

5. LITIGATION UPDATE: A SUMMARY OF RECENT DEVELOPMENTS IN U.S. CASES BROUGHT UNDER THE ALIEN TORT CLAIMS ACT AND TORTURE VICTIM PROTECTION ACT

by: **Jennifer Green and Paul Hoffman***

Cases against Corporations Doing Business in the United States¹

Doe/Roe v. Unocal

In 1996, two lawsuits were filed charging the Unocal Corporation and Union Oil Company of California (“Unocal”) with knowingly using forced labor to construct a natural gas pipeline across the Tenaserin region of Burma. Both cases survived Unocal’s motions to dismiss. *Doe v. Unocal*, 963 F.Supp. 880 (C.D. Cal. 1987); *NCGUB v. Unocal, Inc.*, 176 F.R.D. 529 (C.D. Cal. 1987).

However, in September 2000, both suits were dismissed by Judge Ronald S.W. Lew. *John Doe I v. Unocal Corp.*, 110 F.Supp.2d 1294, 1310 (C.D. Cal. 2000).

Judge Lew held that the ATCA requires direct participation by Unocal in the wrongful acts. Judge Lew further held that in order for Unocal to have been the proximate cause of the injuries, it would have to have had control over the military regime. Plaintiffs appealed the ruling arguing that there was sufficient evidence

of Unocal’s participation with and control over the military security forces to raise material questions of fact and that the district court erred in requiring evidence of participation and control. Plaintiffs argued that the Nuremberg line of cases controlled, and that Unocal’s conduct was sufficient to create liability based on an aiding and abetting theory.

In the fall of 2002, the plaintiffs in both cases filed new complaints in Los Angeles Superior Court raising purely state law claims. Judge Lew had dismissed these claims without prejudice. In an August 20, 2001, ruling Superior Court Judge Victoria Chaney ruled that collateral estoppel and federal preemption did not act to bar these claims. Unocal filed new motions for summary judgment in early 2002. In a June 10, 2002 ruling, Judge Chaney denied portions of these motions, clearing the way for a trial. Accepting plaintiffs’ “vicarious liability” theory, Judge Chaney held that there were triable issues of fact as to whether there was a joint venture that included Unocal to construct the pipeline. The court further held that there were triable issues on whether Unocal and its co-venturers hired, contracted with, or otherwise retained the SLORC regime as an agent to perform security and other “services” for the project. The state court trial has now been bifurcated. In June the trial court held a one day evidentiary hearing on choice of law and found that California law applied to the issues in the case. Unocal filed a writ petition seeking immediate appellate review of this decision which is still pending. The first phase of the bifurcated trial relating to corporate structure issues (e.g. piercing the corporate veil etc) is scheduled to start on December 3rd and will last 2-3 weeks. The merits phase of the trial will start at some point in early 2004.

On September 19, 2002, the Ninth Circuit issued an opinion reversing Judge Lew’s grant of summary judgment to Unocal. Citing the line of cases beginning with the Nuremberg Tribunals, the appeals court held that plaintiffs could proceed under the ATCA with an “aiding

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and abetting” theory. Under this standard, plaintiffs need only show that Unocal provided knowing assistance to the direct perpetrators of the human rights violations. The court cited plaintiffs’ evidence that Unocal and its co-venturers provided financial and material support to the security forces in holding that there was sufficient evidence to submit the issue to a jury.

The Ninth Circuit granted Unocal Petition for Rehearing En Banc and the case was reargued en banc on June 17, 2003. The Justice Department filed an amicus brief on Unocal's behalf taking the position that the ATCA is only a subject matter jurisdiction statute and that all of the ATCA cases decided since 1980 have been wrongly decided. At the argument the en banc panel indicated that it was not going to overrule prior Ninth Circuit ATCA decisions and that it was primarily interested in resolving the differences of view in the panel decision about the proper methodology to be applied in ATCA cases regarding third party liability.

Wiwa v. Royal Dutch Petroleum, 96 Civ. 8386 (S.D.N.Y., filed November 8, 1996), 226 F.3d 88 (2d Cir. 2000)

This case charges Royal Dutch Petroleum Company and Shell Transport and Trading Company (Royal Dutch/Shell) with complicity in the November 10, 1995 hanging of Ken Saro-Wiwa and John Kuinen, two of nine leaders of MOSOP (Movement for the Survival of the Ogoni People), the torture and detention of Owens Wiwa, and the wounding of a woman who was peacefully protesting the bulldozing of her crops in preparation for a Shell pipeline, who was shot by Nigerian troops called in by Shell. The case was brought under ATCA and the Racketeer Influenced and Corrupt Organizations Act (RICO). The District Court found that there was personal jurisdiction over defendants, but granted defendants’ motion to dismiss the complaint on

grounds of forum non conveniens (to England, home of Shell Transport & Trading). Plaintiffs appealed the dismissal; defendants cross-appealed the ruling on personal jurisdiction. On September 15, 2000, the Second Circuit issued its decision, which reversed the forum non conveniens dismissal and denied defendants’ cross appeal on personal jurisdiction. The Second Circuit then remanded the case for consideration of defendants’ motion to dismiss for lack of subject matter jurisdiction. Defendants petitioned for certiorari, but the petition was rejected.

In 2002, the district court ruled that the court had subject matter jurisdiction. The ruling contained an important analysis of forced exile as a form of cruel, inhuman or degrading treatment. 2002 U.S. Dist. LEXIS 3293 (S.D.N.Y. Feb. 28, 2002).

Wiwa v. Anderson, 01 Civ. 1909 (S.D.N.Y. filed March 2001)

In March 2001, the former head of the Nigerian subsidiary, Shell Transport & Trading, Brian Anderson, was sued while in New York. He filed a motion to dismiss, which also included a claim that the case should be transferred to England under the forum non conveniens doctrine. The motion was denied in its entirety, and included the rejection of defendant’s attempt to use the Nigerian truth commission as a basis for a forum non conveniens

In both **Wiwa v. Royal Dutch Petroleum** and **Wiwa v. Anderson** plaintiffs filed amended complaints and the cases are now in discovery. The plaintiffs in both cases are represented by Judith Chomsky, Jennie Green, Paul Hoffman and Beth Stephens of the Center for Constitutional Rights; Anthony DiCaprio of Ratner, DiCaprio & Chomsky; Julie Shapiro; Tom Golden, Nisha Menon, and Anamika Samanta of Willkie Farr & Gallagher; and Jodie Kelley of Jenner & Block.

Kiobel, et al v. Royal Dutch Petroleum, et al., *S.D.N.Y. 02 Civ. 7618 (KMW)*

On September 20, 2002, fourteen individual plaintiffs filed a class action charging Shell with complicity for human rights violations committed between 1990-1999 in Nigeria (including purchasing ammunition and providing logistical support of repression of anti-Shell protestors). This case is also in discovery (on a coordinated schedule with the Wiwa plaintiffs), and a motion for class certification and a motion to dismiss are now pending. As part of their motion to dismiss the Kiobel action, defendants filed a U.S. Department of Justice amicus curiae brief challenging ATCA itself that was filed in the Ninth Circuit in the Unocal actions. The Wiwa and Kiobel plaintiffs jointly submitted the plaintiff/appellees' opposition in Unocal.

