

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JUAN ROMAGOZA ARCE,
NERIS GONZALEZ, CARLOS MAURICIO, and
JORGE MONTES,

Plaintiffs,

v.

JOSE GUILLERMO GARCIA, an individual,
CARLOS EUGENIO VIDES CASANOVA, an
individual, and DOES 1 through 50, inclusive,

Defendants.

Case No. 99-8364 CIV-HURLEY

**SECOND AMENDED COMPLAINT
FOR TORTURE; CRIMES AGAINST
HUMANITY; CRUEL, INHUMAN OR
DEGRADING TREATMENT OR
PUNISHMENT; AND ARBITRARY
DETENTION**

JURY TRIAL DEMANDED

Plaintiffs Juan Romagoza Arce, Neris Gonzalez, Carlos Mauricio, and Jorge Montes (collectively “Plaintiffs”), complain and allege as follows:

PRELIMINARY STATEMENT

1. This is a civil action for compensatory and punitive damages for torts in violation of international and domestic law. Plaintiffs in this action—refugees from El Salvador now living in the United States—institute this action against Defendants General Jose Guillermo Garcia, Defense Minister of El Salvador from October 1979 to April 1983, and General Carlos Eugenio Vides Casanova, Director-General of the Salvadoran National Guard from October 1979 to April 1983 and subsequently Defense Minister of El Salvador upon Defendant Garcia’s retirement in 1983.

2. On December 12, 1980, Plaintiff Juan Romagoza Arce, a Salvadoran doctor, was abducted, detained, and tortured in El Salvador by members of the Salvadoran National Guard for three and a half weeks. On December 26, 1979, Plaintiff Neris Gonzalez, a former lay worker and catechist with the Catholic Church, was abducted, detained, tortured and raped in El Salvador by members of the Salvadoran National Guard for a period of approximately two weeks. Plaintiff Gonzalez was eight months pregnant during her detention. On or about June 13,

1983, Plaintiff Carlos Mauricio, a former professor at the University of El Salvador, was abducted from the University, taken into detention at the National Police Headquarters, interrogated and tortured for one and one-half weeks. In June 1981, Plaintiff Jorge Montes, a former church lay worker and youth group organizer, was detained and tortured by members of the Salvadoran military for approximately one week. Each Plaintiff suffered severe physical and psychological injuries as a result of their detention and torture.

3. Defendants Garcia and Vides Casanova acted in concert with and exercised command responsibility over other members of the Salvadoran Military and Security Forces to plan, carry out and cover up the abduction and torture of the Plaintiffs. Further, Defendants failed to prevent or punish the violations of international law committed by their subordinates. Under international and domestic law, Defendants are liable to Plaintiffs for the injuries Plaintiffs suffered.

JURISDICTION AND VENUE

4. This court has jurisdiction over the international law claims brought by Plaintiffs Gonzalez, Mauricio, and Montes by virtue of 28 U.S.C. § 1350 (the Alien Tort Claims Act), which provides federal jurisdiction and a cause of action for “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.” The court has jurisdiction over all Plaintiffs’ torture claims by virtue of 28 U.S.C. § 1350 note (the Torture Victim Protection Act), which provides federal jurisdiction and a cause of action for victims of torture (United States citizens and aliens alike).

5. Venue is proper in the United States Federal Court for the Southern District of Florida pursuant to 28 U.S.C. §§ 1391(b) and (d), because both Defendants reside within the jurisdiction of this court.

PARTIES

Plaintiffs

6. Plaintiff Juan Romagoza Arce, a native of El Salvador, is a naturalized citizen of the United States.

7. Plaintiff Neris Gonzalez, a native and citizen of El Salvador, is currently residing as a political asylee in the United States.

8. Plaintiff Carlos Mauricio, a native and citizen of El Salvador, currently resides in the United States as a legal permanent resident. Plaintiff Mauricio's claims are limited to Defendant Vides Casanova.

9. Plaintiff Jorge Montes, a native and citizen of El Salvador, currently resides with political asylum in the United States. Plaintiff Montes' claims are limited to Defendant Garcia.

Defendants

10. On information and belief, Defendant General Jose Guillermo Garcia ("Defendant Garcia") is a native and citizen of El Salvador and a resident of Florida. From about October 1979 to approximately April 1983, Defendant Garcia was the Minister of Defense and Public Security of the Republic of El Salvador. As Minister of Defense, Defendant Garcia was a member of the Salvadoran Military High Command and exercised overall command responsibility for the operations of the Salvadoran Armed Forces consisting of the "Military Forces" (Infantry, Navy, Air Force and Cavalry) and the "Security Forces" (National Guard, National Police and Treasury Police). In or about April 1983, Defendant Garcia retired from the Salvadoran military and stepped down from his position as Minister of Defense. He subsequently relocated to the United States.

11. On information and belief, General Carlos Eugenio Vides Casanova ("Defendant Vides Casanova") is a native and citizen of El Salvador and a resident of Florida. From approximately October 1979 through April 1983, Defendant Vides Casanova was the Director-General of the National Guard for the Republic of El Salvador. As Director-General of the National Guard, Defendant Vides Casanova was a member of the Salvadoran Military High Command and exercised direct command responsibility over the operations of the Salvadoran National Guard. Upon the retirement of Defendant Garcia, Defendant Vides Casanova was promoted to the position of El Salvador's Minister of Defense. Defendant Vides Casanova entered the United States on or about August 21, 1989.

STATEMENT OF FACTS

Plaintiff Juan Romagoza Arce

12. Plaintiff Juan Romagoza Arce is a Salvadoran doctor who attended the School of Medicine of the University of El Salvador from 1970-1980. As part of his medical training Plaintiff Romagoza Arce worked with others at the University of El Salvador and in the Catholic Church to establish medical clinics for the poor in rural areas as well as in the capital, San Salvador.

