

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case No. 03-20161 CIV-KING

Marie Jeanne Jean, in her individual
capacity, and as parent and legal
guardian for minors Vladimyr Pierre
and Michelda Pierre, and Lexiuste Cajuste,

Plaintiffs,

Carl Dorélien,

Defendant.

**FIRST AMENDED COMPLAINT FOR
EXTRAJUDICIAL KILLING;
TORTURE; ARBITRARY DETENTION;
CRUEL, INHUMAN OR DEGRADING
TREATMENT; AND CRIMES AGAINST
HUMANITY**

JURY TRIAL DEMANDED

Plaintiff Marie Jeanne Jean, in her individual capacity, and as legal guardian for minors
Vladimyr Pierre and Michelda Pierre, and Lexiuste Cajuste (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, and for the infliction of torture, arbitrary detention, and cruel, inhumane or degrading
treatment on Plaintiff Lexiuste Cajuste

2. Plaintiffs allege that Defendant Dorélien planned, ordered, authorized, encouraged, or
permitted subordinates in the Haitian Armed Forces and paramilitary forces to commit acts of
extrajudicial killing; torture; arbitrary detention; cruel, inhumane or degrading treatment; and crimes

EXHIBIT

against humanity; that he had 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. Accordingly, Plaintiffs assert that Defendant is liable under domestic and international law for their injuries, pain, and suffering.

JURISDICTION

3. Plaintiffs allege that defendant is liable for violations of the law of nations, including the prohibition of extrajudicial killing; torture; arbitrary detention; cruel, inhumane or degrading treatment; and crimes against humanity. Plaintiffs further allege that Defendant is liable for extrajudicial killing and torture as defined by the Torture Victim Protection Act (“TVPA”), Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350, note). 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

4. On information and belief, Defendant was an alien and a resident of the United States at the time he was served with the original complaint in this case. Therefore, venue is proper in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. § 1391(b) and (d).

PARTIES

Defendant

5. On information and belief, Defendant Dorélien is a citizen of the Republic of Haiti. Defendant Dorélien was a resident of the United States at the time he was served with the original complaint in this case. At all times relevant to this complaint, 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 for, among other things, 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 the Haitian Armed Forces and paramilitary forces involved in the alleged abuses against Plaintiffs.

Plaintiffs

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

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

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

9. Lexiuste Cajuste is a citizen of Haiti and a resident of the United States.

STATEMENT OF FACTS

10. In December 1990, Jean-Bertrand 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'état* 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 regime governed Haiti *de facto*.

11. The three-year military regime was characterized by widespread state sponsored human rights violations, including abuses committed by the Haitian Armed Forces. The practices of the Armed Forces 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.

Plaintiffs Marie Jeanne Jean, Vladimy Pierre, and Michelda Pierre

12. Among the atrocities committed by the Haitian Armed Forces during the 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, 1994, and again on April 22, 1994, units of the Haitian Armed Forces, together with members of a 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 “frapper,” meaning “to hit”), 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.

13. Plaintiffs Marie Jeanne Jean, Vladimy and Michelda Pierre, 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 Armed Forces came to harass, beat, or detain Raboteau residents in the past.

14. On this occasion, however, the Armed Forces and paramilitary forces anticipated residents’ flight to the sea, and forces waited in boats and on the shore. As Michel Pierre and others in his boat tried to flee from the military, the soldiers and paramilitary troops shot at Michel Pierre and others. Michel Pierre was killed, and soldiers buried his body in a shallow grave by the sea. Marie Jeanne Jean discovered his body several days later.

Plaintiff Lexiuste Cajuste

15. From 1988 to 1990, Plaintiff Lexiuste Cajuste was president of the Union of Public Transportation Workers of Haiti. In 1990, he helped form a new trade union called the Centrale Generale des Travailleurs (General Confederation of Workers, or “CGT”), of which he later became General Secretary. CGT members supported the democratic election of President Aristide in December 1990. After the *coup d'état* in September 1991, popular organizations and trade unions, including CGT, became targets of human rights abuses committed by the Haitian Armed Forces.

