

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO. 07-21783-CIV-JORDAN

TEÓFILA OCHOA LIZARBE, in her)
individual capacity, and in her capacity as the)
personal representative of the estates of)
Silvestra Lizarbe Solis, Gerardo Ochoa)
Lizarbe, Victor Ochoa Lizarbe, Ernestina)
Ochoa Lizarbe, Celestino Ochoa Lizarbe, and)
Edwin Ochoa Lizarbe, et al.,)
Plaintiffs)

vs.

TELMO RICARDO HURTADO
HURTADO,

Defendant

ORDER GRANTING DEFAULT JUDGMENT ON LIABILITY

For the following reasons, the plaintiffs' motion [D.E. 12] for default judgment on liability is GRANTED.

The plaintiffs brought this action pursuant to the Torture Victim Protection Act of 1991, 28 U.S.C. § 1350 note, the Alien Tort Statute, 28 U.S.C. § 1350, and 28 U.S.C. § 1331. The complaint was served upon Mr. Hurtado on September 24, 2007. [D.E. 11]. Mr. Hurtado failed to respond to the complaint. On October 22, 2007, I issued an order [D.E. 14] directing Mr. Hurtado to respond to the complaint no later than November 15, 2007, or I would enter default judgment on liability. Mr. Hurtado again failed to respond.

The Torture Victim Protection Act provides:

An individual who, under actual or apparent authority, or color of law, of any foreign nation— (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.

The Alien Tort Statute vests original jurisdiction over this claim in the federal district courts. *See* 28 U.S.C. § 1350; *Arce v. Garcia*, 434 F.3d 1254, 1256 n.2 (11th Cir. 2006).

Extrajudicial killing is defined by the Torture Victim Protection Act as “a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” 28 U.S.C. § 1350 note. Torture is defined by that same Act as

any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind.

In this case, the plaintiffs’ well-pled complaint states a claim under the Torture Victim Protection Act and Alien Tort Statute. Specifically, the detailed and extensive complaint alleges: that the plaintiffs are Peruvian citizens residing in Peru, *see* Compl. at ¶ 8 & 10; plaintiffs Teofilia Ochoa Lizarbe and Cirila Pulido Baldeon bring this claim in their individual capacities and as personal representatives of their deceased relatives, *see id.* at ¶¶ 8-11; Teofilia Ochoa Lizarbe’s mother Silvestra Lizarbe Solis, sister Ernestina Ochoa Lizarbe, and brothers Gerardo Ochoa Lizarbe, Victor Ochoa Lizarbe, and Celestino Ochoa Lizarbe as well as Cirila Pulido Baldeon’s mother Fortunata Baldeon Gutierrez and brother Edgar Pulido Baldeon (hereinafter “deceased relatives”) were all killed by a unit of the Peruvian Army led by Mr. Hurtado, *see id.* at ¶¶ 34-40; Mr. Hurtado is a citizen of Peru residing in Miami, Florida, *see id.* at ¶ 5; Mr. Hurtado was the Commander of the Peruvian Army’s Lince 7 patrol unit, *see id.* at ¶ 12(a); ethnic, racist and cultural differences played a significant role in the mistreatment of the plaintiffs and their deceased relatives -- indigenous people living in rural Peru -- at the hands of the Peruvian Army, *see id.* at ¶ 17; the plaintiffs and their deceased relatives were civilians, *see id.* at ¶ 15; Mr. Hurtado attended a meeting in August 1985 where plans for “Operation Huancayoc” were made, and he conspired to carry out the operation, *see id.* at ¶ 27-29, 60; on August 14, 1985, Lince 7 – led by Mr. Hurtado – entered the plaintiffs’ village,

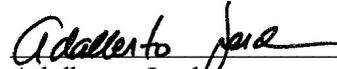
shot their guns, prevented people from escaping, then forcibly removed the plaintiffs' now deceased relatives from their houses and shot them, *see id.* at ¶¶ 34-40; the individual plaintiffs escaped and watched from their hiding places as their relatives were killed by Lince 7, *see id.* at ¶¶ 37 & 40; approximately 69 civilians were killed by the Peruvian Army in Operation Huancayoc, *see id.* at ¶ 44; Mr. Hurtado admitted to the Peruvian Senate commission that he was involved in the killings, *see id.* at ¶ 51; the killings and torture of the plaintiffs and their deceased relatives were conducted under color of Peruvian law, *see id.* at ¶ 53; Mr. Hurtado bears command responsibility for the extrajudicial killings and torture committed to plaintiffs and their deceased relatives as commander of Lince 7, *see id.*; at all relevant times, Mr. Hurtado possessed and exercised command and effective and legal control over Lince 7 and its members; *see id.* at ¶¶ 54-55; Mr. Hurtado knew about the human rights abuses and torts committed by Lince 7 during Operation Huancayoc, *see id.* at ¶ 56; Mr. Hurtado had a duty to ensure the protection of civilians such as the plaintiffs and their deceased relatives and prevent violations of international law, *see id.* at ¶ 57; Mr. Hurtado had a duty to investigate and punish violations of international and Peruvian law yet failed to take reasonable and necessary measures to prevent the extrajudicial killings, *see id.* at ¶¶ 57-58; Mr. Hurtado aided and abetted his subordinates in carrying out the killings and torture, *see id.* at ¶ 61; Mr. Hurtado's acts were part of an organized plan to repress the civilian population of Peru, *see id.* at ¶ 62; Mr. Hurtado is directly liable for the killings and torture of the plaintiffs and their deceased relatives, *see id.* at ¶¶ 94 & 104; and the plaintiffs have no adequate remedies available to them in Peru, *see id.* at ¶¶ 75-90.

Mr. Hurtado, by his default, admits the factual allegations of the complaint. *See Nishimatsu Const. Co., Ltd. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975).¹ Default judgment is proper if the well-pled facts of the complaint, thus admitted as true by the defendant, state a claim for which relief can be granted. *See id.* Since the plaintiffs' complaint states a claim pursuant to the Torture Victim Protection Act and the Alien Tort Statute, the plaintiffs' motion for default judgment on liability is therefore GRANTED.

¹ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*), the Eleventh Circuit adopted as binding precedent all of the decisions of the former Fifth Circuit prior to October 1, 1981.

A trial on damages will be set by subsequent order. At the trial, the plaintiffs will have to establish that they are the personal representatives of the decedents' estates if they want to recover damages on behalf of those estates.²

DONE and ORDERED in chambers in Miami, Florida, this 21st day of November, 2007.


Adalberto Jordan
United States District Judge

Copy to: All counsel of record

Telmo Ricardo Hurtado Hurtado
Federal Correction Institution
#79395-004
15801 Southwest 137th Avenue
Miami, FL 33177

²By December 3, 2007, the plaintiffs shall indicate, in writing, whether they wish to have a jury determine damages, and when they are available for a trial on damages.