

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case No.

03-2016

CIV-KING

MAGISTRATE JUDGE
O'SULLIVAN

Marie Jeanne Jean, in her individual
capacity, and as parent and legal
guardian for minors Vladimir Pierre
and Michelleda Pierre,

Plaintiffs,

v.

Carl Dorélien,

Defendant.

**COMPLAINT FOR
EXTRAJUDICIAL KILLING
AND CRIMES AGAINST
HUMANITY
JURY TRIAL DEMANDED**

FILED BY _____
03 JAN 24 PM 4:36
CLARENCE HADLEY
CLERK U.S. DISTRICT
COURT
S.D. OF FLA.

Plaintiff Marie Jeanne Jean, in her individual capacity, and as guardian ad litem for minors Vladimir Pierre and Michelleda Pierre (collectively "Plaintiffs") allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action for compensatory and punitive damages against Carl Dorélien ("Defendant") for his responsibility for the extrajudicial killing of decedent Michel Pierre, a.k.a. Jamédodo. Plaintiffs, the wife and children of Michel Pierre, allege that Defendant Dorélien planned, ordered, authorized, encouraged, or permitted subordinates in the Haitian military and paramilitary forces to commit acts of torture, disappearance and extrajudicial killing, that he has command responsibility for the abuses committed by his subordinates, and that he conspired with

and aided and abetted such forces in their commission of, and in covering up, these abuses, including the extrajudicial killing of decedent Michel Pierre. Accordingly, plaintiffs assert that defendant is liable under domestic and international law for their injuries, pain, and suffering.

JURISDICTION

2. Plaintiffs allege that defendant is liable for extrajudicial killing as defined by customary international law and the Torture Victim Protection Act ("TVPA"), Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350, note). Plaintiffs further allege that defendant is liable for violations of customary international law prohibiting the commission of crimes against humanity. Accordingly, this Court has jurisdiction over this action based on 28 U.S.C. § 1350 (known as the Alien Tort Claims Act, or "ATCA"), and 28 U.S.C. § 1331.

3. On information and belief, Defendant is an alien and a resident of the United States. Therefore, venue is proper in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1391(d) and (b).

PARTIES

Defendant

4. On information and belief, Defendant Dorélien is a citizen of the Republic of Haiti and presently a resident of the United States. At all relevant times, Defendant Dorélien was a Colonel in the Armed Forces of Haiti and a member of its High Command. In or about 1992, Dorélien was appointed as Chief of Personnel, otherwise known as Assistant Chief of Staff (G1). In this position, Defendant Dorélien was responsible, among other things, for the appointment, transfer, and removal of armed forces personnel, and for military discipline including the administration of

military justice. In addition, as a member of the High Command, Defendant Dorélien exercised command and control over the operations of Haitian military and paramilitary forces involved in the alleged abuses against plaintiffs.

Plaintiffs

5. Marie Jeanne Jean is a resident and citizen of Haiti.

6. Vladimir Pierre is the minor son of Marie Jeanne Jean and Michel Pierre, and a resident and citizen of Haiti.

7. Michelleda Pierre is the minor daughter of Marie Jeanne Jean and Michel Pierre, and a resident and citizen of Haiti.

STATEMENT OF FACTS

8. In December 1990, Jean-Bértrand Aristide, a former Haitian Catholic priest, won 67% of the popular vote in Haiti's first democratic presidential election following years of repressive dictatorship. Aristide took office on February 7, 1991, but was overthrown that September in a violent *coup d'etat* led by dissatisfied elements of the army and supported by many of the country's economic elite. From October 1991 to September 1994, an unconstitutional military *de facto* regime governed Haiti.

9. The three-year military regime was characterized by widespread state sponsored human rights violations, including abuses committed by the Haitian military. The practices of the military included extrajudicial killings, disappearances, torture and other physical abuse of detainees, and arbitrary arrest and detention. Several thousand Haitians were killed during the period of *de facto* military rule. These abuses caused thousands of Haitians to flee the country, often in crowded, unseaworthy boats. Many of these refugees sought safe haven in the United States.