16. On April 23, 1993, at approximately 4:00 p.m., Plaintiff Cajuste arrived with three colleagues at Radio Caraïbes, a radio station in Port au Prince, Haiti, for a scheduled radio interview. Military policemen were at the station. A police sergeant held in his hand a copy of a press release discussing an upcoming strike that Plaintiff Cajuste was intending to announce on the radio. The sergeant attempted to detain one of Plaintiff Cajuste’s companions, but the man fled. The armed policemen ordered Plaintiff Cajuste and his remaining companions to follow them to the police station for questioning.

17. At the station, the three men were led into a room and forced to face a wall. Approximately ten military soldiers were present. The soldiers subjected Plaintiff Cajuste to verbal abuse, including threats, related to his pro-Aristide activity and union work. They handed him a gun in an attempt to force him into a shoot-out. Then the soldiers forced Plaintiff Cajuste and his companions to lie on their stomachs on the ground as guns were pointed at their backs.

18. The soldiers explained they were waiting orders before they could physically harm the men. After two hours of verbal abuse, approximately fifty additional attachés, some in civilian clothing, some in uniform, entered the room where Plaintiff Cajuste lay on the ground. He was hit

repeatedly with brass knuckles and fists. He was dragged and continuously beaten on his back, abdomen, arms, and face.

19. Plaintiff Cajuste was then separated from his two companions and taken into a smaller room that contained a metal bed and a pile of wooden batons. He was shoved into a fetal-like position (the “djak” position). His legs and head were under the bed frame with his back and buttocks exposed. The attachés, one after another, jumped from the bed on to his back then on to the ground. They then took turns beating him with the wooden batons until he lost consciousness.

20. Plaintiff Cajuste regained consciousness approximately two days later. He awoke to find himself in a small prison cell. He had severe lacerations on his buttocks. He remained in the prison cell for three days with no toilet, no room to move, and only seawater to drink. He eventually moved to a police infirmary. A United Nations official demanded that he be transferred to a hospital. The military moved him, but they placed him in a military rather than a civilian hospital. Plaintiff Cajuste remained in custody for one month at the military hospital. Once released, Plaintiff Cajuste’s civilian doctors faced difficulty in administering treatment, as the military did not keep record of procedures performed on him while in their custody. He suffered from kidney failure requiring temporary dialysis. He also required several plastic surgeries to remove dead tissue from his buttocks.

GENERAL ALLEGATIONS

21. The attack against Raboteau, known as the “Raboteau massacre,” was part of the Haitian military regime’s repressive campaign against popular resistance to military rule. The campaign aimed to force the Haitian population, particularly the Haitian poor who 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.

22. The targeting of trade unions and their leaders was also a part of the military regime’s strategy to prevent popular resistance to military rule. At the time of his detention, Plaintiff Cajuste was well known throughout Haiti for his unionist activities. In the capital, Port au Prince, he was outspoken in local media about his support of the democratically elected President Aristide and his efforts to organize a general strike in protest of the *de facto* military regime. Plaintiff Cajuste was one amongst several union leaders who were detained and tortured for their organizing activities in an effort to prevent the anticipated general strike.

23. The abuses committed by Armed Forces 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 Armed Forces and paramilitary forces under his control were committing severe human rights abuses against civilians.

24. 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. Defendant maintained legal authority and effective control over his subordinates in the Haitian military. Under customary international law and Haitian law, Defendant Dorélien had a duty

to take measures to prevent forces under his control 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 take necessary and reasonable measures to investigate, prevent, and punish violations of customary international law committed by forces under his authority. 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 control for committing such abuses.

25. Defendant Dorélien planned, ordered, authorized, encouraged, or permitted subordinates in the Armed Forces and/or paramilitary forces to commit acts of extrajudicial killing; torture; arbitrary detention; cruel, inhumane or degrading treatment; and crimes against humanity; and exercised command responsibility over, conspired with, and aided and abetted such 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 international and Haitian law.