13. On or about December 12, 1980, Plaintiff Romagoza Arce was providing medical care at a church clinic in Santa Anita, Chalatenango. While Plaintiff Romagoza Arce was treating patients, two vehicles arrived carrying soldiers from the local army garrison, the National Guard, and ORDEN (a government-sponsored paramilitary group). Perched on top of the trucks, the soldiers and Guardsmen opened fire upon the people administering and receiving medical care at the church clinic.

14. The soldiers and Guardsmen shot Plaintiff Romagoza Arce in the right foot and another bullet grazed his head. The soldiers and Guardsmen detained Plaintiff Romagoza Arce as a “subversive leader” because he possessed medical and surgical instruments. Plaintiff Romagoza Arce received no medical treatment for these injuries.

15. Subsequently, Plaintiff Romagoza Arce was blindfolded and taken by helicopter to a local army garrison. During the flight, soldiers pushed Plaintiff Romagoza Arce to the edge of the open door of the helicopter and threatened to throw him out. Upon his arrival at the garrison, Plaintiff Romagoza Arce was stripped of his clothes, bound spread eagle to a table, interrogated and beaten.

16. The next morning (on or about December 13, 1980), Plaintiff Romagoza Arce was transferred to the National Guard headquarters in San Salvador. Once inside, Guardsmen showed him other prisoners who had been tortured, and asked if he wanted to have the same thing happen to him. He was put on a table, beaten and interrogated, and threatened with additional torture for failing to answer questions to their satisfaction. He was stuck with needles, producing intense pain, and threatened with death.

17. At the end of his second day of detention, Plaintiff Romagoza Arce was chained to an iron rod, naked and wounded, and interrogated again. The Guardsmen administered electric shocks to his ears, tongue, testicles, anus, and the edges of his wounds until he lost consciousness. The Guardsmen would force Plaintiff to regain consciousness by kicking him or burning him with cigarettes.

18. For approximately the next 22 days, Plaintiff Romagoza Arce was interrogated and tortured every day—sometimes three or four times per day.

19. For several days, the Guardsmen hung Plaintiff Romagoza Arce with ropes made of sharp material that cut into his fingers. Plaintiff Romagoza Arce was told that he would never be a surgeon again. The Guardsmen also shot him in the left hand, severing the muscles and tendons, in a gesture said to be aimed at his “leftist” politics. Additionally, the Guardsmen anally raped Plaintiff Romagoza Arce with foreign objects and subjected him to additional electric shocks, water torture, and asphyxiation with a hood containing *cal* (calcium oxide, or lime).

20. During Plaintiff Romagoza Arce’s detention, Defendant Vides Casanova was physically present on two occasions. The first occasion was in late December 1980 or early January 1981, approximately four or five days prior to Plaintiff Romagoza Arce’s release. At this time, Vides Casanova and other military officers—including Plaintiff Romagoza Arce’s uncle, Lt. Col. Salvador Mejia Arce—visited Plaintiff Romagoza Arce in his cell. On prior occasions, Plaintiff Romagoza Arce had informed the Guardsmen about his two uncles in the Salvadoran military, Salvador Mejia Arce and Manuel Rafael Arce Blandon, hoping that this would save his life.

21. After this incident, Plaintiff Romagoza Arce’s captors moved him into another room and kept him in a coffin-like box for four or five days. Periodically they would return to threaten, kick or burn him with lighted cigarettes.

22. Defendant Vides Casanova was also physically present during Plaintiff Romagoza Arce’s release on or about January 5, 1981. Plaintiff Romagoza Arce was released to his uncle, Lt. Colonel Manuel Rafael Arce Blandon, who was a government economist. His other uncle, Lt. Col. Salvador Mejia Arce, stood nearby conversing with Defendant Vides Casanova.

23. After his release, Plaintiff Romagoza Arce fled El Salvador. He arrived in the United States in April 1983. As a direct result of the injuries inflicted during his detention, Plaintiff Romagoza Arce lost his ability to perform surgery and continues to suffer the physical and psychological effects of his torture.

24. Based upon the persecution described above, Plaintiff Romagoza Arce was granted political asylum in the United States on April 21, 1987. He subsequently applied to become a legal permanent resident and became a naturalized citizen in 1995.

Plaintiff Neris Gonzalez

25. Plaintiff Gonzalez is a Salvadoran woman who worked for several years as a catechist and lay worker with Catholic parishes throughout El Salvador.

26. On December 26, 1979, Plaintiff Gonzalez—who was then eight months pregnant—was abducted without cause from the central market in San Vicente by four National Guardsmen dressed in uniform and armed with assault rifles. The National Guardsmen forcibly led Plaintiff Gonzalez to the National Guard Post in San Vicente where she was detained in a small interrogation room. The Guardsmen asked Plaintiff Gonzalez if she had any ties to, or if she had collaborated with, the guerrillas. When she answered “no”, they pistol-whipped and beat her.

27. Over the course of her detention, Plaintiff Gonzalez was repeatedly tortured. The Guardsmen pushed pins under her nails, telling her that cooperating with them would cost her nothing. They repeatedly burned her with cigarettes and poured liquid on the burns to intensify the pain. The Guardsmen also repeatedly cut the surface of her fingertips, thighs and breasts with a razor blade and hit her in the chest. On one occasion, the Guardsmen pulled out her fingernails with a pair of pliers. On three occasions, they administered electric shocks while asphyxiating Plaintiff Gonzalez with a powder-filled rubber mask.

28. After about three days, Plaintiff Gonzalez was taken out of the interrogation room and pushed down a flight of stairs by the Guardsmen. She was subsequently detained, handcuffed and bound with chains, in the basement of the National Guard Post for approximately twelve days.