10. Among the atrocities committed by Haitian Armed Forces during the 1991-94 military regime was an attack against civilians in the impoverished seaside neighborhood of Raboteau on the outskirts of the city of Gonaïves. On April 18 and 22, 1994, units of the Haitian Armed Forces, together with members of paramilitary group known as "FRAPH" (an acronym for the Front for Advancement and Progress in Haiti, and also a pun for the French and Creole word "to hit"), twice attacked the civilian population of Raboteau. At least 26 unarmed civilians were shot and killed and more than fifty homes were destroyed. Civilians killed in the attack were buried in shallow graves on the shore of Raboteau.

11. Plaintiffs and decedent Michel Pierre lived in Raboteau at the time of the massacre. On or about April 22, 2002, Michel Pierre became aware that soldiers were invading Raboteau. Michel Pierre fled in a boat to the sea, as fearful residents often had done when the military had come to harass, beat, or detain Raboteau residents in the past.

12. On this occasion, however, military and paramilitary forces anticipated residents' flight to the sea, and forces awaited in boats and on the shore. As Michel Pierre and others in his boat tried to flee from the military, the soldiers and paramilitary members shot at Michel Pierre and others. Michel Pierre was fatally wounded, and soldiers buried his body in a shallow grave by the sea. Marie Jeanne Jean discovered his body several days later.

GENERAL ALLEGATIONS

13. The attack against Raboteau, known as the "Raboteau massacre," was part of the military regime's repressive campaign against popular resistance to military rule. The campaign aimed to force the Haitian population, particularly the Haitian poor which overwhelmingly supported President Aristide, to abandon the struggle for a return to constitutional order. The

Raboteau massacre was one of a number of similar attacks conducted by the armed forces against civilians in neighborhoods considered strongholds of support for President Aristide and his "Lavalas" party, including the neighborhoods of Chantal, Carrefour-Feuilles, Carrefour-Marin, Thomassin, Borgne and Cité Soleil. Soldiers and paramilitary forces shot, killed, tortured, raped, detained, and physically abused civilians in these areas, and often looted and burned or destroyed homes, in an effort to break the resistance of the citizens of poorer neighborhoods to military rule.

14. The abuses committed by military and paramilitary forces against Haitian civilians were widely reported in the national and international media, and foreign diplomatic officials, human rights organizations, and others voiced their concerns about these abuses to the military regime and the High Command. Defendant Dorélien knew or reasonably should have known that the Haitian military and paramilitary forces under his command were committing severe human rights abuses against civilians.

15. At all relevant times, the chain of command within the Haitian Armed Forces was fully functional. Local officers were not permitted to conduct operations without authorization from superior officers, and operational information and intelligence regularly flowed up the chain of the command. Under customary international law and Haitian law, Defendant Dorélien had a duty to take measures to prevent military forces under his authority from committing violations of Haitian law and customary international law, including prohibitions against torture and extrajudicial killing. Additionally, Defendant Dorélien was under a duty to investigate, prevent and punish violations of customary international law committed by members of the military under his authority.

16. Defendant Dorélien failed or refused to take all necessary measures to properly investigate and prevent such abuses committed by or attributed to his subordinates, or to punish personnel under his command for committing such abuses.

17. Defendant Dorélien planned, ordered, authorized, encouraged, or permitted subordinates to commit acts of torture, disappearance and extrajudicial killing, and exercised command responsibility over, conspired with, and aided and abetted military and paramilitary forces in their commission of, and in covering up, these abuses. These actions and omissions were outside the scope of his lawful authority, and were not authorized by Haitian law.

18. At all times relevant hereto, on information and belief, Haitian military and paramilitary forces acted under the management, command, and supervisory authority of the Haitian Armed Forces, including Defendant Dorélien.