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

27. 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

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

FIRST CLAIM FOR RELIEF

(Extrajudicial Killing – Marie Jeanne Jean, Vladimy Pierre and Michelda Pierre)

29. Plaintiff Marie Jeanne Jean, in her individual capacity, and as the parent and guardian for minors Vladimy Pierre and Michelda Pierre, re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 28 as if fully set forth herein.

30. Defendant’s acts and omissions, and the acts committed by his subordinates, caused the extrajudicial killing of Michel Pierre, and caused Plaintiffs Marie Jeanne Jean, Vladimy Pierre and **Michelda Pierre to suffer severe mental anguish.**

31 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.**

32. 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.

33. Defendant Dorélien planned, ordered, authorized, encouraged, or permitted subordinate forces under his command 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.**

34. Defendant’s acts and omissions described herein, and the acts committed by his subordinates in the Armed Forces and/or paramilitary forces against decedent Michel Pierre, were committed under the actual or apparent authority, or color of law, of the government of Haiti.

35. 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.

36. As a result of the extrajudicial killing of Michel Pierre, Plaintiffs Marie Jeanne Jean, Vladimy Pierre and Michelda Pierre have suffered damages and are entitled to compensation in an amount to be determined at trial.

37. 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 CLAM FOR RELIEF

(Torture – Lexiuste Cajuste)

38. Plaintiff Lexiuste Cajuste re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 28 of this Complaint as if fully set forth herein.

39. Defendant’s acts and omissions, and the acts committed by his subordinates, caused the torture of Plaintiff Cajuste.

40. The torture described herein was carried out by or at the instigation, under the control or authority, or with the consent or acquiescence of a public official

41. The acts described herein caused Plaintiff Cajuste to suffer severe physical and mental pain and suffering.

42. The acts described herein were inflicted deliberately and intentionally for purposes that include, among others, obtaining information or a confession, punishing the victim, intimidating the victim or a third person, or discriminating against persons for their presumed political beliefs.

43. Defendant Dorélien planned, ordered, authorized, encouraged, or permitted subordinate forces under his command to commit acts of torture, and exercised command responsibility over, conspired with and aided and abetted such forces in their commission of, and in covering up, such abuses.

44. Defendant's acts and omissions described herein, and the acts committed by his subordinates in the Armed Forces and/or paramilitary forces against Plaintiff Cajuste, were committed under the actual or apparent authority, or color of law, of the government of Haiti.

45. The acts described herein constitute torture as defined in the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note). **Additionally, the torture of Plaintiff Cajuste 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 torture as reflected, expressed, defined and codified in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.**

46. As a result of the torture described herein, Plaintiff Cajuste has suffered damages and is entitled to compensation in an amount to be determined at trial.

47. 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.

THIRD CLAIM FOR RELIEF

(Arbitrary Detention – Lexiuste Cajuste)

48. Plaintiff Cajuste re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 28 of this Complaint as if fully set forth herein.

49. Defendant's acts and omissions, and the acts committed by his subordinates, caused the arbitrary detention of Plaintiff Cajuste.

50. The acts inflicted against Plaintiff Cajuste were inflicted by and/or at the instigation, under the control or authority, or with the consent or acquiescence of a public official or other person acting in an official capacity.

51 Defendant and Defendant's subordinates and agents detained Plaintiff Cajuste or caused him to be detained without a warrant, probable cause, articulable suspicion, or notice of charges; and failed to accord him due process or any legal or familial protection and support.

The arbitrary detention of Plaintiff Cajuste 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 arbitrary detention as reflected, expressed, defined and codified in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

53 Defendant Dorélien planned, ordered, authorized, encouraged, or permitted subordinate forces under his command to commit acts of arbitrary detention, and exercised command responsibility over, conspired with, and aided and abetted such forces in their commission of, and in covering up, such abuses.

