

FILED

2004 NOV 24 A 9:12

CLERK, US DIST. COURT
EASTERN DIST. OF CALIF.
AT FRESNO

BY _____
DEPUTY _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

9	J. DOE,)	CIV-F-03-6249 OWW LJO
)	
10	Plaintiff,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW
11	v.)	
)	
12	ALVARO RAFAEL SARAVIA; and DOES)	<u>REDACTED VERSION - NOT</u>
	1-10, inclusive,)	<u>FILED UNDER SEAL</u>
13)	
	Defendants.)	
14)	
)	

FINDINGS OF FACT

- 18 1. [REDACTED]
- 19 2. Pursuant to Order of the Court dated September 18,
- 20 2003, for good cause shown, Plaintiff has brought this case under
- 21 the pseudonym J. Doe.
- 22 3. [REDACTED]
- 23 4. Plaintiff justifiably believes that El Salvador remains
- 24 an extremely dangerous country and that if his role in bringing
- 25 this case were widely known, he would be in danger.
- 26 5. The Plaintiff justifiably believes that he could not
- 27 bring this case in the Courts of El Salvador, because no criminal
- 28 investigation and prosecution were ever completed to identify the

1 perpetrators of the assassination of Archbishop Romero. Further,
2 based on the grant of amnesty to perpetrators, continuing
3 unreliability of the Courts of El Salvador, including
4 demonstrated hostility to imposing legal responsibility for the
5 assassination of Archbishop Romero, Plaintiff justifiably
6 believes that a fair and impartial hearing could not be received
7 in the Courts of El Salvador.

8 6. The Plaintiff in good faith believes that he and his
9 family, through the present time, may be subject to attacks for
10 his role in this case and would not have brought the case except
11 under the privilege of anonymity.

12 7. Plaintiff acknowledges that conditions have changed to
13 the extent that his attorneys could meet with witnesses, who
14 testified at trial in the United States, and gathered evidence
15 which, in earlier years before the end of the civil war, was not
16 possible.

17 8. Defendant Alvaro Rafael Saravia, a Salvadoran citizen,
18 was born on February 16, 1946. Criminal Complaint, *U.S. v.*
19 *Alvaro Rafael Saravia Merino*, 87-03598-CIV (S.D. Fla. Nov. 25,
20 1987), and supporting affidavit of Sharon L. Kegerreis, ¶ 5;
21 Complaint for Extrajudicial Killing and Crimes Against Humanity,
22 filed 9/12/03 ("Complaint"), ¶ 4. Saravia previously served as a
23 captain in the Salvadoran Air Force. In 1979, he was separated
24 from the Salvadoran military, and from that time worked closely
25 with Major Roberto D'Aubuisson.

26 9. D'Aubuisson, at the direction of and in conjunction with
27 elements of the Salvadoran armed forces and land-owning
28 Salvadoran civilians inside and outside of El Salvador, founded

1 the political movement Frente Amplio Nacional (the "FAN") and the
2 political party Alianza Republicana Nacionalista ("ARENA"), and
3 organized "escuadrones de la muerte," or "death squads,"
4 paramilitary organizations composed of military personnel and
5 civilians who systematically carried out politically-motivated
6 assassinations and other human rights abuses in El Salvador.
7 Complaint ¶¶ 4, 11-13. Saravia was an active member of these
8 death squads and held the position of "chief of security" for
9 Robert D'Aubuisson in 1980. *Id.*; Hr'g. Tr. 8/27/04 (Karl) 89:4-
10 10.¹

11 10. Saravia was resident in Modesto, California, in the
12 Fresno Division of the Eastern Judicial District of California at
13 the time this suit was filed. He continues to receive mail at
14 2401 Manor Oak Drive, Modesto, California 95355, and was served
15 with process there. Proof of Service, filed January 9, 2004.

16 11. Public records connect Defendant, by his date of birth,
17 to that address, and establish that Defendant is the same Alvaro
18 Rafael Saravia, who was sought to be extradited by the U.S.
19 Government to El Salvador in 1987-1988 to face charges, later
20 dismissed, of his complicity in the assassination of Archbishop
21 Romero. See Declaration of Lecia Smith, and Ex. A, filed 9/2/04
22 ("Smith Decl."). These records link Defendant to an earlier
23 Florida address and a Social Security Number issued in Florida in
24 1985-1986. *Id.*; see also Supplemental Declaration of Mary Beth
25

26 ¹ All citations to the transcript of the evidentiary hearing
27 on Plaintiff's Application for a Default Judgment are to the
28 preliminary version; the final transcript was not yet available
at the time of filing.

1 Kaufman, filed 9/2/04 ("Kaufman Decl.").

2 12. On September 12, 2003, Plaintiff filed a complaint
3 against Saravia for violations of the Alien Tort Claims Act
4 ("ATCA"), 28 U.S.C. § 1350, and the Torture Victim Protection Act
5 ("TVPA"), Pub. L. No. 102-256 (1992) (codified at 28 U.S.C.
6 § 1350, note) for his role in the March 24, 1980 assassination of
7 Archbishop Romero in San Salvador, El Salvador.

8 13. Substitute service was effected on September 15, 2003,
9 and October 18, 2003, by leaving a copy of the papers with Ines
10 Olsson, the owner of 2401 Manor Oak Drive, Modesto, California
11 95355, the address at which Saravia was or had been residing and
12 at which he was and is continuing to receive mail. The
13 registered process server who served the Summons, Complaint and
14 related papers, explained the general nature of the papers to Ms.
15 Olsson at the time of personal service. Thereafter the papers
16 were mailed on October 21, 2003, by a registered process server
17 in the United States mail to Saravia at that address.

18 14. As of January 7, 2004, Defendant held recorded
19 fictitious business names for Alo Fashion, Aquarius Enterprises,
20 in the name of Alvaro Saravia, listing his business address as
21 2401 Manor Oak Drive, Modesto, California 95353. Personal
22 records showed Defendant's listing of the same address as his
23 address since at least 1997.

24 15. In a December 16, 2003, conversation, Ms. Olsson told
25 M. B. Kaufman, a fellow and attorney for the Center for Justice
26 and Accountability, that Alvaro Saravia had moved to Modesto in
27 1990, after conversations with Ms. Olsson and that Ms. Olsson
28 "knew Mr. Saravia had been in the Air Force in El Salvador."

1 16. The Court entered Saravia's default by Order of the
2 Clerk dated April 13, 2004.

3 17. Plaintiff applied for default judgment by the Court.
4 In support of the application, Plaintiff filed declarations from
5 numerous witnesses and presented live testimony at an evidentiary
6 hearing held in open court on August 24-27 and September 3, 2004.
7 The witnesses testifying at the hearing included The Reverend
8 Canon William L. Wipfler, Ph.D.; Bishop Thomas J. Gumbleton;
9 Amado Antonio Garay; Ambassador Robert White (by videotape
10 deposition); Judge Atilio Ramirez Amaya; Professor Terry Lynn
11 Karl; Maria Julia Hernandez; Father Jon Cortina, S.J.; Esther del
12 Carmen Chavez Mancia; Francisco Acosta Arevalo; Father Walter
13 Guerra; and Professor Naomi Roht-Arriaza.

14 III. FACTUAL BACKGROUND: THE ROOTS OF THE CONFLICT IN EL SALVADOR

15 A. COUNTRY BACKGROUND

16 18. The recent history of El Salvador has been defined by
17 the concentration of the vast majority of land in the hands of a
18 small group of wealthy landowners. This group is colloquially
19 referred to as the "14 families," signifying that a small number
20 of people hold great wealth and political influence in the
21 country. Hr'g. Tr. 8/26/04 (Karl), 3:12-25; Ex. 98, March 15,
22 1993 Report of the United Nations Commission on the Truth in El
23 Salvador ("TC Report") (Ex. 98), pp. 132-33.

24 19. Peasants and workers were constantly attacked in order
25 to prevent them from organizing. These attacks culminated in a
26 massacre in 1932 with more than 30,000 killed by military forces
27 aligned with the landowners. This led to the imposition of a
28 military regime that remained in power for more than 50 years,

1 the longest military regime in the history of Latin America.

2 Hr'g Tr. 8/26/04 (Karl), 2:6-25; TC Report, pp. 132-33.

3 20. A *de facto* alliance between the military and the
4 oligarchs strengthened the oligarchs' grip on power. The
5 military located their barracks on the property of these
6 landowners and thereby controlled peasants and workers by
7 repressing any opportunities for organization. By protecting
8 their land and keeping the workers under control, the military
9 served the landowner's interests opposing land reform. Hr'g Tr.
10 8/26/04 (Karl), 3:18, 4:1-25; TC Report, pp. 132-33.

11 21. The armed forces of El Salvador included an army and
12 three security forces: the National Guard, the National Police
13 and the Treasury Police. These three forces operated under the
14 orders of the High Command but simultaneously served the
15 landowners. The National Guard was traditionally the body of the
16 security forces with the greatest presence in rural areas. Hr'g
17 Tr. 8/26/04 (Karl), 16:1-25.

18 B. The Rise of Paramilitary Forces.

19 22. In 1969 El Salvador went to war against Honduras in a
20 border conflict better known as the "soccer war." Closing the
21 borders eliminated a "safety valve" for Salvadorans unable to
22 find work on the farms or in factories. This increased the
23 pressure for land reform and the already extensive strength of
24 the military and security forces. Hr'g Tr. 8/26/04 (Karl), 3:1-
25 15; 6:19-7:21.

26 23. In response to new attempts by Salvadoran peasants to
27 organize during the sixties and the emergence of some reformists
28 within the military who favored land reform, the security forces

1 created paramilitary groups to operate in rural areas. One of
2 the main paramilitary groups was known as ORDEN. Colonel Jose
3 Alberto Medrano, the former head of the National Guard, was the
4 founder of ORDEN and oversaw more than 80,000 members, mostly
5 civilians, throughout the country. Medrano also created the
6 National Intelligence Agency of El Salvador (ANSESAL). Hr'g Tr.
7 8/26/04 (Karl), 3:18, 17:1-25, 22:1-25, 23:1-25; TC Report, p.
8 133.

9 24. By 1979, the security forces and ORDEN had thoroughly
10 consolidated their power, sowing terror among the civilian
11 population. Not only were workers, peasants and priests
12 targeted, teachers, union leaders, doctors, and other
13 professionals were brutally repressed. Hr'g Tr. 8/26/04 (Karl),
14 68:1-25; TC Report, p. 133.

15 C. The Emergence of Liberation Theology.

16 25. During the same time, the Catholic Church underwent a
17 major transformation after a conference of bishops in Medellin,
18 Columbia, S.A., in 1969, at which it was decreed that the church
19 should focus on the needs of the poor. Because the Catholic
20 Church had traditionally been aligned with the oligarchy in El
21 Salvador, this new interpretation of theology, known as
22 "Liberation Theology," was a significant change. Hr'g Tr.
23 8/26/04 (Cortina), 95:16-25.

24 26. Priests all over El Salvador began to engage in
25 projects to support poorer communities. The oligarchy and
26 sympathetic military leaders considered Liberation Theology to be
27 a front for Marxism. Starting in at least 1977, priests and lay
28 Catholic workers became targets of repression. The World

1 Anticomunist League and its regional body, the Confederation of
2 Latin American Anti-Communists (CAL), approved resolutions
3 condemning priests and establishing groups to monitor their
4 activities. Hr'g Tr. 8/26/04 (Karl), 67:1-25, 68:1-25, 69:1-25,
5 70:1-25, 71:1-25, 72:1-25.

6 27. On February 22, 1977, Oscar Romero, then bishop of San
7 Miguel, was elevated to Archbishop of San Salvador. At that time
8 he was known for his moderate traditional views. On March 12,
9 1977, Father Rutilio Grande, a Jesuit priest, was murdered in the
10 town of Aguilares. (Aguilares provided an example of the
11 implementation of Liberation Theology, where community members,
12 with the help of Father Grande and others, established Christian
13 Base Communities). Father Grande was a close and important
14 friend of Archbishop Romero. After the murder, Romero realized
15 that Father Grande was targeted simply because he wanted to
16 improve the deplorable condition of the poor in El Salvador. The
17 steadily increasing human rights abuses against poor civilians
18 and members of the church changed Romero's views on the role of
19 the church in El Salvador. Hr'g Tr. 8/26/04 (Karl), 71:1-73:25;
20 Hr'g Tr. 8/26/04 (Cortina), 88:1-89:25.

21 D. Coup and Violent Backlash.

22 28. In October 1979 a coup was carried out by younger
23 reformist military officers led by Colonel Adolfo Majano. The
24 new Revolutionary Governing Junta promised democracy and land
25 reform, decreed the dismantling of ANSESAL and ORDEN, and briefly
26 jailed some of the most notorious repressive figures in the
27 military. Hr'g Tr. 8/26/04 (Karl), 55:21-56:25.

28 29. The coup resulted in a new period of violence. Various

1 groups vied for control of the repressive apparatus. A core of
2 military officers sought to block any reform. They considered
3 the Junta to be infiltrated by reformers. One of the leaders of
4 this faction was former Major Roberto D'Aubuisson, who up until
5 1979 had been third in command of ANSESAL and had secreted away
6 many of the agency's archives. D'Aubuisson began organizing
7 death squads as early as 1977, but intensified his efforts after
8 the coup. The group of military officers he led performed
9 widespread and brutal abductions and murders throughout the late
10 1970s and early 1980s. TC Report, p. 133-34.

11 30. Major D'Aubuisson drew considerable support from
12 wealthy civilians who feared that their lands and business
13 interests would be adversely affected by the reform program
14 announced by the Junta. They were convinced that the country
15 faced a serious threat of Marxist insurrection which they needed
16 to overcome. Some of the richest landowners and businessmen
17 inside and outside the country offered their estates, homes,
18 vehicles, and bodyguards to help the death squads. They also
19 provided the funds used to organize and maintain the squads,
20 especially those directed by Major D'Aubuisson. TC Report, p.
21 134.

22 31. Saravia was "[o]ne of the principal lieutenants of
23 D'Aubuisson" and was widely known to be D'Aubuisson's "Chief of
24 Security" after both were cashiered from the Salvadoran military.
25 Hr'g Tr. 8/27/04 (Karl), 122:15-17; Hr'g Tr. 8/24/04 (White),
26 White Dep. 34:4-5.

27 E. Romero's Increasingly Vocal Criticism.

28 32. During this time Archbishop Romero showed a profound

1 interest in and sympathy for the needs of poor Salvadorans. He
2 used his position as Archbishop to address the repression in the
3 country. In his weekly Sunday homilies he denounced the human
4 rights abuses occurring throughout El Salvador. Often his
5 homilies were the only public source of information about these
6 abuses, identifying victims of violence and victims who
7 "disappeared." He explicitly denounced the military and members
8 of the security forces for their repressive actions. His
9 homilies were broadcast throughout the country and millions of
10 Salvadorans listened to them regularly. Hr'g Tr. 8/26/04
11 (Cortina), 98:23-25, 99:20-100:2; Hr'g Tr. 8/27/04 (Guerra),
12 57:1-58:25.

13 33. On March 23, 1980, Archbishop Romero delivered his most
14 decisive homily. After weeks of increasing repression,
15 Archbishop Romero declared, "No soldier is obliged to obey an
16 order counter to the law of God." He continued, "In the name of
17 God, then, and in the name of this suffering people, whose cries
18 rise to heaven each day more tumultuous, I beseech you, I beg
19 you, I order you, in the name of God, stop the repression?" Ex.
20 92 (March 23 homily); Hr'g Tr. 8/24/04 (Wipfler), 64:3-65:16.

21 IV. ASSASSINATION OF ARCHBISHOP ROMERO

22 A. The Assassination.

23 34. On March 24, 1980, Major D'Aubuisson, Saravia and
24 others gathered at the home of a D'Aubuisson supporter in San
25 Salvador. The group had knowledge that Archbishop Romero would
26 celebrate a mass that day. A member of the group proposed that
27 this provided a good opportunity to carry out the already
28 approved assassination. D'Aubuisson agreed, and the group began

1 to make arrangements. Saravia took charge of the operation and
2 was involved in paying the fees of the assassin. Complaint,
3 ¶¶ 15, 19; TC Report, pp. 127-131; Ex. 99, Inter-American
4 Commission on Human Rights Decision ("IACHR Decision"), ¶¶ 3, 20,
5 43, 54, 54 (citing with approval the findings of the TC Report).

6 35. Amado Garay testified that early that evening, Saravia
7 was at home when he instructed his driver, Garay, to drive him to
8 a house with distinctive Japanese Maronon trees in front.

9 Saravia, along with two members of the National Police, Nelson
10 Morales, and Nelson Garcia, who had previously recruited Garay to
11 work for Saravia, and another person also drove to the house.

12 Hr'g Tr. 8/24/04 (Garay), 103:22-104:23; TC Report, pp. 127, 130,
13 131.

14 36. Garay waited by the gate of the house while Saravia
15 went into the house. Saravia later emerged accompanied by a tall
16 man with a beard. Saravia told Garay to drive the bearded man to
17 an undisclosed location, and told him that the man would give him
18 directions. Hr'g Tr. 8/24/04 (Garay), 105:11-106:5; TC Report,
19 pp. 127, 130, 131.

20 37. Saravia said to the tall, bearded man, in Garay's
21 presence, "It [is] better to shoot in the head because maybe he
22 have [sic] a bulletproof vest. You have to be sure he got [sic]
23 killed." Saravia also informed Garay that they would be provided
24 with protection, as a vehicle would drive behind him. Hr'g Tr.
25 8/24/04 (Garay), 106:7-16.

26 38. Saravia directed Garay to get into a red Volkswagen to
27 drive the tall, bearded man. The man had a long rifle with a
28 telescopic lens. Garay followed the directions of the man, who

1 spoke with a Salvadoran accent, to a location with a big gate
2 followed by a long path. Complaint, ¶ 16; Hr'g Tr. 8/24/04
3 (Garay), 106:13-14; 20-23; 107:1-2; 111:12-13; 112:16; TC Report,
4 pp. 127, 130-131.

5 39. During the ride, while Garay drove, the bearded man
6 said, "I can't believe it, I'm going to shoot a priest." Hr'g
7 Tr. 8/24/04 (Garay), 112:3-4.

8 40. The man directed Garay to stop at the front door of a
9 church, which was identified by eyewitnesses as the chapel of the
10 Hospital of Divine Providence. Garay saw people sitting in the
11 pews of the church and a priest - whose identity was unknown to
12 him at the time - speaking. The priest was Archbishop Romero,
13 who was celebrating a mass in memory of Sara Meardi de Pinto, the
14 mother of Jorge Pinto, a friend of the Archbishop's and the owner
15 of the opposition newspaper, *El Independiente*. Notice of the
16 mass, celebrated at six o'clock in the afternoon, had been
17 published in the newspapers, *La Prensa Grafica* and *Diario de Hoy*.
18 Hr'g Tr. 8/24/04 (Garay), 107:5-7; 108:21-25; 109:1; Hr'g Tr.
19 8/24/04 (Ramirez Amaya) 34:19-22; 35:10-11; Hr'g Tr. 8/26/04
20 (Hernandez), 153:2-7; Ex. 40 (photo of Jorge Pinto); IACHR
21 Decision, ¶ 45, n. 31; Ex. 115 (announcement of mass for Sara
22 Meardi di Pinto).