29. During the course of the twelve days, the National Guardsmen repeatedly raped, tortured and withheld food from Plaintiff Gonzalez. At night, the Guardsmen would force her to sit, neck-deep, in a basin of ice water for one to two hours. When she was taken out of the water, her body was completely numb.

30. On at least two occasions, Plaintiff Gonzalez's torture involved injuries to her uterus. She was put under a metal bed frame while Guardsmen stomped on top of the frame. The Guardsmen also balanced the bed frame over her abdomen, standing on both ends of the bed frame like a seesaw.

31. Plaintiff Gonzalez was also forced to witness acts of torture against others. She was forced to watch the Guardsmen beat a man. After the beating, he was whipped with plastic whips and kicked in the testicles. Subsequently, the Guardsmen handcuffed the man's hands behind his back and suspended him from the ceiling by his arms and legs. One of the Guardsmen then sat on top of the man and began to ride him like a swing. The Guardsmen took the man down from his suspended position, cut open his stomach, pushed Plaintiff Gonzalez's face into the wound and forced her to drink his blood.

32. In a separate incident, Plaintiff Gonzalez was forced to watch the torture of a boy who looked to be approximately 14 years old. In front of Plaintiff Gonzalez, a Guardsman gouged out the boy's eye with a tool. Tissue from the eye socket landed on Plaintiff Gonzalez's chest and she fainted from the sight. When she regained consciousness, the Guardsmen hit her in the back of the head with the blunt end of their machetes and cut into her forearms with the point of their machetes.

33. Plaintiff Gonzalez was later dumped, unconscious, in an area outside of San Vicente. A local villager took Plaintiff Gonzalez into her home and Plaintiff Gonzalez began her recovery. Approximately eight days later, Plaintiff Gonzalez was taken to a church in San Salvador, where she received medical treatment at a clinic and recuperated at the neighboring convent.

34. Due to the torture inflicted by the Guardsmen, Plaintiff Gonzalez's infant son was born with multiple injuries, broken bones and indentations on his face. He died two months after his birth as a result of these injuries.

35. Plaintiff Gonzalez fled El Salvador for the United States and was eventually granted political asylum. She is currently petitioning for legal permanent residency.

36. As a direct result of her torture, Plaintiff Gonzalez sustained severe physical and psychological injuries. Since the time of these injuries, she has received treatment for post-traumatic stress syndrome.

Plaintiff Carlos Mauricio

37. On or about June 13, 1983, Plaintiff Mauricio, a professor at the University of El Salvador, was abducted without cause from his classroom by individuals dressed in civilian clothes who forced him into an unmarked vehicle. After his abduction, the University and others launched a campaign to determine his whereabouts and to obtain his immediate release. The Salvadoran Defense Ministry issued a written statement acknowledging the detention of Plaintiff Mauricio at the National Police headquarters.

38. Plaintiff Mauricio was detained at the National Police headquarters in San Salvador for approximately one and one-half weeks. During his first week in detention, he was tortured and interrogated in a clandestine torture center at the National Police headquarters as a suspected Farabundo Marti National Liberation Front (FMLN) "*comandante*" (commander).

39. Plaintiff Mauricio's captors at the National Police headquarters strung him up with his hands behind his back over his head, and repeatedly hit him with a metal bar covered with rubber, inflicting injuries to his face and torso. During the first 2-3 days of detention, Plaintiff Mauricio was given no food to eat. He was denied use of a bathroom throughout his confinement in the torture center. He was also forced, along with other detainees, to stand for hours at a time and failure to do so resulted in being singled out for additional physical abuse.

40. On or about June 23, 1983 Plaintiff Mauricio was released. He subsequently fled El Salvador for the United States, where he now resides.

41. Plaintiff Mauricio suffered injuries to his ribs, eyes and mouth inflicted during this detention. In addition to his physical injuries, Plaintiff Mauricio continues to suffer from the long-term psychological effects of his torture.

Plaintiff Jorge Montes

42. In early 1981, Plaintiff Montes began working as a volunteer at a church located in downtown San Salvador, which served as a focal point for protest against the government. The church was monitored by the Salvadoran Military and Security Forces.

43. In June of 1981, when he was nineteen years old, Plaintiff Montes and three members of the church's youth group were en route to San Salvador when they were stopped by infantry soldiers and taken to an unoccupied distillery. The soldiers accused Plaintiff Montes and his companions of being guerrillas. The soldiers searched them and then began to kick and beat them with the butts of their rifles. The beating continued for approximately an hour, during which time Plaintiff Montes was seriously injured.

44. After the beating, Plaintiff Montes and his friends were blindfolded and handcuffed. They were then forced to lay face down in the back of the truck while the soldiers stood on top of their backs and held the barrels of rifles at the backs of their heads. They were driven around over rough roads for approximately three hours in extreme heat, their bodies violently bouncing against the floor of the truck.

45. When the truck stopped, Plaintiff Montes and his friends were led into the infantry barracks at San Juan Opico, in the Department of La Libertad, subjected to additional beatings and drugged. The drug caused Plaintiff Montes to feel very dizzy. Soldiers at the barracks interrogated Plaintiff Montes and urged him to admit he was a guerrilla. Soldiers beat Plaintiff Montes in the ribs with a rifle butt. After the interrogation, Plaintiff Montes was detained with approximately twenty other people. His was given food once a day, which he believed was also drugged.

46. During his detention, Plaintiff Montes was subjected to several different interrogation sessions, from one to two hours each. During each session he was beaten and accused of being a guerrilla.

47. After approximately one week, Plaintiff Montes and his associates were released. Based upon the persecution described herein, he subsequently fled El Salvador for the United States and was granted political asylum. He continues to live with the psychological injuries from his detention and torture.

