

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

Case No. 10-21951-Civ-TORRES

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 the estate of Eduardo Estrada, and John Doe, in his individual capacity,

Plaintiffs,

v.

CARLOS MARIO JIMENEZ NARANJO, also known as “Macaco,” “El Agricultor,” “Lorenzo Gonzalez Quinch a,” and “Javier Montanez,”

Defendant.

**ORDER GRANTING IN PART
PLAINTIFF’S MOTION TO ALTER OR AMEND JUDGMENT**

This matter is before the Court on Plaintiffs Jesus Cabrera Jaramillo, Jane Doe, and John Doe (collectively “Plaintiffs”) Motion to Alter or Amend Judgment [D.E. 75] filed April 10, 2012, to which Defendant has opposed [D.E. 79]. The Court has reviewed the parties’ arguments, the record, and the development of legal actions involving the Alien Tort Statute, 28 U.S.C. § 1350 (ATS), and the Torture Victim Protection Act, 28 U.S.C. 1350, note § 2(a) (TVPA) in reaching its decision. For the following reasons, it is hereby ORDERED as follows:

1. The Court previously entered on March 13, 2012, an Order Staying Action pending resolution of a dispositive issue in *Kiobel v. Royal Dutch Petroleum Co.*, No. 10-1491 (U.S.). [D.E. 74]. The Court's sua sponte Order acknowledged that the Court would entertain arguments from the parties at a later date if both or either believed that the Order was ill-advised. Plaintiff then timely moved for reconsideration through a motion to amend the Court's Order on multiple grounds, including the arguments that the ATS claim should go forward since the Supreme Court will likely hold that the ATS does apply extraterritorially, that the Court has subject matter jurisdiction under the TVPA claim pursuant to 28 U.S.C. § 1331, and that the TVPA claims would ultimately stand regardless because the TVPA is an extraterritorial statute.

2. Defendant opposes the Motion. Notably, however, Defendant's Response to Plaintiff's Motion to Alter or Amend Judgment failed to present legally substantive arguments in support of this position.

3. As opposed to Rule 60 governing relief from a judgment or order, there are no specified grounds on which to grant a motion to alter or amend a judgment. Compare Fed. R. Civ. P. 60 with Fed. R. Civ. P. 59(e). Therefore, "the decision to alter or amend a judgment is committed to the sound discretion of the district court." *Drago v. Jenne*, 453 F.3d 1301, 1305 (11th Cir. 2006) (citing *Lockard v. Equifax, Inc.*, 163 F.3d 1259, 1267 (11th Cir. 1998)). In fact, Rule 59(e) was "adopted to make[] clear that the district court possesses the power to rectify its own mistakes in the period immediately following the entry of judgment." *Gordon v. Heimann*, 715 F.2d 531, 536 (11th Cir. 1983) (internal citations omitted).

4. In exercising this discretion, courts have “developed a non-exhaustive list of circumstances in which relief is available under Rule 59(e).” *Venegas-Hernandez v. Sonolux Records*, 370 F.3d 183, 190 (1st Cir. 2004); *see, e.g., Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (finding “reconsideration appropriate if the district court (1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in the controlling law”); *Sussman v. Salem, Saxon & Nielson, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla. 1994) (finding reconsideration to be justified in the same three circumstances). The moving party must explicitly provide the basis on which it is requesting the court to alter or amend judgment. *See Venegas-Hernandez*, 370 F.3d at 190; *Sussman*, 153 F.R.D. at 694.

5. Plaintiff argues that the Court erred in staying the case based on the Court’s then view that “the Supreme Court’s resolution of this broader [extraterritoriality] question may provide this Court with better and more precedential guidance on the issues that have been raised in the case to date. Accordingly, there appears to be good cause in this record to withhold ruling on the pending motions until such time as the Court resolves these broader issues in the interests of judicial economy.” [D.E. 74 at 2-3]. While a stay in the federal courts “pending the conclusion of state court or administrative proceedings” is not traditionally warranted, it is appropriate for a Court to issue a stay pending resolution of another case where “the decision ... [is] likely to have a substantial or controlling effect on the claims and issues in the stayed case.” *Miccosukee Tribe of Indians v. United States Army Corps of Eng’rs*,

559 F.3d 1191, 1196-98 (11th Cir. 2009) (finding the “reason for the district court’s stay to be a good one, if not an excellent one” where the federal appellate court’s decision could potentially “wash out the plaintiff’s ... theory entirely”). “Federal courts may exercise their discretion to stay proceedings when a stay would promote judicial economy and efficiency.” *See 200 Leslie Condo. Ass’n v. QBE Ins. Corp.*, 2011 WL 2470344 at *44 (S.D. Fla. June 21, 2011).

