

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

JESUS 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	)	CASE NO: 1:10-CV-21951
the estate of Eduardo Estrada, and	)	UNGARO/TORRES
	)	
JOHN DOE, in his individual capacity,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
CARLOS JIMENEZ NARANJO,	)	
	)	
Defendant.	)	
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**JIMENEZ’S MOTION FOR RECONSIDERATION OF COURT’S ORDER  
ON PLAINTIFFS’ MOTION TO PROCEED ANONYMOUSLY**

Carlos Jimenez Naranjo (“Jimenez” or “Defendant”), by and through undersigned counsel, respectfully requests the court reconsider its order on Plaintiffs’ Motion to Proceed Anonymously. D.E. No. 45.

**I. INTRODUCTION**

On August 11, 2010, before Jimenez was represented by counsel, Plaintiffs filed a motion to proceed anonymously. D.E. No. 23. The court reviewed and granted the motion. D.E. No. 45. However, the court noted in its order:

Of course, the Court is without the benefit of a response from Defendant who is proceeding *pro se*. Nonetheless, Defendant may move for reconsideration of this Order if he appears to defend this action within the set deadline.

*Order on Motion, D.E. No. 45* at 1.

On September 2, 2011, counsel for Jimenez filed a notice of appearance after receiving permission by the Office of Foreign Asset Control, (“OFAC”) of the United States government. Prior to that time no one could provide any service of legal representation for Mr. Jimenez. Jimenez is now prepared to defend this action.

As such, Jimenez respectfully requests that the court reconsider its prior ruling and deny Plaintiffs’ motion to proceed anonymously.

## II. ARGUMENT

Rule 10(a) specifically states that the title of the complaint must name all the parties. Fed. R. Civ. P. 10(a); see also So. Dist. Fla. Local Rule 5.1(a)(5)(D) (“All civil and criminal pleadings . . . shall include a caption with the title of the document, including the name and designation of the party . . .”). Only in exceptional circumstances do courts permit a plaintiff to proceed under a fictitious name. *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir. 1992). The district court has discretion to determine whether a plaintiff may proceed anonymously in the case. *Frank*, 951 F.2d at 323. A party may seek to proceed anonymously if disclosure of his identity will subject him to extensive harassment and violence. *Doe v. Stegall*, 653 F.2d 180, 186 (5th Cir. Unit A 1981).

In their motion, Plaintiffs argued that “Jane and John Doe face ‘real danger of physical harm.’” D.E. No. 23 at 3, ¶1-10. However, Plaintiffs fail to cite to a single credible threat that any individual has made directly against John Doe or Jane Doe. Not surprisingly<sup>1</sup>, Plaintiffs rely on general statements of fact in reports by the U.S.

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<sup>1</sup> Jimenez is familiar with this litigation tactic. Plaintiffs rely on the same type of generalizations in its complaint. Jimenez challenged these generalizations in its motion to dismiss for failing to meet pleading standards, as outlined *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). See D.E. No. 60.

government and an activist organization with glaring bias to try to point to dangers that John Doe and Jane Doe may speculatively face. Where Plaintiffs fail to cite to any specific credible threat against John Doe and Jane Doe, Plaintiffs' motion should be denied.

Furthermore, it is inherently unfair where John Doe and Jane Doe have both publicly accused Jimenez of heinous violations of federal and international law but seek to cloak themselves in anonymity. Counsel for John Doe and Jane Doe has turned this case into a public spectacle forcing Jimenez to vigorously and publicly defend himself against their accusations. Plaintiffs' counsel has filed numerous articles on the internet and issued a press release accusing Jimenez of committing horrific acts. See, e.g., *Cabrera v. Jimenez Naranjo*, THE CENTER FOR JUSTICE AND ACCOUNTABILITY, available at <http://www.cja.org/article.php?list=type&type=403> (posting a summary of Plaintiffs' civil claims and case updates as recent as March 2011); *Colombian Survivors File Suit Against Paramilitary Leader and Drug Trafficker for Crimes Against Humanity* (Press Release), THE CENTER FOR JUSTICE AND ACCOUNTABILITY, July 1, 2010, available at <http://www.cja.org/downloads/CJA.Macaco.PR.6.29.10.English-2.pdf>.

Where Plaintiffs have, and continue, to try this case in newspapers and over the internet, it appears that they have little to no concern for their own privacy. If Plaintiffs were in fact in any real danger in Colombia, it is not at all clear why counsel for Plaintiffs is so eager to publicize this case across the world, and identify Plaintiffs as relatives of Eduardo Estrada.

Plaintiffs' anonymity also obstructs Jimenez from bringing forward numerous legal defenses. Without the identity of either plaintiff, Jimenez is unable to bring forward

a challenge of standing. A remedy under the Alien Tort Statute is only available to an alien. 28 U.S.C. § 1350 (“The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”). Claims under the Torture Victim Prevention Act provide a remedy either to the individual subject to an extrajudicial killing, or to the “legal representative, or to any person who may be a claimant in an action for wrongful death.” 106 Stat. 73, section 2(a)(2). Jimenez is unable to verify that John Doe and Jane Doe meet these requirements. Plaintiffs rather would have Jimenez to take their word that John Doe and Jane Doe both are legally entitled to bring claims under these statutes. Jimenez is not prepared to do so.

The Torture Victim Prevention Act also prohibits John Doe and Jane Doe from bringing claims before this court if they have not exhausted adequate and available remedies in Colombia. 106 Stat. 73, section 2(b). Again, without the identity of John Doe and Jane Doe, Jimenez is unable to verify whether either may be eligible to pursue adequate and available remedies in Colombia and, if so, whether either has in fact exhausted those remedies.

Lastly, Plaintiffs’ complaint alleges that the “extrajudicial killing of Eduardo Estrada also inflicted severe mental pain and suffering on plaintiffs John Doe and Jane Doe.” D.E. No. 1 at 14, ¶-76. “[Jimenez]’s subordinates specifically intended to inflict severe pain and suffering on Jane Doe.” D.E. No. 1 at 15, ¶-79; see *also* D.E. No. 1 at 15, ¶83, at 16, ¶-89. The Torture Victim Prevention Act defines “mental pain and suffering” as “prolonged mental harm.” 106 Stat. 73, section 3(b)(2). Without knowing the identity of John Doe or Jane Doe, Jimenez is unable to conduct discovery to

determine whether either plaintiff has in fact suffered “prolonged mental harm” as a result of the purported acts of Jimenez’s subordinates. In fact, failing to disclose their identities may altogether foreclose Jimenez from requesting mental examinations of both plaintiffs under Rule 35. See Fed. R. Civ. P. 35 (physical and mental examinations).

### **III. CONCLUSION**

Ultimately, Plaintiffs have not pointed to any specific, credible threat made against John Doe or Jane Doe for bringing this suit. Further, Plaintiffs’ anonymity obstructs Jimenez from bringing forward numerous defenses in his case.

Where any speculative privacy interest for Plaintiffs is clearly outweighed by the unfair prejudice imposed on Jimenez by their anonymity, Plaintiffs must abide by Rule 10 and identify all parties in their complaint.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this pleading will be provided to all interested parties through the Court’s CM/ECF system.

Respectfully submitted,  
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