GENERAL ALLEGATIONS

48. Between December 1979 to 1992, the people of El Salvador were engulfed in a civil war in which over 75,000 people are estimated to have been killed. Throughout this period, the Salvadoran Armed Forces (including the Military and Security Forces) employed numerous counter-insurgency methods—including arbitrary detention, forced disappearance, torture and murder—to control the Salvadoran population and intimidate and eliminate perceived and/or actual opponents of the Salvadoran government. The hostilities and oppression did not come to a formal conclusion until a Peace Agreement was negotiated under the auspices of the United Nations and signed on January 16, 1992.

49. The acts described herein were inflicted under actual or apparent authority or color of law of members of the Government and Armed Forces of El Salvador, including the Defendants. The acts of abduction, detention and torture inflicted upon Plaintiffs Juan Romagoza Arce, Neris Gonzales, Carlos Mauricio, and Jorge Montes were part of a pattern and practice of systematic human rights violations committed in El Salvador from 1979 to 1983, for which Defendants Garcia and Vides Casanova—acting as Ministers of Defense and, in the case of Defendant Vides Casanova, Director-General of the National Guard—bear personal responsibility.

50. At all relevant times, the Minister of Defense stood at the pinnacle of the Salvadoran Military High Command. The military was divided into distinct forces: the Military Forces (Infantry, Navy, Air Force and Cavalry) and the Security Forces (the National Guard, the National Police and the Treasury Police). Each force was represented on the Salvadoran Military High Command by its respective Director-General. The ultimate decision-making power and final responsibility for any military operation rested with the Salvadoran Military High Command.

51. As members of the Salvadoran Military High Command, Defendants Garcia and Vides Casanova had a duty—under customary international law, multilateral treaties and Salvadoran law—to ensure the protection of noncombatants present in El Salvador during military operations; to prevent violations of international law by the Military and Security Forces; and to ensure that all persons under their command were trained in, and complied with, the laws of land warfare and international law, including the international law prohibitions against torture, crimes against humanity, arbitrary detention, and cruel, inhuman and degrading treatment or punishment. Further, the Defendants were under a duty to investigate, prevent and punish violations of international law committed by members of the Military and Security Forces under their command.

52. At all relevant times, Defendants Garcia and Vides Casanova knew or reasonably should have known of the pattern and practice of gross human rights abuses perpetrated by subordinates under their respective commands, including the abuses directed against the Plaintiffs. Defendants Garcia and Vides Casanova failed or refused to take action to prevent or punish such violations of international law, thus materially contributing to the uncontrolled violence committed by members of the Salvadoran Military and Security Forces against noncombatants.

53. Defendants Garcia and Vides Casanova are liable for the acts of arbitrary detention; torture; cruel, inhuman or degrading treatment; and crimes against humanity alleged herein because the individuals who committed the atrocities were the subordinates, representatives, co-conspirators and/or agents of Defendants Garcia and Vides Casanova. The Salvadoran Security and Military Forces acted under Defendants Garcia and Vides Casanova's direct or implicit instructions, authority and control and within the scope of authority granted to them and overseen by the High Command and the Government of El Salvador. Defendants Vides Casanova and Garcia—instead of acting to punish or prevent such abuses—ordered, instigated, permitted, encouraged, authorized, covered up, and ratified the commission of gross human rights violations by the Military and Security Forces under their respective commands.

54. Defendants Garcia and Vides Casanova are further liable to Plaintiffs for their injuries, because the acts described herein were committed in furtherance of an agreement among members of the Salvadoran Military and Security Forces including the Defendants to eliminate and/or intimidate perceived and/or actual opponents of the government of the Republic of El Salvador. The Defendants and their co-conspirators conspired to violate international and domestic law and carried out a series of overt acts in furtherance of this conspiracy, including, *inter alia*, detaining and torturing Plaintiffs and forcing them to witness the torture of others. Defendants and their co-conspirators further conspired to conceal and cover up these violations of international and domestic law in furtherance of this conspiracy.

Absence of Remedies In El Salvador

55. In March 1993, the Salvadoran legislature adopted a broad and unconditional amnesty for any individual implicated in “political offenses” (*Decreto* No. 486). The amnesty law foreclosed both civil and criminal liability for all individuals who had participated in any way in the commission of political crimes, common crimes related to political crimes, or common crimes committed before January 1, 1992. This law, as currently interpreted, precludes liability under Salvadoran law for those responsible for Plaintiffs’ detention and torture. Consequently, there are no adequate available remedies for Plaintiffs to exhaust in El Salvador. To date, the government of El Salvador has not proceeded, nor has it shown any intention of proceeding, against Defendants for their involvement in human rights violations committed when they served as Ministers of Defense or, in the case of Defendant Vides Casanova, Director of the National Guard.

FIRST CLAIM FOR RELIEF

(Torture under the Torture Victim Protection Act)

56. Plaintiffs reallege and incorporate by reference the specific allegations set forth in paragraphs 14 through 21 (Plaintiff Romagoza Arce), paragraphs 27 through 33 (Plaintiff Gonzalez), paragraphs 38 through 39 (Plaintiff Mauricio), and paragraphs 43 through 46 (Plaintiff Montes), and the general allegations related to their claims as if fully set forth herein.

Plaintiffs Romagoza Arce, Gonzalez, and Mauricio state this claim for relief against Defendant

Vides Casanova; Plaintiffs Romagoza Arce, Gonzalez, and Montes state this claim for relief against Defendant Garcia.

57. The acts described herein constituted 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), which provides federal jurisdiction and a cause of action for acts of torture, regardless of where they were committed or the citizenship of the victims or perpetrators.

58. The harms to Plaintiffs described herein were inflicted by and/or at the instigation of a public official or other person acting in an official capacity.