23 41. The bearded man in the car directed Garay to act like
24 he was fixing something in the car. Garay bent over in the front
25 seat. Hr'g Tr. 8/24/04 (Garay), 107:8-11.

26 42. Garay then heard a loud explosion as the bearded man in
27 the back seat of the vehicle shot Archbishop Romero. Hr'g Tr.
28 8/24/04 (Garay), 107:12-13, 108:24; Complaint, ¶ 6; TC Report,

1 pp. 28, 127, 130, 131.

2 43. The man told Garay to drive slowly away from the
3 church. Garay drove slowly, and subsequently got lost, but the
4 shooter made contact with the security car by radio and was given
5 directions back to the house with the Japanese Maronon trees.
6 Hr'g Tr. 8/24/04 (Garay), 107:14-22.

7 44. When Garay and the shooter returned to the house with
8 the Maronon trees, they were greeted by Saravia. The shooter
9 informed Saravia that the assignment had been carried out.
10 Saravia told Garay and the shooter that he had heard the news on
11 the radio that the Archbishop had died instantly. Complaint
12 ¶ 16; Hr'g Tr. 8/24/04 (Garay), 109:20-22, 24-25; 110:1-4.

13 45. Saravia, Nelson Morales, Nelson Garcia and Garay drove
14 back to Saravia's house in a Jeep Cherokee, which was the vehicle
15 regularly used to transport Saravia. Hr'g Tr. 8/24/04 (Garay),
16 101:24; 115:7.

17 46. Once at Saravia's house, Saravia advised Garay that
18 Garay, Nelson Morales, and Nelson Garcia would sleep at a
19 different house that night. Hr'g Tr. 8/24/04 (Garay), 116:25;
20 117:1, 3-10; 119:1, 4-5.

21 47. Several days later, Garay drove Saravia from Saravia's
22 home to a house in Sal Salvador that looked like a castle. The
23 house had a long driveway and a big, white gate. Major
24 D'Aubuisson emerged from the house. Saravia saluted Major
25 D'Aubuisson and told him, "Mission completed." Complaint, ¶ 17;
26 Hr'g Tr. 8/24/04 (Garay), 127:1-11, 16-23; 127:5-9.

27 48. Saravia also delivered to the assassin a sum of money,
28 which earlier had been provided to him to pay the assassin, or

1 his agent. Complaint, ¶ 17; RT Report, pp. 127, 131.

2 49. On a later date, Garay was driving Saravia past an
3 empty lot. He saw a car that had been burned. Saravia told
4 Garay that the car was the red Volkswagen that had been used to
5 transport the shooter to the Romero assassination. Hr'g Tr.
6 8/24/04 (Garay) 115:9-11, 13-18, 20-25; 116:1-8.

7 B. Events in the Immediate Aftermath of the Assassination.

8 50. Archbishop Romero fell where he had been shot at the
9 Chapel of the Hospital of Divine Providence and was tended to by
10 the nuns who lived and worked there. He was rushed to the
11 Policlinica Hospital in a station wagon right after he was shot.
12 Hr'g Tr. 8/26/04 (Hernandez), 149:18-20; Exs. 22, 24-30, 34, 36,
13 38 (photos of assassination); Declaration of Maria Clelia Flores
14 Iraheta, ¶ 7, filed 8/20/04.

15 51. At the Hospital of Divine Providence, many people were
16 gathered, including Father Jon Cortina; Monsenor Ricardo Urioste;
17 other nuns and priests; one of the lawyers for the Archdiocese's
18 human rights office, Florentin Melendez; the members of an
19 American ecumenical delegation; relatives of the Archbishop; and
20 others. Hr'g Tr. 8/24/04 (Wipfler), 73:20-24; Hr'g Tr. 8/25/04
21 (Ramirez Amaya) 30:22-25; Hr'g Tr. 8/26/04 (Cortina), 104:1-2; 5-
22 6; Hr' Tr. 8/26/04 (Hernandez), 145:21-23; 146:4-6, 9; Ex. 42
23 (photograph at the Policlinica); Declaration of Rosa Nohemy
24 Ortiz, ¶ 7, filed 8/20/04; Declaration of Philip Berryman, ¶ 21,
25 filed 8/20/04; Declaration of Thomas Quigley, ¶ 4, filed 8/20/04.

26 52. Archbishop Romero was pronounced dead on his arrival at
27 the Policlinica. Hr'g Tr. 8/24/04 (Wipfler), 73:23-24.

28 53. At the Chapel of the Hospital of Divine Providence,

1 some of the hospital patients were detaining the photographer
2 from the newspaper, *Diario de Hoy*, who had attended the mass. He
3 initially was suspected of carrying out the assassination.
4 Father Cortina testified he was somewhat knowledgeable about
5 photography, he went to Divine Providence to investigate this
6 situation. Hr'g Tr. 8/26/04 (Cortina), 104:8-21, 105:5-13; Hr'g
7 Tr. 8/26/04 (Hernandez), 150:21-23.

8 54. Fearful to go by himself, Father Cortina was
9 accompanied by Monsenor Modesto Lopez to the Chapel of the
10 Hospital of the Divine Providence. Father Cortina arrived at the
11 chapel and hospital area around 8:00 p.m. At that time, the area
12 was filled with armed soldiers wearing camouflage uniforms and
13 armed policemen, he believed were members of the National Police.
14 Hr'g Tr. 8/26/04 (Cortina), 104:25, 105:3-4; 108:10-15, 108:25-
15 109:10. Father Cortina determined that the two cameras of the
16 photographer could not have been converted to fire a bullet and
17 were not out of the ordinary. Father Cortina then left with the
18 photographer to assist him in developing the photographs at the
19 offices of the *Diario de Hoy*. Hr'g Tr. 8/26/04 (Cortina),
20 104:20-24; 105:1-2, 5-15, 16-18; 107:11-16; Exs. 24, 25, 27-30,
21 33-36 (photographs of assassination).

22 C. Post-Assassination Investigation.

23 55. Judge Atilio Ramirez Amaya, the Criminal Judge of the
24 Fourth Criminal Court in San Salvador, testified he attempted to
25 carry out a serious investigation into the assassination of
26 Archbishop Romero, but National Police and other government
27 officials charged with assisting in the investigation actively
28 obstructed his efforts, failed to conduct a timely investigation,

1 failed to collect and preserve material evidence, and failed to
2 identify witnesses. Complaint, ¶ 18; Hr'g Tr. 8/25/04 (Ramirez
3 Amaya), 22:2-4; 23:5-7, 15-18; 24:6-15; 27:4-7, 11-18; 45:21-25;
4 46:1-11; TC Report, p. 128; IACHR Decision, ¶¶ 10, 12, 20, 43,
5 46, 87-91.

6 56. On March 24, 1980, Judge Ramirez Amaya heard by word of
7 mouth that Archbishop Romero had been shot. He went to the
8 Policlinica Hospital after he determined that Archbishop Romero
9 had not been taken to the forensic clinic, a departure from the
10 normal procedure. He arrived around seven o'clock in the
11 evening. The National Police had not informed Judge Ramirez
12 Amaya of the murder, also a departure from standard procedure.
13 Since Romero was a person of high ranking, Judge Ramirez Amaya,
14 as the Criminal Judge in San Salvador, immediately took over the
15 investigation from the Justice of the Peace. Hr'g Tr. 8/25/04
16 (Ramirez Amaya), 22:19-22; 23:15-18, 20-23; 28:17-21, 22-25;
17 28:12-14; 29:1-10.

18 57. Judge Ramirez Amaya did not observe any police at the
19 Policlinica despite the fact that they should have been there to
20 ensure security. Judge Ramirez Amaya then called his secretary
21 and asked him to call the police to request their presence at the
22 Policlinica. The police never arrived. Hr'g Tr. 8/25/04
23 (Ramirez Amaya), 27:4-7; 30:13-18; 31:21; 46:9-11.

24 58. The room finally was cleared of all the people, and
25 Judge Ramirez Amaya ordered the forensic doctors to perform the
26 autopsy. The autopsy was performed by Dr. Cuellar Ortiz, Dr.
27 Pedro Chavarria, and two others. Judge Ramirez Amaya and his
28 secretary were present during the autopsy. Hr'g Tr. 8/25/04

1 (Ramirez Amaya), 31:1-5; 32:22-25; TC Report, p. 128.

2 59. The first step in the autopsy was the taking of X-rays
3 to make a determination as to the location of the bullet in
4 Archbishop Romero's body. The first X-ray was unsuccessful so
5 two or three more X-rays were taken. From these X-rays, the
6 doctors determined that a small entry wound, barely 5 millimeters
7 in diameter in the right thorax, evidenced the point of entry of
8 the bullet. The bullet had fragmented into three parts and was
9 still inside Archbishop Romero's thorax. Hr'g Tr. 8/25/04
10 (Ramirez Amaya) 31:5-8; TC Report, p. 128; Ex. 113 (Romero
11 autopsy report).

12 60. The forensic doctors cut the cartilage in the sternum
13 area of Archbishop Romero's chest to open his thorax. They
14 discovered a number of blood clots which inhibited the locating
15 of the bullet fragments. The blood clots were removed and
16 dissolved individually. Finally, the bullet fragments were
17 located. Hr'g Tr. 8/25/04 (Ramirez Amaya) 31:9-18; TC Report, p.
18 128; Ex. 113 (Romero autopsy report).

19 61. The autopsy took almost four hours. The book of
20 acknowledgment and the final autopsy report, signed by Dr.
21 Chavarria, on behalf of his colleagues, and by Judge Ramirez
22 Amaya and his secretary, recorded that Archbishop Romero died
23 from a hemorrhage caused by the bullet fragments severing his
24 aorta and the venae cavae. Hr'g Tr. 8/25/04 (Ramirez Amaya)
25 32:5-6, 9-21; 33:1-3, 6-7; IACHR Decision, ¶¶ 45, 46; Ex. 113
26 (Romero autopsy report).

27 62. At this point, Judge Ramirez Amaya requested that his
28 secretary telephone the National Police once again so the police

1 could secure the evidence in bags, as was standard operating
2 procedure. The police did not arrive. Hr'g Tr. 8/25/04 (Ramirez
3 Amaya), 24:12-15; 31:19-22.

4 63. Later, Judge Ramirez Amaya requested that his secretary
5 place yet another call to the National Police to arrange for them
6 to accompany him and his secretary to the scene of the crime, the
7 Chapel of the Hospital of the Divine Providence. The police
8 never arrived. Judge Ramirez Amaya was forced to take the
9 evidence, the bullet fragments and the X-rays, with him. Judge
10 Ramirez Amaya and his secretary had to travel to the crime scene
11 in Judge Ramirez Amaya's private vehicle. Hr'g Tr. 8/24/04
12 (Ramirez Amaya), 33:8-15; 34:14-17.

13 64. When Judge Ramirez Amaya arrived at the chapel around
14 11:30 p.m., Florentin Melendez and Roberto Cuellar, the two
15 lawyers for the Archdiocese's Human Rights Office, were present.
16 No police were present. Hr'g Tr. 8/25/04 (Ramirez Amaya), 33:6-
17 18; 34:15; Hr'g Tr. 8/26/04 (Hernandez), 146:9-18, 21-23; 147:9-
18 10.

19 65. Judge Ramirez Amaya and the others canvassed the small
20 chapel in search of the bullet. They took measurements to
21 determine the range and distance from which the shot could have
22 been fired. They thoroughly searched for any type of evidence
23 but found none. Hr'g Tr. 8/25/04 (Ramirez Amaya), 33:19-25.

24 66. A short time before midnight, Judge Ramirez Amaya drove
25 his secretary to the court, where his secretary stayed instead of
26 returning to the secretary's home as it would have been extremely
27 dangerous to drive there. By this time, Judge Ramirez Amaya
28 observed Army tanks on the streets and police patrolling with

1 automatic weapons. Hr'g Tr. 8/25/04 (Ramirez Amaya), 34:2-13.

2 67. Because the National Police never came to pick up the
3 evidence, Judge Ramirez Amaya took the bullet fragments and the
4 X-rays with him to his home. Hr'g Tr. 8/25/04 (Ramirez Amaya),
5 34:14-17.

6 68. The next day, March 25, 1908, Judge Ramirez Amaya went
7 to his chambers at the Fourth Criminal Court. There, he
8 organized the files on the case and the book of acknowledgment so
9 that it could be transcribed. He also was made aware of the
10 published advertisement announcing Archbishop Romero's
11 celebration of the memorial mass for Sara Meardi de Pinto the
12 previous evening. Hr'g Tr. 8/25/04 (Ramirez Amaya), 26:20-24;
13 34:19-22, 23-25; 35:18-21.

14 69. The National Police finally went to the crime scene
15 four days after the assassination. The police did not collect
16 evidence nor did they provide the investigating judge any
17 information or evidence to assist in the investigation. IACHR
18 Decision, ¶¶ 46, 88, 89; Complaint, ¶ 18.

19 70. Despite a National Police analysis confirming Judge
20 Ramirez Amaya's conclusion that the projectiles extracted from
21 Archbishop Romero's body came from a .22 caliber bullet, these
22 conclusions never appeared in the judicial file of Archbishop
23 Romero's case. The X-rays also disappeared from the judicial
24 file. TC Report, p. 128; IACHR Decision ¶¶ 46, 90; Complaint,
25 ¶ 18.

26 71. Pedro Napoleon Martinez was alleged to have been an
27 eyewitness to the flight of the assassins. At the chapel, he
28 assisted in moving Archbishop Romero's body for transport to the

1 hospital. Twenty days after the assassination, on April 13,
2 1980, P. Martinez was kidnaped and disappeared. His
3 disappearance was never investigated. Complaint, ¶ 18; Hr'g Tr.
4 8/26/04 (Hernandez), 149:18-22, 25, 150:1-4; 152:22-23; Hr'g Tr.
5 8/27/04 (Karl) 129:4-130:16; Ex. 34 (photograph showing Martinez
6 helping to remove Romero from the chapel); IACHR Decision, ¶¶ 11,
7 103-104.

8 72. In the months following the assassination, several
9 other suspicious events occurred, obstructing any investigation
10 of the murder of Archbishop Romero. These included:

- 11 • On July 5, 1980, the offices of Socorro Juridico were
12 searched by the National Police and the files
13 concerning Socorro Juridico's investigation of the
14 assassination were removed and were never seen again.
15 IACHR Decision, ¶ 106; Hr'g Tr. 8/26/04 (Hernandez),
16 148:1-15, 20-23; 149:7-10.
- 17 • In 1980, both the Director of Socorro Juridico, Roberto
18 Cuellar, and its staff attorney working on the
19 investigation of the assassination of Archbishop
20 Romero, Florentin Melendez, were forced to flee El
21 Salvador after receiving death threats. Hr'g Tr.
22 8/26/04 (Hernandez), 146:9-16; 21-25; 147:1-25; Ex. 42
23 (photo of Melendez at autopsy).

24 D. Attack on Judge Amaya.

25 73. On March 25, 1980, Judge Ramirez Amaya received a
26 telephone death threat at his home. Altogether, on March 25 and
27 26, Judge Ramirez Amaya received three or four telephoned death
28 threats. In one instance, his thirteen-year old daughter, who

1 answered the phone, was asked her favorite color. She was told
2 that "that was the color they would paint the coffin that they
3 would have [Judge Ramirez Amaya] in." Hr'g Tr. 8/25/04 (Ramirez
4 Amaya), 39:2-10; 41:16; IACHR Decision ¶ 114.

5 74. On March 27, 1980, at about 10:15 p.m., two men knocked
6 at Judge Ramirez Amaya's door. The men claimed to know a friend
7 of the Judge. Ramirez Amaya told his housekeeper to carefully
8 open the door. The two men entered his home. Hr'g Tr. 8/25/04
9 (Ramirez Amaya), 39:11-22; 40:4-5.

10 75. Judge Ramirez Amaya, armed with a twelve gauge shotgun,
11 stayed in the bedroom. He opened the bedroom door, peeked out,
12 and realized that he did not know the men. He told them to be
13 seated. Hr'g Tr. 8/25/04 (Ramirez Amaya), 39:22-23; 40:5-9.

14 76. One of the man immediately pulled an automatic weapon
15 from a briefcase he was carrying. Judge Ramirez Amaya responded
16 by pulling out his shotgun. As Judge Ramirez Amaya was about to
17 fire at them, his housekeeper ran towards him. Hr'g Tr. 8/25/04
18 (Ramirez Amaya), 40:10-15; IACHR Decision ¶ 112.

19 77. One of the men fired the gun at Judge Ramirez Amaya.
20 However, since the housekeeper was in the way, the gunman missed
21 the judge and, instead, wounded the housekeeper. She was injured
22 in the back and the buttocks area. She fell towards Judge
23 Ramirez Amaya, who was not able to break her fall. Hr'g Tr.
24 8/25/04 (Ramirez Amaya), 40:17-22; IACHR Decision, ¶¶ 11, 112.

25 78. The men immediately fled from Judge Ramirez Amaya's
26 home. Outside, they shot at the house and the tires of Judge
27 Ramirez Amaya's car. Hr'g Tr. 8/25/04 (Ramirez Amaya), 40:23-25;
28 41:1-2.

1 79. Judge Ramirez Amaya then heard noises on the roof of
2 his house. He began to fire his shotgun out the windows. He was
3 mindful of the fact that within recent weeks, Mario Zamora, the
4 Attorney General of El Salvador, the mayor of the City of San
5 Miguel had been killed in a similar fashion. Hr'g Tr. 8/25/04
6 (Ramirez Amaya), 41:4-11.

7 80. Judge Ramirez Amaya yelled to his wife "Josefina, they
8 are going to kill us, just like they did with Mario Zamora," and
9 urged her to fire a pistol out the windows. In addition, Judge
10 Ramirez Amaya protected his daughter by throwing a mattress over
11 her. He crawled through his home and listened for the attackers.
12 Finally, the noises stopped. Hr'g Tr. 8/25/04 (Ramirez Amaya),
13 41:12-20.

14 81. Breaking the silence ten minutes later, the phone rang.
15 The voice on the other end said, "Doctor, this is Elicio Soto
16 from the National Police." This voice was familiar to Judge
17 Ramirez Amaya as he had known Soto, now a National Police
18 inspector, since childhood. Ramirez Amaya's mother had assisted
19 Soto in obtaining his job with the police. Hr'g Tr. 8/25/04
20 (Ramirez Amaya), 41:21-25; 42:1-9.

21 82. Next, in a surprised tone of voice, Soto said to
22 Ramirez Amaya, "Doctor, you are alive." Judge Ramirez Amaya
23 answered, "Yes, I am happy to be alive." Soto replied, "Don't
24 worry. Perhaps they were just trying to scare you." Hr'g Tr.
25 8/25/04 (Ramirez Amaya), 42:10-15.

26 83. Within a half hour, family and friends, whom Judge
27 Ramirez Amaya had telephoned, arrived at his house. When he
28 opened the door for them, Judge Ramirez Amaya also greeted some

1 of his neighbors and the night watchman. The night watchman
2 informed Judge Ramirez Amaya that the police must have been
3 "deaf" because two marked police vehicles had been parked on the
4 street during the assassination attempt and did not move. Hr'g
5 Tr. 8/25/04 (Ramirez Amaya), 42:16-20, 24-25; 43:1-5, 6-9.