The plaintiffs are represented by Berger & Montague of Philadelphia.

Bowoto v. Chevron, *Case No. C99-2506 CAL (N.D. Cal. 1999)*

This case charges the San Francisco-based Chevron Corporation for its involvement in a series of three machine gun attacks upon unarmed protesters and people in their homes in Nigeria between May 1998 and January 1999. The Plaintiffs were either summarily executed by the gunfire, seriously injured by gunfire during the attacks, burned in a fire set during the attack or tortured by the police thereafter with the complicity of and/or at the request or suggestion of Chevron. The suit was filed in May 1999 in federal court in San Francisco. In the spring of 2000, Plaintiffs defeated defendant's motions to dismiss the entire complaint to Nigeria on lack of subject matter jurisdiction, forum non conveniens and act of state grounds, and argued that the protestors' claims did not state claims of international law, and the case is now in discovery. In discovery, plaintiffs have found substantial evidence of Chevron's knowledge of and acquiescence to

the subsidiary's conduct. Defendant has filed a motion for summary judgment which has been briefed and argued. Plaintiffs have also filed claims in state court for unfair business practices and advertising practices, and other violations of state law.

Counsel on the case are the law firms of Hadsell & Stormer, Traber & Voorhees, Cindy Cohn, Judith Chomsky, Michael Sorgen, EarthRights International, the Working Peoples' Law Center, the Center for Constitutional Rights, Bahan & Herold, and Paul Hoffman.

In Re: South African Apartheid Litigation, *02 MDL 1499 (S.D. 2002)*

A series of cases which had been filed in New York and other courts across the country against a range of corporate defendants for their activities supporting apartheid in South Africa were consolidated earlier this year. Defendants include banks, insurance companies, and computer companies. Claims are for forced labor, discrimination, rape and other torture, and other human rights violations. The lead complaints are as follows:

In June 2002, a class action on behalf of more than 5,000 apartheid victims was filed against dozens of multinational corporations. Ntsebeza v. Citigroup, 02 Civ. 4712 (RCC). The companies are accused of rescuing the apartheid regime in the mid-1980s when it faced financial default because of international sanctions. Damages sought are \$50 billion. Counsel include Fagan & Associates (New Jersey); Nagel Rice Dreifuss & Mazie (New Jersey); Thomas Wareham & Richards (New York); Dumisa Buhle Ntsebeza (South Africa/Connecticut); John Ngcebetsha and Gugulethu Oscar Madlanga (Randburg, South Africa); Dambusa & Mnqandi Incorporated (Eastern Cape, South Africa); Kedibone Molema Attorneys (Pretoria, South Africa), and Padayachi Lloyd (Cape Town, South Africa).

Connecticut attorneys Paul Ngoni and associates have filed a related complaint,

Digwamaje v. IBM Corp., et al 02-CV-6218
(*S.D.N.Y. 2002*).

On November 12, 2002, the Washington, D.C. law firm of Cohen, Milstein, Hausfeld & Toll, with the South African firm of Abrahams, Kiewitz, the Florida firm of Kerrigan, Estes, Rankin & McLeod, LLP, and the Los Angeles firm of Fleishman & Fisher filed a suit on behalf of the Khulumani Support Group and individual plaintiffs in the Eastern District of New York. *Khulumani v. Barclays National Bank Ltd.* (E.D.N.Y. 2002). The suit targets Swiss, German, U.S., Dutch, French and British banks and companies who had financial ties with the regime.

Plaintiffs filed second amended complaints against various defendants in March 2003; all claims against Daimler Chrysler AG were voluntarily dismissed without prejudice and the court ordered dismissal without prejudice against Rio Tinto. On May 22, 2003, the Court granted leave to defendants to file a joint motion to dismiss. In September 2003, the South African government and the U.S. State Department intervened to support dismissal of the lawsuits.

Flores v. Southern Peru Copper Corporation,
No. 00 CIV. 9812 (CSH) (S.D.N.Y., filed Dec. 27, 2000)

Residents of Ilo, Peru charged defendant with despoilment of the air, land and water through copper mining and refining operations over the last forty years. Plaintiffs' claims include violation of the right to life, violation of the right to health, violation of duty to assure sustainable development. Defendant's motion to dismiss was granted on July 16, 2002. 2002 U.S. Dist. LEXIS 13013.

Judge Charles Haight of the Southern District of New York held that plaintiffs had not submitted sources demonstrating an international consensus that high levels of environmental pollution within a nation's borders did not violate the "right to life," "right to health" or "right to sustainable

development." Judge Haight further explained that if he had not held that the ATCA claims were legally unfounded, he would have dismissed the lawsuit on forum non conveniens grounds. Plaintiffs appealed and on August 29, 2003, their appeal was rejected. 2003 U.S. App. LEXIS 18098.

Attorneys for plaintiffs are Wallace Showman of New York, and Schirrmester Ajamie, LLP of Houston, TX.

Sarei, et al v. Rio Tinto, plc, CV 00-11695-MMM (MANx) (C.D. Cal. Filed 2000)

Class action claiming displacement of villages and environmental damage in construction of copper mine in Bougainville, Papua New Guinea. Claims include crimes against humanity (including a medical blockade), violation of the right to life and health and security of person, racial discrimination, violations of international environmental rights and war crimes (including blockade).

Defendant filed a motion to dismiss, and on in October 2001, the U.S. attorney general filed a "statement of interest" that adjudication of this lawsuit could negatively impact the peace accord that has been negotiated by Papua New Guinea.

On July 9, 2002, Defendant's motion to dismiss was granted on the grounds of the act of state doctrine and international comity. 221 F.Supp.2d 1116 (C.D. Cal. 2002). The plaintiffs appealed to the Ninth Circuit, and oral argument was heard on September 8, 2003.

Attorneys for plaintiffs include Steve Berman of Hagens Berman LLP in Seattle, Kevin Roddy of Hagens Berman LLP in Los Angeles, and Paul Luvera and Joel D. Cunningham of Luvera, Barnett, Brindley, Beninger & Cunningham.

Bano, et al. v. Union Carbide Corporation and Warren Anderson: 99 Civ. 11329 (JFK) (S.D.N.Y. 1999)

Class action lawsuit filed in November 1999 on behalf of survivors and next-of-kin of victims of the Bhopal Gas Disaster of December 2-3, 1984, (the “Bhopal Disaster”) against Union Carbide Corporation (hereafter “Union Carbide” or “the Company”), as well as its former Chief Executive Officer, Warren Anderson, in the federal court in New York.

Plaintiffs claim that defendants acted with unlawful, reckless and depraved indifference to human life in the design, operation and maintenance of the Union Carbide of India Ltd. (“AUCIL”) facility at Bhopal which resulted in the devastating leak of massive amounts of methyl isocyanate (“MIC”) into the city killing thousands and injuring many thousands of its residents. Plaintiffs’ claims also include disregard of any emergency-preparedness or minimal safety precautions, and widespread and severe contamination and environmental pollution of soil and drinking water. Finally, plaintiffs charge civil contempt, abuse of judicial mandate and evasion of lawful process, as well as actual and constructive fraud because of defendants’ failure to comply with the lawful orders of the courts of both the United States and India. Plaintiffs also alleged violations of international law.

