

to punish him for his father's "presumed political beliefs and ideology," and they assert that Calderon's father's arrest approximately three months earlier—for possession of allegedly "subversive" flyers—was the motivation behind the killing. (Mem. Support Pls.' Mot. Summ. J. 16.) The Court finds this purported connection somewhat speculative. However, the unexpected, late-night, and forcible nature of the men's entry, as well as the shots fired into the air upon the men's departure, demonstrate a clear effort to intimidate or coerce. Accordingly, the Court concludes that Calderon has established all of the requisite elements of torture, as defined under the TVPA, and GRANTS his motion for summary judgment as to this claim.

4. Alvarado

Finally, Plaintiff Daniel Alvarado seeks summary judgment on his claim of torture under the ATCA and the TVPA. The undisputed facts plainly reveal that Alvarado was subjected to severe pain and suffering by members of the Treasury Police, including electric shocks and beatings. The facts also demonstrate that Alvarado was tortured until he agreed to sign a statement stating that he had murdered Lt. Cmdr. Albert Schaufelberger, a United States military adviser. Finally, Defendant does not dispute that Major Ricardo Pozo, chief of the intelligence section of the Treasury Police and the lead investigator in Lt. Cmdr. Schaufelberger's death, was in charge of the men who tortured Alvarado. (Def.'s Resp. Pls.' SOMF ¶¶ 64-75.) The Court concludes that Alvarado has thus established governmental involvement, as well as the other

elements of torture, under the TVPA and ATCA. His motion for summary judgment as to this predicate act is GRANTED.

C. Extrajudicial Killing

The TVPA defines extrajudicial killing 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. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

28 U.S.C. § 1350 note § 3(a). Courts rely on this definition to analyze claims of extrajudicial killing under the ATCA as well. See Saravia, 348 F.Supp.2d at 1148, 1153-54. To make out a claim for extrajudicial killing under both the TVPA and the ATCA, Plaintiffs must show that the killing was carried out under actual or apparent authority, or color of law, of any foreign nation. See 28 U.S.C. § 1350 note § 2(a) ("An individual who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to extrajudicial killing shall . . . be liable . . ."); H.R. Rep. No. 102-367(III), reprinted in 1992 U.S.C.C.A.N. at 87 (noting that suits against "purely private groups" are not actionable under the TVPA); Saravia, 348 F.Supp.2d at 1149-50 ("Under Section 2(a) of the

TVPA, in order to make out a claim for extrajudicial killing, plaintiff must show that [Defendant] acted under actual or apparent authority, or color of law, of any foreign nation. Courts have generally required this showing for extrajudicial killing claims under the ATC as well.”); Kadic, 70 F.3d at 243-44 (holding summary execution actionable under the ATCA “only when committed by state officials or under color of law”).

1. Chavez

Chavez seeks summary judgment on her claim that her parents were summarily executed by government-affiliated death squads. As set forth above, however, a triable issue of fact exists as to whether there was government involvement or substantial cooperation between private individuals and the government in her parents’ deaths. See supra Part IV B.1. Accordingly, Chavez’s motion for summary judgment on these claims, under both the TVPA and the ACTA, is DENIED.

2. Calderon

The undisputed facts surrounding the murder of Calderon’s father demonstrate that all of the requirements for extrajudicial killing under the TVPA are met. Namely, Calderon observed men—carrying military-issued rifles and accompanied by members of the National Police—enter his home and deliberately execute his father without judicial process or for any apparent lawful reason. (Def.’s Resp. Pls.’ SOMF ¶¶ 46-55.) As Defendant does not dispute Calderon’s claim, there is no genuine issue of

material fact on this predicate act. Accordingly, Calderon's motion for summary judgment as to his claim of extrajudicial killing under the TVPA is GRANTED.

3. Revelo

Revelo's claim that her husband, Manuel Franco, was summarily executed is not based on her personal knowledge, but rather on the findings of the Truth Commission Report. See supra n.2. Accordingly, the Court must first determine whether the Report constitutes admissible evidence. See Turner v. Scott, 119 F.3d 425, 430 (6th Cir. 1997) ("summary judgment rulings must be based on admissible evidence"); Wiley v. United States, 20 F.3d 222, 226 (6th Cir. 1994) ("hearsay evidence cannot be considered on a motion for summary judgment").

Federal Rule of Evidence 803(8)(C) provides an exception to the hearsay rule for "[r]ecords, reports, statements . . . of public offices or agencies, setting forth . . . factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness." Fed. R. Evid. 803(8)(C). The Rule creates a presumption of admissibility, which the opposing party has the burden to overcome by proving its untrustworthiness. Bank of Lexington & Trust Co. v. Vining-Sparks Sec., Inc., 959 F.2d 606, 616 (6th Cir. 1992).

As a threshold matter, the Truth Commission Report must have been prepared by a "public office or agency" to fall under Rule 803(8)(C). The Report was prepared by the United Nations Truth Commission on El Salvador, which was formally created by the April, 1991, Mexico Agreements between the Government of El Salvador and the Frente Farabundo Martí para la Liberación Nacional ("FMLN"). The Mexico Agreements defined the functions and powers of the Commission, which were expanded by the parties' Peace Agreement in 1992. (Truth Comm'n Report at PL0017-18.) It is apparent that the United Nations Truth Commission on El Salvador is a "public office or agency" under the meaning of Rule 803(8)(C). See United States v. M'Biye, 655 F.2d 1240, 1242 (D.C. Cir. 1981)(finding that United Nations is a "public office or agency" for Rule 803(10) purposes)("The U.N. is an organization composed of nation members. It would defy reason to suppose that such an organization, constituted of public entities of the highest political order, would not itself be a public agency.")

It is equally clear that the Truth Commission Report sets forth "factual findings," and not merely a "recitation of statements of other individuals" Miller v. Field, 35 F.3d 1088, 1092 (6th Cir. 1994)(holding investigative police reports comprised of summaries of interviews with witnesses, victim, and prosecutor that contained "neither factual findings made by the report's preparers nor conclusions and opinions based upon such factual findings" inadmissible under Rule 803(8)(C)); see also Combs v. Wilkinson, 315 F.3d 548, 555-56 (6th

Cir. 2002)(rejecting argument that investigative report was not admissible under Rule 602 or 803(8) for lack of authors' personal knowledge because such reports "embody the results of investigation and accordingly are often not the product of the declarant's firsthand knowledge")(quotation omitted); Hill v. Marshall, 962 F.2d 1209, 1215 n.2 (6th Cir. 1992)(admitting report under Rule 803(8)(C) based on interviews with witnesses where author did not have personal knowledge of events); Bridgeway Corp. v. Citibank, 201 F.3d 134, 143 (2d Cir. 2000)(holding United States State Department Country Reports for Liberia admissible under Fed. R. Evid. 803(8)(C) and noting the rule "renders presumptively admissible not merely . . . factual determinations in the narrow sense, but also . . . conclusions or opinions that are based upon a factual investigation")(internal quotations omitted). Finally, it is evident, as set forth above, that the Report's findings resulted "from an investigation made pursuant to authority granted by law." Fed. R. Evid. 803(8)(C); (Truth Comm'n Report at PL0009)(noting Commissioners "were entrusted with their task by the Secretary-General of the United Nations").

Having concluded that the Truth Commission Report is presumptively admissible, Defendant has the burden to prove that the Truth Commission Report is not sufficiently trustworthy. See Bank of Lexington & Trust Co., 959 F.2d at 616. To determine whether a report is trustworthy, the court considers four factors: (1) the timeliness of the investigation, (2) the special skill or experience of the investigators, (3) whether the agency held a

hearing, and (4) possible motivational problems. Id. Defendant's sole argument is that the Report is based on hearsay, not first-hand knowledge. (Def.'s Mem. Opp. Pls.' Mot. Summ. J. 4.) This recitation is insufficient to overcome the Report's presumptive admissibility, and it is clear that the Report satisfies each of the four indicators of trustworthiness.