6 84. One of Judge Ramirez Amaya's students at the National
7 University, the boyfriend of his neighbors, was visiting his
8 girlfriend at the same time as the attack. He confidentially
9 informed Judge Ramirez Amaya that he saw that three persons were
10 involved in the attempted murder of the Judge. In addition to
11 the two men who entered the house, one remained behind in the
12 get-away car. He told Ramirez Amaya that he personally knew the
13 man at the wheel of the car to be a member of the National
14 Police. Judge Ramirez Amaya knew that the neighbor's boyfriend
15 had worked with the National Police. Hr'g Tr. 8/25/04 (Ramirez
16 Amaya), 43:10-25.

17 85. The night of the attempt, a group of police detectives
18 arrived at Judge Ramirez Amaya's home and inquired what was
19 happening. They dismissed the assassination attempt as the work
20 of "amateurs" that they could have prevented from happening. No
21 further investigation occurred thereafter. Hr'g Tr. 8/25/04
22 (Ramirez Amaya), 44:3-6; 46:12-22; IACHR Decision, ¶¶ 115, 116.

23 86. At this point, Judge Ramirez Amaya told his wife they
24 would be killed by the police so they had to leave El Salvador.
25 Despite the fact that he had a ticket to go to Venezuela two days
26 later, Judge Ramirez Amaya determined that, with police control
27 of the airports, traveling by plane would be too risky. He
28 arranged to leave by boat through the Gulf of Fonseca and to

1 travel directly to Nicaragua. Complaint, ¶ 18; Hr'g Tr. 8/25/04
2 (Ramirez Amaya), 43:25; 44:1-2, 20-25; 45:1-4, 6-9.

3 87. Judge Ramirez Amaya went to the hospital the next day
4 to visit his housekeeper. He found that she had not been
5 admitted to the hospital. She was still lying on the floor in
6 the hallway. A doctor explained that they did not intend to
7 remove the bullets and would send her home the next day. Hr'g
8 Tr. 8/25/04 (Ramirez Amaya), 44:7-19.

9 88. Judge Ramirez Amaya then resigned his position and fled
10 El Salvador. Judge Ramirez Amaya was not able to return to El
11 Salvador for almost ten years. Complaint, ¶ 18; Hr'g Tr. 8/25/04
12 (Ramirez Amaya), 21:7-11, 19-20; 45:10-13; IACHR Decision, ¶ 46.

13 89. The assassination attempt against Judge Ramirez Amaya
14 was never investigated. Hr'g Tr. 8/25/04 (Ramirez Amaya), 44:3-
15 6.

16 90. The Truth Commission concluded that "[t]here is
17 sufficient evidence that the failed assassination attempt against
18 Judge Atilio Ramirez Amaya was a deliberate attempt to deter
19 investigation of the case." TC Report, pp. 127, 128, 131; IACHR
20 Decision ¶ 54 (citing with approval the finding of the TC
21 Report).

22 E. The Funeral for Archbishop Romero.

23 91. For one week after the assassination, Archbishop
24 Romero's body was available for viewing by the public. His
25 coffin was never alone. Different communities were a part of
26 this ritual by leading the activities and mass each day. Hr'g
27 Tr. 8/27/04 (Guerra), 59:13-17; Hr'g Tr. 8/26/04 (Cortina),
28 111:10-18; Declaration of Julia Elvira Chacon, ¶ 8, filed

1 8/20/04.

2 92. On March 31, 1980, the funeral for Romero was held at
3 the cathedral in San Salvador. The National Palace, located next
4 to the cathedral, was an official government building,
5 inaccessible to the public, and could be entered only by
6 government officials. The day of the funeral, the palace was
7 closed. Nonetheless, during the funeral mass, bombs were thrown
8 into the crowd from a window at the far end of the National
9 Palace. Additionally, government officials in civilian clothes
10 were stationed on the roofs of the National Palace and
11 surrounding buildings. After the bombs were thrown, government
12 officers in plainclothes on the roofs opened fire on the crowd.
13 Hr'g Tr. 8/26/04 (Cortina), 115:10-16, 25; 116:1-4, 24-25; Hr'g
14 Tr. 8/26/04 (Acosta), 40:1-2, 18-20; 39:12-20; Hr'g Tr. 8/27/04
15 (Guerra), 60:19-21.

16 93. The bombs and gunfire caused the approximately 100,000
17 people at the funeral to run in fear. Many in the crowd were
18 trampled. The priests who had carried Archbishop Romero's casket
19 were forced to take his body inside the cathedral and hurriedly
20 place it in the burial vault for fear that it would be stolen.
21 About 5,000 people crammed into the cathedral in search of
22 safety. Once Archbishop Romero was buried, the priests
23 encouraged those in the cathedral to sing. Hr'g Tr. 8/27/04
24 (Guerra), 61:7-20; Hr'g Tr. 8/27/04 (Acosta), 40:1-8; Hr'g Tr.
25 8/26/04 (Cortina), 115:4-8. See also Declaration of the Rev.
26 Charles Harper, ¶ 16, filed 9/01/04; Declaration of Carlos Ayala
27 Ramirez, ¶ 9, filed 8/20/04; Declaration of Philip Berryman, ¶
28 22, filed 8/20/04; Declaration of Julia Elvira Chacon, ¶ 9, filed

1 8/20/04; Declaration of Maria de la Luz Cueva Santana, ¶ 7, filed
2 8/20/04; Declaration of Pierre Jean DeClarcq, ¶ 8, filed 8/20/04;
3 Declaration of Jose Humberto Giron Pez, ¶ 9, filed 8/20/04.

4 94. After about two hours, some of the priests went outside
5 to the plaza. They recovered seventeen dead bodies. Not until
6 4:30 in the afternoon were all the priests and nuns who had been
7 trapped in the cathedral able to leave under Red Cross
8 protection. Hr'g Tr. 8/27/04 (Guerra), 61:21-24; 62:6-8, 17-19;
9 Ex. 65 (photo of dead bodies at funeral); Ex. 66 (photo of nuns
10 leaving cathedral at funeral).

11 V. FAILED EFFORTS TO PROSECUTE ARCHBISHOP ROMERO'S KILLERS

12 A. The Arrest of D'Aubuisson, Saravia, Garay and Others at
13 the San Luis Finca on May 7, 1980.

14 95. On May 7, 1980, twelve civilians and twelve military
15 personnel met at a farmhouse near San Salvador known as the San
16 Luis Finca. They included D'Aubuisson, Saravia and Garay, as
17 well as numerous other persons associated with El Salvador's
18 rightwing death squads. At the meeting, D'Aubuisson gave his .45
19 millimeter handgun to Garay to hold while he was inside the
20 farmhouse. Hr'g Tr. 8/24/04 (Garay), 121:12-122:13; Hr'g Tr.
21 8/24/04 (White) [White Dep. 43:18-44:14]; Hr'g Tr. 8/27/04
22 (Karl), 152:17-153:5; Ex. 122 (May 8, 1980 U.S. diplomatic
23 cable); Ex. 125 (May 12, 1980 report of Maj. José Francisco
24 Samayoa); TC Report, pp. 28 and 129.

25 96. While the meeting was going on, troops from the
26 Salvadoran Army's First Brigade raided the farmhouse, arresting,
27 among others, D'Aubuisson, Saravia and Garay. The raid had been
28 ordered by Col. Majano, a member of the five-man Revolutionary

1 Governing Junta. Hr'g Tr. 8/24/04 (White), [White Dep. 45:13-
2 47:5]; Ex. 122 (May 8, 1980 U.S. diplomatic cable).

3 97. Numerous documents were seized during the raid which
4 implicated many of those arrested in the assassination of
5 Archbishop Romero, a coup plot, and other serious crimes. Hr'g
6 Tr. 8/24/04 (White) [White Dep. 40:10-20 and 63:14-64:2]; Ex.
7 122, Ex. 125; Ex. 127 (June 19, 1980 U.S. diplomatic cable);
8 Declaration of Todd R. Greentree, ¶¶ 5 & 7, filed 8/20/04; Hr'g
9 Tr. 9/3/04 (Karl), 3:6-12, 4:10-12, 5:9-16.

10 98. Members of the Junta and experts contacted by U.S.
11 Ambassador White concluded that the "Operacion Piña" documents
12 seized at the San Luis Finca, along with the so-called "Saravia
13 Diary," referred to the plan to assassinate Archbishop Romero.
14 Hrg. Tr. 8/24/04 (White), [White Dep. 35:2-39:2]; Hrg. Tr. 9/3/04
15 (Karl), 19:15-22:10; Ex. 122 (May 8, 1980 U.S. diplomatic cable);
16 TC Report, p. 129.

17 99. On May 12, 1980, Col. Majano lost his influence over
18 the Junta when Col. Jaime Abdul Gutiérrez was appointed President
19 of the Junta by the High Command of the Armed Forces. That same
20 day, several newspapers published a message from a group calling
21 itself "death squad" that demanded the release of D'Aubuisson and
22 the others arrested at the San Luis Finca. TC Report, p. 204,
23 n.24.

24 100. D'Aubuisson and the others arrested at the San Luis
25 Finca were soon released without ever being interrogated, much
26 less prosecuted for any of the crimes for which they were
27 implicated. Col. Majano was removed from the Junta by the end of
28 the year, and was forced to flee El Salvador not long afterwards.

1 Hrg. Tr. 8/24/04 (Garay); 123:15-124:4; Hrg. Tr. 8/24/04 (White),
2 [White Dep. 47:9-14]; Hrg. Tr. 9/3/04 (Karl), 9:15-17, 32:1-6; TC
3 Report, pp. 28, 29 and 205, n.29.

4 B. Failed Investigations During the Early and Mid-1980s.

5 101. The investigation of Archbishop Romero's murder was
6 not pursued by the Government of El Salvador in the months
7 following the killing and was actively thwarted in many ways. In
8 June 1984, José Guerrero, a member of the ARENA party, Roberto
9 D'Aubuisson's personal lawyer, and a former delegate to the CAL,
10 the regional anti-communist league, was named as Public
11 Prosecutor of El Salvador by the Legislative Assembly, which at
12 the time was controlled by ARENA and its allies. IACHR Decision
13 at ¶ 120; Hrg. Tr. 9/3/04 (Karl), 51:11-17.

14 102. On December 12, 1984, the Fourth Criminal Court's
15 investigation of the Romero assassination was formally closed.
16 IACHR Decision at ¶ 14.

17 103. The Fourth Criminal Court's investigation was reopened
18 in 1985. *Id.*

19 104. On May 21, 1985, the Legislative Assembly, which was
20 no longer controlled by ARENA, dismissed Guerrero as the Public
21 Prosecutor "for not meeting the well-known requirements of
22 morality and competence." However, Guerrero was quickly
23 reinstated by the Salvadoran Supreme Court of Justice, which
24 ruled that his dismissal had been unconstitutional. *Id.* at
25 ¶ 120.

26 105. In August 1985, the Public Prosecutor, Guerrero,
27 submitted the statement of Robert Adalberto Salazar Collier
28 ("Pedro Lobo") to the Fourth Criminal Court. At that time

1 Guerrero did not mention that the videotaped "confession" of
2 "Pedro Lobo" had first been presented by Major D'Aubuisson during
3 the March 1984 electoral campaign, and that it had been
4 immediately discredited when it was determined that "Pedro Lobo"
5 was a common criminal who had been incarcerated from 1979 through
6 1981 and who had admitted that he had been offered \$50,000 to
7 confess to being an accomplice in the assassination of Archbishop
8 Romero. IACHR Decision at ¶ 50, n.43; TC Report, p. 129.

9 C. The Failed Extradition Effort of 1987-1988.

10 106. In January 1986, President José Napoleón Duarte
11 appointed a Commission to Investigate Criminal Acts ("the
12 Investigative Commission") to give impetus to the Romero
13 investigation. IACHR Decision at ¶ 14.

14 107. The work of the Investigative Commission led to the
15 discovery of Amado Antonio Garay, Saravia's former driver. On
16 November 20, 1987, the Investigative Commission presented Garay
17 to Judge Ricardo Alberto Zamora Pérez of the Fourth Criminal
18 Court, who took Garay's sworn statement. IACHR Decision at ¶ 52;
19 Complaint, ¶ 20, TC Report at p. 130.

20 108. On November 24, 1987, Judge Zamora charged Saravia
21 with aggravated homicide in violation of Article 53 of the
22 Salvadoran Penal Code for his alleged role in the murder of
23 Archbishop Romero. Judge Zamora issued an arrest warrant for
24 Saravia, and an extradition request was duly issued to the United
25 States. TC Report, p. 130.

26 109. On November 25, 1987, the United States Department of
27 Justice filed a Criminal Complaint against Saravia in the United
28 States District Court for the Southern District of Florida, and

1 that court issued a warrant for his arrest. *U.S. v. Alvaro*
2 *Rafael Saravia Merino*, Case No. 87-3598-CIV, (S.D. Fla.
3 11/15/87). The November 25, 1987 affidavit of Sharon L.
4 Kegerreis, an Assistant U.S. Attorney for the Southern District
5 of Florida, filed in support of the Complaint identifies Saravia
6 as a citizen of El Salvador who was born on February 16, 1946 in
7 Santiago de Maria, Usulután Province, El Salvador. *U.S. v.*
8 *Alvaro Rafael Saravia Merino*, Affidavit of Sharon L. Kegerreis at
9 ¶ 5.

10 110. On November 27, 1987, Saravia was arrested in Florida
11 pursuant to the arrest warrant. *U.S. v. Alvaro Rafael Saravia*
12 *Merino*, Case No. 87-3598-CIV, "Certification of Extraditability
13 and Order of Commitment" (S.D. Fla. Sept. 27, 1988), p. 1;
14 Complaint, ¶ 20.

15 111. Saravia, reportedly with funding for his legal costs
16 provided by Major D'Aubuisson, filed habeas corpus petitions in
17 both the U.S. and Salvadoran courts. See *Saravia v. U.S.*, 88-
18 01975-CIV-TEB (S.D. Fla.). On October 3, 1988, the United States
19 Ambassador to El Salvador, William Walker, sent a diplomatic
20 cable to the United States Secretary of State regarding "The
21 Saravia Extradition and the D'Aubuisson Mafia." Ex. 96, p. 1.
22 Ambassador Walker reported the following to the Secretary of
23 State:

24 There is ample circumstantial [sic] evidence that an
25 effort is underway to obstruct the extradition from the
26 U.S. of Cpt. Alvaro Rafael Saravia, the cashiered
27 Salvadoran Air Force officer charged with complicity in
28 the March 24, 1980 assassination of Archbishop Oscar
D'Aubuisson and associates through a document telefaxed
from D'Aubuisson's Mariscos Tazumal office to Saravia's
U.S. lawyer for entry into the Saravia extradition

1 court records.

2 * * *

3 The Mariscos Tazumal fax identification clearly links
4 the Saravia defense to an entire realm of coup
5 plotters, death squad chiefs, kidnappers, baby robbers,
6 mad bombers, car thieves, and other assorted criminals.
None, however, has ever been convicted, and prosecution
is unlikely as long as D'Aubuisson and his backers are
free to manipulate the Salvadoran judicial system.

7 Ex. 96, pp. 1 and 8.

8 112. On December 19, 1988, the Constitutional Division of
9 the Supreme Court of Justice of El Salvador issued a decision
10 ordering the Fourth Criminal Court to stop the investigation of
11 Saravia and to withdraw the warrant for his arrest. *U.S. v.*
12 *Alvaro Rafael Saravia Merino*, Case No. 87-3598-CIV, "Government's
13 Motion to Dismiss Extradition Proceedings" (S.D. Fla. Dec. 28,
14 1988) (attaching a certified translation of the Salvadoran
15 court's decision).

16 113. No member of the Salvadoran Supreme Court had been
17 present when Garay gave his statement. The Chief Judge of the
18 Supreme Court at the time was the same José Francisco Guerrero
19 who had served as D'Aubuisson's personal lawyer and who had
20 submitted the discredited "Pedro Lobo confession" to the Fourth
21 Criminal Court when he was the Public Prosecutor in 1985. *Id.*,
22 Hrg. Tr. 9/3/04 (Karl), 51:11-53:1, 55:23-56:10.

23 114. The U.N. Truth Commission found the Salvadoran Supreme
24 Court "played an active role that served to hinder the
25 extradition from the United States and later imprisonment of
26 Saravia in El Salvador." The Truth Commission interpreted the
27 decision as politically motivated. Complaint, ¶ 20; TC Report,
28 p. 131; IACHR Decision, ¶ 98.

1 115. On December 28, 1988, the U.S. District Court for the
2 Southern District of Florida vacated the Certificate of
3 Extraditability and Order of Commitment and ordered the United
4 States Marshals to release Saravia. *U.S. v. Alvaro Rafael*
5 *Saravia Merino*, Case No. 87-3598-CIV, "Order of Dismissal and
6 Vacation." (S.D. Fla. Dec. 28, 1988).

7 116. No further efforts have ever been made in El Salvador
8 to prosecute Saravia or anyone else for the murder of Archbishop
9 Romero. Complaint, ¶ 21.

10 D. End of Civil War.

11 117. From 1980 to 1992, El Salvador was engaged in full-
12 scale civil war, caused in part by the assassination of
13 Archbishop Romero. In 1990, the parties began informal talks
14 about the possibility of negotiating a peace agreement. Actual
15 negotiations continued from 1990 to 1992. A formal cease fire
16 and Peace Accords were signed in Chapultepec, Mexico, on January
17 16, 1992. The peace agreement required the dismantling of the
18 Treasury Police and the National Police because they "were so
19 thoroughly repressive and corrupt that they could not be saved."
20 However, the death squads that operated out of those forces were
21 not entirely dismantled. Hrg. Tr. 8/25/04 (White), [White Dep.
22 55:13-56:1]; Hrg. Tr. 8/27/04 (Acosta), 41:2-6; 42:6-21; Hrg. Tr.
23 8/25/04 (Karl), 75:6-18, 93:3-16.

24 E. United Nations Truth Commission.

25 118. In accordance with the Peace Accords, the United
26 Nations established a Truth Commission that began investigating
27 crimes committed since 1980. It was set up in July 1992 and was
28 composed of former Colombian president Belisario Betancur, former

1 Venezuelan foreign minister Reinaldo Figueredo Planchart, and
2 George Washington University law professor Thomas Buergenthal.
3 The Truth Commission's report on "serious acts of violence" since
4 1980 entitled "From Madness to Hope: the 12-Year War in El
5 Salvador: Report of the Commission on the Truth for El Salvador,"
6 was released on March 15, 1993, at the United Nations. The peace
7 agreements also commissioned the Truth Commission to make "legal,
8 political or administrative" recommendations that were either
9 general or related to specific cases. The Truth Commission was
10 delegated two specific powers: the power to make investigations
11 and the power to make recommendations. The Parties to the peace
12 agreement had agreed to be bound by the Truth Commission's
13 recommendations. TC Report, p. 11, 18-25; Hrg. Tr. 8/25/04
14 (Karl), 75:19-21.