6. The pending question before the Supreme Court in *Kiobel* is 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.” *Kiobel*, 565 U.S. at ___ (U.S. Mar. 5, 2012). As with the issue faced by the district court in *Miccosukee Tribe of Indians*, in which the Eleventh Circuit approved the stay, *see* 559 F.3d at 1198, it is clear that the Supreme Court’s decision will provide precedential guidance pertaining to that issue. If the Supreme Court holds that the ATS does not apply extraterritorially or narrows its application, then the Plaintiff’s claims under the ATS could be foreclosed as the events occurred in foreign territory, Colombia, and there is no other link between the United States and said claim except for the Defendant’s current status within the United States. If, on the other hand, the Supreme Court recognizes the ATS’s extraterritorial applicability, then the Plaintiff’s theory under the ATS “would remain on dry ground” and proceed to a determination of whether the events that transpired implicate a violation of the law of nations. *Miccosukee Tribe of*

Indians, 559 F.3d at 1198. Therefore, it is appropriate, if not necessary, that the Court continue the stay as to the Alien Tort Statute claims.

7. However, as the Court now understands it, the Torture Victim Protection Act presents a separate claim and a separate basis for subject matter jurisdiction.¹ The Court initially stayed both the ATS and the TVPA claims based on its misunderstanding of the case law addressing whether the TVPA could stand without the ATS's jurisdictional support. *See Kadic v. Karadzic*, 70 F.3d 232, 246 (2d Cir. 1995) (noting that there is "the possibility of section 1331 jurisdiction"); *Doe v. Islamic Salvation Front*, 993 F.Supp. 3, 9 (D.D.C 1998) (finding that [b]ecause the ATCA supplies jurisdiction in this case, the Court will not reach the issue of whether 28 U.S.C. § 1331 provides an independent basis for subject matter jurisdiction"). Accordingly, the potential viability of the TVPA claim was overlooked as the statute seemed at first blush to be dependent on the ATS for jurisdictional purposes.

8. While it was clear that the TVPA is not purely a jurisdictional statute as it undoubtedly creates a private cause of action, *see, e.g., Romero v. Drummond Co., Inc.*, 552 F.3d 1303, 1316 (11th Cir. 2008) (noting the TVPA "does not grant jurisdiction"), the Court overlooked whether the federal question statute, § 1331 could provide a jurisdictional platform upon which a TVPA claim could stand alone.

¹ Under the TVPA: "An individual who ... (1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or (2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual's legal representative or to any person who may be a claimant in an action for wrongful death." 28 U.S.C. § 1350.

9. The District Courts seemed to disagree regarding this question. *Compare In re. Sinaltrainal Litigation*, 474 F. Supp. 2d 1273, 1301 (S.D. Fla. 2006) (holding that the TVPA claim does not confer jurisdiction standing alone and must be brought under the ATS), *vacated in part*, 578 F.3d 1252 (11th Cir. 2009), and *Aldana v. Fresh Del Monte Produce, Inc.*, 305 F. Supp. 2d 1285, 1305 (S.D. Fla. 2003) (holding, like *Sinaltrainal*, that the TVPA could not go forward since such claims may be entertained “only if they fall within the jurisdiction conferred by the ATCA”), *vacated in part*, 416 F.3d 1242 (11th Cir. 2005), with *Cabello Barrueto v. Fernandez Larios*, 291 F. Supp. 2d 1360, 1365 (S.D. Fla. 2003) (finding that “[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”). After all it cannot be denied that there is a paucity of cases where a plaintiff raised or proceeded with a TVPA claim standing alone. *See Mohamad v. Palestinian Authority*, 123 S.Ct. 1702, 1710 (2012) (noting that “only two TVPA plaintiffs have been able to recover successfully against a natural person”).