59. Plaintiffs were subjected to torture while in the custody and/or physical control of the Defendants, their subordinates, their agents and/or their co-conspirators in the Salvadoran Military and Security Forces.

60. Defendants' subordinates, agents and/or co-conspirators in the Salvadoran Military and Security Forces specifically intended to inflict severe mental and physical pain and suffering on Plaintiffs. The harms to Plaintiffs were inflicted deliberately and intentionally by Defendants' subordinates, agents and/or co-conspirators for one or more of the following purposes: to punish Plaintiffs for an act they or another person committed or were suspected of having committed; to intimidate or coerce Plaintiffs or another person; and/or to discriminate against Plaintiffs.

61. Defendants Vides Casanova and Garcia ordered, instigated, permitted, encouraged, authorized, covered up, and/or ratified the acts of torture committed by the Military and Security Forces under their respective commands. Defendants acted to conceal and cover-up the conduct alleged herein so that Defendants and their subordinates, agents and/or co-conspirators could commit such acts with impunity. Further, Defendants failed to prevent abuses or punish the perpetrators.

62. The pain or suffering described herein did not arise from and was not incidental to lawful sanctions.

63. The acts described herein placed Plaintiffs in imminent fear for their lives and caused them to suffer severe physical and mental pain and suffering. As a result of the torture

described above, each named Plaintiff is entitled to compensation in an amount to be determined at trial.

64. Defendants' acts 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

(Torture under the Alien Tort Claims Act and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)

65. Plaintiffs Gonzalez, Mauricio and Montes reallege and incorporate by reference the specific allegations set forth in paragraphs 27 through 33 (Plaintiff Gonzalez), paragraphs 38 through 39 (Plaintiff Mauricio), and paragraphs 43 through 46 (Plaintiff Montes), and the general allegations related to their claims as if fully set forth herein. Plaintiffs Gonzalez and Mauricio state this claim for relief against Defendant Vides Casanova; Plaintiffs Gonzalez and Montes state this claim for relief against Defendant Garcia.

66. The torture of alien Plaintiffs Gonzalez, Mauricio and Montes described herein constituted "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 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 39 U.N. Doc., GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984) ("Torture Convention").

67. The harms to Plaintiffs Gonzalez, Mauricio, and Montes described herein were inflicted by and at the instigation of a public official or other person acting in an official capacity.

68. Plaintiffs were subjected to torture while in the custody and/or physical control of the Defendants, their subordinates, their agents and/or their co-conspirators in the Salvadoran Military and Security Forces.

69. Defendants' subordinates, agents and/or co-conspirators in the Salvadoran Military and Security Forces specifically intended to inflict severe mental and physical pain and suffering on Plaintiffs. The harms to Plaintiffs were inflicted deliberately and intentionally by Defendants' subordinates, agents and/or co-conspirators for one or more of the following

purposes: to punish Plaintiffs for an act they or another person committed or were suspected of having committed; to intimidate or coerce Plaintiffs or another person; and/or to discriminate against Plaintiffs.

70. Defendants Vides Casanova and Garcia ordered, instigated, permitted, encouraged, authorized, covered up, and/or ratified the acts of torture committed by the Military and Security Forces under their respective commands. Defendants acted to conceal and cover-up the conduct alleged herein so that Defendants and their subordinates, agents and/or co-conspirators could commit such acts with impunity. Further, Defendants failed to prevent abuses or punish the perpetrators.

71. The pain or suffering described herein did not arise from and was not incidental to lawful sanctions.

72. The acts described herein placed Plaintiffs Gonzalez, Mauricio, and Montes in imminent fear for their lives and caused them to suffer severe physical and mental pain and suffering. As a result of the torture described above, Plaintiffs Gonzalez, Mauricio, and Montes are entitled to compensation in an amount to be determined at trial.

73. Defendants' acts 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

(Torture under the Alien Tort Claims Act and the International Covenant on Civil and Political Rights)

74. Plaintiffs Gonzalez, Mauricio and Montes reallege and incorporate by reference the specific allegations set forth in paragraphs 27 through 33 (Plaintiff Gonzalez), paragraphs 38 through 39 (Plaintiff Mauricio), and paragraphs 43 through 46 (Plaintiff Montes), and the general allegations related to their claims as if fully set forth herein. Plaintiffs Gonzalez and Mauricio state this claim for relief against Defendant Vides Casanova; Plaintiffs Gonzalez and Montes state this claim for relief against Defendant Garcia.

75. The torture of Alien Plaintiffs Gonzalez, Mauricio, and Montes described herein constituted “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 violated the International Covenant on Civil and Political Rights, G.A. Res. 2220A (xxi), 21 U.N. Doc., GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966) (“ICCPR”).

76. The harms to Plaintiffs Gonzalez, Mauricio, and Montes described herein were inflicted by and at the instigation of a public official or other person acting in an official capacity.

77. Plaintiffs were subjected to torture while in the custody and/or physical control of the Defendants, their subordinates, their agents and/or their co-conspirators in the Salvadoran Military and Security Forces.

78. Defendants’ subordinates, agents and/or co-conspirators in the Salvadoran Military and Security Forces specifically intended to inflict severe mental and physical pain and suffering on Plaintiffs. The harms to Plaintiffs were inflicted deliberately and intentionally by Defendants’ subordinates, agents and/or co-conspirators for one or more of the following purposes: to punish Plaintiffs for an act they or another person committed or were suspected of having committed; to intimidate or coerce Plaintiffs or another person; and/or to discriminate against Plaintiffs.

79. Defendants Vides Casanova and Garcia ordered, instigated, permitted, encouraged, authorized, covered up, and/or ratified the acts of torture committed by the Military and Security Forces under their respective commands. Defendants acted to conceal and cover-up the conduct alleged herein so that Defendants and their subordinates, agents and/or co-conspirators could commit such acts with impunity. Further, Defendants failed to prevent abuses or punish the perpetrators.