First, the Report is based on an investigation that began in a timely fashion upon the signing of the Peace Agreement between the Salvadoran government and the FMLN. (Truth Comm'n Report at PL0009, PL0018)(noting work began on July 13, 1992, following signing of Peace Agreement in January). Second, the credentials of the Commissioners—a former president of Columbia; a congressman and former Minister of Foreign Affairs of Venezuela; and an international law professor in the United States and former president of the Inter-American Court of Human Rights—as well as their advisors, consultants, and researchers appear more than sufficient to satisfy the requirement that the investigators have special skill or experience. (See id. at PL0236-43.) The third factor under the trustworthiness inquiry is whether the agency held a hearing. While the Truth Commission did not hold formal hearings, it did conduct numerous interviews and examined thousands of complaints, court papers, and other documents. (Id. at PL0010.)

Finally, there is no evidence of "motivational problems" or bias in the Commission's methodology or conclusions. (See id. at PL0025-26)("[T]he Commission felt that it had a special obligation to

take all possible steps to ensure the reliability of the evidence used to arrive at a finding. In cases where it had to identify specific individuals as having committed, ordered or tolerated specific acts of violence it applied a stricter test of reliability. . . . In order to guarantee the reliability of the evidence it gathered, the Commission insisted on verifying, substantiating and reviewing all statements as to facts, checking them against a large number of sources whose veracity had already been established.”)

As the Truth Commission Report exhibits all four indicators of trustworthiness and Defendant has offered nothing to rebut its admissibility, the Court finds that the Report is admissible under Rule 803(8)(C) of the Federal Rules of Evidence. Having determined that the Report is admissible, the Court now turns to the sufficiency of Revelo's allegations of the extrajudicial killing of her husband, Manuel Franco.

According to the Truth Commission report, Franco was a leader of the Democratic Revolutionary Front (“FDR”). On November 27, 1980, Franco and five other FDR leaders were abducted by “one or more public security forces” from the Colegio San Jose, in San Salvador. Treasury Police provided the external security operation, “which aided and abetted the perpetrators.” (Truth Comm'n Report at PL0068-69.) Their bodies were later dumped along the road outside of San Salvador. (*Id.* at PL0070.) Revelo found her husband's body on the floor of a funeral home and observed gunshot wounds to his

mouth and thorax, as well as a "very well-defined burn that surrounded his entire neck." (Revelo Dep. at 31.) The Court finds that there is no genuine issue of material fact on Revelo's claim that her husband was killed without judicial process by state actors. Accordingly, Revelo's motion for summary judgment as to her extrajudicial killing claim under the ATCA and the TVPA is GRANTED.

VI. Conclusion

For all of the reasons set forth above, Plaintiff Chavez's motion for summary judgment on her claims of torture and extrajudicial killing under the ATCA and the TVPA, as predicate acts under Plaintiffs' theory of command responsibility, is DENIED. Plaintiff Santos' motion for summary judgment on her claim of torture under the TVPA, as a predicate act under Plaintiffs' theory of command responsibility, is GRANTED. Plaintiff Calderon's motion for summary judgment on his claims of torture and extrajudicial killing under the TVPA, as predicate acts under Plaintiffs' theory of command responsibility, is GRANTED. Plaintiff Revelo's motion for summary judgment on her claim of extrajudicial killing under the TVPA and the ATCA, as predicate acts under Plaintiffs' theory of command responsibility, is GRANTED. Plaintiff Alvarado's motion for summary judgment on his claim of torture under the TVPA and the ACTA, as a predicate act under Plaintiffs' theory of command responsibility, is GRANTED.

80a

So ORDERED this [25] day of October, 2005.

/s/ Jon P. McCalla
JON P. McCALLA
UNITED STATES
DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF TENNESSEE
WESTERN DIVISION**

ANA PATRICIA CHAVEZ,)	
CECILIA SANTOS,)	
JOSE FRANCISCO CALDERON,)	
JANE DOE and JOHN DOE,)	
)	
Plaintiffs,)	
)	
v.)	No. 03-2932
)	M/P
NICOLAS CARRANZA,)	
)	
Defendant.)	

**ORDER DENYING DEFENDANT'S MOTION
FOR JUDGMENT ON THE PLEADINGS,
AND IN ADDITION THERETO OR IN THE
ALTERNATIVE, FOR SUMMARY JUDGMENT**

Before the Court is the Motion of the Defendant, Nicolas Carranza, for Judgment on the Pleadings, and in Addition Thereto or in the Alternative, for Summary Judgment, filed June 24, 2005. Plaintiffs responded in opposition on July 27, 2005. For the following reasons, the Court DENIES Defendant's motion.

I. Background

Plaintiffs, who are or were at all pertinent times citizens of El Salvador, filed their original complaint in this action pursuant to the Torture Victims Protection Act ("TVPA"), Pub. L. No. 102-256, 106 Stat. 73 (enacted March 12, 1992)(codified as Note to 28 U.S.C. § 1350), and the Alien Tort Claims Act ("ATCA"), 28 U.S.C. § 1350, on December 10, 2003. Plaintiffs filed an Amended Complaint on July 29, 2004, and a Second Amended Complaint on June 20, 2005. Plaintiffs allege that Defendant is liable for the extrajudicial killings and/or torture of themselves or members of their immediate families that were committed by the Salvadoran Security Forces or the Salvadoran Treasury Police in the early 1980s.

According to Plaintiffs, Defendant, Nicolas Carranza, served as El Salvador's Subsecretary of Defense and Public Security, from about October, 1979, until January, 1981, during which time he "exercised command and control over the three units of the Salvadoran Security Forces—the Guardia Nacional ('National Guard'), Policia Nacional ('National Police'), and Policia de Hacienda ('Treasury Police')." (Second Am. Compl. at 2-3.) He served as Director of the Treasury Police from about June, 1983, until May, 1984, during which time he "possessed and exercised command and control over the Treasury Police." (*Id.* at 3.) Plaintiffs' Second Amended Complaint alleges that Mr. Carranza "exercised command responsibility over, conspired

with, or aided and abetted subordinates in the Security Forces of El Salvador, or persons or groups acting in coordination with the Security Forces or under their control, to commit acts of extrajudicial killing, torture, and crimes against humanity, and to cover up these abuses." (Second Am. Compl. ¶ 2.) Defendant has resided in the United States since 1984 and is currently a resident of Memphis, Tennessee.

Defendant filed a Motion to Dismiss on January 20, 2004, arguing that Plaintiffs' claims are barred by the statute of limitations and that this Court lacks subject matter jurisdiction. Defendant then filed a Renewed Motion to Dismiss on March 9, 2004, setting forth similar arguments to those made in the original Motion to Dismiss. The Court denied Defendant's motions on September 30, 2004.

Defendant moves for judgment on the pleadings and/or summary judgment on three grounds: (1) the claims of each Plaintiff are time-barred; (2) Plaintiffs' claims are barred under Salvadoran law, and the United States "should give full faith and credit to the sovereign legal laws of the nation of El Salvador by reason of the accord of nations and comity between nations and the common law doctrine of full faith and credit"; and (3) there is no genuine issue of material fact as to any of Defendant's affirmative defenses. (Mot. J. Pleadings, or in the Alternative, Summ. J. ¶¶ 1-3.)

II. Standard of Review

Under Federal Rule of Civil Procedure 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). So long as the movant has met its initial burden of "demonstrat[ing] the absence of a genuine issue of material fact," Celotex, 477 U.S. at 323, and the nonmoving party is unable to make such a showing, summary judgment is appropriate. Emmons v. McLaughlin, 874 F.2d 351, 353 (6th Cir. 1989). In considering a motion for summary judgment, "the evidence as well as all inferences drawn therefrom must be read in a light most favorable to the party opposing the motion." Kochins v. Linden-Alimak, Inc., 799 F.2d 1128, 1133 (6th Cir. 1986); see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

When confronted with a properly-supported motion for summary judgment, the nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e); see also Abeita v. TransAmerica Mailings, Inc., 159 F.3d 246, 250 (6th Cir. 1998). A genuine issue of material fact exists for trial "if the evidence [presented by the nonmoving party] is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In essence, the inquiry is "whether the

evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." Id. at 251-52.

