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.
_____/

MOTION FOR STAY OF PROCEEDINGS PENDING
TRAVEL VISA OF PLAINTIFF FROM CUBA TO THE UNITED STATES

COME NOW the Plaintiff, by and through the undersigned counsel, and respectfully File this Motion requesting that this court stay the instant proceeding pending Plaintiff's Travel Visa from Cuba to the United States, and in support thereof states:

1. The Plaintiffs filed the instant case on July 18, 2013, when Plaintiff, was serving time in Cuban prison as a result of the Defendant's actions, which were alleged in the Complaint.

2. Plaintiff had been convicted to a seven year prison sentence on October 8, 2010, which recognized the time already served by him in prison, which began on January 20, 2010.

3. Despite Plaintiff's unavailability at the time of filing, Plaintiff filed the instant case against the Defendants in the realistic expectation that Plaintiff would be granted provisional release from prison and that his relatives living in Miami, Florida could claim him for the purposes of family reunification.

4. As was expected, Plaintiff was granted provisional release from prison in Cuba, his sentence to be carried out at his wife's home in Cuba, and in January, 2014 he filed an application to the Department of Homeland Security for an I-130 visa, which was approved and sent out on October 6, 2014. In December U.S. Citizenship and Immigration Services indicated that Corbacho Daudinot could participate in the Cuban Family Reunification Parole Program based on the approval of his Form I-130. *See* "**Exhibit A**"

5. Before Plaintiff and his counsel were able to schedule an interview with Homeland Security regarding the visa, Corbacho Daudinot was once again detained in September by Cuban police and held without charges until the end of the year.

6. Due to his unwarranted incarceration, Corbacho Daudinot was unable to schedule an interview with Homeland Security in order to pursue is I-130 visa in time to come to the United States in order to comply with the deadline set for the taking of his deposition, which was scheduled to take place prior to the parties' mediation on January 14, 2015.

7. While Plaintiff is serving out the remainder of his sentence from home in provisional release, he may be subject to such arbitrary detentions and incarcerations as the one he just endured. However, it is common practice in Cuba to release all prisoners, regardless of their crime, when they have served eighty percent of their sentence, which is considered to be a completed sentence. In addition, all prisoners, who have served more than fifty percent (50%) of their sentence, are eligible to apply for early release.

8. Plaintiff has made and is continuing to make every effort inside of Cuba to secure Plaintiff's early release. Having served more than seventy percent (70%) of his sentence, Corbatcho Daudinot is working in Cuba to achieve that early release, which will make it easier for him to schedule an interview with Homeland Security and receive his visa.

9. Despite continuing efforts to obtain early release, it is by no means certain when such early release will be granted due to the political nature of Corbacho Daudinot's Cuban criminal case.

10. The court made it plain during the hearing that took place on November 5, 2014, that Plaintiff was required to be deposed prior to the scheduled mediation, which was to take place on January 14, 2015. However, it is clear that Plaintiff shall be unable to come to the United States to either attend the mediation or to be deposed.

11. The Plaintiff was able to overcome the first level of scrutiny when he survived Defendant's motion to dismiss, and through his diligent efforts, he was able to secure an approval for his I-130 Form. It was only as a result of the unforeseen detainment without charges by the Cuban police that Plaintiff is not in the United States to participate in the deposition. Although, he is well able to participate in any deposition taken in Cuba if Defendant's are willing to travel there.

12. As of the filing of this motion, neither party has conducted any discovery on this case. The trial is set for November 16, 2015.

13. The Plaintiff's testimony is needed to establish the underlying facts of the case, and he should be permitted to present his testimony—not only in the deposition—but also during the trial in the instant case.

LEGAL ARGUMENT

Every district court has the power to stay proceedings as "incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of the time and effort for itself, for counsel, and for litigants." Landis v. North American Co., 299 U.S. 248, 254 (1936). Trial courts are afforded "broad discretion" in determining whether to stay a proceeding. I.A. Durbin, Inc. v. Jefferson Nat'l Bank, 793 F 2d 1541, 1551-52 (11th Cir. 1986). Where one or more parties proposes that a pending proceeding be stayed, "the competing interest which will be affected by the granting or refusal to grant a stay must be weighed. CMAX, Inc. v. Hall, 300 F.2d 265, 268 (9th Cir. 1962). When deciding the question of whether to grant a stay, "courts generally consider the following factors: (1) whether a stay would unduly prejudice or present a tactical disadvantage to the nonmovant, (2) whether a stay will simplify the issues in the case; and (3) whether discovery is complete, and a trial date has been set." Tomco Equipment Company v. Southeastern Agri-Systems, Inc., 542 F.Supp. 2d 1303.(N.D.Ga. 2008). The Supreme Court stated, however, that among the competing interests to be considered in a motion to stay is "the hardship or inequity which a party may suffer in being required to go forward". *Landis*, 299 U.S. at 254.

In the case at bar, the Plaintiff who has made great strides in his labors to come to the United States was suddenly and unexpectedly detained by Cuban police for several months without charges, and was not released again until the end of 2014. This unprovoked and unaccountable detainment prevented him from continuing to pursue his visa in order to travel to the United States to conduct his deposition and other discovery here.