80. The pain or suffering described herein did not arise from and was not incidental to lawful sanctions.

81. The acts described herein placed Plaintiffs Gonzalez, Mauricio, and Montes in imminent fear for their lives and caused them to suffer severe physical and mental pain and

suffering. As a result of the torture described above, Plaintiffs Gonzalez, Mauricio, and Montes are entitled to compensation in an amount to be determined at trial.

82. Defendants' acts 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

(Torture under the Alien Tort Claims Act and Customary International Law)

83. Plaintiffs Gonzalez, Mauricio and Montes reallege and incorporate by reference the specific allegations set forth in paragraphs 27 through 33 (Plaintiff Gonzalez), paragraphs 38 through 39 (Plaintiff Mauricio), and paragraphs 43 through 46 (Plaintiff Montes), and the general allegations related to their claims as if fully set forth herein. Plaintiffs Gonzalez and Mauricio state this claim for relief against Defendant Vides Casanova; Plaintiffs Gonzalez and Montes state this claim for relief against Defendant Garcia.

84. The acts of torture of Plaintiffs Gonzalez, Mauricio, and Montes described herein constituted "tort[s] ... committed in violation of the law of nations or a treaty of the United States according to the Alien Tort Claims Act, 28 U.S.C. §1350, in that they constituted a violation of customary international law as part of the "the law of nations." The customary international law prohibition against torture is reflected, expressed, defined and codified in the Torture Convention; the ICCPR; the Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948); the Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976); the American Convention on Human Rights (Pact of San Jose, Costa Rica), O.A.S.T.S. No. 36 at 1, O.A.S. Off. Rec. OEA/Ser. L/V/II, 23, doc. 21, rev. 2 (English 1978); the Fourth Geneva Convention; Protocol II; and the Inter-American Convention to Prevent and Punish Torture, O.A.S.T.S. No. 67, O.A.S. Doc. OEA/Ser. P, AG/doc. 023/85 rev. 1, at 46-54 (English 1986), *reprinted in* 25 I.L.M. 519 (1986).

85. The harms to Plaintiffs Gonzalez, Mauricio, and Montes described herein were inflicted by and at the instigation of a public official or other person acting in an official capacity.

86. Plaintiffs were subjected to torture while in the custody and/or physical control of the Defendants, their subordinates, their agents and/or their co-conspirators in the Salvadoran Military and Security Forces.

87. Defendants' subordinates, agents and/or co-conspirators in the Salvadoran Military and Security Forces specifically intended to inflict severe mental and physical pain and suffering on Plaintiffs Gonzalez, Mauricio, and Montes. The harms to Plaintiffs Gonzalez, Mauricio, and Montes were inflicted deliberately and intentionally by Defendants' subordinates, agents and/or co-conspirators for one or more of the following purposes: to punish Plaintiffs for an act they or another person committed or were suspected of having committed; to intimidate or coerce Plaintiffs or another person; and/or to discriminate against Plaintiffs.

88. Defendants Vides Casanova and Garcia ordered, instigated, permitted, encouraged, authorized, covered up, and/or ratified the acts of torture committed by the Military and Security Forces under their respective commands. Defendants acted to conceal and cover-up the conduct alleged herein so that Defendants and their subordinates, agents and/or co-conspirators could commit such acts with impunity. Further, Defendants failed to prevent abuses or punish the perpetrators.

89. The pain or suffering described herein did not arise from and was not incidental to lawful sanctions.

90. The acts described herein placed Plaintiffs Gonzalez, Mauricio, and Montes in imminent fear for their lives and caused them to suffer severe physical and mental pain and suffering. As a result of the torture described above, Plaintiffs Gonzalez, Mauricio, and Montes are entitled to compensation in an amount to be determined at trial.

91. Defendants' acts 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 Under the Alien Tort Claims Act and Customary International Law)

92. Plaintiffs Gonzalez, Mauricio, and Montes reallege and incorporate by reference the specific allegations set forth in paragraphs 27 through 33 (Plaintiff Gonzalez), paragraphs 37 through 38 (Plaintiff Mauricio), and paragraphs 43 through 46 (Plaintiff Montes), and the general allegations related to their claims as if fully set forth herein. Plaintiffs Gonzalez and Mauricio state this claim for relief against Defendant Vides Casanova; Plaintiffs Gonzalez and Montes state this claim for relief against Defendant Garcia.

93. The crimes against humanity perpetrated against Plaintiffs Gonzalez, Mauricio, and Montes described herein constituted “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 constituted a violation of customary international law as part of the “the law of nations.” The customary international law prohibition against crimes against humanity is reflected, expressed, defined and codified in Article 7 of the Rome Statute of the International Criminal Court, United Nations, Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, U.N. Doc. A/CONF. 183/9 (1998), *reprinted in* 37 I.L.M. 999 (1998) (“the ICC Statute”); the Charter of the International Military Tribunal, Nuremberg, of 8 August 1945 (“IMT Charter”), *confirmed by* G.A. Res. 3, U.N. Doc. A/50 (1946) and G.A. Res. 95, U.N. Doc. A/236 (1946); the Special Proclamation by the Supreme Commander for the Allied Powers at Tokyo, Jan. 19, 1946, T.I.A.S. No. 1589. 4 Bevens 20, 21, *as amended* Apr. 26, 1946, 4 Bevens 20, 27 (“Tokyo Charter”); the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, adopted Nov. 26, 1968, 754 U.N.T.S. 73 (entered into force Nov. 11, 1970); the Principles of International Co-Operation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes Against Humanity, G.A. Res. A/9039/Add.I (1973); the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Report of the Secretary General pursuant to Paragraph 2 of Security Council Resolution 808 (1993), U.N. Doc. S/25704 at 36 (1993),

adopted by S.C. Res. 827, U.N. Doc. S/Res./827 (1993), *reprinted in* 32 I.L.M. 1159, 1170 (1993) (“ICTY Statute”); and the Statute for the International Tribunal for Rwanda, U.N. SCOR, 49th Sess., 3453rd mtg. at 1, U.N. Doc. S/Res./955 (1994) (“ICTR Statute”).

