "adequate record support").

Although Defendant offers several hypothetical concerns, none is grounded in the record. The mere fact that Plaintiffs allege claims under Colombian law – or that courts in different cases dismissed distinct Colombian claims – does not render Plaintiffs' Colombian claims "novel" or "complex." Indeed, federal courts regularly exercise supplemental jurisdiction over claims involving foreign law. *See, e.g.*, *Rundquist v. Vapiano SE*, 798 F. Supp. 2d 102, 130, 132 (D.D.C. 2011) (exercising jurisdiction over pendant copyright claims under the laws of *fifteen* foreign countries); *David v. Signal Int'l, LLC*, No. CIV.A. 08-1220, 2014 WL 4063875, at *6 (E.D. La. Aug. 12, 2014) (exercising jurisdiction over pendant claims that were potentially subject to India's laws).

Defendant's citation to *Romero* and *Amergi* do not change the analysis. The district court in *Romero* reviewed "extensive briefing" on the plaintiffs' Colombian claims before deciding that foreign law would present "novel or complex" issues. *Romero*, 552 F.3d at 1318. Indeed, *Mamani* distinguished *Romero* on this exact basis to hold that "adequate record support" is required. *See Mamani*, 21 F. Supp. 3d at 1378-79. No such briefing or record support exists here.

Estate of Amergi ex rel. Amergi v. Palestinian Auth., 611 F.3d 1350, 1366-67 (11th Cir. 2010) did not address § 1367(c)(1) at all. Instead, the district court declined supplemental jurisdiction over Israeli claims under § 1367(c)(3) after it had dismissed all of the federal claims. *Id.* at 1366. Section 1367(c)(3) is not relevant here because federal TVPA claims remain in the case. *Amergi* also relied on "exceptional" circumstances to decline jurisdiction under

§ 1367(c)(4): the plaintiffs "could obtain satisfaction in Israeli courts." *Id.* at 1366.[8] By contrast, Defendant's extradition and 33-year sentence foreclose any legal remedy in Colombia. ¶ 59. Exercising supplemental jurisdiction is warranted on these facts because it would promote "fairness to the parties." *Palmer*, 22 F.3d at 1569 (citing *Gibbs*, 383 U.S. at 725-26).[9]

Finally, Defendant's judicial economy argument is unpersuasive. Judicial economy is not a basis for declining jurisdiction. *Cf.* 28 U.S.C. § 1367(c). To the extent it may be a relevant consideration, judicial economy weighs in favor of exercising jurisdiction. Irrespective of the Colombian claims, documents produced in this case will mostly be in Spanish; witnesses will require Spanish translators at depositions and trials; and each side will likely present experts on complex issues. Because the Colombian claims involve the "same facts, occurrences, witnesses, and evidence" as the TVPA claims, no additional depositions are required. *See Palmer*, 22 F.3d at 1566. In cases like this one, where "all the claims would be expected to be tried together," exercising supplemental jurisdiction *promotes* judicial economy by reducing litigation costs and simplifying discovery. *Id.* at 1569 (citing *Gibbs*, 383 U.S. at 725-26); *see also Rundquist*, 798 F. Supp. 2d at 132 (where all claims stemmed from the same facts, exercising supplemental jurisdiction over foreign claims "'would significantly reduce litigation costs and simplify discovery'"); *id.* ("there is no reason why, as Vapiano SE flippantly suggests, for the plaintiff to 'be sent back across the Atlantic to pursue her European and Asian claims'"); *Signal*, 2014 WL 4063875, at *6 (exercising supplemental jurisdiction would promote judicial economy where parties would have "ample time" before trial to research Indian law and where application of Indian law would not require any additional depositions).

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[8] "[A] broad reading of [1367(c)(4)] would threaten to swallow the first three subsections of § 1367(c). Not surprisingly, the courts have interpreted the provision narrowly." 13D CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 3567.3 (3d ed. 2014). Defendant has not identified any "exceptional" circumstances to apply § 1367(c)(4).

[9] *In re Chiquita Brands Int'l, Inc. Alien Tort Statute & S'holder Deriv. Litig.*, 792 F. Supp. 2d 1301, 1357 (S.D. Fla. 2011) relied solely on *Romero* and *Amergi* to decline supplemental jurisdiction over the plaintiffs' pendant Colombian claims. To the extent *Chiquita* held that Colombian claims presented "novel or complex" issues based on the pleadings alone, the later decision by the Southern District of Florida in *Mamani* persuasively demonstrates that the decision should rest on "adequate record support." *Mamani*, 21 F. Supp. 3d at 1378-79.