54. Defendant's acts and omissions described herein, and the acts committed by his subordinates in the Armed Forces and/or paramilitary forces against Plaintiff Cajuste, were committed under the actual or apparent authority, or color of law, of the government of Haiti.

As a result of the arbitrary detention described herein, Plaintiff Cajuste has suffered damages and is entitled to compensation in an amount to be determined at trial.

56. 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.

FOURTH CLAIM FOR RELIEF

(Cruel, Inhuman, or Degrading Treatment or Punishment – Lexiuste Cajuste)

57. Plaintiff Lexiuste Cajuste re-alleges and incorporates by reference the allegations set forth in paragraphs 1 through 28 of this Complaint as if fully set forth herein.

58. Defendant's acts and omissions, and the acts committed by his subordinates, caused the cruel, inhuman or degrading treatment of Plaintiff Cajuste.

59. The acts inflicted against Plaintiff Cajuste were inflicted by and/or at the instigation, under the control or authority, or with the consent or acquiescence of a public official or other person acting in an official capacity.

60. The acts described herein had the intent and effect of grossly humiliating and debasing Plaintiff Cajuste, by among other things, forcing or attempting to force him to act against his will or conscience, inciting fear and anguish, and breaking physical and moral resistance, and/or forcing or leading him to leave his home country or family. As an intended result of these acts, Plaintiff Cajuste was placed in great fear for his life and physical safety, and suffered severe physical and psychological abuse and agony.

61 The cruel, inhuman or degrading treatment of Plaintiff Cajuste 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 in that it constitutes a violation of customary international law prohibiting torture as reflected, expressed, defined and codified in multilateral treaties and other international instruments, international and domestic judicial decisions, and other authorities.

62. Defendant Dorélien planned, ordered, authorized, encouraged, or permitted subordinate forces under his command to commit acts of cruel, inhuman or degrading treatment, and exercised command responsibility over, conspired with and aided and abetted such forces in their commission of, and in covering up, such abuses.

63. Defendant's acts and omissions described herein, and the acts committed by his subordinates in the Armed Forces and/or paramilitary forces against Plaintiff Cajuste, were committed under the actual or apparent authority, or color of law, of the government of Haiti.

64. As a result of the cruel, inhuman or degrading treatment described herein, Plaintiff Cajuste has suffered damages and is entitled to compensation in an amount to be determined at trial.

65. 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.

FIFTH CLAIM FOR RELIEF

(Crimes Against Humanity)

66. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 28 of this Complaint as if fully set forth herein.

67. The abuses committed against Plaintiff Cajuste and decedent Michel Pierre described herein also constituted persecution against an identifiable group based on political or cultural status, and were committed in the context of a widespread or systematic attack against a civilian population. Defendant Dorélien planned, ordered, authorized, encouraged, or permitted subordinate forces under his command to commit such abuses, and exercised command responsibility over, conspired with, and aided and abetted such forces in their commission of, and in covering up, 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.

68. The abuses described herein against Plaintiff Cajuste and decedent Michel Pierre 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 they constitute violations of 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.

69. The extrajudicial killing of Michel Pierre and the torture, arbitrary detention, and cruel, inhuman or degrading treatment of Plaintiff Cajuste, all in the course of a widespread or systematic attack against the civilian population of Haiti, caused all Plaintiffs to suffer severe physical and mental pain and suffering. As a result of these acts, all Plaintiffs have suffered damages and are entitled to compensation in an amount to be determined at trial.

70. 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

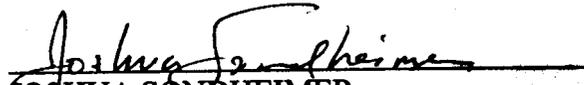
WHEREFORE, Plaintiffs, pray for judgment against Defendant as follows:

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

A jury trial is demanded on all issues.

Dated this 29th day of September, 2003

Respectfully submitted,



JOSHUA SONDEHEIMER
MATTHEW EISENBRANDT
(Admitted *Pro Hac Vice*)

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