15 119. The Truth Commission testimony attributed almost 85% of
16 all abuses to agents of the government of El Salvador, allied
17 paramilitary groups, and the death squads. TC Report, p. 43.
18 Among other things, the Truth Commission concluded that:

- 19 • Violence in the 1980s "originated in a political mind-
20 set that viewed political opponents as subversives and
21 enemies." TC Report, p. 43.
- 22 • Those who promoted opposing ideas that questioned
23 official policy were automatically labeled subversive
24 and deemed to be working for the guerrillas. TC
25 Report, p. 43.
- 26 • In the early 1980s, violence in rural areas was
27 "indiscriminate in the extreme." TC Report, p. 44.
- 28 • Several members of the armed forces admitted and gave

1 details of their involvement at the highest levels in
2 the organization, operation and financing of the death
3 squads. TC Report, p. 132.

- 4 • Between 1980 and 1991, human rights violations were
5 committed in a systematic and organized manner by
6 groups acting as death squads. TC Report, p. 132.
- 7 • Many of the civilian and military authorities in power
8 during the 1980s "participated in, encouraged and
9 tolerated" the activities of the death squads. TC
10 Report, p. 132, 137.
- 11 • The intelligence sections of many armed forces units
12 operated on the death squad model, dressing in civilian
13 clothes and driving unmarked cars. TC Report, p. 136.
- 14 • Salvadoran exiles living in Miami "directly financed"
15 certain death squads. TC Report, p. 137.
- 16 • The lack of effective action by the judicial system was
17 a factor in maintaining impunity for "members and
18 promoters" of the death squads. TC Report, p. 137.
- 19 • None of the branches of government were capable of
20 restraining the military's overwhelming control of
21 society. TC Report, p. 172.
- 22 • The judicial system suffered from a "glaring inability"
23 to investigate crimes or to enforce the law, especially
24 with regard to crimes committed or supported by
25 government institutions. TC Report, p. 178.

26 120. Based on these findings, the Truth Commission
27 recommended, among other things:

- 28 • The discharge of officers in the Salvadoran armed

1 forces who were named in the report. TC Report, p.
2 176.

- 3 • The appointment of a new Supreme Court. TC Report, p.
4 177.
- 5 • Elimination of the defense of "due obedience" for
6 soldiers who carry out orders that are clearly illegal.
7 TC Report, p. 179.
- 8 • The subordination of the military to civilian
9 authorities. TC Report, p. 179.
- 10 • The eradication of illegal armed groups by "all
11 necessary measures." TC Report, p. 180.
- 12 • Review of the constitutional rules which led to
13 "tremendous concentration" of power in the hands of the
14 Supreme Court, particularly its President. TC Report,
15 p. 181.

16 121. The Truth Commission was unable to recommend specific
17 penalties because, as it found: "El Salvador has no system for
18 the administration of justice which meets the minimum
19 requirements of objectivity and impartiality so that justice can
20 be rendered reliably. This is a part of the country's current
21 reality and overcoming it urgently should be a primary objective
22 for Salvadoran society." TC Report, p. 178.

23 F. Amnesty Law.

24 122. On March 20, 1993, five days after the Truth
25 Commission Report was released at the United Nations, the
26 Legislative Assembly of El Salvador adopted the General Amnesty
27 Law by Decree No. 486 ("Amnesty Law"). IACHR Decision, ¶ 55;
28 Hrg. Tr. 8/26/04 (Hernandez), 126:3-10, 128:4-12; Hrg. Tr. 9/3/04

1 (Roht-Arriaza), 130:16-21, 131:14-17.

2 123. The Amnesty Law grants a "broad, absolute and
3 unconditional amnesty . . . in favor of all those who in one way
4 or another participated in political crimes, crimes with
5 political ramifications, or common crimes committed by no less
6 than twenty people, before January 1, 1992." The Amnesty Law
7 extends to indirect perpetrators and accomplices as well, and
8 includes those who have been convicted, indicted or not yet
9 charged. *Id.* At Art. 1, 4.

10 124. Shortly after passage of the Amnesty Law, on March 31,
11 1993, Judge Luis Antonio Villeda Figueroa applied the Amnesty Law
12 to Saravia and dismissed with prejudice the case against him for
13 the murder of Archbishop Romero. Specifically, Judge Villeda
14 found that the Romero assassination was a "political" crime which
15 provides Saravia with amnesty under the 1993 law. Judge
16 Villeda's decision was upheld by the First Criminal Chamber on
17 May 13, 1993, which entered a final judgment in the case because
18 the time for the Office of the Public Prosecutor to file a motion
19 had expired without any action. The First Criminal Chamber ruled
20 that its decision has *res judicata* effect with regard to Saravia
21 in the Romero case. IACHR Decision, ¶¶ 22, 98, n.100, 101;
22 Amnesty Law, Art. 2, 4(c).

23 125. The Inter-American Commission on Human Rights found in
24 2000 that "the application of the General Amnesty Law in the
25 [Romero] case eliminated the possibility of undertaking judicial
26 investigations aimed at determining the responsibility of all
27 those involved. In addition, that decision violated the right of
28 the victim's relatives and of society at large to know the truth

1 about the events in question." The IACHR Commission recommended
2 that the government of El Salvador pass legislation to nullify
3 the amnesty law. IACHR Decision, ¶¶ 151, 159(3).

4 126. No such legislation has ever been passed. The
5 Salvadoran Supreme Court has twice upheld the constitutionality
6 of the Amnesty Law, in 1993 and 2000. Although the Court's 2000
7 decision, post-dating the IACHR Decision does not foreclose
8 narrowing of the amnesty, in the twelve years following
9 enactment, no prosecutions have taken place for crimes and
10 individuals facially covered by the Amnesty Law. This is because
11 the Public Prosecutor has interpreted the Salvadoran Supreme
12 Court decision to apply the amnesty law to all cases of human
13 rights abuses. Hrg. Tr. 9/3/04 (Roht-Arriaza), 136:3-20.

14 127. Aside from the Amnesty Law's blocking prosecution of
15 Saravia for his involvement in the assassination of Archbishop
16 Romero, the passage of the Amnesty Law immediately following the
17 release of the Truth Commission Report served to stifle
18 discussion of the report and frustrated the implementation of its
19 recommendations. This undermined the efficacy and purpose of the
20 entire truth-finding process. Hrg. Tr. 9/3/04 (Roht-Arriaza)
21 130:16-21, 131:14-19.

22 G. Inability to Publicly or Privately Pursue Justice in El
23 Salvador.

24 (1) Fear of Reprisal.

25 128. Prior to the first democratically-elected government
26 taking office in El Salvador on June 1, 1994, the military and
27 security forces held enormous power. From 1980 to 1994, any
28 person who made allegations against active or former members of

1 the military risked reprisal, including death. However, citizens
2 did not just fear reprisals by the military. The ARENA party
3 held great power in El Salvador in the 1980s and continues to run
4 the government today. The ARENA party was founded by Roberto
5 D'Aubuisson, who also founded the death squads that operated in
6 direct concert with the Salvadoran armed forces. Salvadorans
7 feared and continue to fear, not only retaliation from the
8 military, but also from the ARENA-run government and its death
9 squads. Complaint, ¶ 22; Hrg. Tr. 8/25/04 (Ramirez Amaya),
10 26:12-19; 493:3-12, 51:22-52:21.

11 129. During the civil war, judges were murdered at a high
12 rate. As the Truth Commission concluded, "In the 1980s, it was
13 dangerous to be a judge in El Salvador." During that decade, 28
14 judges were killed. The judiciary could not defend itself
15 against violence. It "fell victim to intimidation and the
16 foundations were laid for its corruption. . . [I]ts
17 ineffectiveness steadily increased until it became, through its
18 inaction or its appalling submissiveness, a factor which
19 contributed to the tragedy suffered by the country." TC Report,
20 pp. 170, 172-73.

21 130. Even after the security forces were disbanded pursuant
22 to the Peace Accords, Salvadoran courts were still unable or
23 unwilling to hear most claims for human rights violations against
24 individuals for alleged involvement in financing, ordering,
25 assisting, or carrying out death squad killings, including the
26 assassination of Archbishop Romero. Even today, survivors of
27 torture and relatives of killings committed by Salvadoran death
28 squads and the armed forces as far back as the 1970s and early

1 1980s have declined to bring claims in El Salvador or elsewhere
2 against the individuals responsible, for fear of violent
3 reprisals. Complaint, ¶ 22.

4 131. J. Doe, specifically, was afraid to bring a case
5 either inside or outside of El Salvador due to risks of violent
6 reprisals against plaintiff and plaintiff's family. Although
7 plaintiff has now brought this case, it is only with the
8 protection of anonymity provided by filing under the name J. Doe.
9 El Salvador remains a dangerous place, but changed circumstances
10 now permit this case to be brought and improved cooperation of
11 witnesses in El Salvador now makes it possible to present this
12 case in a United States Court. Supplemental Declaration of
13 Plaintiff J. Doe, ¶¶ 4-6, filed 9/28/04.

14 132. Fear is a primary reason that cases have never been
15 brought. The inefficiency and corruption of the El Salvadoran
16 judiciary contributed to the unwillingness of persons to assert
17 claims in the courts of El Salvador. The judiciary bore
18 "tremendous responsibility" for the impunity that persisted
19 during the civil war and displayed a "glaring inability" to
20 investigate crimes, particularly those committed with support of
21 the government. Tutela Legal, the human rights office of the San
22 Salvador archdiocese, brought more than 24,000 cases between 1982
23 and 1992. Of these, only about five or six were accepted by the
24 courts and eventually all the defendants in those cases received
25 amnesty. TC Report, p. 177-78; Hrg. Tr. 8/26/04 (Hernandez),
26 125:20-22.

27 133. The Truth Commission also found that the El Salvador
28 Supreme Court held far too much power, "seriously undermining the

1 independence of lower court judges and lawyers." The Truth
2 Commission recommended that new justices be immediately named to
3 the Supreme Court and that the court's powers be revised. TC
4 Report, p. 177-78, 181.

5 134. In addition to all these obstacles, El Salvador's 1993
6 Amnesty Law immunized nearly every person who had committed human
7 rights abuses before and during the civil war. See Section V.F.,
8 *supra*.

9 (2) No Private Prosecutions in Romero Case Due to Fear
10 of Reprisals and Corruption of Salvadoran Judicial
11 System.

12 135. No prosecution has ever been brought by Archbishop
13 Romero's family in El Salvador, even though Salvadoran law
14 permits private citizens to initiate criminal proceedings.
15 Victims of a crime, or their relatives, may bring a private
16 accusation for crimes subject to *ex officio* proceedings. As a
17 general rule, a private attorney acting as prosecutor represents
18 the victim and notifies the judge in writing of such
19 representation. Code of Penal Procedure, Art. 50; Hrg. Tr.
20 8/26/04 (Hernandez), 127:4-13, 129:11-130:10.

21 136. However, fear of reprisal and the corruption of the
22 judicial system continue to prevent any private prosecution for
23 the Romero assassination. Tutela Legal spoke with two criminal
24 lawyers during the 1980s about bringing a private prosecution on
25 behalf of Archbishop Romero's family, but both refused to take
26 the case for fear of reprisal. Even today private lawyers refuse
27 to bring a private accusation. This specific example reflects
28 the reality that very few private prosecutions have ever been

1 brought for human rights violations and related crimes. Hrg. Tr.
2 8/26/04 (Hernandez), 127:4-13, 129:11-130; Hrg. Tr. 8/25/04
3 (Ramirez Amaya), 26:13-16, 52:8-11.

4 (3) No State Prosecutions in Romero Case.

5 137. Beyond the failed attempt to extradite Saravia, which
6 was abrogated by Salvadoran courts, there have been no
7 prosecutions brought by the Salvadoran government for the
8 assassination of Archbishop Romero. Public prosecutors are
9 selected by the Congress. Congress is controlled by the ARENA
10 party and does not operate in an independent and non-partisan
11 manner. In practice, public prosecutors will not even consider
12 bringing a state case concerning the assassination. Hrg. Tr.
13 8/25/04 (Ramirez Amaya), 52:5-7, 17-21; 53:15-45:1.

14 138. Even the modest efforts to investigate the case were
15 disrupted. The Truth Commission found that the official
16 investigation was "inefficient . . . highly controversial and
17 plagued by political motivations." The Supreme Court also
18 actively intervened to prevent Saravia's extradition, thereby
19 ensuring impunity for the perpetrators of the assassination. TC
20 Report, pp. 127-28.

21 (4) No Civil Liability in Romero Case.

22 139. [REDACTED]

23 (5) Deterrent to Earlier Filing.

24 140. Due to the continuing climate of repression and active
25 fear of reprisal, plaintiff was effectively inhibited from
26 bringing this case in the courts of El Salvador and the United
27 States. Although United States courts were independent from the
28 intimidation and reprisal operative in El Salvador during the

1 1990-2003 time period, the plaintiff was subject to 'fear,
2 intimidation, and was deterred by the example that the prior
3 extradition attempt in a United States District Court had been
4 thwarted by the Salvadoran court.

5 141. The totality of these conditions effectively barred
6 Plaintiff from earlier filing this human rights case until the
7 Plaintiff's lawyers and supporting organizations facilitated the
8 commencement and prosecution of this case in 2003.

9 A. Compensatory Damages.

10 142. [REDACTED]

11 143. [REDACTED]

12 144. [REDACTED]

13 145. [REDACTED]

14 B. Archbishop Romero's Enduring Legacy.

15 (1) Archbishop Romero's Theological Influence.

16 146. Archbishop Romero's legacy within the Roman Catholic
17 Church is immense. The archdiocese of San Salvador, which he
18 served as Archbishop, has formally nominated him to be canonized
19 as a martyr of the church, and the Vatican is presently
20 conducting the formal canonization process. Hrg. Tr. 8/26/04
21 (Hernandez), 155:18-156:24.

22 147. Many already refer to him as a saint, often as "Saint
23 Romero of the Americas." Hrg. Tr. 8/24/04 (Wipfler), 79:18-
24 80:11; Hrg. Tr. 8/27/04 (Acosta), 43:15-18; Declaration of Philip
25 Berryman, ¶ 29, filed 8/20/04; Declaration of Rosa Nohemy Ortiz,
26 ¶ 19, filed 8/20/04; Declaration of Anna Lisa Peterson, Ph.D.,
27 ¶ 8, filed 8/20/04; Declaration of Fr. Paul Schindler, ¶ 12,
28 filed 8/20/04; Declaration of Jean Stokan, ¶ 16, filed 8/20/04;

1 Declaration of Thomas Quigley, ¶ 7, filed 8/20/04.

2 148. In 1988, Westminster Abbey in London unveiled the
3 busts of ten 20th Century martyrs that now stand over the main
4 entrance to that historic church. Archbishop Romero is included,
5 the last of the ten to be killed. Hrg. Tr. 8/27/04 (Guerra),
6 64:12-16; Declaration of Philip Berryman, ¶ 29, FILED 8/20/04;
7 Declaration of Eileen M. Purcell, ¶ 20, filed 8/20/04.

8 149. Archbishop Romero's theological influence has been
9 significant, contributing to ideas of the Christian church as the
10 "people of God" rather than as a formal and remote institution;
11 ideas of "accompaniment," which guide Christians in their social
12 and political lives; broader understandings of the Christian
13 concept of martyrdom; new concepts of leadership within the
14 church, particularly priests' and nuns' obligations to exercise a
15 "preferential option for the poor;" and an understanding of the
16 church doctrine known as "Liberation Theology." Declaration of
17 Carlos Ayala Ramirez, ¶ 22, filed 8/20/04; Declaration of Fr.
18 Robert Stuart Pelton, ¶¶ 9-11, filed 8/20/04; Declaration of Anna
19 Lisa Peterson, Ph.D., ¶ 4, filed 8/20/04; Declaration of Eileen
20 M. Purcell, ¶ 22, filed 8/20/04; Declaration of Juan Sobrino y
21 Pastor, S.J., ¶¶ 5-7, filed 8/20/04; Declaration of Prof. Juan
22 José Tomayo Acosta, ¶¶ 9-10, filed 8/20/04.

23 150. In addition to his contribution to ideas, the model of
24 his actions embodies this theology manifested by his religious
25 and spiritual practices. The most evident example is his
26 courageous denunciations of human rights abuses. Hrg. Tr.
27 8/24/04 (Gumbleton), 164:12-166:4; Declaration of Philip
28 Berryman, ¶¶ 27-28, filed 8/20/04; Declaration of Anna Lisa

1 Peterson, Ph.D., ¶ 5, filed 8/20/04.

2 (2) Archbishop Romero's International Influence as a
3 Proponent of Human Rights and Non-Violence.

4 151. Archbishop Romero's courageous defense of human
5 rights, his solidarity with the poor, and his commitment to
6 nonviolence and democracy, all rooted in a deep and abiding
7 respect for the dignity of all human beings, in the face of real
8 and continuing mortal intimidation which resulted in his
9 assassination, have been an inspiring model to the world. During
10 his life he came to be known as the "Voice of the Voiceless," and
11 this model has stood for nearly 25 years as one of the world's
12 most revered beacons of hope. He has been compared to Martin
13 Luther King, Jr., and Mahatma Gandhi. Hrg. Tr. 8/24/04
14 (Wipfler), 80:12-81:17; Hrg. Tr. 8/27/04 (Acosta), 43:12-14,
15 44:6-9; Declaration of President Oscar Arias Sánchez, ¶¶ 11-13,
16 filed 8/20/04; Declaration of Carlos Ayala Ramirez, ¶ 13, filed
17 8/20/04; Declaration of Maria Catriona Elena Bain de Alvarenza,
18 ¶ 7, filed 8/20/04; Declaration of Representative Michael D.
19 Barnes, ¶ V, filed 8/20/04; Declaration of Hector Miguel Antonio
20 Dada Hirezi, ¶ 25, filed 8/20/04; Declaration of Representative
21 George Miller, ¶ 11, filed 8/20/04; Declaration of Adolfo Perez
22 Esquivel, ¶ 11, filed 8/20/04; Declaration of Eileen M. Purcell,
23 ¶ 22, filed 8/20/04; Declaration of Jean Stokan, ¶ 15, filed
24 8/20/04; Declaration of Archbishop Desmond Mpilo Tutu, ¶ 4, filed
25 9/20/04.

26 152. The impact of his murder is partially captured through
27 literature and art. Plays honoring him have been produced
28 worldwide, including the United States, France, and Germany.

1 Numerous biographies have been published about him in French,
2 German, Italian, English, Spanish, and Portuguese. There is a
3 major motion picture about his death; there are medical clinics,
4 student scholarships, community centers, and scholarship programs
5 bearing his name. Hrg. Tr. 9/3/04 (Karl) 73:8-74:3.

6 153. Archbishop Romero's legacy as a continuing beacon of
7 hope is manifest. Each March 24, there are religious services,
8 memorials and marches in his memory all over the world. Hrg. Tr.
9 8/24/04 (Gumbleton), 165:24-166:15; Hrg. Tr. 8/27/04 (Guerra),
10 64:20-66:5; Exs. 78-82 (photos of memorials).

11 C. Due to His Stature and the Unique Role that he Played
12 Within El Salvador, the Damages Caused by the
13 Assassination of Archbishop Romero Have Been Profound.

14 (1) Loss of El Salvador's Primary Mediator/Bridge.