One point that carries great weight in deciding whether or not to grant a stay of proceeding is the stage of litigation. In *Semiconductor Energy Laboratory Co., LTD. V. Chimei Innolux Corp.*, 2012 WL 7170593 (C.D. Cal 2012), the court held that even though the litigation had been underway for a year, little discovery had been conducted (neither party had served any

document requests or written discovery and no parties had taken depositions or undertaken expert discovery), which was a point in favor of a stay. The court held that, since discovery was in its infancy, there was more work ahead of the parties and the court than behind them, and a stay would not unduly prejudice either party.

In the case at bar, the Defendants shall not be prejudiced by a three-month stay in the proceedings. The Defendants have not undertaken any discovery and the Plaintiff has not demanded any discovery of the Defendants. While it is never pleasant to be under the shadow of litigation, a three-month delay in the instant case shall not unduly burden the Defendants in any way, as the underlying facts and the underlying witnesses shall remain the same, and the work to be undertaken to see this case to trial shall remain unaltered by the three-month lapse.

Plaintiff should be permitted the opportunity to finalize his visa application proceeding. While his visa application was approved and the USCIS approved him for the family reunification program, his sudden arrest in Cuba prevented him from pursuing that avenue for three (3) months, while he was wrongfully detained.

Having come this fair, it would be unjust and inequitable to deny the Plaintiff his right to pursue this case and to appear at trail to face the Defendants before a trier of fact.

"There is a constitutional right to a fair trial in a civil case." Latolias v. Whitley, 93 F.3d 205, 207 (5th Cir.1996) (quoting *Lemons v. Skidmore,* 985 F.2d 354, 357 (7th Cir.1993)); see also *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966) (finding that a fair trial is guaranteed to every person by the Due Process Clause of the Fourteenth Amendment to the Constitution); *Bailey v. Systems Innovation, Inc.*, 852 F.2d 93, 98 (3d Cir.1988) (holding that "fairness in a jury trial, whether criminal or civil in nature, is a vital constitutional right"); *Chicago Council of Lawyers v. Bauer*, 522 F.2d 242, 248 (7th Cir.1975)(recognizing that “the right to a fair trial, guaranteed by the Sixth Amendment to criminal defendants and to all persons by the Due Process Clause of the Fourteenth Amendment”).

The court in *Latolias*, further stated that "it is difficult, but essential to maintain [the right to a fair trial in a civil case] for prisoner-plaintiffs." *Id*. at 207 (quoting *Lemons*, 985 F.2d at 357). Since “the very nature of a trial as a search for truth” (*Nix v. Whiteside*, 475 U.S. 157, 158, 106 S.Ct. 988, 989-90, 89 L.Ed.2d 123 (1986)), “at a minimum, fundamental fairness requires that

plaintiffs have the opportunity to present their cases" in order for the trier of fact can make a meaningful search for that truth. 93 F. 3d at 207.

The Eleventh Circuit has held that in order to determine whether the prisoner should appear at trial, the district court must consider factors such as "whether the prisoner's presence will substantially further the resolution of the case, the security risks presented by the prisoner's presence, the expense of the prisoner's transportation and safekeeping, and whether the suit can be stayed until the prisoner is released without prejudice to the cause asserted." Ballard v. Spradley, 557 F. 2d 476, 480 (5th Cir. 1977).[1] The court should not base the exercise of its discretion on the probability that a prisoner will succeed on the merits of the claim. *Id*. at 481.

While the cases above, dealt with the issue of Motions for Habeas Corpus Ad Testificandum, which is not an option in the instant case because the Plaintiff is not being held within the United States, they are indicative of the analysis that the court enters in cases like these, when a Plaintiff-Prisoner is unable to testify in court due to a criminal proceeding that bars him from attending the trial. Importantly, the court in *Ballard* stated that "should other considerations be present… a stay of the action may be appropriate." *Id*. at 481 (quoted in *ITEL Capital Corp. v. Dennis Min. Supply and Equipment, Inc.*, 651 F.2d 405 (5th Cir. 1981).

In the case at bar, the Plaintiff has no other alternative, but to respectfully request that the court stay the proceedings for a period of three (3) months so that he may finalize his visa process and is allowed to attend the deposition—and later, trial—personally.

There will be no prejudice to the cause asserted in the instant case, as all elements are already in place, the witnesses lined up, and the discovery yet conducted. Moreover, Congress anticipated that cases raised under the TVPA, based on the inherent nature of the acts prohibited by the law, which involve extreme suffering conducted under "actual or apparent authority, or color of law, of a foreign nation" for which the Plaintiff must have first "exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred" prior to filing a claim, would require an adequate period of time to be brought before the court, and therefore provided for a ten year statute of limitation for such cases to be raised.

[1] Prior to October 1, 1981, the 11th Circuit was actually part of the 5th Circuit. After the 11th Circuit was created, it adopted all of the 5th Circuit's holdings prior to October 1, 1981.

WHEREFORE, Plaintiffs respectfully request, in the interest of conducting through discovery and having a fair trial and permitting the Plaintiff to present his best case to the trier of fact, that the Court enter an order staying the instant proceedings for a three (3) month period so that the Plaintiff can finalize the proceedings to obtain his visa through USCIS's family reunification program.

Local Rule 7.1(a)(3) Certification

Undersigned counsel has conferred with counsel for Defendants, Sean Santini, regarding this motion and certifies that he stated that the Defendants objected to same.

By: *s/Kenia Bravo*
Kenia Bravo, Esq., FBN 68296
Avelino J. Gonzalez, Esq., FBN 75530

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was filed in federal court using CM/ECF on January 7, 2015.

s/Kenia Bravo
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