94. The acts of torture, arbitrary detention, rape and other inhumane acts alleged herein constituted crimes against humanity under customary international law. These acts were committed in the context of a widespread and systematic attack against a civilian population. These acts were instigated and/or directed by Defendants and their subordinates, agents and/or co-conspirators in the Salvadoran Military and Security Forces. Defendants and their subordinates and/or co-conspirators sought to conceal and cover up these acts. Further, Defendants failed to prevent abuses or punish the perpetrators.

95. The acts described herein placed Plaintiffs Gonzalez, Mauricio, and Montes in imminent fear for their lives and caused them to suffer severe physical and mental pain and suffering. As a result of the crimes against humanity described above, Plaintiffs Gonzalez, Mauricio, and Montes are entitled to compensation in an amount to be determined at trial.

96. Defendants’ acts 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.

SIXTH CLAIM FOR RELIEF

(Cruel, Inhuman or Degrading Treatment or Punishment Under the Alien Tort Claims Act and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment)

97. Plaintiffs Gonzalez, Mauricio, and Montes reallege and incorporate by reference the specific allegations set forth in paragraphs 27 through 33 (Plaintiff Gonzalez), paragraphs 37 through 39 (Plaintiff Mauricio), and paragraphs 43 through 46 (Plaintiff Montes), and the general allegations related to their claims as if fully set forth herein. Plaintiffs Gonzalez and Mauricio state this claim for relief against Defendant Vides Casanova; Plaintiffs Gonzalez and Montes state this claim for relief against Defendant Garcia.

98. The cruel, inhuman or degrading treatment or punishment committed against Plaintiffs Gonzalez, Mauricio, and Montes described herein constituted “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 violated the prohibition against cruel, inhuman or degrading treatment or punishment contained in the Torture Convention.

99. The acts of cruel, inhuman or degrading treatment or punishment described herein had the intent and the effect of grossly humiliating and debasing Plaintiffs Gonzalez, Mauricio, and Montes, forcing them to act against their will and conscience, inciting fear and anguish, breaking their physical or moral resistance, and/or forcing them to leave their home and country and flee into exile. As an intended result of these acts, Plaintiffs Gonzalez, Mauricio, and Montes were placed in great fear of their lives, suffered severe physical and psychological abuse and agony, and were forced to flee into exile.

100. These acts were instigated and/or directed by Defendants and their subordinates, agents and/or co-conspirators in the Salvadoran Military and Security Forces. Defendants and their subordinates and/or co-conspirators sought to conceal and cover up these acts. Further, Defendants failed to prevent abuses or punish the perpetrators.

101. As a result of the cruel, inhuman and degrading treatment or punishment described above, Plaintiffs Gonzalez, Mauricio, and Montes have been damaged in an amount to be determined at trial.

102. Defendants’ acts 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.

SEVENTH CLAIM FOR RELIEF

(Cruel, Inhuman or Degrading Treatment or Punishment Under the Alien Tort Claims Act and the International Covenant on Civil and Political Rights)

103. Plaintiffs Gonzalez, Mauricio, and Montes reallege and incorporate by reference the specific allegations set forth in paragraphs 27 through 33 (Plaintiff Gonzalez), paragraphs 37 through 39 (Plaintiff Mauricio), and paragraphs 43 through 46 (Plaintiff Montes), and the general

allegations related to their claims as if fully set forth herein. Plaintiffs Gonzalez and Mauricio state this claim for relief against Defendant Vides Casanova; Plaintiffs Gonzalez and Montes state this claim for relief against Defendant Garcia.

104. The acts of cruel, inhuman or degrading treatment or punishment inflicted upon Plaintiffs Gonzalez, Mauricio, and Montes described herein constituted “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 violated the prohibition against cruel, inhuman and degrading treatment in Article 7 of the ICCPR.

105. The acts of cruel, inhuman or degrading treatment or punishment described herein had the intent and the effect of grossly humiliating and debasing Plaintiffs Gonzalez, Mauricio, and Montes, forcing them to act against their will and conscience, inciting fear and anguish, breaking their physical or moral resistance, and/or forcing them to leave their home and country and flee into exile. As an intended result of these acts, Plaintiffs Gonzalez, Mauricio, and Montes were placed in great fear of their lives, suffered severe physical and psychological abuse and agony, and were forced to flee into exile.

106. These acts were instigated and/or directed by Defendants and their subordinates, agents and/or co-conspirators in the Salvadoran Military and Security Forces. Defendants and their subordinates and/or co-conspirators sought to conceal and cover up these acts. Further, Defendants failed to prevent abuses or punish the perpetrators.

107. As a result of the cruel, inhuman and degrading treatment or punishment described above, Plaintiffs Gonzalez, Mauricio, and Montes have been damaged in an amount to be determined at trial.

108. Defendants’ acts 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.

EIGHTH CLAIM FOR RELIEF

*(Cruel, Inhuman or Degrading Treatment or Punishment Under the
Alien Tort Claims Act and Customary International Law)*

109. Plaintiffs Gonzalez, Mauricio, and Montes reallege and incorporate by reference the specific allegations set forth in paragraphs 27 through 33 (Plaintiff Gonzalez), paragraphs 37 through 39 (Plaintiff Mauricio), and paragraphs 43 through 46 (Plaintiff Montes), and the general allegations related to their claims as if fully set forth herein. Plaintiffs Gonzalez and Mauricio state this claim for relief against Defendant Vides Casanova; Plaintiffs Gonzalez and Montes state this claim for relief against Defendant Garcia.

