

United States Court of Appeals  
Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

Thomas K. Kahn  
Clerk

In Reply, Please Give Number  
Of Case And Names of Parties

June 24, 2005

TO: Mr. Kurt Klaus Jr. & Mr. James Green

Re: No. 02-14427, Arce v. Garcia

The Court requests that, by July 18, you submit a letter brief regarding the following:

The Court issued its opinion in this case on Feb 28, 2005. It has come to the Court's attention, however, that it made two factual errors, which may require a different disposition. The Court therefore requests that you submit a letter brief that considers the effect of the corrected errors. To explain what you should submit, here are the two errors and what questions you should answer in your letter.

**I.**

The opinion made two factual mistakes:

**(1) The date on which the complaint was filed.** The opinion stated, "On February 22, 2000, the plaintiffs brought this action against Garcia and Casanova . . . ." Arce v. Garcia, 400 F.3d 1340, 1343 (11th Cir. 2005). This is wrong. The 29-page complaint was filed on May 11, 1999; the mistake stemmed from the fact that the second amended complaint was filed

on February 22, 2000.

**(2) The date on which Casanova left government service.** The opinion stated, "The defendants in this case are Jose Garcia, the minister of defense of El Salvador from 1979 to 1983, and Carlos Vides-Casanova (Casanova), the director-general of El Salvador's National Guard during the same period." *Id.* While correct, this is incomplete. While Casanova did leave his position as director-general in 1983, he then started his new position as minister of defense, which he kept until May 31, 1989. R20:2247.

These errors bring the Court's disposition into question because the Court stated that because there was no evidence of the defendants' misconduct, the plaintiffs were not entitled to equitable tolling:

[T]he plaintiffs fail to muster sufficient evidence of the defendants' involvement. Instead, the plaintiff's focus on the ambient situation in El Salvador. But given the particular facts of this case, the fact that other people or entities may have hindered the plaintiff[s] is by itself insufficient to trigger equitable tolling. Therefore, the lack of cooperation from the Salvadoran government from 1983 (when the defendants left office) to 2000 (when the plaintiffs filed suit) is not sufficient to toll the statute of limitations.

Arce, 400 F.3d at 1348 (footnote omitted). If Casanova was the minister of defense for the El Salvadoran government between 1983 to 1989, then he may have been part of the misconduct sufficient for tolling. The opinion's two mistakes thus coalesce in the following manner: if the complaint was filed on May 11, 1999 instead of February 22, 2000, then the 10-year statute of limitations reaches back to May 11, 1989; and if Casanova was in government until May 31, 1989, his actions may fall within the statute of limitations.

Note that the error does not apply to every plaintiff or every defendant in

this case. On the plaintiffs' side, it applies to Juan Romangoza Arce and Neris Gonzalez (originally styled "Jane Doe, in her individual capacity and as the personal representative for the Estate of Baby Doe") because they were listed in the original complaint on May 11, 1999; the error does not apply to Carlos Mauricio, who was added some time after May 31, 1999 (more than 10 years after Casanova retired). On the defendants' side, the error applies to Casanova; it does not apply to Jose Guillermo Garcia, who retired from government service in 1983 (more than 10 years before the complaint was filed).

## II.

Before the Court states the questions that you should address, the Court emphasizes that the law of equitable tolling that it laid out in its opinion, see generally Arce, 400 F.3d at 1346-1351, is still good law. Combining this law with the description of the mistakes in Part I, the Court requests that you answer the following two questions:

(1) Is it appropriate to use the May 11, 1999 original Complaint as the date on which the action commenced (i.e., was the February 28 opinion wrong to use the February 22, 2000 Second Amended Complaint as the date on which the action commenced)?

(2) Does Carlos Eugenio Vides-Casanova's record conduct during his tenure as minister of defense of El Salvador (from 1983 to 1989) qualify Juan Romangoza Arce and/or Neris Gonzalez for equitable tolling until Casanova's retirement on May 31, 1989?

In answering the questions, comply with the following guidelines: (1) while the opinion lays out the law of equitable tolling, you may cite and argue from any

other law (e.g., other cases) that you deem apt; (2) include clear and frequent references to the record as you detail Casanova's conduct; (3) keep your letter to 15 pages; (4) and submit your letter by 5:00 PM EST, July 18, 2005.