Defendants filed a motion to dismiss the amended complaint, deny class certification, and in the alternative, moved for summary judgment. The District Court granted their motion (2000 U.S. Dist. LEXIS 12326) in August 2000 and plaintiffs appealed. On November 15, 2001, the Second Circuit ruled that the lower court had properly dismissed the plaintiffs’ claims under ATCA (because the 1989 settlement ordered by the Indian Supreme Court precluded any other claims from the 1984 disaster; it never ruled on whether Union Carbide’s actions violated international norms). However, the Circuit ruled that the lower court

erred in dismissing the plaintiffs’ common-law environmental claims and remanded on those claims. On March 18, 2003, these claims were dismissed on statute of limitations grounds. Plaintiffs have filed an appeal.

The case was brought by Goodkind Labaton Rudoff & Sucharow LLP, Professor Upendra Baxi, Law Offices of Curtis Trinko, Llp, and EarthRights International.

Abdullahi v. Pfizer (S.D.N.Y., filed Aug. 29, 2001)

Thirty Nigerian families sued Pfizer for conducting an unethical clinical trial of an antibiotic (Trovan) on their children in 1996. Defendants moved to dismiss the case to Nigeria on forum non conveniens grounds and that motion was granted on September 16, 2002. 2002 U.S. Dist. LEXIS 17436. Plaintiffs appealed to the Second Circuit and oral argument was held on August 25, 2003; a decision is pending. The plaintiffs are represented by Milberg Weiss Bershad Hynes & Lerach in New York.

Saipan cases: In late September 2002, a final settlement was concluded with seven major U.S. retailers, which for the most part concluded three cases filed on January 13-14, 1999 in U.S. federal court in Los Angeles and Saipan, and in California state court, challenging sweatshop conditions in the garment industry in Saipan, Commonwealth of the Northern Mariana Islands (CNMI). Levi Strauss did not agree to the settlement and continues as a defendant, although they stopped purchasing garments from Saipan after the lawsuit was filed. The case against Levi Strauss is now before the Ninth Circuit. For details on the groundbreaking settlement, see www.globalexchange.org, www.sweatshopwatch.org.

The Plaintiffs are represented by the law firms of Milberg, Weiss, Bershad, Hynes & Lerach; Altshuler, Berzon, Nussbaum, Berzon & Rubin, Galloway & Associates, and Bushnell, Caplan & Fielding, LLP.

Presbyterian Church v. Talisman Energy Co., Inc. *01 CV 9882 (AGS) (S.D.N.Y.) filed Nov. 8, 2001 (amended complaint filed Feb. 25, 2002)*

The Presbyterian Church of Sudan and one of its pastors, with the assistance of the American Anti-Slavery Group, filed a class action on behalf of non-Muslims in the Sudan, charging that Talisman, a Canadian oil production company, has supported the ethnic cleansing campaign of the Islamic government in Sudan. Plaintiffs allege that Talisman was complicit in the actions of the government against Christians who lived near oil fields or transportation systems, including kidnapping, rape, murder, and land confiscation. The February 2002 amended complaint added the Sudanese government as a defendant.

Talisman filed a motion to dismiss the lawsuit, and requested that the court solicit a U.S. State Department opinion about the consequences of the suit for Sudan's peace process. In September 2002, the Judge refused Talisman's request to consult the State Department. In March 2003, the judge dismissed defendant's motion, holding that, corporations "are potentially liable for violations of the law of nations that ordinarily entail individual responsibility," like slavery, piracy, or genocide. He found that states may exercise universal jurisdiction over violations of such basic norms, for both criminal and civil liability. Defendants then filed a copy of the U.S. Department of Justice amicus curiae brief in Doe v. Unocal; a large number of law professors and human rights organizations filed a brief in opposition. The court's decision is pending, and discovery is ongoing.

Plaintiffs' lawyers include Carey D'Avino and Stephen Whinston of Berger & Montague of Philadelphia.

SINALTRAINAL v. Coca-Cola

On July 20, 2001, members of the SINALTRAINAL labor union sued Coca-Cola and PanAmerican Beverages, Inc. for violations of labor rights in Colombia, including the

assassination of union activists in federal court in Miami. In March 2003, the judge held that the case could proceed against the Coca-Cola bottler in Colombia but not against the parent company; plaintiffs will appeal that part of the decision. Counsel includes the International Labor Rights Fund and the United Steelworkers Union.

Bigio v. Coca-Cola, *No. 98 9058, 239 F.3d 440 (2d Cir. 2001)*

Plaintiffs alleged that Coca-Cola either purchased or leased their property with full knowledge of the unlawful manner in which it had been seized from the plaintiffs. Defendants' motion to dismiss was granted by the Southern District of New York, which concluded that the plaintiffs had not satisfied the prerequisites for jurisdiction under the ATCA, and that the Act of State Doctrine barred the court's jurisdiction, despite the parties' diversity of citizenship. The Second Circuit upheld the dismissal of the ATCA claims, but stated that the Act of State doctrine does not bar the court from exercising diversity jurisdiction. The court remanded for the purpose of determining whether principles of international comity dictating against exercising jurisdiction, and if they do not, for the court to decide the case on its merits. In December 2002, defendants filed a motion to dismiss and briefing was completed by April 2003. A decision is pending.

Plaintiffs' counsel include Nathan Lewin of Miller, Cassidy, Larroca & Lewin, LLP of Washington, D.C.

Jota v. Texaco, Inc.

Two consolidated claims, Aguinda v. Texaco, S.D.N.Y. Dkt. No. 93 Civ. 7527 (on behalf of residents of the Oriente region of Ecuador) and Ashanga v. Texaco Inc., S.D. Dkt. No. 94 Civ. 9266 (residents of Peru), allege that Texaco polluted the rain forests and rivers in Ecuador and Peru during oil exploitation activities in Ecuador between 1964 and 1992:

dumping toxic by-products in local rivers, leaking petroleum into the environment, resulting in physical injuries that included pre-cancerous growths.

On October 5, 1998, the Second Circuit reversed a dismissal on the ground of forum non conveniens. 157 F.3d 153 (2d Cir. 1998). The case was remanded and oral argument was heard in February 1999. In January 2000, the Court ordered additional briefing on whether the case could be heard in Ecuador, given a January 21, 2000, military coup and the 1998 U.S. State Department Country Report on Ecuador. 2000 U.S. Dist. LEXIS 745 (Jan. 31, 2000). On May 30, 2001, the District Court dismissed the case on forum non conveniens grounds to Ecuador (noting that the Peruvian plaintiffs could bring their claims in Peru if they so chose). 142 F.Supp.2d 534 (S.D.N.Y. 2001). In its forum non conveniens analysis, the district court concluded that plaintiffs would be unlikely to demonstrate that Texaco's acts are actionable under ATCA. Plaintiffs appealed.

