UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIGUEL ANGEL CORBACHO DAUDINOT.

Plaintiff, CASE NO. 1:13-cv-22589-KMV

v.

YASIEL PUIG VALDES a/k/a YASIEL PUIG
and MARITZA VALDES GONZALEZ.

Defendants.
_____/

PLAINTIFF'S SUR-REPLY MEMORANDUM IN OPPOSTION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT

Plaintiff, MIGUEL ANGEL CORBACHO DAUDINOT, through counsel, files this Sur-Reply Memorandum in opposition to Defendant's Motion to Dismiss his Complaint and in support thereof states:

I. INTRODUCTION

Defendant filed a Motion to Dismiss the instant case [DE 11] ("the Motion") proposing the premise that Plaintiff's claim under the TVPA must fail because (1) "the TVPA does not apply to a claim that is wholly unconnected to the United States"; (2) that "the acts described in the Amended Complaint do not satisfy the TVPA's definition of torture"; and, (3) "the amended complaint fails to properly allege [for purposes of establishing secondary liability] that defendants' actions were intended to result in plaintiff's torture". (DE 11, p. 2)

Plaintiff has successfully stated a claim under the TVPA. Plaintiff addresses the issues raised in Defendants' Motion as they raised them. First, the presumption against extraterritorial application does not apply to the TVPA. Second, Plaintiff satisfies the definition of torture as set by the TVPA—including both the "severity standard" and "purpose standard" as set out by the statute and the case law. Lastly, Plaintiffs have stated a *plausible* claim for relief under theories of secondary liability that is filled with more than merely unadorned statements, but with facts,

including names, dates, details, documents, documents containing the Defendants' own signatures, actions, and events. [1]

II. ARGUMENT

The TVPA Overcomes the Presumption against Extraterritoriality

In defining "extraterritoriality" in the Motion Defendant cited only *Kiobel v. Royal Dutch Petroleum Co.*, 133 S. Ct. 1659 (U.S. 2013)[2], and quoted the following from that case: "when a statute gives no clear indication of an extraterritorial application, it has none … and reflects the presumption that United States law governs domestically but does not rule the world." (DE 11, p. 4). Notwithstanding Defendants' earlier definition, they narrowed their definition in their Reply by stating that the presumption against territoriality can only be overcome when the claims "touch and concern the territory of the United States" with "sufficient force" (DE 15, p. 2), while ignoring the rest of the argument provided by both the Motion and by *Kiobel*, upon which Defendants rely.

According to *Kiobel*, the presumption "is typically applied to discern whether an Act of Congress regulating conduct applies abroad," but that "its underlying principles constrain courts when considering causes of action that may be brought under the ATS" because, unlike the TVPA, which provides a specific cause of action, the ATS simply provides jurisdiction for the court to hear causes actions arising from torts in violation of international law, limited only by the Supreme Court's finding in *Sosa v. Alvarez–Machain*, 124 S.Ct. 2739, 159.

In deciding whether the Statute overcame the presumption against territoriality, the *Kiobel* court looked to "the text, *history*, or *purposes* of the ATS". The court stated that in order "to run interference in ... a delicate field of international relations there must be present the affirmative ***intention*** of the ***Congress clearly expressed***.", and that "foreign policy consequences" must be "clearly ***intended by the political branches***". 133 S. Ct. at 1664 (emphasis added). The court hammered home the point that "Congress can indicate that it intends federal law to apply to conduct occurring abroad" (citing 18 U.S.C. § 1091(e) (2006 ed., Supp. V) (providing jurisdiction over the offense of genocide "regardless of where the offense is committed"). *Id*. at 1665. The court need not only consider the words of the Act themselves, but also ""[a]ssuredly

[1] If the court should find that Plaintiffs have not plead with sufficient details the hardships they have suffered to plead torture under the TVPA, they respectfully request this court allow them to Amend the instant complaint in order to meet the requirement.

[2] Defendant also cited Murillo, whose decision was based on the *Kiobel* decision.

context can be consulted" in determining whether a cause of action applies abroad" and turns to the Congressional Record, if any, to determine the *purpose* in passing the law, and if Congress intended such a law to apply extraterritorially. *Id*. at 1668, (citations omitted).

Only *after* the court has concluded that a statute was not intended to apply extraterritorially—by conducting an exhaustive analysis of the language of the statute, the history/context of the law, and the Congressional Record to establish intent and purpose—must the claims in a given action "touch and concern the territory of the United States… with sufficient force to displace the presumption against extraterritorial application." *Id*. at 1669. Defendant's argument is tantamount to declaring all claims must overcome the presumption against extraterritoriality, notwithstanding Congressional Intent for a law to on foreign soil. That argument is plainly irrational, since it would serve to negate the legislative body's intent.

There is sufficient of evidence, both in the body of the TVPA and in the Congressional Record as provided by Plaintiffs in their Response to the Motion that blatantly declares that the TVPA was intended to apply extraterritorially.

Complicity and Agreement by the Cuban Government Was Explicitly Plead

Plaintiff sufficiently pled conspiracy between the government and the Defendants, irrespective of each side's individual motivation for joining the conspiracy. Outside of pleading in detail the government's well-documented pattern of utilizing its athlete's as informants in a "snitch network" orchestrated by the DCSE and the INDER (both governmental agencies) and Cuba's focus on rooting out the pilfering of their athletes by the United States and the Dominican Republic, the First Amended Complaint specifically details how Puig worked with the state security to continue to bait the Plaintiff, and how he and his mother worked directly with the INDER's deputy director in Cienfuego and the Cienfuego's baseball team's coach in order to make the accusation against the Plaintiff. Plaintiffs did provide dates, times, names, and how each participant acted in the conspiracy. Those allegations, in addition to the fact that it was the Cuban government, with the aid and cooperation of the Defendants, that arrested, detained, tried, and tortured Plaintiff, are more than enough to allege conspiracy sufficient to survive a motion for summary judgement.

WHEREFORE, Plaintiff respectfully requests that this court enter an order denying Defendants' Motion to Dismiss.

Respectfully Submitted,

s/Kenia Bravo
Kenia Bravo, Esq., FBN 68296

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was filed in federal court using CM/ECF on November 6, 2013.

s/Kenia Bravo
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