15 154. Archbishop Romero was widely recognized as the one
16 person who could act as a bridge between the divided sectors of
17 Salvadoran society. He was able to mediate labor disputes and
18 many other types of conflicts because he was the one figure in El
19 Salvador who was consistently respected and listened to by all
20 sides. He was viewed by the U.S. government and many others as
21 essential to any nonviolent or less-violent resolution of the
22 crisis gripping El Salvador at the time. Hrg. Tr. 8/25/04
23 (White), [White Dep. 21:1-22:5]; Hrg. Tr. 9/3/04 (Karl), 74:13-
24 23.

25 (2) The Assassination of Archbishop Romero was a Major
26 Catalytic Event that Helped to Precipitate El
27 Salvador's Civil War.

28 155. Archbishop Romero acted as a critical bridge between

1 the polarized sectors of Salvadoran society. Eliminating that
2 bridge helped drive El Salvador into civil war. His killing -
3 and the absolute impunity that his assassins enjoyed in its
4 aftermath - signaled the futility of nonviolent methods of
5 change. As Robert White, the then-U.S. Ambassador to El Salvador
6 testified:

7 Those who killed Monsignor Romero knew perfectly well
8 what they were doing and what they would accomplish.
9 They destroyed the one figure in El Salvador that could
10 have served as a bridge, as a creative interpreter
11 between all the different sides.

12 And his removal by violence basically sent a signal
13 that - that no dialogue was warranted, that what the
14 Salvadoran rich and military were after was a total
15 pressure of this burgeoning movement towards democratic
16 change.

17 Hrg. Tr. 8/24/04 (White) [White Dep. 28:15-29:13, 55:13-56:1];
18 see also Hrg. Tr. 9/3/04 (Karl), 74:13-23; Declaration of
19 President Oscar Arias Sánchez, ¶ 7, filed 8/20/04; Declaration of
20 Philip Berryman, ¶ 23, filed 8/20/04; Declaration of Hector
21 Miguel Antonio Dada Hirezi, ¶ 17, filed 8/20/04.

22 156. The assassination also signaled that no one was safe.
23 The message was clear: "If the Archbishop could be killed with
24 impunity, then anyone could be." Ambassador White testified:

25 the failure of the Salvadoran military to arrest and
26 keep under arrest Roberto D'Aubuisson and Alvaro
27 Saravia and their fellow conspirators, their failure to
28 try them and convict them and put them into prison was
29 another lesson to the Salvadoran people that impunity
30 in El Salvador was alive and well, that there was no
31 chance of getting justice from the system. And,
32 therefore, the Archbishop not only did it - reinforced
33 the image of a military that was a law unto itself. It
34 also served as a recruiting tool for revolutionaries,
35 because if you can kill an Archbishop, you know, you
36 can kill anybody. No one is sacred.

37 Hrg. Tr. 8/24/04 (White) [White Dep. 56:2-14]; see also Hrg. Tr.

1 9/03/04 (Karl) 91:20-21; Hrg. Tr. 8/27/04 (Acosta), 35:17-36:1;
2 Hrg. Tr. 8/26/04 (Cortina), 110:16-20; Declaration of Eileen M.
3 Purcell, ¶ 10, filed 8/20/04; Declaration of Carlos Ayala
4 Ramirez, ¶ 18, filed 8/20/04; Declaration of Plazido Erdozoin
5 Beroiz, ¶ 7, filed 8/20/04; Declaration of Maria Elena Galván de
6 Gifon, ¶ 31, filed 8/20/04.

7 157. Romero's death also fueled support for both the
8 unarmed and armed left, further polarizing the country. In April
9 1980, shortly after his murder, the Frente Democratico
10 Revolucionario ("FDR") formed; it was the first organization in
11 the history of El Salvador to unite all factions of the left and
12 much of the center, reflecting the extent to which the actions of
13 the military had destroyed the political center and driven its
14 remnants to ally with the left. Archbishop Romero became their
15 rallying cry and a major symbol for recruitment. Hrg. Tr.
16 8/24/04 (White) [White Dep. 56:1-57:1]; Hrg. Tr. 9/3/04 (Karl),
17 75:24-76:19.

18 158. As repression continued, this also fueled the
19 establishment of a guerrilla army, which by the end of 1980, grew
20 from five small armed factions to the Frente Farabundo Marti para
21 la Liberacion Nacional ("FMLN"). In effect, the extraordinary
22 state terror launched by the military and security forces united
23 the armed left into a single command and produced the formation
24 of a guerrilla army - an action they had never been able to
25 achieve previously. Hrg. Tr. 9/3/04 (Karl) 76:25-78:5.

26 159. With two armies confronting each other, El Salvador
27 had moved from widespread social conflict to a state of civil
28 war. Hrg. Tr. 9/3/04 (Karl) 78:2-5.

1 160. Other prominent members of the nonviolent opposition
2 were murdered in the ensuing months, along with hundreds of less
3 prominent individuals. In November of 1980, six political
4 leaders of the nonviolent FDR were killed by the armed forces.
5 Hrg. Tr. 9/3/04 (Karl), 76:20-77:7; Hrg. Tr. 8/26/04 (Hernandez),
6 160:20-161:23.

7 161. The civil war between the Salvadoran government and
8 the FMLN raged for the next 11 years. TC Report, pp. 28-29, and
9 58-62; Exs. 67-72 (photos of death squad victims).

10 162. Murders in El Salvador increased significantly
11 following the Archbishop's death, further immersing the country
12 in violence. The month prior to his death (February 1980) 237
13 people were killed; by June 1980, the number had grown to 1,000.
14 Hrg. Tr. 9/3/04 (Karl) 79:16-80:5.

15 163. The number of murders following the Archbishop's
16 assassination increased yearly. While approximately 1,000
17 civilians were killed in 1979, this figure rose to well over
18 11,000 in 1980 and 16,000 in 1981. Many of the civilians killed
19 were young. As Ambassador White testified, "in the great
20 majority, these were the killing of unarmed civilians, most of
21 them young, young men, young boys that were just rounded up and
22 herded and gunned down execution style. So, it was terrible. I
23 mean, I'd seen enough dead 15 year olds to, you know, to last me
24 the rest of my life." Hrg. Tr. 8/24/04 (White) [White Dep.
25 24:21-25:5]; see also Hrg. Tr. 9/3/04 (Karl) 83:17-21.

26 164. By the end of the war, estimates of civilian dead
27 ranged from 75,000 (USAID) to 80,000 (World Bank), far higher on
28 a per capita basis than in other cases of state terror such as

1 Chile or Argentina. Hrg. Tr. 9/3/04 (Karl), 78:8-13, 83:22-84:7.

2 165. The military, security forces and death squads were
3 responsible for "almost 85 percent" of these murders. TC Report,
4 p. 43.

5 166. In addition to the incalculable cost of the thousands
6 of lost lives, the economic damage was severe. The damage to El
7 Salvador's infrastructure is estimated at \$2.2 billion, including
8 the destruction of schools, hospitals, and clinics. Hrg. Tr.
9 9/03/04 (Karl), 84:23-85:4.

10 167. The disruption of livelihoods and the profound
11 dislocation of economy and society resulted in the decrease in
12 domestic investment, the most important indicator of a country's
13 growth, from 22% of GDP in 1979 to 12% in 1989, despite huge
14 increases in U.S. aid. The real GDP declined by 12% during the
15 1980s, and per capita income dropped 25%. From a development
16 perspective, this has been a generation of loss. By the end of
17 the war, for example, health expenditures were a third of the
18 Latin America average, illiteracy was almost twice the Latin
19 American average, and infant mortality was significantly higher
20 than the Latin American average. Hrg. Tr. 9/3/04 (Karl), 85:12-
21 86:23.

22 (3) More than One Million Salvadorans Driven into
23 Exile.

24 168. At least 1.2 million Salvadorans - roughly one-fifth
25 of the population - were forced into exile during the civil war
26 that followed the assassination of Archbishop Romero. In
27 addition, more than 600,000 Salvadorans were internally displaced
28 within the country. Hrg. Tr. 9/3/04 (Karl), 87:3-10.

1 169. One of these refugees was Francisco Acosta Arevalo. A
2 student of the Jesuit University of Central America, he was
3 forced to sleep outside for days to avoid attacks by security
4 forces and death squads. He was given an offer to join an armed
5 opposition group, but declined due to his nonviolent principles.
6 He believed his only alternative was to flee the country.
7 Seventy-two of Mr. Acosta's relatives were killed during the war.
8 His family is now dispersed among 14 countries, and they speak
9 nine different languages. Hrg. Tr. 8/27/04 (Acosta), 36:2-38:22,
10 45:5-12.

11 170. Another typical member of the Salvadoran diaspora is
12 Esther Chavez. She came under the suspicion of the Treasury
13 Police when she organized a day care center for children. She
14 had to flee the country after her father was captured. She
15 stated that when she left in October 1980:

16 I have mixed feeling regarding that I was in some way
17 betraying my community. Because of my family's
18 condition, I was able to leave the country. But the
19 majority of people that was [sic] involved, they didn't
have that chance. And that's why I felt I was
betraying my community and my belief.

20 And I was hoping that in two years, I would be able to
21 go back and continue to work. But two years came to be
four, six and many years.

22 Hrg. Tr. 8/27/04 (Chavez), 14:22-16:11; 15:13-21.

23 (4) The Killing was Particularly Brutal.

24 171. The very public nature of Archbishop Romero's
25 assassination made it brutal to those who experienced the loss.
26 As Archbishop Desmond Mpilo Tutu testified, "His assassination in
27 public, with his people, was reminiscent of the assassination of
28 another great man, Mahatma Gandhi. Such a brutal act

1 demonstrated the arrogance of the perpetrators, their total
2 disrespect for life and confidence in their impunity."

3 Declaration of Desmond Mpilo Tutu, ¶ 4, filed 9/3/04.

4 172. The killing of Archbishop Romero was of a different
5 character from many other atrocities in El Salvador, a sniper's
6 bullet as opposed to accounts of torture and grotesque brutality.
7 The powerful symbolism of Archbishop Romero's killing was just as
8 brutal. He was killed while celebrating mass. The intentional
9 profaning of the sacred, perpetrating an attack upon a faith
10 deeply shared by the people. One eyewitness, a nun, described
11 the killing:

12 I was in the left wing, four meters away from the altar
13 of the Temple of Atonement that he had dedicated with
14 oil on the sixteenth of July one thousand nine hundred
15 and seventy-four, and which this day he consecrated
16 with his own blood at six fifteen in the afternoon. In
17 his homily he made reference to "the grain of wheat
18 that can't give life if it does not die," as though he
19 felt this would be his Post humus [sic] Mass. During
20 his homily he kept his eye on the main door, but then
21 he moved to the center of the Altar to lay out the
22 corporal before beginning the offertory. In that
23 moment from the main door an assassin's bullet entered
24 rapidly and exploded his heart. Due to the instinct of
25 conservation, Monseñor Romero grabbed the table of the
26 Altar and pulled the tablecloth onto which the hosts
27 fell without being consecrated, and Monseñor fell at
28 the feet of Christ, who had been his faithful model
since his childhood, his youth, as a Priest, as a
Bishop and as an Archbishop. In our Religious
Community we interpreted this painful event as God
saying, "TODAY I DON'T WANT YOU TO OFFER BREAD AND WINE
AS ALWAYS. TODAY YOU WILL BE THE VICTIM, OSCAR."

24 Declaration of Maria de la Luz Cueva Santana, ¶ 6, filed 8/20/04.

25 173. This symbolism affected those who were not Catholic as
26 well. An Evangelical minister, Raúl Lopez Pacheco, testified as
27 follows:

28 What shocked me the most about the death of Monseñor

1 Romero was the cruelty of the moment in which he was
2 assassinated. For the entire Christian community the
3 moment most noble and sacred is the presentation of the
4 bread as the body of Christ; this has many implications
because it was precisely at this point during mass when
he was assassinated.

5 Declaration of Raúl Lopez Pacheco, ¶ 8, filed 8/20/04; see also
6 Declaration of Miguel Tomas Castro Garcia, ¶ 5, filed 8/20/04
7 (also a Protestant minister).

8 174. The killing of Archbishop Romero was part of an
9 overall strategy of the junta to attack the church, particularly
10 the adherents of Liberation Theology. Killing the country's
11 foremost religious leader while celebrating mass most powerfully
12 expressed this war on the church. Killing Romero in this way
13 sent a message of terror and intimidation to all who shared his
14 commitment to the faith.

15 (5) It Became more Dangerous to Worship Following
16 Archbishop Romero's Murder.

17 175. Archbishop Romero's killing served to unleash still
18 more terror directed against the church in El Salvador. More
19 priests were killed or driven into exile, many hundreds of
20 catechists (lay church activists) were killed, and it became
21 increasingly dangerous and difficult to participate in any
22 religious services. Some worshipers were forced to practice
23 their faith clandestinely. Hrg. Tr. 8/27/04 (Guerra), 66:13-
24 67:10; Hrg. Tr. 8/26/04 (Hernandez), 161:3-18; Hrg. Tr. 8/27/04
25 (Chavez), 11:3-12:5, Declaration of Rosa Nohemy Ortiz, ¶¶ 11 &
26 15, filed 8/20/04; Declaration of Rigoberta Menchú Tum, ¶¶ 6-7,
27 filed 8/20/04; Maria Catriona Elena Bain de Alvarenga, ¶¶ 6 & 8,
28 filed 8/20/04; Declaration of Maria Clelia Flores Iraheta, ¶ 14,

1 filed 8/20/04.

2 (6) The People Were Deprived of Their Protector.

3 176. The death of Archbishop Romero caused many to feel
4 that they were without protection from the repression. For many,
5 his role as the "Voice of the Voiceless," meant that he was their
6 only protection against attack. Many felt profoundly bereft and
7 afraid. Hrg. Tr. 8/26/04 (Cortina), 110:21-22; Declaration of
8 Maria Elena Galván de Girón, ¶¶ 29-30, filed 8/20/04.

9 177. The loss of the one who was their protector created an
10 atmosphere of fear that was acutely felt. See, e.g., Declaration
11 of Meria Leonor del Carmen Chacón, ¶¶ 5 & 7, filed 8/20/04.

12 (7) Many Shared a Sense of Profound Loss, as

13 Archbishop Romero was Revered by many Almost as a
14 Member of their Family.

15 178. Julia Elvira Chacón is a housewife who first met
16 Archbishop Romero in 1963. Whenever he was in her town, he would
17 drop in and she would "make some beans and a hot sauce the way he
18 liked them." On March 24, 1980, her brother-in-law told her that
19 he was there in her town, and so she went home to make dinner for
20 him. The table was ready when she received the news that he had
21 been killed. She is an old woman now, but that memory persists.
22 There will always be an empty place at her table. Declaration of
23 Julia Elvira Chacón, ¶¶ 5-6 & 14, filed 8/20/04.

24 179. Sara Sorto de Lopez, a dressmaker, testified that she
25 was "greatly impacted by the death of Monsenor Romero," and
26 recalled that he "enjoyed listening to the marimba and he came to
27 my house to listen to it being played." Declaration of Sara
28 Sorto de Lopez, ¶¶ 5 & 7, filed 8/20/04.

1 Healing the scars of war and violence of these refugees
2 is a difficult task. And it might be that all these
3 activities help alleviate their suffering. For many of
4 the relatives of the 75,000 civilians that were killed
5 in the last twenty years, healing takes a quite
6 different and profound meaning. Families will have to
perceive that their loss and pain were not in vain.
Since "El Dolor" (their pain) was collective, healing
will also have to be in a dialectic process that comes
from the social to the particular individual situation.

7 Declaration of Felix Kury, ¶ 5, filed 8/20/04; see also Hrg. Tr.
8 9/3/04 (Karl), 87:14-89:1.

9 183. Holding accountable those responsible for Archbishop
10 Romero's murder is one means to facilitate this healing.

11 Declaration of Felix Kury, ¶ 5, filed 8/20/04 ("The trial of
12 individuals involved in the death of Romero would be a
13 significant part of the healing of all Salvadorans everywhere.")

14 As Francisco Acosta testified,

15 To me personally, and I am for sure for the members of
16 my family, the point is: Should we forget? Should we
17 forgive? How can we move on? Because this is heavy in
18 misery for us. Extremely heavy. The fact I was
invited to be a witness in this time, in this place, is
a way to get a closure, saying, justice is done. I can
move on in my life.

19 Hrg. Tr. 8/27/04 (Acosta), 45:17-23.

20
21 CONCLUSIONS OF LAW

22
23 I. SUBJECT MATTER JURISDICTION.

24 184. Plaintiff brings this case under the Alien Tort Claims
25 Act, 28 U.S.C. § 1350 (the "ATCA"), and the Torture Victim
26 Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1993)
27 (codified at 28 U.S.C. § 1350 note) (the "TVPA"). This Court has
28 jurisdiction over this action under the ATCA and 28 U.S.C.

1 § 1331.

2 II. PERSONAL JURISDICTION.

3 185. This Court has personal jurisdiction over Defendant
4 Saravia, who is or was a resident in Modesto, California, at the
5 time this action commenced and who continues to receive mail at
6 2401 Manor Oak Drive, Modesto, California 95355, where he was
7 served with process in the Eastern District of California.

8 186. Substitute service was affected on September 15 and
9 October 18, 2003, following attempts to serve the defendant
10 personally, by leaving a copy of the papers with the owner of
11 2401 Manor Oak Drive, Modesto, California 95355, the address at
12 which Saravia had been residing and at which he is continuing to
13 receive mail, and by then mailing the papers to Saravia at the
14 Modesto address. Proof of Service, filed January 9, 2004.

15 187. Service is valid under Fed. Rule Civ. P. 4(e)(1),
16 which permits service "pursuant to the law of the state in which
17 the district court is located," and California Code Civ. P.
18 § 415.20(b), which authorizes service at a person's "usual
19 mailing address other than a United States Postal Service post
20 office box, in the presence of a competent . . . person
21 apparently in charge of his or her office, place of business or
22 usual mailing address . . ., at least 18 years of age, who shall
23 be informed of the contents thereof, and by thereafter mailing a
24 copy of the summons and of the complaint . . . to the person to
25 be served at the place where a copy of the summons and complaint
26 were left"

27 188. A registered process server served the Summons and
28 Complaint and related papers on the owner of the usual mailing

1 address for Saravia, personally on October 18, 2003, and
2 explained the nature of the papers, and thereafter by mail on
3 October 21, 2003, to Defendant's usual mailing address, 2401
4 Manor Oak Drive, Modesto, California 95355.

5 189. Based on a verified declaration under penalty of
6 perjury of substituted service, the Court entered Saravia's
7 default by Order of the Clerk dated April 13, 2004.

8 190. Substitute service has been made on the correct Alvaro
9 Rafael Saravia. The Alvaro Rafael Saravia who was living at and
10 continues to receive mail at 2401 Manor Oak Drive, Modesto,
11 California, shares the same birthdate - February 16, 1946 - with
12 the Alvaro Rafael Saravia sought to be extradited to El Salvador
13 to face charges in connection with the assassination of
14 Archbishop Romero. Smith Decl. ¶¶ 4-5; Ex. A; Criminal
15 Complaint, *U.S. v. Alvaro Rafael Saravia Merino*, 11/25/87, and
16 supporting affidavit of Sharon L. Kegerreis, ¶ 5. That same
17 report shows that Saravia is associated with a previous address
18 in Florida and has a Social Security Number issued in Florida
19 between 1985 and 1986, where he was known to be living at the
20 time the extradition proceedings commenced. Smith Decl. ¶¶ 4-5.
21 Ms. Olsson, who lived at and owns the 2401 Manor Oak Drive
22 residence met Saravia in Miami, told Saravia about the type of
23 city Modesto was, and Saravia moved to Modesto. Ms. Olsson was
24 told by Saravia that he had family in Miami and Ms. Olsson knows
25 that Saravia used to be in the Salvadoran Air Force. Kaufman
26 Decl. ¶¶ 4-5.