On August 16, 2002, the Second Circuit affirmed the lower court's decision to dismiss the case, but reasoned differently. Rather than finding that plaintiffs would be unlikely to state a claim for a violation of international law, the Court held that it need not reach the issue because other public and private interest factors would require dismissal even if ATCA expresses a strong U.S. policy interest. The Second Circuit ruled that the dismissal must be conditioned on Texaco's agreement to waive defenses based on statutes of limitation for limitations periods expiring between the institution of these actions and a date one year subsequent to the final judgment of dismissal.

On May 5, 2003, 88 Ecuadoran plaintiffs sued ChevronTexaco in Ecuador to compensate residents, clean up the sites, install new technology to prevent further dumping and provide medical care.

Counsel for plaintiffs-appellants include the Law Office of Cristobal Bonifaz, Kohn,

Swift & Graf, and Sullivan & Damen. Updates are available at <http://www.texacorainforest.org/>

Arias v. DynCorp, No. 1:01CV01908 (D.D.C., filed Sept. 11, 2001)

Class action of 10,000 Ecuadorian Indians charging that U.S. company was contracted to carry out fumigation of cocaine and heroin believed to be growing over the area in which they live. Plaintiffs charge that reckless spraying of homes and farms caused illness, congenital birth defects, and death and destroyed crops and their means of livelihood. ATCA violations charged included crimes against humanity, torture and genocide. Defendants' motion to dismiss was briefed in the spring of March 2002. A decision is pending.

Plaintiffs' counsel include the International Labor Rights Fund and Cristobal Bonifaz.

Doe v. ExxonMobil Corp. (No. 01-1357 CIV, D.D.C., filed May 2001)

Seven men and four women from Aceh, Indonesia accused Exxon of paying and directing the Indonesian government security forces to commit atrocities including murder, torture, kidnapping and crimes against humanity. Exxon Mobil filed a motion to dismiss the lawsuit and plaintiffs responded December 14, 2001. Oral argument was heard on April 9, 2002.

The Court, in response to ExxonMobil's request, then requested the U.S. government for its views on whether the case interfered with U.S. foreign policy. In July 29, 2002, the U.S. Department of State wrote a letter to the Court stating that foreign policy considerations dictated that the case must be dismissed. They highlighted the war on terrorism and "commercial interests." Indonesia's Ambassador to the U.S. also submitted a letter opposing jurisdiction by U.S. courts. Plaintiffs filed an affidavit by Harold Koh, Yale Law School Professor and former Assistant Secretary

of State for Democracy, Human Rights and Labor. The motion to dismiss, as well as a decision on the legal effect of the State Department's letter, is pending.

Plaintiffs' counsel includes the International Labor Rights Fund.

Villeda v. Fresh Del Monte Produce, No. 01-3399-CIV (S.D.Fla. filed August 2001)

Seven former leaders of the SITRABI labor union in Guatemala charged the company with organizing kidnapping and conspiracy in subsequent torture. The case charges that the company violated the plaintiffs' right to freedom of association, in particular their right to organize and bargain collectively. Defendants filed a motion to dismiss on May 13, 2002; plaintiffs filed their third amended complaint on February 5, 2003, and defendants' motion to dismiss was denied without prejudice. Defendants re-filed their motion to dismiss on April 30, 2003. Argument was scheduled for August 13, 2003. Counsel include the International Labor Rights Fund.

Estate of Rodriguez, et al v. Drummond Company, Inc., et al, CV-02-0665 (N.D. Ala., filed March 14, 2002)

This suit charges Alabama's largest mining corporation, Drummond Company, Inc., and its wholly-owned subsidiary, Drummond Ltd. with hiring or directing paramilitary gunmen to torture, kidnap and murder three union leaders in La Loma, Colombia during a bitter dispute between the company and the union.

On April 14, 2003, the court ruled against defendants' motion to dismiss. 2003 WL 1889330.

Attorneys include the International Labor Rights Fund and the United Steelworkers of America.

Mujica v. Occidental Petroleum and AirScan, Inc., No. 03-2860 (C.D. Cal. Filed April 24, 2003)

Plaintiffs; a young Colombian man, his father, and minor brother; claim relief for the extrajudicial killing of their family members. A few days before Christmas in 1998, defendants and members of the Colombian Air Force (CAF) dropped a cluster bomb on the village of Santo Domingo during an exercise purportedly aimed at securing Occidental Petroleum's oil pipeline in northeastern Colombia. The attack killed 18 civilian villagers, including three of plaintiff's family members. Plaintiffs allege that Occidental Petroleum and its Florida-based security contractor, AirScan, met with members of the CAF the morning of the attack in "Room G" of Occidental's complex in Canon Limon, Arauca, Colombia, to plan the raid and provided material and monetary support, including air coordinates used to drop the bomb on Santo Domingo. The claims include extrajudicial killing; war crimes; crimes against humanity; torture; and cruel, inhuman, and degrading treatment. The plaintiffs also allege unfair business practices under the California Business and Professions Code § 17200. This ATCA and TVPA civil suit parallels the Santo Domingo villagers' petition to the Inter-American Commission on Human Rights.

Attorneys for the plaintiffs include International Labor Rights Fund, Center for International Human Rights at Northwestern University Law School, Dan Kovalik, and Paul Hoffman of Schonbrun, DeSimone, Seplow, Harris and Hoffman LLP.

U.S. officials

Alvarez-Machain

In June 2002 the Ninth Circuit reheard the decision reported at 266 F. 3d 1045 (9th Cir 2001) en banc. On June 3, 2003, the Ninth Circuit in a 6-5 decision upheld most of the panel's decision, though employing different

reasoning. The main difference is that the majority of the en banc panel found that transborder abduction of a criminal suspect from Mexico to the United States did not violate customary international law. However, the majority did find that Dr. Alvarez' arrest by private Mexican citizens operating without legal authority in Mexico did constitute arbitrary arrest and detention in violation of international customary law. Central to the Court's reasoning was the fact the DEA's authorizing statutes do not authorize extra-territorial arrests and thus there was no authority in U.S. law for Dr. Alvarez' arrest outside the territorial boundaries of the United States. The Court was of the view that Congress could authorize the violation of international law by granting such authority but Congress had not done so. Using a similar analysis, the Court found that Dr. Alvarez also had a false arrest claim under the Federal Tort Claims Act.

The en banc panel affirmed the panel's decision that ATCA claims could be substituted under the Westfall Act making it impossible to bring ATCA claims against federal officials acting within the scope of their authority.

In early September defendant Sosa, supported by the United States, filed a Petition for a Writ of Certiorari in which he asks the Court to decide whether the ATCA is merely a jurisdictional statute; whether the violation of a jus cogens norm must be shown to invoke ATCA remedies; and whether Dr. Alvarez' kidnapping constitutes arbitrary arrest or detention under international law. On October 1, 2003, the United States filed its own Petition raising issues relating to the FTCA issues in the case. The Court is expected to decide whether to grant the Petitions before the end of the year.

