

**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’ MOTION TO ALTER OR AMEND JUDGMENT**

**TO THE UNITED STATES COURT FOR THE SOUTHERN DISTRICT OF FLORIDA:**

NOW COMES Plaintiffs Jesús Cabrera Jaramillo, Jane Doe, and John Doe (collectively “Plaintiffs”) and hereby respectfully move this Court to alter and/or amend its Order of March 13, 2012 (the “March 13 Order”), pursuant to Rule 59(e) of the Federal Rules of Civil Procedure.<sup>1</sup>

**INTRODUCTION**

In June, 2010, Plaintiffs brought this action pursuant to the Torture Victim Protection Act, 28 U.S.C. § 1350, note § 2(a) (TVPA), and the Alien Tort Statute, 28 U.S.C. § 1350 (ATS). Plaintiffs allege that in 1998 and 1999 Defendant Carlos Mario Jiménez Naranjo oversaw and controlled

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<sup>1</sup> Plaintiffs conferred with Defense counsel on April 10, 2012. Counsel stated that he has no objection to the filing of this motion.

paramilitaries who brutally murdered Alma Rosa Jaramillo Lafourie (“Alma Rosa Jaramillo”) and Eduardo Estrada Gutierrez (“Eduardo Estrada”) (collectively the “Decedents”) in the Middle Magdalena River region of northwest Colombia. Alma Rosa Jaramillo, a lawyer and sub-regional coordinator for the Program for Peace and Development (PDP), was removed forcibly from a vehicle by Defendant’s soldiers and never seen again. Her torso was later recovered from a river. She had been mutilated with a power or electric saw and eventually bled to death. Eduardo Estrada, a founding member of the PDP and coordinator for the PDP working group in Middle Magdalena, was shot three times in the back of his head as he and Jane Doe returned from a party near their home. He died as a result of the gunshot wounds later that night.

The Decedents’ beneficiaries brought this action to recover compensatory and punitive damages for torts in violation of international and domestic law. This Court’s March 13 Order improperly stayed proceedings pending the Supreme Court’s resolution of *Kiobel v. Royal Dutch Petroleum Co.*, 621 F. 3d 111 (2d Cir. 2010), *cert. granted*, 132 S. Ct. 472 (Oct. 17, 2011), which concerns only the ATS, not the TVPA. Regardless of the outcome in *Kiobel*, this court will continue to have subject matter jurisdiction under the TVPA. Moreover, *Kiobel* does not present circumstances extraordinary enough to warrant a stay.

### **BACKGROUND**

On March 13, this Court stayed proceedings in this action in direct response to the Supreme Court’s recent direction for re-argument in *Kiobel* and additional briefing concerning “whether ‘and under what circumstances the Alien Tort Statute, 28 U.S.C. § 1350, allows courts to recognize a cause of action for violations of the law of nations occurring within the territory of a sovereign other than the United States.’” March 13 Order at 2 (quoting *Kiobel v. Royal Dutch Petroleum Co.*, No. 10-1491, -- S. Ct. --, 2012 WL 687061, at \*1 (U.S. Mar. 5, 2012)).

Specifically, this Court articulated its concern that the Supreme Court might decide “the broader question of the extraterritoriality” of the Alien Tort Statute in respondents’ favor, and that such a decision might moot or significantly affect the issues raised in this case. March 13 Order at 2. This Court then invited the parties to seek reconsideration under Rule 59 if a compelling showing could be made that this Court’s decision was ill-advised. *Id.* at 3. Plaintiffs respectfully submit that such a showing can be made.

## ARGUMENT

Whether to grant a Rule 59 motion is a decision “committed to the sound discretion of the district court.” *Drago v. Jenne*, 453 F.3d 1301, 1305 (11th Cir. 2006). A motion to alter or amend must demonstrate why the court should reconsider its prior decision and “set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision.” *Cover v. Wal-Mart Stores, Inc.*, 148 F.R.D. 294, 295 (M.D. Fla. 1993). The Eleventh Circuit has held that the only grounds for granting a Rule 59(e) motion are “newly-discovered evidence or manifest errors of law or fact.” *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007). For the reasons set forth below, Plaintiffs respectfully submit that reconsideration of the March 13 Order is warranted based on manifest error of law and fact.

### **I. This court has subject matter jurisdiction, regardless of *Kiobel***

In its March 13 Order, this court erroneously presumed that its exercise of subject matter jurisdiction depends largely on Plaintiffs’ ability to bring suit under the ATS. But, importantly, neither Plaintiffs’ claims nor the Court’s jurisdiction rely solely on the ATS. As explained below, regardless of the Supreme Court’s decision in *Kiobel*, Plaintiffs’ claims under the TVPA will survive and this Court will continue to have subject matter jurisdiction pursuant to 28 U.S.C. § 1331. *See Cabello Barrueto v. Fernandez Larios*, 291 F. Supp. 2d 1360, 1365 (S.D. Fla. 2003) (“A court may exercise subject matter jurisdiction over a TVPA claim either under the ‘jurisdictional umbrella’ of the ATCA or as a federal question pursuant to 28 U.S.C. § 1331.”) (internal citations omitted).