27 191. The evidence preponderates that the correct Alvaro
28 Rafael Saravia was validly served with the Summons and Complaint

1 in Modesto, California, on September 15 and October 18 and 21,
2 2003.

3 III. DEFAULT PROCEEDING.

4 192. The entry of default deems Saravia to have admitted
5 every well-pleaded allegation of the complaint except those
6 relating to damages. *Bender Shipbuilding & Repair Co., Inc. v.*
7 *The Vessel Drive Ocean V.*, 123 F.Supp.2d 1201, 1208 (S.D. Cal.
8 1998); see also *United States v. Woody*, No. CIV.S-98-0442, 1999
9 U.S. Dist. LEXIS 9088 (E.D. Cal. June 2, 1999). The entry of
10 default conclusively establishes a defendant's liability.
11 *Adriana Int'l Corp. v. Thoeren*, 913 F.2d 1406, 1414 (9th Cir.
12 1990); *Bender Shipbldg. & Repair*, 123 F. Supp. 2d at 1208; *Taylor*
13 *Made Golf Co., Inc. v. Carsten Sports, Ltd.*, 175 F.R.D. 658, 661
14 (S.D. Cal. 1997); *United States v. Wight*, No. CIV.S-98-0442, 2001
15 U.S. Dist. LEXIS 22785 (E.D. Cal. Dec. 14, 2001).

16 193. Here, the facts pleaded in the Complaint establish
17 Plaintiff's claims of extrajudicial killing in violation of the
18 TVPA and extrajudicial killing and crimes against humanity in
19 violation of the ATCA. This alone is sufficient to establish
20 Saravia's liability, although Plaintiff also has presented
21 independent evidence in support of its claim, and evidence to
22 establish its damages. Fed. R. Civ. P. 55(b).

23 IV. LIABILITY UNDER THE TVPA AND ATCA

24 A. The Statutory Scheme.

25 (1) ATCA.

26 194. The ATCA states:

27 The district courts shall have original jurisdiction of
28 any civil action by an alien for a tort only, committed
in violation of the law of nations or a treaty of the

1 United States.

2 28 U.S.C. § 1350.

3 195. In *Sosa v. Alvarez-Machain*, the United States Supreme
4 Court held that the ATCA gives federal courts jurisdiction to
5 hear claims by an alien for torts in violation of the law of
6 nations. It does not itself provide a cause of action, but
7 provides jurisdiction over certain international law claims, to
8 the extent those claims have been incorporated into the common
9 law. As the Court explained:

10 In sum, although the [ATCA] is a jurisdictional statute
11 creating no new causes of action, the reasonable
12 inference from the historical materials is that the
13 statute was intended to have practical effect the
14 moment it became law. The jurisdictional grant is best
15 read as having been enacted on the understanding that
16 the common law would provide a cause of action for the
17 modest number of international law violations with a
18 potential for personal liability at the time.

15 *Sosa v. Alvarez-Machain*, 124 S. Ct. 2739, 2761 (2004).

16 196. When the ATCA was enacted in 1789, only three torts
17 were recognized under the common law as being violations of the
18 law of nations "with a potential for personal liability:"
19 violation of safe conduct, infringement of the rights of
20 ambassadors, and piracy. *Id.* at 2761.

21 197. A majority of the Court found, however, that the
22 "international law violations" recognized by federal common law
23 did not remain frozen as of 1789. "We assume, too, that no
24 development in the two centuries from the enactment of § 1350 to
25 the birth of the modern line of cases beginning with *Filartiga v.*
26 *Pena-Irala*, 630 F.2d 876 (2d Cir. 1980), has categorically
27 precluded federal courts from recognizing a claim under the law
28 of nations as an element of common law; Congress has not in any

1 relevant way amended § 1350 or limited civil common law power by
2 another statute." *Sosa*, 124 S. Ct. at 2761. However, the
3 recognition of a claim under the "present-day law of nations" as
4 an element of common law is circumscribed to "norm[s] of
5 international character accepted by the civilized world and
6 defined with a specificity comparable to the features of the
7 18th-century paradigms we have recognized." *Id.* at 2761-2762.

8 198. The norms amenable to being the subject of the ATCA
9 must be "specific, universal and obligatory." *Id.* at 2765.

10 199. As described below, both extrajudicial killing and
11 crimes against humanity meet the specific, universal and
12 obligatory standard.

13 (2) TVPA.

14 200. The TVPA was passed by Congress in 1991 and enacted in
15 1992. 106 Stat. 83 (passed Mar. 12, 1992). It sets forth an
16 unambiguous and separate jurisdictional basis for civil actions
17 in federal courts for redress against the acts of extrajudicial
18 killing and torture. S. Rep. No. 102-249, p.3 (1991); H.R. Rep.
19 No. 102-367, pp. 2-3 (1991). The TVPA was intended explicitly to
20 ratify the ATC by denoting that aliens also can bring a claim
21 under its aegis. H.R. Rep. No. 102-367, pp. 3-4 (1991).
22 Further, the TVPA extended the civil remedy to United States
23 citizens. S. Rep. No. 102-249, p.3 (1991); H.R. Rep. No. 367,
24 p.3 (1991).²

25
26 ² A federal court also has jurisdiction over a claim brought
27 by a U.S. citizen under the TVPA pursuant to its general federal
28 question jurisdiction under 28 U.S.C. § 1331. *Estate of Cabello*
v. Fernandez-Larios, 157 F. Supp. 2d 1345, 1355 (S.D. Fla. 2001)

1 201. As the U.S. Supreme Court recently stated in *Sosa*,
2 "[A] clear mandate appears in the Torture Victim Protection Act
3 of 1991, 106 Stat. 73, providing authority that 'establish[es] an
4 unambiguous and modern basis for' federal claims of torture and
5 extrajudicial killing." H.R. Rep. No. 102-367, pt. 1, p.3
6 (1993); *Sosa*, 124 S. Ct. at 2763.

7 202. The TVPA states:

8 2.(a) An individual who, under actual or apparent
9 authority, or color of law, of any foreign nation . . .
10 (2) subjects an individual to an extrajudicial killing
11 shall, in a civil action, be liable for damages to the
12 individual's legal representative, or to any person who
13 may be a claimant in an action for wrongful death.

14 28 U.S.C. § 1350 (note).

15 203. Although the TVPA provides a statutory basis for a
16 claim for extrajudicial killing, the enactment of the TVPA did
17 not diminish the scope of the ATCA in any way. *Kodic v.*
18 *Karadzic*, 70 F.3d 232, 241 (2d Cir. 1995) ("[t]he scope of the
19 Alien Tort Act remains undiminished by enactment of the Torture
20 Victim Act."); see also *Wiwa v. Royal Dutch Petroleum Company*,
21 No. 96 CIV.8386, 2002 WL 319887, *4 (S.D.N.Y. Feb. 28, 2002)
22 ("This Court reads *Kadic I* to hold that the TVPA did not preempt
23 torture and summary execution claims under the ATCA. . . . In
24 fact, no court that has evaluated ATCA claims since the enactment
25 of the TVPA has held that the TVPA in any way preempts ATCA
26 claims for torture and extrajudicial killings [T]he TVPA
27 simply provides an additional basis for assertion of claims for
28 torture and extrajudicial killing."); see also S. Rep. No. 102-

(citing cases).

1 249, p.3 (1991) ("The ATCA has . . . important uses and should
2 not be replaced"); accord H.R. Rep. No. 102-367, p.3 (1991).
3 Plaintiff may assert a claim for extrajudicial killing under both
4 the CVPA and ATCA.

5 B. Plaintiff Has Standing to Bring This Action Under the
6 TVPA and ATCA.

7 (1) TVPA.

8 204. [REDACTED]

9 205. [REDACTED]

10 206. [REDACTED]

11 (2) ATCA.

12 207. The ATCA has no explicit standing requirements. To
13 ascertain, however, whether Plaintiff has standing to bring a
14 claim under the ATCA, the Court either follows the approach of
15 the TVPA to look to California law (which establishes standing
16 here), or employs a choice of laws analysis to look to Salvadoran
17 law. See *Sosa v. Alvarez-Machain*, 331 F.3d 604, 632-33 (9th Cir.
18 2003) (employing choice of law analysis) (issue not reached by
19 the United States Supreme Court in *Sosa*, 124 S. Ct. 207). The
20 former approach, was adopted in *Xuncax v. Gramajo*, 886 F. Supp.
21 162, 191 (D. Mass. 1995); cf. *Papa v. U.S.*, 281 F.3d, at 1012
22 (finding TVPA closest analogue to ATCA for purposes of
23 determining statute of limitations under ATCA). The application
24 of Salvadoran law does not affect the outcome.

25 (3) Salvadoran Law.

26 208. If a choice of law analysis is undertaken, the Court
27 looks to the law of El Salvador, but only to the extent it does
28 not frustrate the purpose of the ATCA. See *Tachiona v. Mugabe*,

1 234 F. Supp. 2d 401, 419 (S.D.N.Y. 2001) (choice of law
2 determination should not compel "dispositive application of
3 foreign law where the municipal rule of decision may conflict
4 with federal law or international standards"); see also *Figartiga*
5 *v. Pena-Irala*, 577 F. Supp. 860, 863-64 (E.D.N.Y. 1984) ("the
6 court should consider the interests of Paraguay to the extent
7 they do not inhibit the appropriate enforcement of the applicable
8 international law or conflict with the public policy of the
9 United States").

10 209. [REDACTED]

11 210. In El Salvador, a civil law jurisdiction, a civil
12 action for wrongful death may be brought only in connection with
13 a criminal action, as part of the penal proceeding. The civil
14 proceeding arises from criminal responsibility. See Salvadoran
15 Civil Code Art. 2065 ("the person who commits a felony or a
16 misdemeanor has the obligation to compensate, independently of
17 the punishment established by the law for that particular
18 fact."); see also Art. 114, 115, 116, 117 & 130 of the Penal
19 Code; Art. 69 and 89 of the Code of Penal Procedure; Hrg. Tr.
20 8/25/04 (Ramirez Amaya), 47:6-10; Noya Decl. ¶¶ 3, 4.

21 211. [REDACTED]

22 C. Equitable Tolling Avoids the Bar of the Statute of
23 Limitations.

24 212. Plaintiff filed the Complaint on September 12, 2003.
25 Although there is no express limitation period prescribed by the
26 ATCA, the Ninth Circuit has held the applicable limitations
27 period to be the 10-year period set out in the TVPA. U.S.C.
28 § 1350, (note) § 2(c) 28; *Papa v. U.S.*, 281 F.3d at 1012 ("the

1 statute of limitations applicable to the ATCA is that provided by
2 the TVPA.”)

3 213. Courts, however, have held that the 10-year TVPA
4 limitation period is subject to equitable tolling. *Hilao v.*
5 *Marcos*, 103 F.3d 767, 773 (9th Cir. 1996); *Cabello*, 157 F. Supp.
6 2d at 1367-68 citing cases and quoting H.R. Rep. No. 102-367, at
7 5 (1991). The *Cabello* court concluded that “the TVPA’s ten-year
8 limitations period is equitably tolled, where either (1)
9 defendant’s wrongful conduct prevented plaintiff from asserting
10 the claim; or (2) extraordinary circumstances outside the
11 plaintiff’s control made it impossible to timely assert the
12 claim.” *Id.* at 1368 (quoting *Doe v. Unocal Corp.*, 963 F. Supp.
13 880, 897 (C.D. Cal. 1997) (opinion vacated on other grounds by
14 *Doe v. Unocal Corp.*, ___ F.3d ___, 2003 WL 359787 (9th Cir. Feb.
15 14, 2003)) and citing *Forti v. Suarez-Mason*, 672 F. Supp. 1531,
16 1549 (N.D. Cal. 1987)). This is consistent with the policy
17 expressed by the Court in *Forti*, 672 F. Supp. at 1548, “of
18 providing a forum for claims of violations of internationally
19 recognized human rights.” See also, S. Rep. 102-249, p.10 (“the
20 legislation provides for a 10-year statute of limitations, but
21 explicitly calls for consideration of all equitable tolling
22 principles in calculating this period with a view toward giving
23 justice to Plaintiff’s rights.”).

24 214. *Forti* held that the inability to obtain justice from
25 Argentina’s courts could provide a basis for tolling the
26 limitation period:

27 Plaintiffs claim that it was impossible for them to
28 gain relief for defendant’s wrongdoing in the courts of
Argentina from the time their claims accrued until the

1 demoncratically-elected [sic] government assumed power.
2 As defendant points out, plaintiffs were not actually
3 denied access to the Argentine courts. Nominally, the
4 Argentine courts retained their powers to adjudicate
5 civil claims against military officers and to grant
6 habeas relief. As a practical matter, however, access
7 to Argentine courts may have been denied to plaintiffs.
8 Plaintiffs present facts indicating that the court
9 retained of its powers over the military in form only
10 and that effectively, no relief was or could be granted
11 by the Argentine courts. Additionally, given the
12 pervasiveness of the military's reign of terror, it may
13 be possible for plaintiffs to demonstrate that members
14 of the judiciary neglected to apply laws granting
15 relief out of fear of becoming the next victim of the
16 "dirty war."

17 672 F. Supp. at 1550 (emphasis aded).

18 215. In this case, there is clear support in the Complaint
19 and in the record for tolling the limitations period. As in
20 *Forti*, Plaintiff could not have obtained justice from Salvadoran
21 courts as a result of Plaintiff's lawyers, and some judges'
22 objective and reasonable fear of retaliation or judicial
23 complicity with the repressive regime. This fear extended to
24 proceedings brought outside of El Salvador as well. Supplemental
25 Declaration of Plaintiff J. Doe, ¶ 4, filed 9/28/04.

26 216. The evidence is that from 1980 to 1994, and even
27 through to the present, any person who leveled allegations
28 against active or former members of the military risked reprisal,
including death. Complaint, ¶ 22, Hrg. Tr. 8/25/04 (Ramirez
Amaya), 26:12-19. Salvadorans also feared retaliation from the
ARENA-run government and its death squads, which worked closely
with the armed forces. Hrg. Tr. 8/25/04 (Ramirez Amaya), 52:12-
21.

22 217. Judges were murdered at a high rate. As the Truth
23 Commission concluded, "In the 1980s, it was dangerous to be a

1 judge in El Salvador," and during that decade, 28 judges were
2 killed. TC Report, p. 170. The judiciary had little power to
3 defend itself against violence. It "fell victim to intimidation
4 and the foundations were laid for its corruption. . . . [I]ts
5 ineffectiveness steadily increased until it became, through its
6 inaction or its appalling submissiveness, a factor which
7 contributed to the tragedy suffered by the country." TC Report,
8 pp. 172-73.

9 218. "Even after the Salvadoran security forces were
10 disbanded pursuant to the Peace Accords, Salvadoran courts were
11 still unable or unwilling to hear most claims for human rights
12 violations against individuals for alleged involvement in
13 financing, ordering, assisting, or carrying out death squad
14 killings, including the assassination of Archbishop Romero."
15 Complaint, ¶¶ 22, Hrg. Tr. 8/26/04 (Hernandez), 127:6-13, 129:11-
16 130:10; Hrg. Tr. 9/03/04 (Karl) 51:19-25. "Even today, survivors
17 of torture and relatives of killings committed by Salvadoran
18 death squads and the armed forces as far back as the 1970s and
19 early 1980s have declined to bring claims in El Salvador or
20 elsewhere against the individuals responsible for fear of violent
21 reprisals." Complaint, ¶ 22, Hrg. Tr. 9/3/04 (Karl) 88:21-89:1.
22 In fact, the plaintiff has brought this case under a pseudonym
23 precisely because of fear of reprisals.

24 219. Due to this same fear of violent reprisals, plaintiff
25 was unable to bring this claim in a U.S. Court earlier. Although
26 plaintiff has now brought this case, it is only with the
27 protection of filing under the pseudonym J. Doe. El Salvador
28 remains a dangerous place, but changes in the country have now

1 allowed plaintiff's attorneys to investigate the case and obtain
2 the cooperation of witnesses in El Salvador. Supplemental
3 Declaration of J. Doe, ¶¶ 4-5, filed 9/28/04.

4 220. In thwarting extradition of Defendant Saravia, in
5 judicially validating Amnesty laws, and in rejecting direct,
6 credible evidence of Defendant's participation in the
7 assassination, the courts of El Salvador have foreclosed the
8 opportunity for plaintiff's case to be maintained before the
9 judicial system of El Salvador and have evidenced their inability
10 and unwillingness to provide a fair, honest, and reliable forum
11 for the hearing of Plaintiff's claims.

12 221. For these reasons, the 10-year limitation period
13 applicable to the TVPA and ATCA has been equitably tolled through
14 the date of filing of the complaint, September 12, 2003.

15 D. Defendant is Liable Under the TVPA for Extrajudicial
16 Killing.

17 222. Under the TVPA,

18 2.(a) An individual who, under actual or apparent
19 authority, or color of law, of any foreign nation . . .
20 (2) subjects an individual to an extrajudicial killing
21 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.

22 28 U.S.C. § 1350 (note).

23 223. Extrajudicial killing is defined as "a deliberate
24 killing not authorized by a previous judgment pronounced by a
25 regularly constituted court affording all the judicial guarantees
26 which are recognized as indispensable by civilized peoples." *Id.*
27 at § 3(a). The TVPA also requires that a plaintiff exhaust
28 "adequate and available" local remedies and provides a ten-year

1 statute of limitations. *Id.* at § 2.(b) and (c).

2 (1) Saravia's Role in the Assassination.

3 224. Saravia's role in coordinating and planning the
4 assassination of Archbishop Romero is sufficient to establish
5 liability against him under the TVPA and ATCA as a direct
6 participant, conspirator, accomplice, and aider and abettor.

7 225. In *Tachiona v. Mugabe*, 216 F. Supp. 2d 262, 270
8 (S.D.N.Y. 2002) the court found members of Zimbabwe's ruling
9 party liable under the TVPA for "organiz[ing] targeted violence
10 against political opponents and their families and supporters,
11 assassinations and assassination attempts, kidnappings, tortures,
12 rapes, beatings, mass destruction of property, and mob riots in a
13 consistent and focused campaign of terror designed to crush
14 political opposition to ZANU-PF." Other cases have found
15 defendants liable for authorizing or directing torture or
16 killings. See, e.g., *Kadic*, 70 F.3d at 232.

17 226. As explained by the Court in *Mehinovic v. Vuckovic*,
18 198 F. Supp. 2d 1322 (N.D. Ga. 2002), the TVPA encompasses the
19 liability of accomplices:

20 United States Courts have recognized that principles of
21 accomplice liability apply under the ATCA to those who
22 assist others in the commission of torts that violate
23 customary international law. Similarly, the Senate
report on the TVPA notes that that statute is intended
to apply to those who "ordered, abetted, or assisted"
in the violation.

