

**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.)

**PLAINTIFFS’ OPPOSITION TO DEFENDANT’S MOTION FOR
RECONSIDERATION OF COURT’S ORDER ON PLAINTIFFS’ MOTION TO
PROCEED ANONYMOUSLY**

BACKGROUND

On June 14, 2010, plaintiff Jesús Cabrera Jaramillo and two anonymous plaintiffs, Jane Doe and John Doe (collectively “Plaintiffs”), instituted this action against Defendant Carlos Mario Jiménez Naranjo (the “Defendant”), one of Colombia’s most notorious paramilitary leaders and drug traffickers, for torture, extrajudicial killing, war crimes and crimes against humanity. *See* Complaint ¶ 1. In their Complaint, Plaintiffs describe the murder of their relative, Eduardo Estrada, by Defendant’s subordinate. *Id.* ¶¶ 32-35. Specifically, on July 16, 2011, Defendant’s subordinate shot Mr. Estrada in the back of the head and killed him. *Id.* ¶ 35. Jane Doe, who was with Mr. Estrada when he was shot, lost consciousness, only to awaken with the Defendant’s subordinate standing over her with a gun while Mr. Estrada bled to death by her side. *Id.*

On August 11, 2010, Plaintiffs filed a motion and supporting declarations¹ describing that, for good reason, they fear for their lives should their names become publicly available. They thereby made the showing necessary to be permitted to proceed anonymously. Specifically, Plaintiffs described how: (1) they, along with the Defendant’s subordinate, still reside in the area where Mr. Estrada was killed; (2) Defendant’s organization continues to commit violence and atrocious crimes throughout Colombia particularly against those who press for justice; (3) Defendant’s subordinate still resides in Colombia and has not been prosecuted or detained; and (4) Defendant will not be prejudiced if the Court grants the motion.

On June 13, 2011, this Court granted Plaintiffs’ Motion to Proceed Anonymously. Docket Entry No. 45. This Court concluded that that “there appears to be a real need to proceed anonymously.”² Docket Entry No. 45. Defendant now requests that this Court reconsider and

¹ Plaintiffs’ declarations were filed under seal and revealed Plaintiffs’ true identifies and provided additional information regarding their background in support of their Motion to Proceed Anonymously. *See* Docket Entry Nos. 25-27.

² On November 30, 2011 Defendant filed with this Court a motion to sanction Plaintiffs under Fed. R. Civ. P. 11 for filing the Motion to Proceed Anonymously in August 2010. That motion is patently frivolous: Plaintiffs won the motion Defendant contends was supported by the purportedly sanctioned pleading. *See, e.g., Northern Network Caching Technology, LLC v. Novell, Inc., et al.*, No. C-01-2079-VRW, 2003 WL 21699799, at *8 (N.D. Cal. Mar. 21 2003) (holding that sanctions would be inappropriate where a motion has been granted). However, the Court need not even reach the merits because Defendant’s lawyer again ignored procedural requirements; Fed. R. Civ. P. 11(c)(2) requires that a motion for sanctions be served on Plaintiffs 21 days before the sanctions motion is filed. As a point of order, however, the Court should

overturn its prior proper opinion. Nothing has changed relevant to this issue since the Court granted Plaintiffs' motion so Defendant's motion should be denied.

ARGUMENT³

I. DEFENDANT IS NOT ENTITLED TO RECONSIDERATION OF THE COURT'S ORDER ON PLAINTIFFS' MOTION TO PROCEED ANONYMOUSLY

Albeit this Court stated that Defendant *could* move for reconsideration, a motion for reconsideration should only be filed "to correct manifest errors of law or fact or to present newly discovered evidence." *Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1369 (S.D. Fla. 2002) (citation omitted); *see also Compania de Elaborados de Café v. Cardinal Capital Management, Inc.*, 401 F. Supp. 2d 1270, 1283 (S.D. Fla. 2003) ("Motions for reconsideration are appropriate where, for example, the Court has patently misunderstood a party, where there is an intervening change in controlling law or the facts of a case, or where there is manifest injustice."). To prevail on a motion for reconsideration, a party generally must present at least one of "three major grounds which justify reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice." *Burger King Corp.*, 181 F. Supp. 2d at 1369. "[T]he moving party must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." *Id.*

Defendant's Motion for Reconsideration fails to make any of the required showings. Defendant does not argue an intervening change in controlling law or the availability of new evidence. Defendant also does not argue that reconsideration of the Court's original order is necessary to correct "clear error or prevent manifest injustice." Accordingly, Defendant is not

know that prior to filing their Motion to Proceed Anonymously in August of 2010, Plaintiffs' counsel conferred with Defendant's counsel in a good faith effort to resolve the issue underlying the motion. At the time, Defendant's counsel suggested that Defendant would be amenable to a protective order but that counsel for Defendant could not take any further action, nor take a position on Plaintiffs' request to proceed anonymously, because he was not fully retained. *See* Motion to Proceed Anonymously at pg. 4. In contrast, Defendant did not confer with Plaintiffs to resolve these issues either prior to the filing of their Motion for Reconsideration or their Motion for Sanctions. Indeed, Defendant failed to include a Certificate of Good Faith Conference in either motions despite the requirement of Local Rule 7.1(a)(3).