The standard of review for a judgment on the pleadings is the same as that for a motion to dismiss under Fed. R. Civ. P. 12(b)(6). Grindstaff v. Green, 133 F.3d 416, 421 (6th Cir. 1998). "We must construe the complaint in the light most favorable to the plaintiff, accept all of the complaint's factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of the claims that would entitle relief." E.E.O.C. v. J.H. Routh Packing Co., 246 F.3d 850, 851 (6th Cir. 2001)(quotation omitted).

III. Analysis

A. Statute of Limitations and Equitable Tolling

Defendant acknowledges that this Court has previously ruled that "extraordinary circumstances" warrant the equitable tolling of the applicable statute of limitation in this case. Defendant urges the Court to reconsider its ruling in light of the Eleventh Circuit's recent decision in Arce v. Garcia, 400 F.3d 1340 (11th Cir. 2005), which held that plaintiffs' claims under the ATCA and the TVPA against former officials in the government of El Salvador during the 1980s were time-barred. The Court declines to do so.

Arce involved claims under the ACTA and the TVPA against the former minister of defense of El Salvador and the former director-general of El Salvador's National Guard during the late 1970s and early 1980s. The plaintiffs were three Salvadoran individuals who claimed they were tortured by government soldiers during the country's civil war. At trial, the jury found for the plaintiffs, and the defendants appealed, arguing that the district court erred by failing to dismiss the plaintiffs' claims as time-barred under the relevant statutes of limitation. The Court of Appeals for the Eleventh Circuit held that the plaintiffs "failed to present sufficient evidence . . . [to] satisfy the requirements for equitable tolling" and therefore, their claims were time-barred. The court vacated the jury's verdict and dismissed the plaintiffs' claims. Id. at 1345, 1351.

On August 5, 2005, however, after Defendant filed his motion for judgment on the pleadings and/or summary judgment, the Eleventh Circuit vacated its order in Arce without explanation.¹ Since the Arce opinion has been vacated, it has little persuasive effect, and this Court will not revisit its previous ruling in light of the Eleventh Circuit's analysis. Even if the Arce opinion had not been vacated, however, it does not constitute authority binding on this Court.

¹ Plaintiffs submitted a copy of the order to this Court on August 24, 2005. (See Notice of Supp. Authority Support Pls.' Opp. to Def.'s Mot. Summ. J.)

Moreover, the holding in Arce does not compel a different result in this case, as this Court has already examined Defendant's statute of limitations argument at length. In its order denying Defendant's motions to dismiss, the Court rejected Defendant's position—that the ten-year statute of limitations should not be equitably tolled—after careful consideration of both the facts and applicable case law. Accordingly, Defendant's motion for judgment on the pleadings and motion for summary judgment on this ground is DENIED.

B. Doctrine of Comity

Defendant next argues that the Court should decline to exercise jurisdiction in this case based on the doctrine of comity and full faith and credit. In particular, Defendant argues that the broad amnesty law passed by the Salvadoran Legislature at the conclusion of the country's civil war "is entitled to full faith and credit and is entitled to recognition in the United States" and "the courts of the United States should not exercise jurisdiction which circumvents the sovereign law of El Salvador." (Def.'s Mem. Support. Mot. J. Pleadings or in the Alternative, Summ. J. ("Def.'s Mem.") at 9.) The amnesty law grants a "broad, absolute and unconditional amnesty . . . in favor of all those who in one way or another participated in political crimes, crimes with political ramifications, or common crimes committed by no less than twenty people, before January 1, 1992." Doe v. Saravia, 348 F.Supp.2d 1112, 1133 (E.D. Cal. 2004)(quoting 2000 Inter-American Commission on Human Rights

Decision).² The Legislative Assembly of El Salvador adopted the law on March 20, 1993, and according to the Saravia court's factual findings, the Salvadoran Supreme Court has twice upheld its constitutionality, in 1993 and 2000, and no prosecutions have taken place under this law. Id.

Plaintiffs argue that Defendant is not entitled to dismissal based on the doctrine of comity because (1) U.S. law and the Salvadoran amnesty law are not in conflict; (2) dismissal on comity grounds would run contrary to the mandate of the TVPA; (3) even if the U.S. law and the amnesty law are in conflict, the Court should not abstain from adjudication; and (4) Defendant's authority is not on point and actually supports Plaintiffs' position. (Id. at 11-16.) The Court finds Plaintiffs arguments persuasive.

International comity is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or other persons who are under the protection of its

² According to a 1994 report of the Inter-American Commission on Human Rights, the "General Amnesty Law for the Consolidation of the Peace" grants a "full, absolute and unconditional amnesty to all those who participated in any way in the commission, prior to January 1, 1992, of political crimes or common crimes linked to political crimes or common crimes in which the number of person involved is no less than twenty." Inter-American Commission on Human Rights, Report on the Situation of Human Rights in El Salvador, Feb. 11, 1994, available at <http://www.cidh.oas.org/countryrep/ElSalvador94/eng/toc.htm>. The slight differences in the language of Saravia and the 1994 report are not important for the purposes of the Court's analysis.

laws." Hilton v. Guyot, 159 U.S. 113, 164 (1895); see also S&S Screw Mach. Co. v. Cosa Corp., 647 F.Supp. 600, 615 (M.D. Tenn. 1986) ("International comity is the recognition that one nation accords within its territory to the otherwise nonbinding laws of another nation, having due regard both for international cooperation and for the rights of those who seek the protection of the domestic laws.") Comity is a discretionary doctrine. Hilton, 159 U.S. at 163-64 ("Comity, in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other.") It is "not a rule of law, but one of practice, convenience and expediency." Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1971). The doctrine "neither impels nor obliges the United States district court to decline jurisdiction in a particular case." Bodner v. Banque Paribas, 114 F.Supp.2d 117, 129 (E.D.N.Y. 2000). The party who puts forward the doctrine of comity has the burden to prove that it applies. Sarei v. Rio Tinto PLC, 221 F.Supp.2d 1116, 1200 (C.D. Cal. 2002); Allstate Life Ins. Co. v. Linter Group Ltd., 994 F.2d 996, 999 (2d Cir. 1993).

In order for the issue of comity to arise, there must be an actual conflict between domestic and foreign law. Hartford Fire Ins. Co v. Cal., 509 U.S. 764, 798 (1993); see also Societe Nationale Industrielle Aerospatiale v. United States District Court for the Southern District of Iowa, 482 U.S. 522, 555 (1987) (Blackmun, J., concurring and dissenting) ("[T]he threshold question in a comity analysis is whether there is in fact a true conflict between domestic and foreign law."); In re Simon,

153 F.3d 991, 998 (9th Cir. 1998) (“[G]eneral principles of international comity . . . [are] limited to cases in which ‘there is in fact a true conflict between domestic and foreign law.’”); In re Maxwell Communication Corp., 93 F.3d 1036, 1047 (2d Cir. 1996) (“International comity comes into play only when there is a true conflict between American law and that of a foreign jurisdiction.”)

Where, as here, “a person subject to regulation by two states can comply with the laws of both[,]” there is no conflict for comity purposes. Hartford Fire Ins. Co., 509 U.S. at 799. An example of a foreign law in “direct conflict” with the ATCA is illustrated in Sarei v. Rio Tinto PLC, 221 F.Supp.2d 116 (C.D. Cal. 2002). In Sarei, the government of Papua New Guinea passed a law that prohibited plaintiffs from filing claims involving local mining and petroleum projects in foreign courts. The court found a “clear . . . conflict between the Act’s prohibition on filing claims in foreign jurisdictions and the ATCA’s vesting of jurisdiction to hear such claims in the United States.” Id. at 1204.