10. Yet, after careful reconsideration of this issue, the Court finds the weight of authority, specifically within the Eleventh Circuit, supports TVPA jurisdiction under § 1331. First, the Eleventh Circuit, in accord with the majority of the circuits, consistently refers to the TVPA as a separate basis upon which to bring a torture claim and an extrajudicial killing claim. *See, e.g., Aldana v. Fresh Del Monte Produce, Inc.*, 416 F.3d 1242, 1251 (11th Cir. 2005) (finding that although the ATS and TVPA are not mutually exclusive, “Plaintiffs can raise separate claims for state-sponsored torture

under” either statute); *Enahoro v. Abubakar*, 408 F.3d 877, 884-86 (7th Cir. 2005) (finding the ATS and the TVPA to be separate and mutually exclusive).²

11. Second, and most importantly, the Eleventh Circuit’s holding in *Sintrainal v. Coca Cola*, 578 F.3d 1252, 1269 (11th Cir. 2009), is telling because it “vacated the district court’s dismissal of the TVPA claims for want of jurisdiction” explaining that it was an improper basis for dismissal since subject matter “jurisdiction over the TVPA claim is conferred by 28 U.S.C. § 1331.” The decision certainly bolsters, if not disposes of, the argument that § 1331 could provide jurisdictional support over a TVPA claim in other cases. *See also Romero*, 552 F.3d at 1316 (noting that “Federal courts are empowered to entertain complaints under the Torture Act when either the Alien Tort Statute or the federal question statute . . . provides jurisdiction”); *Arce v. Garcia*, 434 F.3d 1254, 1258 n.8 (11th Cir. 2006) (“assum[ing] jurisdiction under § 1331 when it appears that a complaint’s allegations state a cause of action under federal law”).

12. Finally, the Eleventh Circuit once considered a case where the TVPA claim stood alone and proceeded to the merits of the issue; in effect reaffirming that the TVPA is independent from the ATS and can proceed under § 1331 jurisdiction. *See Ford ex. rel. Estate of Ford v. Garcia*, 289 F.3d 1283, 1286 (11th Cir. 2002).

13. Nevertheless, although the TVPA claim may be able to stand jurisdictionally on its own as a matter of statute, the arguments in *Kiobel* still

² Although the Eleventh and the Seventh Circuit disagree regarding the question of whether the TVPA supplements or replaces the ATS within the field, both Circuits agree that both statutes represent independent claims. *Compare Aldana*, 416 F.3d at 1251, *with Enahoro*, 408 F.3d at 884-86.

potentially raise a constitutional question that could have implications for the constitutionality of the TVPA. Specifically, the TVPA, like the ATS, confers universal civil jurisdiction in cases where the plaintiff and defendant are aliens and the events occurred in foreign territory. But as questioned by Justice Alito in the oral arguments for *Kiobel*, there is uncertainty regarding whether “there is an Article III source of jurisdiction for a lawsuit . . . where an alien is suing an alien.” Transcript of Oral Argument at 51, *Kiobel v. Royal Dutch Petroleum Co.*, 565 U.S. at ____ (2012) (No. 10-1491). This uncertainty seems to imply concerns regarding the constitutionality of the TVPA if applied in extraterritorial fashion.³

14. A review of the amicus briefs filed in *Kiobel*, specifically the Chevron brief referred to by Justice Kennedy in the oral argument, as well as the amicus briefs filed in an earlier TVPA case of *Sosa v. Alvarez-Machain*, present the question whether the law of nations sanctions universal civil jurisdiction as prescribed by both the ATS and the TVPA. See Brief of Chevron Co. as *Amici Curiae* in support of Respondents at 6-13, filed in *Kiobel v. Dutch Petroleum Co.*, 565 U.S. at ____ (2012) (No. 10-1491); Brief of the Governments of the Commonwealth of Australia, the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland as *Amici Curiae* in Support of the Petitioner at 7, filed in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (No. 03-339).