Dr. Alvarez is represented by a team of ACLU Foundation of Southern California lawyers led by former ACLU/SC Legal Director Paul Hoffman, as well as Ralph Steinhardt, Erwin Chemerinsky, Mark Rosenbaum, Alan Rubin, Dilan Esper and Alan Castillo. The late Joan Fitzpatrick was a key member of the team

until her untimely death in May 2003. The *en banc* decision is reported at 331 F.3d 604 (9th Cir. 2003).

Turkmen v. Ashcroft, *E.D.N.Y. (02 CV 2307 (Gleeson, J.))*

Class action brought by seven noncitizens who were arrested and detained on minor immigration violations by the Immigration and Naturalization Service (INS) following the September 11, 2001 terrorist attacks, and then kept in detention long after they were ready to leave the United States on final orders of removal or voluntary departure until they were "cleared" of criminal suspicion by the Federal Bureau of Investigation (FBI). The Plaintiffs are, or were perceived by Defendants as, Muslim or Arab. U.S. government official defendants were charged with responsibility for instituting and executing the detention policies to which they were unlawfully subjected.

Plaintiffs' claims included a range of civil rights violations, and international law violations. ATCA violations charged were cruel, inhuman or degrading treatment, arbitrary detention, and violation of the customary international law right of contact with the detainees' consulates. Plaintiffs also claimed a direct treaty violation under the Vienna Convention on Consular Relations. Defendants filed a motion to dismiss, claiming that the U.S. government must be substituted for the individual defendants for plaintiffs' ATCA claims and that plaintiffs had no right to sue under the Vienna Convention on Consular Relations. Oral argument was held in January 2003 and a ruling is pending. Subsequent briefing was requested, but not on the international law claims.

Counsel for the plaintiffs are the Center for Constitutional Rights and Covington & Burling.

Rasul v. Bush, *Civil Action No. 02-299 (CKK)* (D.D.C. filed Feb. 19, 2002); **Odah v. United States**, *Civil Action No. 02-828 (D.D.C. filed May 1, 2002)*

Plaintiffs in these two related cases are post 9/11 detainees held at Guantanamo Bay, Cuba. The Rasul action was brought on behalf of two British citizens and one Australian and petitions, inter alia, that the detainees be released, and that they be able to meet with their counsel. The Odah case was filed on behalf of 12 Kuwaitis, and requests a preliminary and permanent injunction allowing the detainees contact with their family members and counsel, and to be informed of the charges against them. Both cases alleged ATCA violations.

The U.S. government filed motions to dismiss, and oral argument was held on June 26, 2002. On July 30, 2002, the District Court dismissed the cases. On the ATCA claims, the court held that no ATCA relief was available to the Rasul and the Odah plaintiffs because habeas corpus is the only potential remedy for wrongful detention. The court held in the alternative that in order to be sued under ATCA, the government must waive its immunity and there had been no such waiver. 215 F.Supp.2d 55.

Plaintiffs appealed, and on March 11, 2003, the Court of Appeals found that it did not have jurisdiction over the habeas claims or the ATCA claims on the grounds that a foreign person without property or presence in the United States does not have constitutional rights, including due process rights, and therefore relief is not available, and finally, that the U.S. does not assert sovereignty over Guantanamo Bay. In his concurring opinion with the majority opinion he signed, Judge Randolph expressed concerns about ATCA's constitutionality and argued that customary international law should not be part of federal common law. Plaintiffs filed a petition for certiorari with the U.S. Supreme Court solely on the constitutional claims.

Counsel for the Rasul plaintiffs are led by the Center for Constitutional Rights; the Odah plaintiffs are represented by Shearman & Sterling.

Schneider v. Kissinger, *D.D.C., filed Sept. 10, 2001 (Case Number 1:01CV0192 (HHK))*

Case on behalf of family members and estate of General Rene Schneider, former head of the Chilean military in the government of Salvador Allende. The complaint includes claims for summary execution, torture, and arbitrary detention, and charges former National Security Advisor Henry Kissinger and former CIA Director Richard Helms and the United States of America for "designing, ordering, implementing, aiding and abetting, and/or directing a program of activities aimed at, and resulting in the kidnapping and killing of Rene Schneider."

Attorneys for the U.S., Kissinger and Helms at Department of Justice have filed a motion to dismiss the case. The motion argues that plaintiffs claims are barred by the political question doctrine and sovereign immunity, common law immunity, qualified and absolute immunity, and that plaintiffs state no cognizable claim under the TVPA. A decision is pending. Regular updates are available on www.icai-online.org.

Michael Tigar is attorney for plaintiffs.

Papa v. United States, *No. 00-55051 (C.D. Cal.)*

On February 25, 2002, the Ninth Circuit reversed the dismissal of the Bivens claims, FOIA claims and ATCA claims, finding that the claims were timely (applying TVPA 10-year statute of limitations) and that they had claims under customary international law. 281 F.3d 1004 (9th Cir. 2002). The case is now in the discovery phase. Plaintiffs' ATCA claims were dismissed based on the *en banc* decision in Alvarez v. United States allowing the substitution of ATCA claims under the Westfall Act.

U.S. government officials and corporations

Jama v. U.S. INS

On October 1, 1998, nineteen political asylum seekers who were formerly detained in an Immigration and Naturalization Service (INS) facility in Elizabeth, New Jersey won an important ruling against INS officials, a private contractor and its employees. 22 F. Supp. 2d 353 (D.N.J. 1998). The suit is now in discovery. Plaintiffs have successfully obtained documents on four other facilities by the contractor, the Esmor Corporation. The plaintiffs have obtained critical protective orders for the immigration records for their clients. Two other cases subsequently filed against the INS have been consolidated for discovery purposes. A recent decision on notice issues for a related class action was recently published. DaSilva v. Esmoor, 215 F.R.D. 477 (D.N.J. 2003). Summary judgment motions from the defendants, including an argument that U.S. government officials are entitled to qualified immunity, are pending.

The plaintiffs are represented by the Constitutional Rights Clinic at Rutgers Law School and the law firm of O'Melveny & Myers.

Cases against foreign officials, organizations and/or U.S./foreign corporations

Ashton et al v. Al Qaeda Islamic Army et al, No. 02 CV-6977; **Beyer et al v. Al Qaeda Islamic Army et al**, No. 02 CV-6978 (S.D.N.Y. filed Sept. 4, 2002)

1,400 victims and survivors of the September 11 attacks on the World Trade Center plaintiffs charge Al Qaeda, Osaama bin Laden, 37 Al Qaeda associates, the estates of the 19 terrorist hijackers who died in the Sept 11 attacks, Zacharias Moussaoui, the Taliban and its leader Mohammad Omar, Iraq, Saddam Hussein and two sons, the Iraqi intelligence agency, 13 individual Iraqi officials and 64 co-conspirators, including banks, charities,

corporations and individuals that are alleged to have provided funds and other support to further the alleged acts of terror against the United States for the last 10 years. The case was brought by the Anti-Terrorism Act, the Torture Victim Protection Act and the Anti-Terrorism and Effective Death Penalty Act. An amended complaint was filed on August 1, 2003.

The plaintiffs are represented by Kreindler & Kreindler of New York.