In the instant action, there is no conflict between domestic and foreign laws because El Salvador’s amnesty law cannot be construed to prohibit legal claims filed outside of El Salvador. The plain language of the law does not support this reading, and Defendant has not put forward any evidence to show that the law has an extraterritorial effect. Application of the ATCA or TVPA in United States federal court does not interfere with the application of the Salvadoran amnesty law. Similarly, Plaintiffs may be barred from filing suit in

El Salvador, but they are not barred from filing suit under United State law. As there is no conflict of law in this case, Defendant has failed to establish the threshold requirement for the applicability of comity principles.

Moreover, the doctrine of comity is only relevant in the absence of contrary congressional direction; it has "no application" where Congress has spoken on the issue. In re Maxwell Communication Corp., 93 F.3d at 1047. Congress established the TVPA to provide "an unambiguous and modern basis for a cause of action" for torture and summary execution committed anywhere in the world and specifically "authorize[d] the Federal courts to hear cases brought" under the Act. H.R. Rep. No. 102-367(III), reprinted in 1992 U.S.C.C.A.N. at 87 (justifying need for Act on grounds that despite "universal consensus condemning" torture and summary execution, many government still engage in or tolerate these abuses and that judicial redress is often "least effective" in those countries); see also Sosa v. Alvarez-Machain, 542 U.S. 692 (2004)(noting "clear mandate appears in the Torture Victim Protection Act of 1991," that creates basis for federal claims of torture and extrajudicial killing).

Congress has also spoken clearly on the use of the Alien Tort Claims Act, noting that claims by aliens for torts committed "in violation of the law of nations" under the ATCA have been "successfully maintained" and that the TVPA should not replace the ATCA. H.R. Rep. No. 102-367(III), reprinted in 1992 U.S.C.C.A.N. at 86 ("[C]laims based on torture or summary executions do not exhaust the list of

actions that may appropriately be covered by section 1350. That statute should remain intact to permit suits based on other norms that already exist or may ripen in the future into rules of customary international law.”); see also Kadic v. Karadzic, 70 F.3d 232, 241 (2d Cir. 1995) (“The scope of the Alien Tort Act remains undiminished by enactment of the Torture Victim Act.”) For the Court to decline jurisdiction in this case in deference to El Salvador’s amnesty legislation would run contrary to Congress’ clear intent to provide a means for victims of violations of the law of nations to seek redress.³ Accordingly, the Court DENIES Defendant’s motion for judgment on the pleadings and motion for summary judgment on this ground.

C. Affirmative Defenses

Defendant also moves for summary judgment on each of his affirmative defenses. (Mot. Def. J. Pleadings and/or Mot. Summ. J. ¶ 3.) The Court has discussed two of Defendant’s affirmative defenses—based on the statute of limitations and the doctrine of comity—above. Defendant’s other affirmative

³ Defendant relies exclusively on Bernstein v. Van Heyghen Freres Societe Anonyme, 163 F.2d 246 (2d Cir. 1947), to support his comity argument. Specifically, he claims that Bernstein stands for the principle that “one nation should not abrogate or attempt to interpret the acts and laws of a foreign nation, but should accord them full faith and credit or comity.” (Def.’s Mem. at 11.) Bernstein does not concern the doctrine of comity, however. It examines the act of state doctrine, a defense which Defendant has not raised. Furthermore, Plaintiffs are not asking the Court to abrogate or interpret the Salvadoran amnesty law; their claims are brought under U.S. law. Defendant’s reliance on Bernstein is misplaced.

defenses, set forth in his Answer, filed June 24, 2005, are: failure to state a claim upon which relief can be granted; the doctrine of laches; denial of due process and equal protection of the law; and that Defendant "has not undertaken any action to personally conceal or hide the claims of the Plaintiffs or to prevent them from commencing legal action against them during the entire period of time he has been in the United States and available for service of process and legal action in the Courts of the United States." (Answer and Aff. Defenses ¶¶ 1-6.) Defendant fails to address any of these affirmative defenses—other than those based on the statute of limitations and doctrine of comity—in his brief to the Court, and as such, Defendant has failed to demonstrate the absence of a genuine issue of material fact on these defenses. Accordingly, the Court DENIES Defendant's motion for summary judgment on his remaining affirmative defenses.

IV. Conclusion

For the foregoing reasons, the Court DENIES Defendant's Motion for Judgment on the Pleadings and in Addition Thereto or in the Alternative, for Summary Judgment.

So ORDERED this [17] day of October, 2005.

/s/ Jon P. McCalla
JON P. McCALLA
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF TENNESSEE
WESTERN DIVISION

JOSE OSCAR CHAVEZ,)
ANA PATRICIA CHAVEZ,)
HAYDEE DURAN,)
CECILIA SANTOS,)
JOSE FRANCISCO CALDERON,)
JANE DOE I, JANE DOE II, and)
JOHN DOE,)

Plaintiffs,)

v.)

No. 03-2932)

NICOLAS CARRANZA,)

Defendant.)

ORDER DENYING DEFENDANT'S MOTIONS
TO DISMISS THE COMPLAINT

Before the Court are two motions: (1) Defendant's Motion to Dismiss the Complaint, filed January 20, 2004, and (2) Defendant's Renewed Motion to Dismiss, filed March 9, 2004. Plaintiff responded in opposition on April 8, 2004. For the reasons stated below, Defendant's motions are DENIED.

I. Background

According to the Amended Complaint, El Salvador experienced intense political unrest in the late 1970s. Various militant organizations, including the Salvadoran Security Forces, carried out systematic repression and human rights abuses against political dissenters during this time. This led to a civil war that lasted from January, 1981 until January, 1992. On January 16, 1992, a United Nations-sponsored Peace Accord was signed by the Salvadoran government and guerilla forces. In March of 1993, the Salvadoran legislature adopted an amnesty law precluding criminal or civil liability for anyone who committed a political or common crime before January 1, 1992. The first elections following the signing of the Peace Accord were held in March of 1994.

Plaintiffs, who are or were at all pertinent times citizens of El Salvador, filed this action pursuant to the Torture Victims Protection Act ("TVPA"), Pub. L. No. 102-256, 106 Stat. 73 (enacted March 12, 1992) (codified as Note to 28 U.S.C. § 1350), and the Alien Tort Claims Act ("ATCA"), 28 U.S.C. § 1350, on December 10, 2003. Plaintiffs allege that Defendant is liable for the extrajudicial killing and/or torture of themselves or members of their immediate families that was committed by the Salvadoran Security Forces or the Salvadoran Treasury Police in the early 1980s.

Defendant, Nicolas Carranza, served as El Salvador's Vice-Minister of Defense and Public

Security from about October, 1979 until January, 1981, during which time he exercised control over the three units of the Salvadoran Security Forces. He served as Director of the Treasury Police from about June, 1983 until May, 1984, during which time he exercised control over the Treasury Police. Plaintiffs Amended Complaint alleges that Mr. Carranza "exercised command responsibility over, conspired with, or aided and abetted subordinates in the Security Forces of El Salvador, or persons or groups acting in coordination with the Security Forces or under their control, to commit acts of extrajudicial killing, torture, crimes against humanity, and cruel, inhuman or degrading treatment or punishment, and to cover up these abuses." (Am. Compl. ¶ 2.) Defendant has resided in the United States since 1984, and is currently a resident of Memphis, Tennessee.

Defendant filed a Motion to Dismiss on January 20, 2004, arguing that the claims in the Complaint are barred by the statute of limitations and that this Court lacks subject matter jurisdiction. On February 23, 2004, Plaintiffs filed an Amended Complaint. Defendant then filed a Renewed Motion to Dismiss on March 9, 2004, setting forth similar arguments to those made in the original Motion to Dismiss.