110. The acts of cruel, inhuman or degrading treatment or punishment committed against Plaintiffs Gonzalez, Mauricio, and Montes described herein constituted “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 constituted a violation of customary international law as part of the ‘law of nations.’” The customary international law prohibition against cruel, inhuman or degrading treatment or punishment is reflected, expressed, defined and codified in the Torture Convention; the ICCPR; the Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948); the Declaration on the Protection of All Persons From Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1976); the Fourth Geneva Convention; Protocol II; the American Convention on Human Rights (Pact of San Jose, Costa Rica), O.A.S.T.S. No. 36 at 1, O.A.S. Off. Rec. OEA/Ser. L/V/II, 23, doc. 21, rev. 2 (English 1978); and the Inter-American Convention to Prevent and Punish Torture, O.A.S.T.S. No. 67, O.A.S. Doc. OEA/Ser. P, AG/doc. 023/85 rev. 1, at 46-54 (English 1986), *reprinted in* 25 I.L.M. 519 (1986).

111. The acts of cruel, inhuman or degrading treatment or punishment described herein had the intent and the effect of grossly humiliating and debasing Plaintiffs Gonzalez, Mauricio, and Montes, forcing them to act against their will and conscience, inciting fear and anguish,

breaking their physical or moral resistance, and/or forcing them to leave their home and country and flee into exile.

112. These acts were instigated and/or directed by Defendants and their subordinates, agents and/or co-conspirators in the Salvadoran Military and Security Forces. Defendants and their subordinates and/or co-conspirators sought to conceal and cover up these acts. Further, Defendants failed to prevent abuses or punish the perpetrators.

113. As an intended result of Defendants' acts, Plaintiffs Gonzalez, Mauricio, and Montes were placed in great fear of their lives, suffered severe physical and psychological abuse and agony, and were forced to leave their homes and country and flee into exile. As a result of the cruel, inhuman and degrading treatment or punishment described above, Plaintiffs Gonzalez, Mauricio, and Montes have been damaged in an amount to be determined at trial.

114. Defendants' acts 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.

NINTH CLAIM FOR RELIEF

(Arbitrary Detention Under the Alien Tort Claims Act and Customary International Law)

115. Plaintiffs Gonzalez, Mauricio, and Montes reallege and incorporate by reference the specific allegations set forth in paragraphs 26 through 33 (Plaintiff Gonzalez), paragraphs 37 through 40 (Plaintiff Mauricio), and paragraphs 43 through 47 (Plaintiff Montes), and the general allegations related to their claims as if fully set forth herein. Plaintiffs Gonzalez and Mauricio state this claim for relief against Defendant Vides Casanova; Plaintiffs Gonzalez and Montes state this claim for relief against Defendant Garcia.

116. The acts of arbitrary detention described herein constituted "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 constituted a violation of customary international law as part of the "the law of nations." The customary international law prohibition against arbitrary detention is reflected, expressed, defined and codified in the ICCPR; the Universal Declaration of Human Rights, G.A. Res. 217A(iii), U.N. Doc. A/810 (1948); the American Convention on

Human Rights (Pact of San Jose, Costa Rica), O.A.S.T.S. No. 36 at 1, O.A.S. Off. Rec. OEA/Ser. L/V/II, 23, doc. 21, rev. 2 (English 1978); the Fourth Geneva Convention; Protocol II.

117. Defendants' subordinates, agents and/or co-conspirators arbitrarily detained Plaintiffs Gonzalez, Mauricio, and Montes without warrant, probable cause, articulable or notice of charges, and failed to accord them due process. These acts of arbitrary detention were instigated and/or directed by Defendants and their subordinates, agents and/or co-conspirators in the Salvadoran Military and Security Forces. Defendants and their subordinates and/or co-conspirators sought to conceal and cover up these acts. Further, Defendants failed to prevent abuses or punish the perpetrators.

118. The acts described herein placed Plaintiffs Gonzalez, Mauricio, and Montes in imminent fear for their lives and caused them to suffer severe physical and mental pain and suffering. As a result of the acts of arbitrary detention described above, Plaintiff s Gonzalez, Mauricio, and Montes are entitled to compensation in an amount to be determined at trial.

119. Defendants' acts 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.

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

1. For compensatory damages according to proof;
2. For punitive and exemplary damages, according to proof;
3. For prejudgment interest as allowed by law;

4. For attorneys' fees and costs of suit, according to proof;
5. For any such other and further relief as the Court deems just and proper.

Dated: February 17, 2000.

Respectfully submitted,

By _____

Attorneys for Plaintiffs

JAMES J. GARRETT
JAMES M. SCHURZ
PETER J. STERN
BETH VAN SCHAACK
MORRISON & FOERSTER LLP
101 Ygnacio Valley Road, Suite 450
Walnut Creek, CA 94596
Tel: (925) 295-3300
Fax: (925) 946-9912

JAMES K. GREEN
(Florida Bar No. 0229466)
250 Australia Ave., Suite 1602
West Palm Beach, Florida 33401
Tel. (561) 695-2029
Fax (561) 655-1357

SUSAN SHAWN ROBERTS
JILL ANNE PEASLEY
BETH STEPHENS
The Center for Justice and Accountability
588 Sutter St., No. 433
San Francisco, CA 94102
(415) 544-0444

CAROLYN PATTY BLUM
Boalt Hall School of Law
685 Simon Hall
University of California
Berkeley, CA 94720-7200
(510) 642-5980

PAUL HOFFMAN
Schonbrun DeSimone Seplow Harris & Hoffman,
L.L.P.
723 Ocean Front Walk
Venice, CA 90291
(301) 396 0731