³ Plaintiffs hereby incorporate all arguments regarding the need to proceed anonymously in Plaintiffs' Motion to Proceed Anonymously and the sealed declarations of Jane and John Doe. *See* Docket Nos. 23-27.

entitled to reconsideration of the Court's order granting Plaintiffs' Motion to Proceed Anonymously.

II. THE COURT RIGHTLY HELD THAT PLAINTIFFS WERE ENTITLED TO PROCEED ANONYMOUSLY

In an attempt to cause reconsideration of the Court's order, Defendant mischaracterizes the standard to proceed anonymously. Defendant suggests that the standard to proceed anonymously is whether an individual has made a "single credible threat" against John Doe or Jane Doe. The Eleventh Circuit Court of Appeals, however, has made it clear that a plaintiff can proceed anonymously where there is "real danger of physical harm" to the plaintiffs. *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992). This does not require any specific threat to be made to the plaintiffs.

As established in Plaintiffs' Motion to Proceed Anonymously, Jane and John Doe undoubtedly face a "real danger of physical harm." Motion to Proceed Anonymously ¶ 10. Defendant continues to be a recognized terrorist who has already been sentenced to over 30 years in prison.⁴ Members of Defendant's organization, the Bloque Central Bolívar ("BCB"), a division of the United Self-Defense Forces of Colombia ("AUC"), for which he was a leader, continue to reside in the same towns they once controlled and commit violent acts, particularly against victims – like the Doe Plaintiffs – who press claims for justice.⁵ *Id.* Jane Doe

⁴ Based on information identified on the Defendant's docket in *United States v. Naranjo*, Case No. 1:07-cr-20794-JAL-1 (S.D. Fla.) when it was available to Plaintiffs and other members of the public. The contents of the docket are now sealed.

⁵ Defendant dismisses U.S. Department of State reports of continued violence in Colombia by the AUC, particularly against human rights defenders, and characterizes a report from Human Rights Watch as having "glaring bias" by an "activist organization." It should be noted that as recently as April 8, 2011, the U.S. Department of State still reports that the AUC remains active throughout Colombia and continues to commit grave abuses of human rights, including the killing, kidnapping, intimidation and harassment of human rights workers. *See* U.S. Department of State, Country Reports on Human Rights for 2010, Colombia, (Apr. 8, 2011), attached to the Declaration of Nema Milaninia in Support of Plaintiffs' Opposition to Defendant's Motion for Reconsideration ("Milaninia Decl."), filed concurrently herewith, at Exhibit 1. In addition, this Court and other courts in this Circuit, have commonly relied upon reports from Human Rights Watch as a reliable source for information. *See, e.g., Graham v. Florida*, 130 S. Ct. 2011, 2033 (2010) (citing Human Rights Watch report regarding sentences for juvenile crimes in Israel); *Loggins v. Thomas*, 654 F.3d 1204, 1224 (11th Cir. 2011) (citing Human Rights Watch report regarding number of persons serving a sentence of life without parole); *Chirico-Romanzo v. United States AG*, 430 Fed. Appx. 858, 863 (11th Cir. 2011) (relying on Human Rights Watch

specifically witnessed and was present during the murder of Mr. Estrada by Defendant's subordinate. *Id.* The same subordinate continues to reside in Colombia in the same area as Jane and John Doe. *Id.* Accordingly, the Court correctly determined that "there appears to be a real need to proceed anonymously." That has not changed.

In his Motion for Sanctions, Defendant makes the additional argument that plaintiff Jaramillo has appeared under his own name and has not faced any real danger of physical harm. To the contrary, since giving his interview with the Miami Herald about this case, Mr. Jaramillo has been followed and explicitly threatened at gunpoint by individuals who he suspects to be members of the AUC. *See* Declaration of Jesús Cabrera Jaramillo in Support of Plaintiffs' Opposition to Defendant's Motion for Reconsideration, filed concurrently herewith. Mr. Jaramillo's bravery to proceed openly, despite the real threat of harm he faces in Colombia, should not be used as a mechanism for diminishing Doe Plaintiffs' sincere risk of physical harm.

The public nature of these proceedings is not a basis for denying an order permitting a party to proceed anonymously due to their real risk of physical harm. Press releases issued by the Center for Justice and Accountability, cited to by Defendant, do no more than reiterate what is already alleged in Plaintiff's Complaint. They do not diminish Doe Plaintiffs' sincere concerns of reprisal if their identities are disclosed to the public. Indeed, plaintiffs in other human rights cases have similarly been permitted to proceed anonymously despite the heightened publicity and attention afforded to the cases by the public. *See, e.g., Doe v. Nestle, S.A.*, No. CV-05-5133-SVW, slip op. (C.D. Cal. Dec. 3, 2010); Deborah Orr, *Slave Chocolate?*, FORBES (April 24, 2006), available at <http://www.forbes.com/forbes/2006/0424/096.html> (Milaninia Decl. Exhibit 2).