II. Standard of Review

A defendant may move to dismiss a claim "for failure to state a claim upon which relief can be granted" under Federal Rule of Civil Procedure

12(b)(6). When considering a 12(b)(6) motion, a court must treat all of the well-pleaded allegations of the complaint as true, Saylor v. Parker Seal Co., 975 F.2d 252, 254 (6th Cir. 1992). Furthermore, the court must construe all of the allegations in the light most favorable to the non-moving party. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). "A court may dismiss a [claim under 12(b)(6)] only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Hishon v. King & Scalding, 467 U.S. 69, 73 (1984).

Federal Rule of Civil Procedure 12(b)(1) provides for dismissal for lack of subject matter jurisdiction. The plaintiff has the burden of proving that the court has subject matter jurisdiction. Moir v. Greater Cleveland Reg'l Transit Auth., 895 F.2d 266, 269 (6th Cir. 1990). To do so, the plaintiff must demonstrate that the complaint alleges a substantial federal claim. Musson Theatrical v. Fed. Express Corp., 89 F.3d 1244, 1248 (6th Cir. 1996). Courts construe the allegations of a complaint in the light most favorable to the plaintiff when ruling on a 12(b)(1) motion. Scheuer v. Rhodes, 416 U.S. 232, 236 (1974); Ludwig v. Bd. of Trustees of Ferris State Univ., 123 F.3d 404, 408 (6th Cir. 1997). If a court determines that it lacks subject matter jurisdiction, "the court shall dismiss the action." Fed. R. Civ. P. 12(h)(3).

III. Analysis

A. Statute of Limitations

Defendant argues that Plaintiffs' claims are barred by the applicable ten-year statute of limitations because the complained of acts took place in the early 1980s, twenty years prior to the commencement of this action. The Torture Victims Protection Act of 1991 provides that "[n]o action shall be maintained under this section unless it is commenced within ten (10) years after the cause of action arose." 28 U.S.C. § 1350 (note). Though the TVPA limitations period does not explicitly apply to the ATCA, courts have applied the TVPA limitations period to the ATCA. See, e.g., Papa v. United States, 281 F.3d 1004, 1011-12 (9th Cir. 2002). Plaintiffs filed their Complaint on December 10, 2003. Therefore, any act occurring prior to December 10, 1993 would be barred by the ten-year statute of limitations applicable to ATCA and TVPA claims.

Each of the acts alleged in the Complaint occurred prior to December 10, 1993. However, Plaintiffs argue that the statute of limitations is subject to equitable tolling in this case. Courts that have addressed the applicability of the ten-year limitations period to TVPA and ATCA actions have held that the doctrine of equitable tolling should apply "where extraordinary circumstances outside plaintiff's control make it impossible for plaintiff to timely assert his claim." Forti v. Suarez-Mason, 672 F. Supp. 1531, 1549 (N.D. Cal. 1987). See also Hilao v. Estate of Marcos, 103 F.3d 767, 773 (9th Cir.

1996).¹ Additionally, the Senate Report on the TVPA states that the ten-year limitations period is subject to equitable tolling. S. Rep. No. 102-249, at 11 (1991).

Plaintiffs assert that the facts alleged in the Complaint are sufficient to toll the ten-year limitations period because they constitute extraordinary circumstances that made it impossible for Plaintiffs to timely file their claims. In particular, the Complaint alleges that the Salvadoran Security Forces engaged in human rights abuses against the citizens of El Salvador beginning in the late 1970s. During this time, the Salvadoran Security Forces worked hand-in-hand with paramilitary groups known as death squads. The death squads and the Salvadoran Security Forces were responsible for the use of torture, forced disappearances, arbitrary detention, and extrajudicial killing of Salvadoran citizens. (Am. Compl. ¶ 17.) These groups allegedly

¹ The Sixth Circuit has identified five-factors to consider when determining whether to apply equitable tolling, "1) lack of notice of the filing requirement; 2) lack of constructive knowledge of the filing requirement; 3) diligence in pursuing one's rights; 4) absence of prejudice to the defendant; and 5) the plaintiff's reasonableness in remaining ignorant of the particular legal requirement." Graham-Humphreys v. Memphis Brooks Museum of Art, Inc., 209 F.3d 552, 561 (6th Cir. 2000). This test, however, has been applied mainly in Title VII employment discrimination cases. In any event, this five factor test is not comprehensive and "[t]he propriety of equitable tolling must necessarily be determined on a case-by-case basis." Id. at 561 (quoting Truitt v. County of Wayne, 148 F.3d 644, 648 (6th Cir. 1998)). The Sixth Circuit has not addressed the applicability of its five-factor equitable tolling test in TVPA or ATCA actions.

operated with the approval and permission of Mr. Carranza. (Id.)

Due to the repression carried out by the Security Forces and death squads, El Salvador was in a state of civil war during the 1980s and early 1990s. An estimated 75,000 Salvadoran civilians were killed during the course of the war. (Id. ¶ 18.) The Amended Complaint also alleges that during this time, a Catholic Archbishop was murdered while saying mass by persons suspected to be government agents, one of the alleged authors of the crime openly campaigned for the Presidency, the judge investigating the murder was threatened and forced to leave the country, death squads were controlled by the President, and many opposition political leaders were murdered by the Security Forces and death squads. (Id. ¶ 75.) The Salvadoran judicial system allegedly failed to investigate serious crime and not a single Salvadoran officer was ever tried and convicted for human rights abuses in El Salvador. (Id. ¶ 76.)

Among the political leaders allegedly murdered was Decedent James Doe, husband of Plaintiff Jane Doe II. According to the Amended Complaint, James Doe was assassinated by the Security Forces because of his role in the leadership of the Frente Democratico Revolucionario (Democratic Revolutionary Front – hereinafter, “FDR”). (Id. ¶ 19.) The FDR constituted the only political opposition to the ruling government. (Id. ¶ 21.) On November 27, 1980, James Doe was abducted by the Security forces, along with six other FDR leaders, from a school where they were

meeting. The men were tortured and then murdered. (Id. ¶¶ 22-23; 49-51.) After their bodies were found, the criminal court failed to conduct a proper investigation and closed the case in October, 1982. (Id. ¶ 53.)

Since 1979, all Plaintiffs have either been living in El Salvador or have immediate family living in El Salvador. (Pls.' Mem. in Opp'n to Def.'s Renewed Mot. to Dismiss at 10.) Plaintiffs claims concern the murder, rape, and torture of themselves or their relatives by the Security Forces or the Treasury Police during the Salvadoran civil war. Plaintiffs claim they reasonably feared reprisal against themselves or their family members in El Salvador if they complained about the murder, torture, and rape that occurred during this civil war. As the facts detailed above and asserted more fully in the Amended Complaint show, this is an "extraordinary circumstance[] outside plaintiff[s]' control [which made] it impossible for plaintiff[s] to timely assert [their] claim[s]." *Forti*, 672 F. Supp. at 1549. Thus, equitable tolling should apply.

The next question before the Court is when the statute of limitations should have commenced running. The civil war officially ended with a Peace Accord in January of 1992. However, Plaintiffs argue that the ten-year limitations period should be equitably tolled until March of 1997, when the first relatively peaceful national elections were held after the Salvadoran civil war. Alternatively, Plaintiffs allege that the statute of limitations should be tolled until the first post-war national elections in March of 1994.

The Amended Complaint alleges that the violence synonymous with the Salvadoran civil war continued after the signing of the Peace Accord. Although the Peace Accord provided that the Security Forces would be disbanded, several hundred members of the Treasury Police and National Guard were absorbed into the newly created National Civilian Police. (Am. Compl. ¶ 77.) Death squads linked to the disbanded Security Forces continued to perpetrate violent acts against Salvadoran citizens after the signing of the Peace Accord and before the election of 1994. This violence included the murders of three opposition political leaders, the murders of opposition political activists, and the commission of ninety-four acts of politically motivated abuses of human rights. (Id. ¶ 79.) The Amended Complaint also asserts that violence continued after the election of 1994, with evidence that the Black Shadow death squad committed at least three dozen murders and threatened to execute six judges in early 1995. (Id. at 81.) Plaintiffs assert that the politically motivated violence did not end until the March, 1997 elections, which were peaceful and contained little evidence of fraud. Opposition political leaders won significant posts in the 1997 election and were permitted to safely occupy those posts without fear of reprisals. (Id. ¶ 82.)