24 Principles of accomplice liability are well-established
25 under international law. Relevant international
26 conventions explicitly provide that those who assist in
the commission of acts prohibited by international law
may be held individually responsible.

27 [Under the International Criminal Tribunal for the
28 Former Yugoslavia], it is sufficient that the
accomplice knows that his or her actions will assist

1 the perpetrator in the commission of the crime:
2 *Id.* at 1355-56 (footnotes omitted); see also *Wiwa*, 2002 WL 319887
3 at *16 ("the Court finds that the language and legislative
4 history of the TVPA supports liability for aiders and abettors of
5 torture and extrajudicial killings."). *Cabello v. Fernandez*
6 *Larios*, 205 F. Supp. 2d 1325, 1333 (S.D. Fla. 2002).

7 227. Saravia's significant involvement in Archbishop
8 Romero's assassination, which was not authorized by any previous
9 judgment of a court, includes the following:

- 10 • Saravia was in charge of the operation and was involved
11 in paying the fees of the assassin. Complaint, ¶¶ 15,
12 19; TC Report, pp. 127, 130, 131; IACHR Decision
13 (citing with approval the findings of the TC Report),
14 ¶¶ 3, 20, 43, 53, 54.
- 15 • Saravia instructed his driver, Amado Garay, to drive
16 him to a staging home. Hrg. Tr. 8/24/04 (Garay),
17 103:22-25; 104:1-23; TC Report, pp. 127, 130-131.
- 18 • Saravia emerged from the house with a tall man with a
19 beard. Hrg. Tr. 8/24/04 (Garay), 105:22-106:5.
- 20 • Saravia told Garay to drive this man to an undisclosed
21 location. Hrg. Tr. 8/24/04 (Garay), 105:9-106:3, TC
22 Report, pp. 127, 130-131.
- 23 • Saravia said to the tall, bearded man, "It's better to
24 shoot in the head because maybe he have [sic] a
25 bulletproof vest. You have to be sure he got [sic]
26 killed." Hrg. Tr. 8/24/04 (Garay), 106:7-17.
- 27 • Saravia informed Garay that they would be provided with
28 protection, as a vehicle would be driving behind him.

1 Hrg. Tr. 8/24/04 (Garay), 106:7-17.

2 • Saravia directed Garay to get into a red Volkswagen in
3 order to drive the tall, bearded man. The man had a
4 long rifle with a telescopic lens. Complaint, ¶ 16,
5 Hrg. Tr. 8/24/04 (Garay), 106:13-14, 18; 20-23; 107:17;
6 111:12-15; TC Report, p. 127, 130-131.

7 • When Garay and the shooter returned to the staging
8 house, they were greeted by Saravia who informed the
9 shooter that he had successfully assassinated
10 Archbishop Romero, as Saravia had heard the news on the
11 radio that the Archbishop had died instantly.

12 Complaint ¶ 16; Hrg. Tr. 8/24/04 (Garay), 109:20-22,
13 24-25; 110:1-4.

14 • Saravia, Nelson Morales, Nelson Garcia and Garay drove
15 back to Saravia's house in a Jeep Cherokee, which was
16 the vehicle regularly used for transporting Saravia.
17 Hrg. Tr. 8/24/04 (Garay), 101:24; 115:7.

18 • Several days later, Saravia reported to Major
19 D'Aubuisson, "mission completed." Complaint, ¶ 17,
20 Hrg. Tr. 8/24/04 (Garay), 127:1-11, 16-21.

21 • Saravia also delivered a sum of money, which earlier
22 had been provided to him to pay the assassin, to the
23 assassin or his agent. Complaint, ¶ 17; TC Report, p.
24 127, 131.

25 228. Based on substantial evidence, including eyewitness
26 testimony, the egregious and significant conduct of the
27 defendant, Saravia makes him liable, as a direct participant, co-
28 conspirator, and aider and abettor, for the assassination of

1 Archbishop Romero.

2 (2) Apparent Authority.

3 229. Saravia acted under apparent authority and color of
4 law of the government of El Salvador. Under Section 2(a) of the
5 TVPA, in order to make out a claim for extrajudicial killing,
6 plaintiff must show that Saravia acted "under actual or apparent
7 authority, or color of law, of any foreign nation." Courts have
8 generally required this showing for extrajudicial killing claims
9 under the ATC as well. See *Wiwa*, 2002 WL 319887 at *13. To meet
10 this definition, plaintiff must show "some governmental
11 involvement" in the Romero assassination. See *Kadic*, 70 F.3d at
12 245 (quoting H.R. Rep. No. 102-367, at 5 (1991)).

13 230. Courts have looked to the jurisprudence of 42 U.S.C.
14 § 1983 as a guide to determine when persons who are not
15 themselves government officials, nonetheless act under apparent
16 authority or color of law. Under § 1983, the standard is met
17 when a person "acts together with state officials" or acts with
18 "significant state aid." *Id.* Other courts have applied the
19 virtually identical "joint action" test requiring a "substantial
20 degree of cooperative action" between the defendant and the
21 government. *Wiwa*, 2002 WL 319887 at *13; see also *Presbyterian*
22 *Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp. 2d 289,
23 328 (S.D.N.Y. 2003); *Tachiona v. Mugabe*, 169 F. Supp. 2d 259, 313
24 (S.D.N.Y. 2001).

25 231. Here, plaintiff has demonstrated by substantial
26 evidence that Saravia acted under apparent authority and color of
27 law of the Salvadoran government. Specifically:

- 28 • The death squad responsible for planning and carrying

1 out the assassination of Archbishop Romero operated
2 "with the financial and logistical support of the
3 Salvadoran armed forces and far right Salvadoran
4 civilians inside and outside El Salvador." Complaint,
5 ¶¶ 12-14; TC Report, pp. 132, 134, 137.

- 6 • In 1980, death squad operations were frequently
7 coordinated with the El Salvador Armed Forces. The
8 clandestine nature of their actions made it possible to
9 cover up the state responsibility and to create a
10 condition of total impunity for the killers.
11 Complaint, ¶ 19; TC Report, pp. 132, 134, 137; Hrg. Tr.
12 8/27/04 (Karl) 80:24-25, 81:1-8.
- 13 • Death squads incorporated active members of the El
14 Salvador state security forces in their ranks and had
15 the support of the corresponding official institutions.
16 Complaint, ¶ 19; TC Report, pp. 132, 134, 137; Hrg. Tr.
17 8/27/04 (Karl) 80:24-25, 81:1-8.
- 18 • The Salvadoran government conspired to cover up
19 responsibility for the assassination. Complaint, ¶ 19.
- 20 • The National Police, contrary to standard operating
21 procedure, did not provide security at the autopsy.
22 Hrg. Tr. 8/25/04 (Ramirez Amaya), 27:5-7; 30:13-19.
- 23 • Hours after Romero's body had been taken to the
24 Policlinica Hospital, armed soldiers in camouflage
25 uniforms filled the chapel and surrounding areas.
26 However, the National Police, contrary to the law and
27 standard operating procedure, refused to assist Judge
28 Ramirez Amaya in investigating the chapel as a crime

1 scene later that night. Hrg. Tr. 8/26/04 (Cortina),
2 105:2-4; 108:10-14, 15-17, 18-19; 109:2-10; Hrg. Tr.
3 8/25/04 (Ramirez Amaya), 33:8-15; 34:14-17.

4 • The National Police attempted to murder Judge Ramirez
5 Amaya. Ten minutes after the attempted assassination
6 against him, a National Police inspector called Ramirez
7 Amaya and expressed surprise that he was still alive
8 and confirmed knowledge about the recent attempt on the
9 Judge's life. Hrg. Tr. 8/25/04 (Ramirez Amaya), 41:21-
10 25; 42:1-9, 10-15. Marked National Police vehicles
11 parked on the street did not move despite the gunfire.
12 Hrg. Tr. 8/25/04 (Ramirez Amaya), 42:24-25; 43:1-5, 7-
13 9. A neighbor identified the man in the getaway car as
14 a National Policeman. Hrg. Tr. 8/25/04 (Ramirez
15 Amaya), 43:10-25.

16 232. These facts more than preponderate to meet the tests
17 of *Kadic* and *Wiwa*, that in carrying out the assassination of
18 Archbishop Romero, Saravia acted under apparent authority and
19 color of law of the government of El Salvador.

20 (3) Plaintiff has Shown that no Legal Remedy was or is
21 Available in El Salvador.

22 233. Under the TVPA, a claimant must show that he or she
23 has "exhausted adequate and available remedies in the place in
24 which the conduct giving rise to the claim occurred." 28 U.S.C.
25 § 1350, (note) § 2(b). However, when foreign remedies are
26 "unobtainable, ineffective, inadequate, or obviously futile,"
27 exhaustion of remedies is generally not required. *Xuncax*, 886 F.
28 Supp. at 178. See also S. Rep. No. 102-249, p.9 (1991)

1 (plaintiff in a TVPA case may rebut alleged availability of
2 domestic remedies by showing they are "ineffective, unobtainable,
3 unduly prolonged, inadequate, or obviously futile.") Plaintiff
4 has established that no legal remedy was or is available in El
5 Salvador for a civil suit against Saravia.

6 (i) Inability to Bring Civil Suit Without
7 Criminal Prerequisite Under Salvadoran Law.

8 234. Plaintiff cannot obtain a civil remedy against Saravia
9 - or any other person involved in Archbishop Romero's
10 assassination - unless a criminal prosecution first occurs. In
11 El Salvador, as in other civil law countries, criminal
12 responsibility is necessary in order to obtain civil damages
13 flowing from that conduct. Noya Decl., ¶ 2; Hrg. Tr. 8/25/05
14 (Ramirez Amaya), 47:6-7, 6-10; see also Art. 130 of the Penal
15 Code ("any person liable for a crime or misdemeanor is also
16 civilly liable. Any person who has suffered injury arising from
17 a crime has the right to redress and compensation.").

18 235. In particular, under Salvadoran law, homicide,
19 aggravated homicide and murder are specific intent or public
20 actionable crimes. An action for civil liability for the killing
21 or wrongful death of an individual can only be brought as part of
22 the penal proceeding to investigate and prosecute such crime, and
23 the wrongful death action may only commence upon the termination
24 of the penal phase. Hrg. Tr. 8/25/04 (Ramirez Amaya), 47:6-10;
25 49:13-17; see also Art. 90 of the Code of Penal Procedure ("the
26 civil action against the participants in the crime will be only
27 brought in conjunction with the penal action.").

28 236. Salvadoran law permits private citizens to initiate

1 criminal proceedings. Victims of a crime, or their relatives,
2 may bring a private accusation for crimes subject to *es officio*
3 proceedings. Art. 50 of the Code of Penal Procedure. As a
4 general rule, a private attorney acting as prosecutor represents
5 the victim and notifies the judge in writing of such
6 representation. However, fear of reprisal and the corruption of
7 the judicial system continue to prevent any private criminal
8 prosecution for the Romero assassination. See Hrg. Tr. 8/26/04
9 (Hernandez), 127:6-13; 129:11-130:6 (explaining unwillingness of
10 private attorneys to bring case). Even today private lawyers
11 would refuse to bring a private accusation in El Salvador. Hrg.
12 Tr. 8/26/04 (Hernandez), 130:7-10; Hrg. Tr. 8/25/04 (Ramirez
13 Amaya), 52:8-11.

14 237. Similarly, beyond the failed attempt to extradite
15 Saravia, there have been no prosecutions brought by the
16 Salvadoran government for the assassination of Archbishop Romero.
17 Public prosecutors are selected by the Congress. Hrg. Tr.
18 8/25/04 (Ramirez Amaya), 53:15-18. Congress is controlled by the
19 ARENA party and does not operate in an independent and non-
20 partisan manner. Hrg. Tr. 8/25/04 (Ramirez Amaya), 52:20-21;
21 53:19-54:1. In practice, public prosecutors will not even
22 consider bringing a state case concerning the assassination.
23 Hrg. Tr. 8/25/04 (Ramirez Amaya), 52:5-7.

24 238. Because there has never been a successful criminal
25 prosecution against the killers of Archbishop Romero, and the
26 opportunity to do so has effectively been abrogated, plaintiff
27 has no judicial remedy in El Salvador.

28 ///

1 (ii) D'Aubuisson and the Salvadoran Supreme Court
2 Actively Thwarted an Attempt to Obtain a
3 Criminal Conviction Against Saravia.

4 239. In the one attempt to pursue a prosecution in
5 connection with the Romero assassination, Roberto D'Aubuisson and
6 the Salvadoran Supreme Court acted to ensure that no prosecution
7 would result. See Ex. 96 ("The Saravia Extradition and the
8 D'Aubuisson Mafia") at 1. ("There is ample circumstantial
9 evidence that an effort is underway to obstruct the extradition
10 from the U.S. of Cpt. Alvaro Rafael Saravia, the cashiered
11 Salvadoran Air Force officer charged with complicity in the March
12 24, 1980, assassination of Archbishop Oscar Arnulfo Romero. The
13 effort is traceable to Roberto D'Aubuisson and associates through
14 a document telefaxed from D'Aubuisson's Mariscos Tazumal office
15 to Saravia's U.S. lawyer for entry into the Saravia extradition
16 court records."); *id.* at 8 ("prosecution is unlikely as long as
17 D'Aubuisson and his backers are free to manipulate the Salvadoran
18 judicial system.").³

19
20 ³ D'Aubuisson's interference with the extradition process
21 and the irregularity of the Supreme Court's decision to dismiss
22 the charges provides a strong basis for disregarding entirely its
23 decision to reject the testimony of Amado Garay as "not
24 credible." The stated grounds for this decision were that (a)
25 Garay's statement was given more than seven years after the
26 assassination; (b) Garay's testimony allegedly conflicted with
27 that of another witness; and (c) Garay was covering up his own
28 involvement in the killing. Government's Motion to Dismiss
Extradition Proceedings filed December 28, 1988 (attaching
December 19, 1988 decision of Salvadoran Supreme Court). As a
preliminary matter, the Salvadoran Supreme Court's decision has
no binding effect in this proceeding as the plaintiff, J. Doe,
was not a party to that case. Claim preclusion does not apply.

1 240. The Chief Judge of the Supreme Court at the time was
2 the same Jose Francisco Guerrero who had served as Maj.
3 D'Aubuisson's personal lawyer and who submitted the notorious
4 "Pedro Lobo confession" to the Fourth Criminal Court when he was
5 the Public Prosecutor in 1985. *Id.*; Hrg. Tr. 9/3/04 (Karl),
6 51:11-53:1, 55:23-56:10.

7 241. The Commission found the Salvadoran Supreme Court
8 "played an active role that served to hinder the extradition from
9 the United States and later imprisonment of former Capt. Saravia
10 in El Salvador." The Truth Commission determined the decision
11 was politically motivated. Complaint, ¶ 20; TC Report, p. 131;
12 IACHR Decision, ¶ 98.

13 242. No further efforts were made in El Salvador to
14 prosecute Saravia or anyone else for the murder of Archbishop
15

16 In any event, no deference should be given to the 1988 decision
17 because that Court never had an opportunity to see Garay testify
18 in person and therefore was in no position to assess his
19 credibility. In contrast, Garay testified in this court and was
20 subject to wide-ranging questioning to test his credibility. See
21 *Mason v. Vasquez*, 5 F.3d 1220, 1224-25 (9th Cir. 1993)
22 (emphasizing importance of trial judge's ability to see
23 "variations in demeanor and tone of voice that bear so heavily on
24 the listener's understanding of and belief in what is said"),
25 citing *Anderson v. Bessemer City*, 470 U.S. 564, 573-75 (1985).
26 Furthermore, due to the differences in procedures between the two
27 legal systems and significant questions about political
28 interference from D'Aubuisson (see, e.g., Ex. 96), neither comity
nor issue preclusive effect should be given to that decision.
See, e.g., *Laker Airways Ltd. v. Sabena, Belgian World Airlines*,
731 F.2d 909, 937 (D.C. Cir. 1984) ("the obligation of comity
expires when the strong public policies of the forum are vitiated
by the foreign act"); cf. *Kremer v. Chemical Const. Corp.*, 102
S.Ct. 1883, 1897 (1982) (issue estoppel should not apply if there
is reason to doubt the quality, extensiveness, or fairness of
procedures followed in prior litigation).

1 Romero. Complaint, ¶ 21.

2 (iii) The Amnesty Law Further Ensured There Would
3 Be No Remedy For Plaintiff in El Salvador.

4 243. Further ensuring that there would be no remedy in El
5 Salvador, the Amnesty Law provided that Saravia would never face
6 criminal or civil responsibility for the assassination. See
7 Amnesty Law, Arts. 1, 4.

8 244. Thus, on March 31, 1993, Judge Luis Antonio Villada
9 Figueroa applied the Amnesty Law to Saravia and dismissed with
10 prejudice the case against him for the murder of Archbishop
11 Romero. IACHR Decision, ¶¶ 22, 98, n.100. Specifically, Judge
12 Villeda found that the Romero assassination was a "political"
13 crime which provides Saravia with amnesty under the 1993 law.
14 IACHR Decision, ¶ 98, fn.100; Amnesty Law, ¶¶ 2, 4(c). Judge
15 Villeda's decision was upheld by the First Criminal Chamber on
16 May 13, 1993, which entered a final judgment in the case because
17 the time for the Office of the Public Prosecutor to file a motion
18 had expired without any action. IACHR Decision, ¶ 101. The
19 First Criminal Chamber thereby ruled that its decision has *res*
20 *judicata* (claim preclusive) effect with regard to Saravia in the
21 Romero case. IACHR Decision, ¶ 22. This decision bars any
22 criminal prosecution of Saravia for the Romero assassination in
23 El Salvador.

24 (iv) IACHR Determined That Domestic Remedies Had
25 Been Exhausted.

26 245. Art. 46(1)(a) of the American Convention requires the
27 exhausting of domestic remedies before the "mechanisms of
28 international protection established in the American Convention

1 are triggered." IACHR Decision, ¶ 25. In finding that there had
2 been exhaustion, the IACHR stated that Judge Villeda's decision
3 applying the Amnesty Law to Saravia and dismissing with prejudice
4 the case against him for the murder of Archbishop Romero "had the
5 effect of deciding the instant case in the domestic jurisdiction
6 of El Salvador. Once this domestic means of settling the matter
7 posed is exhausted in the internal jurisdiction of El Salvador,
8 the mechanisms of international protection established in the
9 American Convention are triggered." IACHR Decision, ¶ 25.

10 246. As found by the IACHR, and based on the evidence
11 presented at the hearing, plaintiff has met the requirements of
12 the TVPA by establishing that domestic remedies have been
13 exhausted or that remedies are "unobtainable, ineffective,
14 inadequate, or obviously futile." *Xuncax*, 886 F.Supp. At 178.

15 E. Defendant Is Liable Under The ATCA.

16 247. Plaintiff's claims under the ATCA were for
17 extrajudicial killing and crimes against humanity. Complaint,
18 ¶¶ 25, 29.

19 (1) Extrajudicial Killing.