19. Defendant Dorélien was convicted in absentia in a trial in Haiti for murder, illegal arrest, conspiracy, and torture for the events at Raboteau and sentenced to prison for life, loss of property, and payment of fines.

Absence of Remedies in Haiti

20. Plaintiffs lack any ability to obtain an enforceable judgment for reparations in Haiti against Defendant. Accordingly, adequate and available remedies do not exist in Haiti.

FIRST CLAIM FOR RELIEF
(Extrajudicial Killing)

21. Plaintiff Marie Jeanne Jean, in her individual capacity, and as the parent and guardian for minors Vladimir Pierre and Michelleda Pierre (collectively "Plaintiffs") re-allege and incorporate by reference the allegations set forth in paragraphs 1-20 as if fully set forth herein.

22. The extrajudicial killing of decedent Michel Pierre was not authorized by any court judgment, and was unlawful under the laws of Haiti. The decedent Michel Pierre was never charged with, convicted of, or sentenced for any crime.

23. The extrajudicial killing of decedent Michel Pierre was carried out by or at the instigation, under the control or authority, or with the consent or acquiescence of a public official.

24. Defendant planned, ordered, authorized, encouraged, or permitted subordinate forces to commit acts of extrajudicial killing, and exercised command responsibility over, conspired with and aided and abetted such forces in their commission of, and in covering up, such abuses.

25. Defendant's acts and omissions described above, and the acts committed by his subordinate military forces against decedent Michel Pierre, were committed under actual or apparent authority, or color of law, of the government of Haiti.

26. The murder of Michel Pierre constitutes an extrajudicial killing as defined by the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note). Additionally, the extrajudicial killing of Michel Pierre constitutes a "tort ... committed in violation of the law of nations or a treaty of the United States" under the Alien Tort Claims Act, 28 U.S.C. § 1350, in that it constitutes a violation of customary international law prohibiting extrajudicial killing as reflected, expressed, defined and codified in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

27. Defendant's acts and omissions described above caused the extrajudicial killing of Michel Pierre, and caused Plaintiffs to suffer severe mental anguish.

28. As a result of the extrajudicial killing of Michel Pierre, Plaintiffs have suffered damages in an amount to be proven at trial.

29. Defendant's acts and omissions were deliberate, willful, intentional, wanton, malicious, and oppressive and should be punished by an award of punitive damages in an amount to be determined at trial.

SECOND CLAIM FOR RELIEF
(Crimes Against Humanity)

30. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 20 of this Complaint as if fully set forth herein.

31. The abuses committed against Plaintiffs and decedent described herein also constituted persecution against an identifiable group based on political, cultural, or religious status, and were committed in the context of a widespread or systematic attack against a civilian population. Defendant Dorélien planned, instigated, ordered, authorized, or incited military, security and paramilitary forces to commit the abuses suffered by decedent, and had command over, controlled, or aided and abetted those forces in their commission of such abuses, and knew or should have known that such acts or omissions were committed in the context of a widespread or systematic attack against a civilian population.

32. Defendant's acts constitute "tort[s] ... committed in violation of the law of nations or a treaty of the United States" under the Alien Tort Claims Act, 28 U.S.C. § 1350, in that the acts against Plaintiffs violated customary international law prohibiting crimes against humanity as reflected, expressed, and defined in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

33. The extrajudicial killing of Michel Pierre caused Plaintiffs to suffer severe physical and mental pain and suffering. As a result of these acts of arbitrary detention, Plaintiffs have been damaged and are entitled to compensation in amounts to be determined at trial.

34. Defendant's acts and omissions were deliberate, willful, intentional, wanton, malicious and oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, pray for judgment against Defendant as follows:

- (a) For compensatory damages according to proof;
- (b) For punitive and exemplary damages according to proof;
- (c) For reasonable attorneys' fees and costs of suit, according proof, and
- (d) For such other and further relief as the court may deem just and proper.

A jury trial is demanded on all issues.

Dated: January 24, 2003

Respectfully submitted,



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