The Court finds that the statute of limitations should be tolled until at least March of 1994, when the first national elections occurred after the end of the civil war. It is not necessary for the Court to determine whether the continued violence following the signing of the Peace Accord tolls the limitations period until March of 1994 or March of 1997, when

the first relatively peaceful national elections occurred, because Plaintiffs' claims are timely under either circumstance. Thus, the ten-year statute of limitations applicable to the TVPA and the ATCA does not bar Plaintiffs' claims. The Court DENIES the Motion to Dismiss based on the statute of limitations.

B. Exhaustion of Remedies

Next, Defendant argues that Plaintiffs' claims should be dismissed because Plaintiffs failed to exhaust their remedies under El Salvador law before filing this action. The TVPA states that "[a] court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred." 28 U.S.C. § 1350 (note). Nonexhaustion of remedies is an affirmative defense, however, and "[t]he ultimate burden of proof and persuasion on the issue of exhaustion of remedies . . . lies with the defendant." S. Rep. No. 102-249, at 9-10 (1991).

Though Plaintiffs' Complaint implies that Plaintiffs have not pursued any remedies in El Salvador, Plaintiffs assert that they have no adequate or available remedies in El Salvador. The Salvadoran legislature passed an amnesty law in March of 1993 precluding Plaintiffs from seeking relief in El Salvador courts for any political or common crime committed before January 1, 1992. (Am. Compl. at 25.) Defendant has offered nothing to show that remedies are available to Plaintiffs in El Salvador. Therefore, Plaintiffs' failure to pursue

remedies in El Salvador does not bar Plaintiffs' TVPA claims against Defendant. The Court DENIES Defendant's Motion to Dismiss for failure to exhaust remedies under El Salvador law.

C. Subject Matter Jurisdiction

Finally, Defendant argues that this Court lacks jurisdiction over the ATCA claims of Plaintiffs who are citizens of the United States, namely, Jose Oscar Chavez, Haydee Duran, Cecilia Santos, and Jose Francisco Calderon. The ATCA creates jurisdiction in United States courts only for non-citizen plaintiffs who sue a defendant in tort for a violation of international law. 28 U.S.C. § 1350. "[W]hile the [ATCA] provides a remedy to aliens only, the TVPA . . . extends a civil remedy also to U.S. citizens who may have been tortured abroad." S. Rep. No. 102-249, at 5 (1991). In their response, Plaintiffs clarified that while the non-citizen Plaintiffs have brought their claims under both the ATCA and the TVPA, the citizen Plaintiffs assert claims only under the TVPA. Subject matter jurisdiction over the citizen Plaintiffs' TVPA claims is proper in this Court. Because the citizen Plaintiffs do not assert ATCA claims, that aspect of Defendant's motion is DENIED as moot.

IV. Conclusion

For the foregoing reasons, the Court DENIES Defendant's Motion to Dismiss and DENIES Defendant's Renewed Motion to Dismiss.

105a

So ORDERED this [30] day of September,
2004.

/s/ Jon P. McCalla
JON P. McCALLA
UNITED STATES
DISTRICT JUDGE

TITLE 28--JUDICIARY AND
JUDICIAL PROCEDURE

PART IV--JURISDICTION AND VENUE

CHAPTER 85--DISTRICT COURTS;
JURISDICTION

Sec. 1350. Alien's action for tort

The district courts shall have original jurisdiction of 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.

(June 25, 1948, ch. 646, 62 Stat. 934.)

Historical and Revision Notes

Based on title 28, U.S.C., 1940 ed., Sec. 41(17) (Mar. 3, 1911, ch. 231, Sec. 24, par. 17, 36 Stat. 1093).

Words "civil action" were substituted for "suits," in view of Rule 2 of the Federal Rules of Civil Procedure.

Changes in phraseology were made.

Torture Victim Protection

Pub. L. 102-256, Mar. 12, 1992, 106 Stat. 73,
provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Torture Victim
Protection Act of 1991'.

"SEC. 2. ESTABLISHMENT OF CIVIL ACTION.

"(a) Liability.--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.

"(b) Exhaustion of Remedies.--A court shall
decline to hear a claim under this section if the
claimant has not exhausted adequate and available
remedies in the place in which the conduct giving
rise to the claim occurred.

"(c) Statute of Limitations.--No action shall be
maintained under this section unless it is

commenced within 10 years after the cause of action arose.

"SEC. 3. DEFINITIONS.

"(a) Extrajudicial Killing.--For the purposes of this Act, the term 'extrajudicial killing' means 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. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.

"(b) Torture.--For the purposes of this Act--

"(1) the term 'torture' means 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; and

"(2) mental pain or suffering refers to prolonged mental harm caused by or resulting from--

"(A) the intentional infliction or threatened infliction of severe physical pain or suffering;

"(B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

"(C) the threat of imminent death; or

"(D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality."

**LAW OF GENERAL AMNESTY FOR THE
CONSOLIDATION OF PEACE**

DECREE N° 486.

**THE LEGISLATIVE ASSEMBLY OF THE
REPUBLIC OF EL SALVADOR,**

WHEREAS:

I.- The ongoing peace building efforts in El Salvador require fostering public confidence, to reconcile and reunite the Salvadoran family by promulgating, and immediately implementing, legal provisions that protect the right of the entire Salvadoran population to fully conduct its activities in harmony, and a climate of trust and respect for all social sectors;

II.- On January 23, 1992, the Legislative Assembly approved the National Reconciliation Act, as part of Legislative Decree Number 147, published by the Official Gazette (No. 14, Volume 314) on the same date. The Decree granted amnesty -with certain restrictions- to all persons involved -in any manner- in the perpetration of political offenses, the common crimes associated with them, and other common crimes committed [in conspiracy] by twenty or more people, before January 1st, 1992.

III.- The restrictions indicated in the above paragraph did not allow a general application of the National Reconciliation Act to all persons -regardless of their affiliation in the armed conflict- who participated in violent acts against society. This has created an inequitable situation that must be

corrected, as it is contrary with the ongoing democratic process and the reunification of the Salvadoran people;

[V.- In order to foster and achieve national reconciliation, it is advisable to grant broad, absolute and unconditional amnesty to all people who participate -in any manner- in the crimes that took place before January 1, 1992, whether they were political offenses, the common crimes associated with them, and/or other common crimes, perpetrated [in conspiracy] by at least twenty people -including persons already convicted, those undergoing judicial proceedings and others currently unindicted; and to make this benefit extensive to persons not presently included in the National Reconciliation Act who participated -either as primary offenders, or by aiding/abetting or acting as accomplices in said criminal actions.

THEREFORE,

By virtue of its constitutional power, and in endorsing the bill proposed by Congressmen Luis Roberto Angulo Samayoa, Ciro Cruz Zepeda Peña, José Rafael Machuca Zelaya, Rafael Antonio Morán Orellana, Carlos Remberto González, José Roque Calles Amaya, Marcos Alfredo Valladares, Carlos René Calderón y Julio Angel Sorto, [the Legislative Assembly]

HEREBY ENACTS the following:

**LAW OF GENERAL AMNESTY FOR THE
CONSOLIDATION OF PEACE**

Art. 1- Broad, absolute and unconditional amnesty is hereby granted to all persons involved -in any manner- in the perpetration of political offenses, the common crimes associated with them, and other common crimes committed [in conspiracy] by twenty or more people, before January 1st, 1992. This includes persons already convicted, those undergoing judicial proceedings and others currently unindicted for those crimes; This benefit is granted to all primary offenders, as well as those who aided/abetted or participated as accomplices in said criminal actions. This amnesty benefit is made extensive to the persons mentioned under Article 6 of the National Reconciliation Act, which is part of Legislative Decree No. 147, dated January 23, 1992, published by the Official Gazette (No. 14, Volume 314) on the same date.