Burnett, St. v. Al Baraka Investment and Development, et al, No. 02-CV-1616 (JR) (D.D.C. Aug 14, 2002)

More than 3000 survivors and relatives of those killed in the 9/11 World Trade Center attacks brought suit against defendants including seven international banks, eight Islamic foundations and their subsidiaries and several individuals alleged to be terrorist financiers, including Osama bin Laden and members of the Saudi royal family. This suit also seeks \$1 trillion in compensator, treble and punitive damages.

The complaint has been amended to add dozens of additional defendants, based on new evidence gathered by a team of private investigators. It was brought under the Foreign Sovereign Immunities Act, Torture Victim Protection Act, the Alien Tort Claims Act, RICO, and tort claims, including wrongful death and conspiracy. The defendants filed motions to dismiss; on July 25, 2003, they were granted in part and denied in part. 2003 U.S. Dist. LEXIS 12730.

Counsel for plaintiffs include Allan Gerson and Ronald Motley (South Carolina). The Washington-based Judicial Watch has been granted permission to intervene.

Cases against foreign government officials

Doe v. Saravia (N.D. Cal., filed Sept. 16, 2003). Plaintiffs represented by the head of the human rights office of the Archdiocese of San Salvador sued Alvaro Saravia, a former

Salvadoran Air Force officer and “right hand” to former death squad leader Roberto D’Aubuisson. They accuse him of participating in the assassination of Archbishop Oscar Romero in 1980 and, in particular, of weapons, vehicles and other equipment for the assassination, providing his personal driver to transport the assassin and paying him after the killing. The UN Truth Commission for El Salvador named Saravia as one of the culprits, and the driver testified against him in hearings that resulted in a warrant for his arrest, later quashed by the right-wing dominated Supreme Court. Saravia has lived in the United States since at least 1987 when he was jailed for 14 months on immigration charges.

The Center for Justice and Accountability is counsel for the plaintiffs, together with Nico van Aelstyn and Russell Cohen of Heller Ehrman White & McAuliffe and Prof. Patty Blum.

Jean v. Dorélien (S.D. Fla. Filed January 24, 2003)

On January 24, 2003, the Center for Justice and Accountability, with Stephen Rosenthal from Podhurst Orseck Josefsberg Eaton, et al, filed a case in the Southern District of Florida federal court against Col. Carl Dorélien, a former member of the Haitian military High Command under the 1991-94 military dictatorship. Dorélien is accused of command responsibility for abuses committed during the “Raboteau massacre” in 1993. CJA is working in close collaboration with Brian Concannon of Bureau des Avocats Internationaux, who represents the Raboteau victims, including in criminal proceedings in Haiti.

Dorélien, who moved to the US in 1995, won \$3.2 million in the Florida State Lottery in 1997. Approximately \$1.6 million remains with the Lottery. Because Dorélien is not a U.S. citizen he is limited to withdrawing 5% of the \$3.2 million each year. In 2001, the US Immigration Service detained him for

deportation, and on January 27, 2003, federal agents turned him over to Haitian authorities. He is being held in prison pending trial for the Raboteau massacre.

El Salvador cases (Ford v. Garcia; Romagoza v. Garcia) (S.D. Fla)

These two cases were brought against General Guillermo Garcia, El Salvador’s Minister of Defense from 1979-83, and General Carlos Eugenio Vides Casanova, Director General of the National Guard during 1979-83, and Garcia’s successor as Defense Minister.

The Ford case was brought on behalf of four U.S. churchwomen who were tortured and killed in El Salvador, and their family members. That case went to trial, and a jury found that the defendants were not liable. The decision was upheld on appeal, 289 F.3d 1283, and plaintiffs filed a writ for certiorari, which was denied. 123 S.Ct. 868. Plaintiffs’ counsel include Robert Kerrigan and Robert Montgomery.

The Romagoza case was brought by three Salvadorans now living in the U.S. who survived torture at the hands of the Salvadoran National Guard and Police between 1979 and 1983. Trial went forward the summer of 2002, and on July 23, 2002, the jury awarded \$54.6 million to the plaintiffs for torture. The suit was filed by the Center for Justice and Accountability, with Morrison & Foerster, James Green of Florida, Professor Patty Blum of the International Human Rights Law Clinic at University of California and Ken Hurwitz of the Lawyers Committee for Human Rights. CJA is working with Florida lawyers and the Human Rights Center of the Central American University (IDHUCA) in San Salvador to attach the generals’ assets. Gen. Vides Casanova’s tax returns, jointly filed with his wife, show substantial assets, which he claims are all owned by his wife.

Zhou v. Li Peng, *Civ. No. 00-6446 (S.D.N.Y. filed Aug. 28, 2000)*

In April 1989, peaceful demonstrators occupied Tiananmen Square in Beijing demanding democratic reforms. After a six-week standoff, the protestors, mainly students, were forcibly removed in a wholesale military attack. Thousands were killed and wounded. In August 2000, former student leader Wang Dan and four other survivors of the massacre filed suit against Li Peng, the Chinese Premier at the time the crackdown at Tiananmen Square was ordered. He was served at a New York hotel. Li Peng has not responded to the complaint, but the U.S. government challenged whether service through Li Peng's security detail was proper.

On August 8, 2002, the court rejected the U.S. government challenge. 2002 U.S. Dist. LEXIS 14648. In January 2003, the U.S. government filed a motion to vacate the court's two previous orders. Their motion argued that the orders interfered with U.S. foreign policy and sovereign immunity. Oral argument was held in April 2003 and the motion is pending. Plaintiffs' counsel are the Center for Constitutional Rights.

Falun Gong cases: Beginning in July 2001, Falun Gong practitioners have brought five ATCA suits against top Chinese officials during visits to the U.S. for torture, murder and other human rights violations against Falun Gong members in China.

In July 2001, activists brought a \$50 million suit in New York against Zhao Zhifeng, Public Security Chief of China's Hubei province, and a default judgment has been issued.

In August 2001, Falun Gong served Zhou Yongkang, Communist Party General Secretary of Sicuan province while he was on a visit to Chicago.

On February 7, 2002, Beijing Mayor Liu Qi (and president of the Beijing Organizing Committee for the 2008 Olympic Games) was served with a complaint while on a visit to San

Francisco, for the brutal crackdown launched in preparation of the 2008 Olympics. The plaintiffs are two Chinese asylees in the U.S. and four citizens of the U.S., Israel, France and Sweden. Liu Qi made no response and CJA filed papers for a default judgment. Ed Chen requested additional briefing on several issues, the State Department issued a letter that the adjudication of the case would impair foreign policy, and CJA submitted a response. In June 2003, Magistrate Chen issued an extensive report in which he recommended the following: (1) Liu Qi was not entitled to sovereign immunity because he acted beyond the scope of his authority in permitting torture and arbitrary detention of Falun Gong practitioners; (2) relief should be limited to declaratory relief on a balance of act-of-state factors; and (3) it would be improper, in the context of a default judgment to adjudicate plaintiffs' claims for conduct that went beyond the scope of their personal knowledge, including religious persecution and crimes against humanity. The district court has not yet issued its judgment.