Other courts facing similar facts have also permitted plaintiffs to proceed anonymously. As in the present case, in *Yousuf, et al., v. Samantar*, plaintiffs accused the defendant of torture, extra-judicial killing, war crimes, crimes against humanity and other serious human rights abuses. Plaintiffs' Memorandum of Law in Support of Plaintiffs' Motion for Leave to Proceed Anonymously and in Opposition to Defendant's Motion to Dismiss Claims of Anonymous

reports regarding human rights abuses in Venezuela); *Johnson v. Governor of Fla.*, 353 F.3d 1287, 1302 (11th Cir. 2003) (citing Human Rights Watch report regarding felony

Plaintiffs at 1, *Yousuf, et al., v. Samantar*, No. 1:04-cv-1360 (E.D. Va. Dec. 29, 2004) (Milaninia Decl. Exhibit 3). In support of their motion, plaintiffs presented evidence from the United Nations and the U.S. Department of State demonstrating that perpetrators of human rights abuses in Somalia were not punished for their actions of ongoing violence in Somalia. *Id.* at 2-3. Plaintiffs further argued that the detention and murder of their family members were “significant and degrading matters of a highly personal nature” such that they met the standard for proceeding anonymously in a “sensitive and highly personal matter.” *Id.* at 10-11. Finally, the plaintiffs argued that defendant would face no prejudice because the Doe Plaintiffs were willing to reveal their identities to the Court, the defendant, and defendant’s lawyers and experts, thus enabling him to defend himself properly. *Id.* at 11. Despite the defendant’s objections, the Court granted plaintiffs’ motion to proceed anonymously. *Yousuf, et al., v. Samantar*, No. 1:04-cv-1360, slip op. (E.D. Va. Jan. 7, 2005).⁶

There is no possible prejudice to the Defendant from allowing two plaintiffs to proceed anonymously. Defendant can still proceed with discovery to determine whether Plaintiffs are “aliens,” whether Plaintiffs have exhausted available remedies in Colombia, or to obtain evidence of Plaintiffs’ prolonged mental harm. Pursuant to Fed. R. Civ. P. 33, Defendant can serve interrogatories to Plaintiffs regarding these issues, to which Plaintiffs would need to respond. In addition, pursuant to Fed. R. Civ. P. 34, Defendant could request documents regarding these issues, which Plaintiffs would provide, redacting only any identifying information. None of the defenses Defendant is concerned with require that John or Jane Doe reveal their identities. Furthermore, Doe Plaintiffs are willing to enter into a protective order

disenfranchisement); *United States v. Cofield*, 108 F. Supp. 2d 1374, 1375 (S.D. Fla. 2000) (citing Human Rights Watch report regarding racial disparities in the war on drugs).

⁶ Indeed, as discussed in Plaintiffs’ original motion and ignored by Defendant, it is precisely for these reasons that other courts have recognized that Doe status is particularly appropriate in cases concerning alleged human rights violations. *See, e.g., James v. Jacobson*, 6 F.3d 233 (4th Cir. 1993); *Nestle*, slip op.; *Doe v. Rafae Saravia*, 348 F. Supp. 2d 1112 (E.D. Cal. 2004); Order Granting Plaintiffs’ Motion For Leave To Proceed Anonymously, *Rodriguez, et al. v. Drummond Co, Inc, et al.*, No. 7:02-cv-00665, Docket Entry No.75 (N.D. Ala. Oct. 22, 2003); Order Granting Motion To Proceed With Commencement Of Action Using Pseudonyms, *Doe, et al. v. Exxon Mobil Corp, et al.*, No. 1:01-cv-01357, Docket Entry No. 2 (D.D.C. June 19, 2001); Order Granting Application Plaintiff May Proceed Anonymously Under Pseudonyms *Doe, et al. v. Unocal Corp, et al.*, No. 2:96-cv-06959, Docket Entry No. 5 (C.D. Cal. Oct. 15, 1996); *Doe, et al. v. Bridgestone Corporation et al.*, No. 2:05-cv-08168, slip op. (C.D. Cal. Nov. 23, 2005); *Chavez, et al. v. Carranza*, No. 2:03-cv-02932, slip op. (W.D. Tenn. Dec. 12, 2003).

under which they reveal their identities to the Court and to Defendant's lawyers and experts, but to no others. Such protective order would permit Defendant to obtain any discovery needed to assert the defenses outlined in their Motion for Reconsideration. Defendant has, therefore, no genuine claim of prejudice resulting from the anonymous prosecution of this case.

CONCLUSION

For the foregoing reasons and based on the entire record in this case, Defendant's motion for reconsideration should be denied.

Dated: December 5, 2011

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 for Reconsideration of Court's Order on Plaintiffs' Motion to Proceed Anonymously was served through the Court's CM/ECF System on December 5, 2011, on counsel or parties of record on the service list.

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