Art. 2.- For the purpose of this law, political offenses shall include, apart from the crimes specified under article 151 of the Criminal Code, those indicated under articles 400-411 and 460-479 of the same Code, and crimes perpetrated as a result or part of, the armed conflict, regardless of [the perpetrators'] status, activism, affiliation or political ideology

Art. 3.- Amnesty shall not be granted to:

- a) Whomever individually or collectively participated in the crimes indicated under the second paragraph of Article 400 of the Criminal Code for profit making purposes,

whether those persons are currently serving, or not, prison sentences for such crimes; and

- b) Persons who individually or collectively participated in the crimes of kidnapping and extortion indicated under articles 220 and 257 of the Criminal Code, and the crimes included in *Ley Reguladora de las Actividades Relativas a las Drogas* (Act Regulating Drug Related Activities), whether or not they have been indicted, are currently serving prison sentences for such crimes, and/or the crimes in question were linked to political crimes.

Art. 4.- The amnesty benefit granted under this law will be as follows:

- a) In the case of defendants subject to imprisonment sentences, the sentencing judge/court will order *ex officio* the immediate release of the defendant without bail. The same shall apply to the court hearing the case when a ruling is still pending;
- b) In the case of fugitives convicted in absentia and sentenced to imprisonment sentences, the judge/court with jurisdictional authority will immediately quash any arrest warrants, *ex officio*, without any bail requirements;
- c) In the case of defendants in pending cases, the judge in charge shall dismiss the case, *ex officio*, without restrictions, and rule in favor of the defendants, closing the proceedings and ordering the defendants' immediate release;

- d) In the case of unindicted persons, the Decree will allow filing a Motion to Dismiss, and having the case dismissed with prejudice, in the eventuality of their prosecution for the crimes covered under the Amnesty. And if these persons are ever captured, they shall be brought to the judge with jurisdiction over their case, to order their release;
- e) Persons who do not fit the above situations, but who, either at their own request, or for any other reason, wish to benefit from this amnesty, may appear before the corresponding trial judge, who shall consider their request and issue a certificate stating the reasons why their citizen rights cannot be denied them; and
- f) The amnesty granted under this law shall extinguish civil liability.

Art. 5.- Notwithstanding the terms of paragraphs a), b) and c) above, defendants who have already been tried and wish to benefit from this amnesty, must submit an application in writing -either directly or through their counsel-, or go before a trial judge to request that their case be dismissed; and, if appropriate, the corresponding judge shall dismiss the case, without restrictions, and without any bail requirements.

The motion can also be filed with Justices of the Peace, State Governors, Municipal Mayors and Consuls accredited abroad, who shall refer it to the corresponding Trial Judge, for appropriate action.

If the authorities indicated above do not comply with this requirement, they shall be fined 1,000-5,000 colons by the appropriate judge, pursuant to the terms of article 718, of the Code for Criminal Procedure.

Art. 6.- All provisions contrary to this Law, and particularly Art. 6, and the last paragraph of Article 7, of the National Reconciliation Act, are hereby revoked, including the true interpretation of the former-, all of which provisions were included as part of Decree No. 147, dated January 23, 1992, and published in the Official Gazette (No. 14, Volume 314) on the same date, and Decree No. 164, dated February 6 of that same year, published in the Official Gazette (No.26, Volume 314), on February 10, 1992.

Art. 7.- This Decree shall become effective eight days after its publication in the Official Gazette.

ISSUED IN THE BLUE ROOM OF THE LEGISLATIVE PALACE: San Salvador, on March 20, 1993.

LUIS ROBERTO ANGULO SAMAYOA
CHAIRMAN

CIRO CRUZ ZEPEDA	RUBEN IGNACIO
PEÑA RUBEN	ZAMORA RIVAS
DEPUTY CHAIRMAN	DEPUTY CHAIRMAN
MERCEDES GLORIA SALGUERO GROSS	
DEPUTY CHAIRMAN	

RAUL MANUEL
SOMOZA ALFARO
SILVIA
SECRETARY
JOSE RAFAEL
MACHUCA
ZELAYA
SECRETARY
GUADALUPE
BARRIENTOS
ESCOBAR
SECRETARY
RENE MARIO
FIGUEROA
FIGUEROA
SECRETARY
REYNALDO QUINTANILLA PRADO
SECRETARY

PRESIDENT's RESIDENCE:
San Salvador, March 22, 1993

FOR PUBLICATION,

ALFREDO FELIX
CRISTIANI BURKARD,
President of the Republic
OSCAR ALFREDO
SANTAMARIA,
Presidential Minister.

RENE HERNANDEZ VALIENTE,
Minster of Justice

Decree N° 486, dated March 20, 1993,
published in the Official Gazette, N° 56,
Volume 318, on March 22, 1993.

Subject: HUMAN RIGHTS

Subject: Human Rights

Agency: LEGISLATURE

Status: Current

Type: Legislative Decree

N°: 486

Official Gazette: 56

Date: March 20/93

Volume: 318

Published in the
Official Gazette:
March 22, 1993

Amendments: none

Comments:

Certification

I certify that the foregoing document in English, "Law of General Amnesty for the Consolidation of Peace," is a true and correct translation of the attached document in Spanish, "Ley de Amnistia General para la Consolidacion de la Paz."

/s/ Eva Desrosiers

Eva Desrosiers
Federally Certified
Court Interpreter

Alexandria:

Virginia:

Eva Desrosiers subscribed the foregoing before me this 23 Oct., 2008.

/s/ Jennifer Ayers Jones
NOTARY PUBLIC

My Commission Expires: _____

[Commonwealth of Virginia
Jennifer Ayers Jones - Notary Public
Commission ID: 271236
My Commission Expires 03/31/2010]

**LEY DE AMNISTIA GENERAL PARA
LA CONSOLIDACION DE LA PAZ**

DECRETO N° 486.

**LA ASAMBLEA LEGISLATIVA DE LA
REPUBLICA DE EL SALVADOR,**

CONSIDERANDO:

I.- Que el proceso de consolidación de la paz que se impulsa en nuestro país, demanda crear confianza en toda la sociedad, con el fin de alcanzar la reconciliación y reunificación de la familia salvadoreña, mediante la adopción de disposiciones legales de ejecución inmediata, que garanticen a todos los habitantes de la República el desarrollo pleno de sus actividades en un ambiente de armonía, respeto y confianza para todos los sectores sociales;

II.- Que con fecha veintitrés de enero de mil novecientos noventa y dos, la Asamblea Legislativa aprobó la Ley de Reconciliación Nacional, contenida en el Decreto Legislativo Número 147, publicado en el Diario Oficial Número 14, Tomo 314 de la misma fecha; mediante dicho decreto se concedió amnistía con restricciones a todas las personas responsables en cualquier forma, en la comisión de delitos políticos, comunes conexos con éstos y en delitos comunes cometidos por un número de personas que no baje de veinte, antes del 1° de enero de mil novecientos noventa y dos;

III.- Que las restricciones a que se hace referencia en el considerando anterior, no permitieron una

aplicación general de la Ley de Reconciliación Nacional para todas las personas que, independientemente del sector a que pertenecieron en el conflicto armado, hayan participado en hechos de violencia que dejaron huella en la sociedad, creándose una situación de falta de equidad que es necesario corregir, ya que no es compatible con el desarrollo del proceso democrático ni con la reunificación de la sociedad salvadoreña;