In May 2002, Ding Guangen, a politburo member and head of publicity for the communist party's central committee, was served in Hawaii. The Plaintiff is a French citizen, Helene Petite, who was arrested in Tiananmen Square during a peaceful protest on November 21, and three unnamed Chinese plaintiffs.

In October 2002, Wei Ye and Hao Wang and a group of anonymous plaintiffs sued Chinese President Jiang Zemin and the Falun Gong Control Office for violations including torture, genocide, arbitrary arrest and imprisonment, and violation of the rights to life, liberty, and freedom of religion. In March 15, 2003, Jiang stepped down as President. Defendants did not respond to the complaint and plaintiffs moved for an entry of default. The U.S. government intervened as an amicus curiae pursuant to 28 U.S.C. 517 (U.S. may intervene where it has interest in case), and asked the court to find that Jiang is immune

from suit or, in the alternative, to set aside the order which allowed service on Jiang's security detail. On September 12, 2003, the Northern District of Illinois dismissed all plaintiffs' claims, ruling that that the former president was entitled to immunity and that there was no personal jurisdiction over the Falun Gong Control office. 2003 U.S. Dist. LEXIS 16209.

The plaintiffs in these cases are represented by Terri Marsh and the World Organization Against Torture. The Center for Justice and Accountability is co-counsel in the case against Liu Qi. Updates are available at www.cja.org.

Doe v. Lumintang, (*D.D.C. CV0064*) (*Filed March 28, 2000; Judgment Sept. 10, 2001*)

Six East Timorese activists sued Indonesian former Vice Chief of Staff Johnny Lumintang, charging him with the design and implementation of a program of systematic human rights violations in East Timor which resulted in crimes against humanity and other human rights violations such as their torture and the summary execution of their relatives. The plaintiffs charged that General Lumintang's participation included sending a telegram to military officials in East Timor with orders to take repressive action against independence supporters after the September 1999 vote for independence, and that he signed a covert operations manual outlining terror tactics to deal with political opposition.

Defendant filed no response to the complaint. On June 27, 2000, the District Court filed an entry of default, and in March 2001, the plaintiffs and expert witnesses testified about the damages caused by Lumintang. On September 10, 2001, the court entered judgment against Lumintang for \$66 million -- awarding each plaintiff \$10 million in punitive damages and around \$1 million for compensatory damages for each of their claims. On March 25, 2002, Lumintang entered an appearance for the sole purpose of setting aside the judgment. This has been briefed and is

awaiting a decision. The most recent hearing was on February 11, 2003.

Counsel for plaintiffs are the Center for Constitutional Rights, Judith Brown Chomsky, the Washington law firm of Patton, Boggs, the Center for Justice and Accountability, James Klimaski, and Paul Hoffman.

Reyes et al v. Juan Evangelista Lopez Grijalba (*S.D.Fla filed July 15, 2002*)

The Center for Justice and Accountability filed a suit against a former Honduran military intelligence chief on behalf of six former Honduran citizens. The plaintiffs charge torture and the disappearance of relatives, which occurred as part of a series of abductions, disappearances and extrajudicial killings against political opponents. Plaintiffs charge that Lopez Grijalba had the legal authority and practical ability to control subordinates who participated in the human rights abuses. The case is scheduled to go to trial in March of 2003. Grijalba was detained by the immigration service in 2002 (for lying on his immigration forms when he stated that there were no outstanding warrants for his arrest and that he had not persecuted others), and evidence provided by CJA ensured that he was not released on bond. CJA has also shared information with the Honduran prosecutors who are planning to prosecute him once he is deported. A quirky Amnesty law, which provides that persons may not be held in detention after the age of 60 for crimes committed before the age of 60, limits available penalties to house arrest and fines. Updates are available on CJA's website: www.cja.org. Counsel for plaintiffs include Ben Reid of arlton Fields in Miami. Counsel for Grijalba in the deportation proceeding is Griselda Ybarra, who represented the family of Elian Gonzalez.

Tachiona, et al v. Mugabe, et al, *00 Civ. 6666 (VM)*, *2001 U.S. Dist. LEXIS 18421*.

Class action on behalf of Zimbabweans claiming that President Robert Mugabe and

Zimbabwe's Foreign Minister Stan Mudenge and their political party the Zimbabwe African National Union-Patriotic Front (ZANU-PF) planned and executed a campaign designed to intimidate and suppress peaceful political opposition. Plaintiffs claims include summary execution, torture, terrorism, rape, beatings and destruction of property. On October 30, 2001, the Southern District of New York ruled that Mugabe and Mudenge had head of state and diplomatic immunity, but that the immunity was not for all purposes, and ZANU-PF could be tried through Mugabe. The case contains an extensive analysis of immunities. An order of default was also entered on October 30, 2001.

The U.S. government (not a party) has filed a motion for reconsideration of the portion of the decision which held that ZANU-PF may be sued through President Mugabe. The U.S. argued that Mugabe and Mudenge were immune from service under head of state and diplomatic immunity and that service upon ZANU-PF through Mugabe was invalid. This motion was rejected. In July 2002, a U.S. magistrate judge recommended a \$73 million judgment against ZANU-PDF for the murder and torture of political opponents under the TVPA. It reserved judgment on the ATCA, and advised plaintiffs that if they chose to proceed under the ATCA, additional briefing was required on the choice-of-law analysis on damages and the applicable law of Zimbabwe. 216 F.Supp.2d 262 (S.D.N.Y. 2002). Plaintiffs chose to proceed under the TVPA only. The District Court then accepted the Magistrate Judge's recommendation but in October 2002 modified it to be under the TVPA only. The case is now closed.

Plaintiffs are represented by Theodore Cooperstein of Washington, D.C. and Paul Sweeney of Hogan & Hartson in New York.

Topo v. Dhir, 01 Civ. 10881 (JSM) (RLE) (S.D.N.Y.)

Plaintiff Pushpa Topo, alleged that the defendants recruited her for a domestic servant

position. Her ATCA allegations included trafficking and involuntary servitude, false imprisonment, and various violations of federal and state minimum wage laws

Defendants attempted to force Ms. Topo to reveal her immigration status, but on September 13, 2002, the court granted her a protective order. 2002 U.S. Dist. LEXIS 17190; 210 F.R.D. 76 (S.D.N.Y. 2002).

The plaintiff is represented by Washington Square Legal Services.

John Doe I and John Doe II v. Milosevic et al., No. 99-cv 11058EFH (D.C. Mass. filed May 17, 1999)

Two anonymous citizens of Kosovo sued Slobodan Milosevic and 13 other "co-conspirators" for genocide, war crimes and other gross human rights abuses. Co-conspirators include the Minister of Foreign Affairs of the Federal Republic of Yugoslavia (FRY), the FRY Minister of Information, the FRY UN representative, the head of the Yugoslav United Left Party and wife and adviser to Milosevic, security officials, and paramilitary officials.