B. The SAC Provides Proper Notice of Foreign Law Under Rule 44.1

Defendant argues that the Court should dismiss Plaintiffs' Colombian claims because the SAC does not delineate "which section and subsection that Plaintiffs base their claims on." Mem. at 3. This argument is misplaced. Plaintiffs amply meet their notice obligations under Federal Rule of Civil Procedure 44.1.

Under Rule 44.1, a party intending to raise foreign law must give due notice "by a pleading or other writing." FED. R. CIV. P. 44.1. Plaintiffs meet that obligation by citing to the Colombian Penal Code (*Ley 599 de 2000*) in Counts 1 through 8 of the SAC.[10] As a matter of law, Rule 44.1 does not require Plaintiffs to delineate specific code provisions of foreign law:

> ***The function of the notice is not to spell out the precise contents of foreign law*** but rather to inform the district court and the litigants that it is relevant to the lawsuit. Thus, a high degree of specificity is not required. The Rule 44.1 notice, whether in the pleadings or otherwise, should specify the segment of the controversy thought to be governed by foreign law and identify the country whose law is claimed to control the matter.

9A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 2443 (3d ed. 2014).[11] "It is important to acknowledge that notice under Rule 44.1 differs from argument – notice merely call[s] attention to the fact that the issue will be raised, whereas argument lays out, *inter alia*, the provisions of foreign law, the basis for its relevance, and the application of the foreign law to the facts of the case." *Rationis Enters. Inc. of Panama v. Hyundai Mipo Dockyard Co.*, 426 F.3d 580, 585-86 (2d Cir. 2005) (alternative pleading of English, Swedish, Korean, or Panamanian law in mass maritime tort complaint satisfied Rule 44.1); *see also In re Griffin Trading Co.*, 683 F.3d 819, 823 (7th Cir. 2012) (complaint's allegations of trading in London, transfer to Netherlands entity, and use of a German bank satisfied Rule 44.1).

Indeed, Rule 44.1 does not even require notice to be given in the complaint. *See* 9A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 2443 ("[A]lthough Rule 44.1 calls for notice, it does not require that the notice be in the pleadings.").

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[10] Plaintiffs allege torture and extrajudicial killing under the TVPA and Colombian law (Counts 1, 2, 4, and 5). Remaining counts (alleging war crimes, crimes against humanity, and cruel, inhuman or degrading treatment) rest solely on Colombian law.

[11] In any event, it is not difficult to identify relevant provisions under the Penal Code. Articles 135 through 164 of the Penal Code pertain to violations of international humanitarian law, such as those alleged in the SAC. Specific penal code provisions and elements of claims can be determined through narrow discovery.

Notice may be given as late as the pretrial conference, or even at trial. *See, e.g.*, *Mutual Service Ins. Co. v. Frit Indus., Inc.*, 358 F.3d 1312, 1321 (11th Cir. 2004) (notice to rely on Cayman law given at pretrial conference); *Griffin Trading*, 683 F.3d at 823 (Rule 44.1 "expressly contemplates the possibility that the need to answer questions of foreign law may become 'apparent' even as late as trial."). Thus, although not required to do so, the SAC provides adequate notice of Plaintiffs' intent to rely on Colombian law, and even if it did not, such would not be a basis for dismissal.

In short, the SAC's citations to Colombian law satisfy Rule 44.1. Any complexities regarding the scope and elements of claims under Colombian law can be addressed through discovery such as expert declarations. *See, e.g.*, 9A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE & PROCEDURE § 2443 ("Discovery is available to the parties in preparing themselves on issues of foreign law. Oral and written examinations, interrogatories to parties, and requests for admission often are used to refine and sharpen disputed issues, to record expert testimony on foreign law, to determine the position taken by the opposing party's expert, and to gather information and foreign legal materials.").

CONCLUSION

For the foregoing reasons, the Court should deny Defendant's motion to dismiss Plaintiffs' Second Amended Complaint.

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REQUEST FOR HEARING

Pursuant to Local Rule 7.1(b)(2), Plaintiffs respectfully request oral argument on their Opposition to Defendant's Motion to Dismiss. Defendant's motion raises issues of state action with respect to Torture Victim Protection Act claims, as well as whether the Court should exercise supplemental jurisdiction with respect to Plaintiffs' Columbian law claims. Given the importance of these questions to the determination of this case and the complexity of the areas of law at issue, Plaintiffs believe that the Court's decision-making process would be aided by oral argument. Plaintiffs estimate one hour will be necessary for argument.

Dated: February 13, 2015

By: /s/ Julie C. Ferguson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Opposition to Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint was served through the Court's CM/ECF System on counsel or parties of record on the service list.

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