³ To be sure, in contrast to the ATS, plaintiffs suing under the TVPA claim can also be United States citizens. See S. Rep. No. 102-249, at 4 (1991) (explaining that “the TVPA would extend a civil remedy also to U.S. citizens who may have been tortured abroad”). Obviously no subject matter challenge can be made to Congress’s constitutional power to remedy such injuries on behalf of U.S. citizens.

15. This is relevant because the constitutional basis of the TVPA, as Congress established it, was based on the following:

Under article III of the Constitution, the Federal judiciary has the power to adjudicate cases “arising under” the “law of the United States.” The Supreme Court has held that the law of the United States includes international law Congress’ ability to enact this legislation also drives from article I, section 8 of the Constitution, which authorizes Congress “to define and punish ... Offenses against the Laws of Nations.”

S. Rep. No. 102-249, at 5 (1991). If, however, the law of nations *does not* recognize extraterritorial jurisdiction for civil claims, then the TVPA arguably no longer stands on firm ground in actions involving solely aliens based on injuries arising in foreign lands. Furthermore, any separate constitutional basis stemming from the Convention Against Torture and Congress’s power to enforce treaties may also be in doubt.⁴

16. On the other hand, although this issue seems pertinent to the question posed by the Supreme Court for re-argument, it is not the issue that has been specifically raised in *Kiobel*. Based upon reconsideration of the oral argument, the order for re-argument, and the petitioner’s brief, the focus may indeed be more on the question of the construction and interpretation of the ATS itself rather than its constitutional basis. The Supreme Court seems most concerned about the Charming Betsy principle, the presumption against extraterritoriality, and the specific intentions

⁴ Based on the conflicting views between signatory nations regarding the requirements of the Convention and the United States specific declaration when ratifying the Convention Against Torture stating that “Article 14 requires a State Party to provide a right of action for damages only for acts of torture committed in territory under the jurisdiction of that State Party,” it is at best uncertain whether the TVPA can rely on the treaty as a constitutional basis. 136 Cong. Rec. S17,486-01 (daily ed. Oct. 27, 1990).

of Congress when passing the ATS. See Transcript of Oral Argument at 8, 10-12, *Kiobel v. Royal Dutch Petroleum Co.*, 565 U.S. at ____ (2012) (No. 10-1491). These concerns do not necessarily to the TVPA as the statute is sufficiently explicit in its provision of extraterritorial jurisdiction and Congress' intentions and purpose are clear.

17. And, moreover, the potential relevance of the Court's analysis to a TVPA claim is lessened by the fact that the Supreme Court did not request re-argument in the *Mohamad v. Palestinian Authority* TVPA case, even though the facts in that case also triggered an exercise of extraterritorial jurisdiction.

18. Accordingly, in analyzing the issue once more, the Court concedes that the TVPA claim is likely to remain standing even if the Supreme Court finds the ATS cannot be applied extraterritorially, as any limitations potentially placed on the ATS may stem from issues that would not affect the TVPA. At the very least, the Court's new-found uncertainty in this regard undermines the basis for the Order staying the action.⁵

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED**:

A. Plaintiff's Motion to Alter or Amend Judgment [D.E. 75] is hereby **GRANTED** in part and **DENIED** in part.

B. The Court will exercise its discretion and Vacate in part the Court's earlier Order Staying Action [D.E. 74]. The claims arising under the Torture Victim

⁵ It goes without saying that nothing in this Order is intended to be a definitive analysis of the issues raised beyond the vacating of the stay with respect to the TVPA claim that has been alleged in this complaint. The Court simply wanted to make the record clear as to why it entered the stay initially and why it has re-considered the matter. The ultimate resolution of any of these substantive and constitutional issues will be left for another day.

Protection Act may proceed, including of course any new arguments raised here challenging the constitutional foundation of the TVPA in a case such as this.

C. The motion is Denied to the extent that the Court shall continue to stay any claims or litigation arising under the Alien Tort Statute pending resolution of a dispositive or potentially dispositive issue in *Kiobel v. Royal Dutch Petroleum Co.*, No. 10-1491 (U.S.).

DONE AND ORDERED in Chambers at Miami, Florida this 26th day of June, 2012.


EDWIN G. TORRES
United States Magistrate Judge