Plaintiffs claim that the conspiracy of the Defendants had two primary goals: first, Milosevic and the other defendants committed these violations to eliminate the ethnic Albanian population from Kosovo area of Yugoslavia, leaving Kosovo populated and controlled by ethnic Serbs; second, defendants intended to conduct a "public relations campaign of disinformation" in the United States, to cover up and conceal the defendants' activities in order to allow them to continue to commit their unlawful acts without interference.

Defendants have filed no response to the complaint. Plaintiffs have filed a Motion for Default Judgment. Plaintiffs asked for compensatory and punitive damages totaling \$14 million, and proposed that all punitive damages would be payable to Catholic Relief Services or another such entity approved by the Court to support charitable services in Kosovo.

A hearing was held on this motion in mid-2001. Judgment is still pending.

Attorneys for plaintiffs are the late Abram Chayes, Jeffrey Bates, Michael Kendall, James Marcellino of McDermott, Will and Emory of Boston.

Cabello v. Fernandez-Larios, 9-528 CIV-LENARD

The defendant in this case participated in “the Caravan of Death,” one of former Chilean dictator Pinochet’s military death squads. CJA filed this case in 1999 on behalf of the family of Winston Cabello, a victim of the Caravan, who was killed in October 1973. The court has held that (a) Cabello’s siblings could pursue claims for their brother’s summary killing because the court could look to Chilean law re standing in light of ATCA’s and TVPA’s humanitarian purpose, and (b) the statute of limitations did not begin to run until 1990 when the repressive military regime was removed, and the new government exhumed the victim’s remains (57 F.Supp.2d 1345). The court also held that individuals who assist or conspire in committing human rights abuses, but who do not directly commit them may be held responsible under ATCA and TVPA (205 F. Supp. 2d 1325). Trial commenced on September 22, 2003, and is expected to end shortly.

Counsel include Leo Cunningham of Palo Alto’s Wilson, Sonsini, Goodrich & Rosati, and Robert Kerrigan of Florida’s Kerrigan, Estess, Rankin & McLeod.

Manlinguez v. Joseph, 01-CV-7574 (NGG) (E.D.N.Y. filed Nov. 13, 2001). Philippine worker working in Malaysia was brought to the U.S. against her will, kept captive in her employers’ home and forced to work under abusive conditions including inadequate food. Plaintiffs claims included involuntary servitude under the Thirteenth Amendment and its enforcing statute, 18 U.S.C. 1584; ATCA violations, conversion (of Ms. Manlinguez’s passport and mail), failure to pay overtime, and

fraudulent inducement and negligent misrepresentation. Defendants filed a motion to dismiss and this motion was rejected in its entirety. The challenge to ATCA focused merely on whether the claims were timely. 2002 U.S. Dist. LEXIS 15277.

Plaintiff’s counsel is Washington Square Legal Services.

Abiola v. Abubakar, Case No. 01-70714 (E.D. Mich. filed Feb. 23, 2001).

Three Nigerian activists, including the daughter of the assassinated former president Chief Abiola, sued the Nigerian president for his role in the mistreatment of them because of their pro-democracy activities. The defendant was a member of the ruling council until 1998 and then became president. Plaintiffs’ claims span 1993-1999. The activists’ claims include torture, wrongful death, arbitrary detention, inhuman and degrading treatment, false imprisonment, assault and battery and infliction of emotional distress. Plaintiffs have already submitted to deposition. The defendant was ordered to appear for deposition, but failed to appear.

Defendants filed a motion for summary judgment on January 9, 2002, claiming that the court lacks both personal and subject matter jurisdiction, that head of state immunity applies, and for a forum non conveniens dismissal to Nigeria. On June 17, 2003, the court ruled that there is personal jurisdiction over Abubakar, that he had not met his burden to establish that Nigeria would provide an adequate forum, but that Abubakar is entitled to immunity for the acts that occurred when he was Nigeria’s head of state. Plaintiff Abiola was directed to submit additional memorandum establishing her standing as an estate representative. 267 F.Supp.2d 907 (N.D. Ill. 2003). On August 25, 2003, Plaintiff Abiola was directed to establish her ability to sue on behalf of her parents’ estate under Illinois law by October 23, 2003.

Plaintiffs counsel include Benjamin Whitfield & Associates and The Justice Center, P.C. of Detroit, Michigan.

Hugo Chavez cases

(S.D.Fla, filed July 10, 2003):
Survivors and family members of protestors killed in April 2002 or wounded while demonstrating in front of the presidential palace in Caracas sued President Hugo Chavez and more than two dozen government, military and paramilitary leaders of Venezuela. Co-defendants include Venezuela's Vice President, Attorney General, chief of the military, head of the paramilitary group *Circulos Bolivarianos* and Chavez's political party *Movimiento Quinta Republica*. Lawyers for the plaintiffs are Pedro Martinez-Fraga, of Greenberg Traurig in Miami and Venezuelan attorneys Alfredo Romero, Eduardo Meier, Gonzalo Himlod, Juan Carols Sosa and Antonio Rosich.

Doe v. Venezuela, Chavez and Walter Marquez, 03-CV 20174 (S.D. Fla). This case, filed by Judicial Watch, charges the defendants with supplying material support and assistance to Osaama Bin Laden and Al Qaeda. The plaintiff is the widow of a woman killed on September 11, 2001 at the World Trade Center.

Rodriguez Saludes v. Castro, et al: (S.D.Fla May 2003).

Miami lawyer Pedro Martinez-Fraga sued Fidel Castro and several other Cuban government officials on behalf of jailed dissident journalist Omar Rodrigues Saludes.

Marta Beatriz Roque et al v. Castro et al (S.D. Fla. April 2003).

Washington-based Judicial Watch sued Fidel Castro and other Cuban government officials on behalf of two jailed Cuban political dissidents.

Cases against individuals and/or unincorporated organizations

Doe v. Islamic Salvation Front (FIS) and Anwar Haddam, 96CV0292 (D.C.D.C)

Nine women and men, and the *Rassemblement Algerien des Femmes Democratres (RAFD)* (the Algerian Assembly of Democratic Women) filed a federal lawsuit under the Alien Tort Claims Act in December 1996 against the Islamic Salvation Front (FIS) and one of its top leaders, Anwar Haddam, for crimes against humanity, war crimes and other human rights abuses against the democratic opposition to FIS including rape, sexual slavery in the form of forced "temporary marriage" and the enforcement of sexual apartheid. Plaintiffs, feminists, journalists and human rights workers who have opposed the policies of the FIS, represent a broad movement in Algeria that also opposes the repressive political, economic and social policies of the current Algerian state.

Anwar Haddam's motion to dismiss was rejected in 1998. Doe v. Haddam, 993 F. Supp. 3 (D.C.D.C. 1998). In early 2002, the defendant served plaintiffs with contention interrogatories and after their response, filed a motion for summary judgment. The case was dismissed on summary judgment against both Haddam and the FIS. A motion for reconsideration reversed the ruling on the FIS; a legal memorandum on personal jurisdiction over the FIS has been submitted, and FIS has continued to default. The Court has not yet ruled on the papers on personal jurisdiction.

Plaintiffs' attorneys include the International Women's Human Rights Clinic (IWHR), the Center for Constitutional Rights, and the Washington, D.C. firm of Maggio & Kattar.