The Supreme Court heard oral argument in *Kiobel* in tandem with *Mohamad v. Rajoub*, 634 F.3d 604 (D.C. Cir. 2011), *cert. granted*, *In re Mohamad*, 132 S. Ct. 454 (Oct. 17, 2011). *Mohamad* presents the narrow question of whether the TVPA “permits actions against defendants which are not natural persons.” *See Mohamad v. Rajoub*, No. 11-88, 2011 WL 2877875, at \*1 (U.S. July 15, 2011). The Supreme Court did not order additional argument or briefing in *Mohamad*. Nor did the Supreme Court order additional argument or briefing related to the TVPA. The Court’s direction for additional argument and briefing concerns only the ATS. *See Kiobel*, 2012 WL 687061, at \*1.

In its March 13 Order this Court predicted that the Supreme Court will decide *Kiobel* in respondent’s favor, but that result is far from certain and, in fact, contrary to case law. United States courts have consistently held that the ATS provides jurisdiction over causes of action arising from extraterritorial actions. *See Flomo v. Firestone Nat’l Rubber Co.*, 643 F.3d 1013, 1025 (7th Cir.

2011) (observing that “no court to our knowledge has ever held that [the ATS] doesn’t apply extraterritorially”). Additionally, *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) “was a case of nonmaritime extraterritorial conduct yet no Justice suggested that therefore it couldn’t be maintained.” *Flomo*, 643 F.3d at 1025. See also *Doe v. Exxon Mobil Corp.*, 654 F.3d 11, 24-26 (D.C. Cir. 2011) (“Extraterritorial application of the ATS would reflect the contemporaneous understanding that, by the time of the Judiciary Act of 1789, a transitory tort action arising out of activities beyond the forum state’s territorial limits could be tried in the forum state.”).

Moreover, regardless of what the Supreme Court decides regarding the ATS, there is no question that the TVPA is an extraterritorial statute. Congress enacted the TVPA explicitly to authorize Aliens and US citizens to bring civil suits against foreign government officials for acts of torture and extrajudicial killing committed in their countries. See 28 U.S.C. § 1350, note § 2(a); see also S. Rep. No. 102-249, § 2, at 3-4 (1991) (noting that the TVPA is designed to “provid[e] a civil cause of action in U.S. courts for torture committed abroad.”). As this Court is aware, Plaintiffs in the present case have alleged violations against an individual Defendant under the TVPA. Those claims, which significantly overlap Plaintiffs’ ATS claims, will survive *Kiobel*, even if the Supreme Court ultimately holds that extraterritorial claims may not be brought under the ATS. Finally, plaintiffs anticipate that discovery related to claims in the instant complaint will be identical to discovery related to the claims that would remain following an adverse result in *Kiobel*.

## **II. *Kiobel* alone does not constitute circumstances extraordinary enough to warrant a stay**

In determining whether to issue a stay, courts must bear in mind their “strong obligation not to dismiss or postpone the federal claim in the absence of exceptional circumstances.” *American Mfrs. Mutual Ins. Co. v. Edward D. Stone, Jr. & Assoc.*, 743 F.2d 1519, 1525 (11th Cir. 1984) (holding that a federal court abused its discretion in staying proceedings pending resolution of parallel state court proceedings). The events described in the complaint occurred more than twelve years ago. The Supreme Court’s decision in *Kiobel* is not expected until Spring or Summer, 2013 – more than a full year from now. To delay proceedings in a case that will remain in this Court’s authority regardless of the outcome at the Supreme Court conflicts with this Court’s obligations under the law to avoid postponing claims in the absence of exceptional circumstances. *Kiobel* does not present a circumstance worthy of a stay. Moreover, at least one other federal court in the Eleventh Circuit considering ATS and TVPA claims arising from events in Colombia has denied a

motion to stay pending *Kiobel*'s resolution. See *Giraldo v. Drummond Co., Inc.*, No. 2:09-CV-1041-RDP, slip op. (N.D. Ala Mar. 8, 2012) (denying motion to stay "for the reasons stated during the course of the hearing" without further elaboration).

**CONCLUSION**

For the reasons stated above, this Court should enter an order altering or amending the March 13th Order and lifting the stay.

Dated: April 10, 2012

By: /s/ Julie C. Ferguson

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*Attorneys for Plaintiffs*

**CERTIFICATE OF GOOD FAITH CONFERENCE**

Pursuant to Local Rule 7.1(a)(3)(B), I hereby certify that counsel for Plaintiffs have conferred with all parties or non-parties who may be affected by this filing in a good faith effort to resolve the issues and has been able to reach an agreement on the issues described in this filing.

/s/ Julie C. Ferguson  
JULIE C. FERGUSON

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Alter or Amend Judgment was served by CM/ECF on April 10, 2012, on counsel or parties of record on the service list.

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