IV.- Que para impulsar y alcanzar la reconciliación nacional, es conveniente conceder la gracia de amnistía amplia, absoluta e incondicional, a favor de todas las personas que en cualquier forma hayan participado en hechos delictivos ocurridos antes del primero de enero de mil novecientos noventa y dos, ya se trate de delitos políticos o comunes conexos con éstos o delitos comunes cometidos por un número de personas que no baje de veinte, comprendiendo aquellas personas contra quienes se hubiere dictado sentencia, iniciado procedimiento por los mismos delitos o no existiere procedimiento alguno en su contra, siendo extensiva la gracia a las personas no incluidas en la Ley de Reconciliación Nacional hayan participado como autores inmediatos, mediatos o cómplices en los mismos hechos delictivos;

POR TANTO,

en uso de sus facultades constitucionales y a iniciativa de los Diputados Luis Roberto Angulo Samayoa, Ciro Cruz Zepeda Peña, José Rafael Machuca Zelaya, Rafael Antonio Morán Orellana, Carlos Remberto González, José Roque Calles

Amaya, Marcos Alfredo Valladares, Carlos Rene Calderón y Julio Angel Sorto,

DECRETA la siguiente:

**LEY DE AMNISTIA GENERAL PARA LA
CONSOLIDACION DE LA PAZ**

Art. 1.- Se concede amnistía amplia, absoluta e incondicional a favor de todas las personas que en cualquier forma hayan participado en la comisión de delitos políticos, comunes conexos con éstos y en delitos comunes cometidos por un número de personas que no baje de veinte antes del primero de enero de mil novecientos noventa y dos, ya sea que contra dichas personas se hubiere dictado sentencia, se haya iniciado o no procedimiento por los mismos delitos, concediéndose esta gracia a todas las personas que hayan participado como autores inmediatos, mediatos o cómplices en los hechos delictivos antes referidos. La gracia de la amnistía se extiende a las personas a las que se refiere el artículo 6 de la Ley de Reconciliación Nacional, contenida en el Decreto Legislativo Número 147, de fecha veintitrés de enero de mil novecientos noventa y dos y publicado en el Diario Oficial Número 14, Tomo 314 de la misma fecha.

Art. 2.- Para los efectos de esta Ley además de los especificados en el artículo 151 del Código Penal, se considerarán también como delitos políticos los comprendidos en los artículos del 400 al 411 y del 460 al 479 del mismo Código, y los cometidos con motivo o como consecuencia del conflicto armado, sin

que para ello se tome en consideración la condición, militancia, filiación o ideología política.

Art. 3.- No gozarán de la gracia de amnistía:

- a) Los que individual o colectivamente hubiesen participado en la comisión de los delitos tipificados en el inciso segundo del artículo 400 del Código Penal, cuando éstos lo fuesen con ánimo de lucro, encontrándose cumpliendo o no penas de prisión por tales hechos; y
- b) Los que individual o colectivamente hubieren participado en la comisión de delitos de secuestro y extorsión tipificados en los artículos 220 y 257 del Código Penal y los comprendidos en la Ley Reguladora de las Actividades Relativas a las Drogas, ya sea que contra ellos se haya iniciado o no procedimiento o se encontraren cumpliendo penas de prisión por cualquiera de estos delitos, sean o no conexos con delitos políticos.

Art. 4.- La gracia de amnistía concedida por esta ley producirá los efectos siguientes:

- a) Si se tratare de condenados a penas privativas de libertad, el juez o tribunal que estuviere ejecutando la sentencia, decretará de oficio la libertad inmediata de los condenados, sin necesidad de fianza; igual procedimiento aplicará el Tribunal que estuviere conociendo, aún cuando la sentencia no estuviere ejecutoriada;

- b) Si se tratare de ausentes condenados a penas privativas de libertad, el Juez o Tribunal competente, levantará de oficio inmediatamente las órdenes de captura libradas en contra de ellos, sin necesidad de fianza;
- c) En los casos de imputados con causas pendientes, el Juez competente decretará de oficio el sobreseimiento sin restricciones a favor de los procesados por extinción de la acción penal, ordenando la inmediata libertad de los mismos;
- ch) Si se tratare de personas que aún no han sido sometidas a proceso alguno, el presente decreto servirá para que en cualquier momento en que se inicie el proceso en su contra por los delitos comprendidos en esta amnistía, puedan oponer la excepción de extinción de la acción penal y solicitar el sobreseimiento definitivo; y en el caso de que fueren capturadas, serán puestas a la orden del Juez competente para que decrete su libertad;
- d) Las personas que no se encuentren comprendidas en los literales anteriores y que por iniciativa propia o por cualquier otra razón deseen acogerse a la gracia de la presente amnistía, podrán presentarse a los Jueces de Primera Instancia respectivos, quienes vistas las solicitudes extenderán una constancia que contendrá las razones por las que no se les puede restringir a los solicitantes

sus derechos que les corresponden como ciudadanos; y

- e) La amnistía concedida por esta ley, extingue en todo caso la responsabilidad civil.

Art. 5.- Sin perjuicio de lo dispuesto en los literales a), b) y c) del artículo anterior, las personas que estén procesadas y deseen acogerse a los beneficios de la presente ley, dirigirán solicitud por escrito, ya sea personalmente o por medio de apoderado, o se presentarán a los Jueces de Primera Instancia, pidiendo que se dicte en su favor el sobreseimiento correspondiente, el Juez competente, de ser procedente, dictará el sobreseimiento, el cual será sin restricciones y sin necesidad de fianza.

Las solicitudes también se podrán presentar ante los Jueces de Paz, Gobernadores Departamentales, Alcaldes Municipales y Cónsules acreditados en el exterior, quienes inmediatamente después las remitirán al Juez de Primera Instancia respectivo, para que les dé el trámite correspondiente.

A los funcionarios indicados en este artículo que no cumplan con dicha obligación, el juez competente les impondrá una multa de Un Mil a Cinco Mil Colones, siguiendo el procedimiento que establece el artículo 718 del Código Procesal Penal.

Art. 6.- Deróganse todas las disposiciones que contraríen la presente ley, especialmente el Art. 6 y el último inciso del Art. 7, ambos de la Ley de Reconciliación Nacional, así como la interpretación auténtica de la primera de las disposiciones citadas

que están contenidas respectivamente, en el Decreto N° 147 del 23 de enero de 1992, publicado en el Diario Oficial N° 14, Tomo 314 de la misma fecha y Decreto N° 164 de fecha 6 de febrero del mismo año, publicado en el Diario Oficial N° 26, Tomo 314 del 10 de febrero de 1992.

Art. 7.- El presente decreto entrará en vigencia ocho días después de su publicación en el Diario Oficial

DADO EN EL SALON AZUL DEL PALACIO LEGISLATIVO: San Salvador, a los veinte días del mes de marzo de mil novecientos noventa y tres.

LUIS ROBERTO ANGULO SAMAYOA
PRESIDENTE

CIRO CRUZ ZEPEDA PEÑA
VICEPRESIDENTE

RUBEN IGNACIO ZAMORA RIVAS
VICEPRESIDENTE

MERCEDES GLORIA SALGUERO GROSS
VICEPRESIDENTE

RAUL MANUEL SOMOZA ALFARO
SECRETARIO

SILVIA GUADALUPE BARRIENTOS ESCOBAR
SECRETARIA

JOSE RAFAEL MACHUCA ZELAYA
SECRETARIO

RENE MARIO FIGUEROA FIGUEROA
SECRETARIO

REYNALDO QUINTANILLA PRADO
SECRETARIO

CASA PRESIDENCIAL: San Salvador,
a los veintidós días del mes de Marzo de
mil novecientos noventa y tres.

PUBLIQUESE,
ALFREDO FELIX CRISTIANI BURCKARD
Presidente de la República
OSCAR ALFREDO SANTAMARIA,
Ministro de la Presidencia.

RENE HERNANDEZ VALIENTE,
Ministro de Justicia.

D.L. N° 486, del 20 de marzo de 1993, publicado en el
D.O. N° 56, Tomo 318, del 22 de marzo de 1993.

Materia: DERECHOS HUMANOS
Materia: Derechos Humanos
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