20 248. Although the ATCA does not provide a definition of
21 extrajudicial killing, under international law, extrajudicial
22 killing is a norm that is "specific, universal, and obligatory."
23 It meets the requirements of *Sosa* to be recognized under federal
24 law.

25 249. The Ninth Circuit has held that "[t]he prohibition
26 against summary execution . . . is . . . universal, obligatory
27 and definable." *In re Estate of Ferdinand Marcos, Human Rights*
28 *Litig.*, 25 F.3d 1467, 1475 (9th Cir. 1994) (citing *Forti*, 672 F.

1 Supp. at 1541, amended, 694 F.Supp. at 710-11). The Xuncax
2 court, relying in part on "[a]n affidavit signed by twenty-seven
3 widely respected scholars of international law [that] attests
4 that every instrument or agreement that has attempted to define
5 the scope of international human rights has 'recognized a right
6 to life coupled with a right to due process to protect that
7 right,'" concluded that, "[a]s with official torture, the
8 practices of summary execution, 'disappearance' and arbitrary
9 detention have been met with universal condemnation and
10 opprobrium." Xuncax, 886 F.Supp. at 185 (citing Forti, 694 F.
11 Supp. at 711).

12 250. Congress' enactment of the TVPA, singling out torture
13 and extrajudicial killing, confirms that extrajudicial killing
14 provides a cause of action under federal law. *Sosa*, 124 S. Ct.
15 at 2763, ("a clear mandate appears in the Torture Victim
16 Protection Act of 1991 . . . providing authority that
17 'establish[es] an unambiguous and modern basis for' federal
18 claims of torture and extrajudicial killing . . .").

19 251. Plaintiff has established that Saravia is liable for
20 the extrajudicial killing of Archbishop Romero.

21 (2) Crimes Against Humanity

22 252. In *Sosa*, the United States Supreme Court held that
23 ATCA claims must "rest on a norm of international character
24 accepted by the civilized world and defined with a specificity
25 comparable to the features of the 18th-century paradigms we have
26 recognized." 124 S. Ct. at 2761-62. The *Sosa* court identified
27 three offenses that give rise to liability under the traditional
28 law of nations: violation of safe conduct, infringement of the

1 rights of ambassadors, and piracy. *Id.* at 2761. These offenses
2 were universally accepted and defined with specificity. The
3 Court relied on the criteria then available to Congress and the
4 courts - the extensive practice between states and the work of
5 scholars, including Blackstone and Vattel, to identify these
6 norms. In addressing the modernization of the ATCA, the court
7 cited with approval, cases which permitted ATCA claims for
8 violations of international norms which were "specific, universal
9 and obligatory." *Id.* at 2765. The prohibition against crimes
10 against humanity constitutes such a specific, universal and
11 obligatory norm.

12 253. The international prohibition of crimes against
13 humanity is explicitly codified in several multilateral
14 agreements and has been extensively litigated in international
15 tribunals, constituting a body of doctrinal exposition. It has
16 been exhaustively addressed in numerous scholarly treatises. The
17 prohibition of crimes against humanity has been defined with an
18 ever greater degree of specificity than the three 18th-century
19 offenses identified by the Supreme Court and that are designed to
20 serve as benchmarks for gauging the acceptability of individual
21 claims under the ATCA.

22 254. The prohibition against crimes against humanity was
23 first recognized by the Charter of the International Military
24 Tribunal at Nuremberg ("Nuremberg Charter"). See *Restatement*
25 *(Third) of the Foreign Relations Law of the United States* § 702,
26 rpt. note 1 (1987). The Nuremberg Charter was adopted to ensure
27 that serious human rights abuses committed during World War II by
28 the military and political leaders of Nazi Germany were punished.

1 See generally M. Cherif Bassiouni, *Crimes against Humanity in*
2 *International Criminal Law* (2d ed. 1999). Under the Nuremberg
3 Charter, acts constituting crimes against humanity included
4 murder, extermination, enslavement, deportation, persecution on
5 political, racial or religious grounds, or other inhuman acts
6 committed against a civilian population. Charter of the
7 International Military Tribunal, August 8, 1945, art. 6(c), 82
8 U.N.T.S. 284. In its final ruling on the criminal liability of
9 Nazi leaders, the International Military Tribunal acknowledged
10 the status of crimes against humanity under international law and
11 convicted several defendants of this crime. See *The Nuremberg*
12 *Trial*, 6 F.R.D. 69 (1946).

13 255. Since the adoption of the Nuremberg Charter, the
14 prohibition against crimes against humanity has been expressly
15 recognized in several international instruments. See, e.g., G.A.
16 Res. 95(I), 1 GAOR U.N. Doc. A/64/Add.1, at 188 (1946)
17 (affirmation of principles set forth in Nuremberg Charter and
18 decision of International Military Tribunal); *Convention on the*
19 *Non-Applicability of Statutory Limits to War Crimes and Crimes*
20 *Against Humanity*, Nov. 26, 1968, 660 U.N.T.S. 195, reprinted in 8
21 I.L.M. 68 (1969); *Principles of International Co-Operation in the*
22 *Detection, Arrest, Extradition and Punishment of Persons Guilty*
23 *of War Crimes and Crimes against Humanity*, G.A. Res.
24 3074(XXVIII), 28 GAOR Supp. (No. 30) at 78, U.N. Doc.
25 A/9030/Add.1 (1973).

26 256. Recent developments affirm the status of crimes
27 against humanity under international law. In 1993, the United
28 Nations Security Council established the International Criminal

1 Tribunal for the former Yugoslavia ("ICTY") to prosecute serious
2 violations of international law committed in that territory,
3 including genocide, war crimes, and crimes against humanity. See
4 *State of the International Criminal Tribunal for the former*
5 *Yugoslavia*, U.N. Doc. S/RES/827 (1993), reprinted in 32 I.L.M.
6 1192 (1993). The International Criminal Tribunal for Rwanda
7 ("ICTR") was established by the Security Council in 1994 to
8 prosecute similar violations of international law committed in
9 Rwanda. See *Statute of the International Criminal Tribunal for*
10 *Rwanda*, U.N. Doc. S/RES/955 (1994), reprinted in 33 I.L.M. 1602
11 (1994). Both statutes set forth an expanded list of enumerated
12 offenses which are crimes against humanity, including murder.

13 257. Both the ICTY and ICTR have affirmed the status of
14 crimes against humanity under international law. In *Tadic*, for
15 example, the ICTY noted that "the customary status of the
16 prohibition against crimes against humanity and the attribution
17 of individual criminal responsibility for their commission have
18 not been seriously questioned." *Prosecutor v. Tadic*, Case No.
19 IT-94-1, (May 7, 1997), at ¶ 623. See also *Prosecutor v.*
20 *Akeyesu*, Case No. ICTR-96-4-T, (Sep. 2, 1998).

21 258. The Rome Statute of the International Criminal Court
22 ("Rome Statute") provides the most current definition of crimes
23 against humanity under international law. *Rome Statute of the*
24 *International Criminal Court* (July 17, 1998), reprinted in 37
25 I.L.M. 999 (1998). Article 7 of the Rome Statute defines crimes
26 against humanity as one of a number of defined acts when
27 committed as part of a widespread or systematic attack directed
28 against any civilian population, with knowledge of the attack.

1 These acts include murder, among an expanded list of crimes. Its
2 recent codification in the Rome Statute makes Article 7 an
3 authoritative interpretation of crimes against humanity in
4 international law. See generally, Otto Triffterer, *Commentary on*
5 *the Rome Statute of the International Criminal Court* (ed., 1999).
6 The Rome statute has been ratified or acceded to by 94 countries
7 and signed by an additional 47, including four of the five
8 members of the U.N. Security Council, signifying widespread
9 acceptance. (The United States is not a signatory, however, this
10 does not affect the analysis).

11 259. The Rome statute requires four elements for establish
12 a crime against humanity: (1) a violation of one of the
13 enumerated acts; (2) committed as part of a widespread or
14 systematic attack; (3) directed against a civilian population;
15 and (4) committed with knowledge of the attack. Significantly,
16 even a single act by an individual, taken within the context of a
17 widespread or systematic attack against a civilian population,
18 can constitute a crime against humanity.

19 260. According to Antonio Cassese, the former President of
20 the International Criminal Tribunal for the former Yugoslavia,
21 "when one or more individuals are . . . accused . . . of
22 perpetrating specific atrocities or vicious acts, in order to
23 determine whether the necessary threshold is met one should use
24 the following test: one ought to look at these atrocities or acts
25 in their context and verify whether they may be regarded as part
26 of an overall policy or a consistent pattern of inhumanity, or
27 whether they instead constitute isolated or sporadic acts of
28 cruelty or wickedness." Antonio Cassese, "Crimes against

1 Humanity," in *I The Rome Statute of the International Criminal*
2 *Court: A Commentary* 353, 361 (eds. 2002); see generally, Darryl
3 Robinson, *Development in International Criminal Law: Defining*
4 *'Crimes against Humanity' at the Rome Conference*, 93 *Am. J. of*
5 *Int'l Law* 43, 48 (2002). This principle was affirmed by the
6 ICTY in *Prosecutor v. Msksic*, where the court stated:

7 Crimes against humanity . . . must be widespread or
8 demonstrate a systematic character. However, as long
9 as there is a link with the widespread or systematic
10 attack against a civilian population, a single act
11 could qualify as a crime against humanity. As such, an
individual committing a crime against a single victim
or a limited number of victims might be recognized as
guilty of a crime against humanity if his acts were
part of the specific context identified above.

12 *Prosecutor v. Msksic*, Case No. IT-95-13-R61, (Apr. 3, 1996), at
13 ¶ 30. See also *Prosecutor v. Tadic*, Case No. IT-94-1-T, (May 7,
14 1997), at ¶ 649 ("Clearly, a single act by a perpetrator taken
15 within the context of a widespread or systematic attack against a
16 civilian population entails individual criminal responsibility
17 and an individual perpetrator need not commit numerous offenses
18 to be held liable.").

19 261. Several federal courts in the United States have
20 accepted the well-established nature of crimes against humanity
21 and their actionability under the ATCA. See, e.g., *Flores v.*
22 *Southern Peru Copper Corp.*, 343 F.3d 140, 151 (2d Cir. 2003)
23 ("Customary international law rules proscribing crimes against
24 humanity, including genocide, and war crimes, have been
25 enforceable against individuals since World War II."); *Aldana v.*
26 *Fresh Del Monte Produce, Inc.*, 305 F. Supp. 2d 1285, 1299 (S.D.
27 Fla. 2003) ("Crimes against humanity have been recognized as
28 violation of customary international law since the Nuremberg

1 Trials in 1944."); *Sarei v. Rio-Tinto PLC*, 221 F. Supp. 2d 1116,
2 1150 (C.D. Cal. 2002) ("It is well-established that a party who
3 commits a crime against humanity violates international law and
4 may be held liable under the ATCA."); *Cabello*, 157 F. Supp. 2d at
5 1360-61 ("[T]he ruling of the Nuremberg Tribunal memorialized the
6 recognition of 'crimes against humanity' as customary
7 international law."); *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d
8 424, 440 (D. N.J. 1999) (recognizing crimes against humanity as a
9 violation of international law); *Quinn v. Robinson*, 783 F.2d 776,
10 799 (9th Cir. 1986) ("crimes against humanity, such as genocide,
11 violate international law"). See also *United States v. Yousef*,
12 327 F.3d 56, 105 (2d Cir. 2003) ("Following the Second World War,
13 the United States and other nations recognized 'war crimes' and
14 'crimes against humanity,' including 'genocide,' as crimes for
15 which international law permits the exercise of universal
16 jurisdiction"); *Sosa*, 124 S. Ct. at 2783 (Breyer, J., concurring)
17 (recognizing that international law views crimes against humanity
18 as universally condemned behavior that is subject to
19 prosecution).

20 262. In particular, several U.S. courts have referenced the
21 specific, universal, and obligatory nature of crimes against
22 humanity in their rulings on ATCA liability. In *Mehinovic*, the
23 district court applied the "specific, universal and obligatory"
24 test and held that crimes against humanity are actionable under
25 the ATCA. 198 F. Supp. 2d at 1344, 1352-54. The district court
26 in *Wiwa*, also followed this approach, analyzing several ATCA
27 claims under the "specific, universal and obligatory" standard
28 and holding the prohibition of crimes against humanity to be "a

1 norm that is customary, obligatory, and well-defined in
2 international jurisprudence." 2002 WL 319887 at *5, 9, 27.

3 263. These cases demonstrate that crimes against humanity
4 constitute a specific, universal, and obligatory norm and that
5 this norm is actionable under the ATCA. The assassination of
6 Archbishop Romero meets the elements for establishing a crime
7 against humanity. The Romero assassination occurred in an
8 environment of state-sanctioned violence that was both widespread
9 throughout El Salvador and constituted systematic, inhumane
10 attacks on the civilian population by the ruling military. The
11 death squad which perpetrated the murder of Archbishop Romero
12 acted as part of a calculated strategy by the military to
13 terrorize the civilian population into submission. The decision
14 to kill Romero was implemented to silence his criticism of the
15 state security forces and state implemented repression. At or
16 about the same time other priests were being murdered by the
17 military and death squads to deter their practice of liberation
18 theology.

19 264. Saravia knew that he was involved in an operation to
20 commit the murder of one of the most important civilians in El
21 Salvador, its revered Archbishop. Given that this particular act
22 took place within the context of other widespread and systematic
23 attacks against the civilian population by state security forces
24 and state-sponsored death squads, the assassination of Romero
25 meets the four criteria for establishing it as a crime against
26 humanity.

27 265. This extrajudicial killing meets the Supreme Court's
28 requirements identified in *Sosa*.

1 (3) No Exhaustion of Remedies Requirement Under ATCA.

2 266. Plaintiffs asserting claims under the ATCA are not
3 required to exhaust their remedies in the state in which the
4 alleged violations of customary international law occurred. See
5 *Abiola v. Abubakar*, 267 F. Supp. 2d 907, 910 (N.D. Ill. 2003);
6 *Sarei*, 221 F. Supp. 2d at 1132-35 ("The court is not persuaded
7 that Congress' decision to include an exhaustion of remedies
8 provision in the TVPA indicates that a parallel requirement must
9 be read into the ATCA.") (citing *Kadic*, 70 F.3d at 241). See
10 also *Jama v. I.N.S.*, 22 F. Supp. 2d 353, 364 (D.N.J. 1998)
11 ("There is nothing in the ATCA which limits its application to
12 situations where there is no relief available under domestic
13 law.").

14 267. In *Kadic*, which the *Sarei* court cited, the Second
15 Circuit held that "[t]he scope of the Alien Tort Act remains
16 undiminished by enactment of the Torture Victim Act." 70 F.3d at
17 241. The *Kadic* court did not apply the TVPA exhaustion of
18 remedies requirement to the plaintiffs' ATCA claims for torture
19 and summary execution, even though plaintiffs asserted the same
20 claims under the TVPA. *Id.* at 243-44.

21 268. The Supreme Court in *Sosa* noted in *dicta* that
22 exhaustion of remedies available in the foreign domestic legal
23 system may be necessary under the ATCA in "an appropriate case."
24 124 S. Ct. at 2766, n.21. However, the court did not elaborate
25 on the issue and did not disavow the Second Circuit's ruling. As
26 plaintiff's claims for extrajudicial killing and crimes against
27 humanity are brought under the ATCA and customary international
28 law, plaintiff need not show that plaintiff has exhausted

1 remedies in El Salvador, which exhaustion has been determined to
2 be futile.

3 F. Plaintiff is Entitled to Damages Under the TVPA and the
4 ATCA.

5 269. Courts have awarded significant compensatory and
6 punitive damages for extrajudicial killing under the TVPA. See,
7 e.g., *Tachiona*, 216 F. Supp. 2d at 267-68. In that case, the
8 Court awarded \$2.5 million for consistency with next pages in
9 compensatory and \$5 million in punitive damage for extrajudicial
10 killing. In reaching that decision, the Court cited the
11 following awards of other courts: *Mushikiwabo v. Barayagwiza*, No.
12 94 Civ. 3627, 1996 WL 164496, at *3 (S.D.N.Y. Apr. 9, 1996)
13 (awarding compensatory damages including \$500,000 in pain and
14 suffering and awarding \$1 million in punitive damages to each
15 relative of a victim and \$5 million to each victim for torture
16 and murder under the TVPA and ATCA); *Mehinovic*, 198 F. Supp. 2d
17 at 1358-60 (awarding \$10 million in compensatory and \$25 million
18 in punitive damages to each victim for torture, cruel and
19 inhumane treatment, arbitrary detention, violations of the law of
20 war and crimes against humanity under both the TVPA and ATCA as
21 well as assault and battery, false imprisonment, intentional
22 infliction of emotional distress and conspiracy under Georgia
23 law).

24 270. Courts have also awarded significant compensatory and
25 punitive damages for violations of the ATCA, including
26
27
28

1 extrajudicial killing and crimes against humanity.⁴ Previous
2 courts have awarded the following:

- 3 • *Filartiga* (awarding \$5 million each in punitive damages
4 to the father and sister of Joelito Filartiga, who was
5 tortured to death by Paraguayan officials; court also
6 awarded, \$350,000 in compensatory damages);
- 7 • *Xuncax* (awarding \$7 million in compensatory and
8 punitive damages to each of the three plaintiffs
9 asserting a claim for extrajudicial killing);
- 10 • *Mushikawabo* (awarding between \$10 million and \$35
11 million in compensatory and punitive damages to each
12 plaintiff suing for the extrajudicial killing of a
13 number of relatives during massacres in Rwanda);
- 14 • *Trajano v. Marcos (In re: Estate of Ferdinand E. Marcos*
15 *Human Rights Litigation)*, 978 F.2d 493 (9th Cir. 1992)
16 (awarding \$4.16 million in compensatory and punitive
17 damages and attorneys fees for torture and

18
19 ⁴ If a choice of law analysis is necessary to determine the
20 applicability of punitive damages, this Court may look to the law
21 of El Salvador, but only to the extent it does not frustrate the
22 very purpose of the ATCA. See *Tachiona*, 234 F. Supp. 2d at 419
23 (choice of law determination should not compel "dispositive
24 application of foreign law where the municipal rule of decision
25 may conflict with federal law or international standards"); see
26 also *Filartiga v. Pena-Irala*, 577 F. Supp. 860, 863-64 (E.D.N.Y.
27 1984) ("the court should consider the interests of Paraguay to
28 the extent they do not inhibit the appropriate enforcement of the
applicable international law or conflict with the public policy
of the United States"). Salvadoran law does support awards of
"moral damages," which are tantamount to punitive damages under
U.S. law. See *Noya Decl.* at ¶¶ 19-21. Therefore, even under a
choice of law analysis, plaintiff is entitled to punitive
damages.

1 extrajudicial killing);

- 2 • *Tachiona* (awarding undifferentiated damages under both
3 the TVPA and the ATCA in the amount of \$7.5 million in
4 compensatory and punitive damages for each of three
5 claims of extrajudicial killing); and
- 6 • *Cabello v. Fernandez-Larios*, No. 99-0528-CIV-LENARD
7 (S.D. Fla. Oct. 31, 2003) (following a jury trial, an
8 award of \$4 million was entered in favor of plaintiffs
9 for a single claim of extrajudicial killing and crimes
10 against humanity).

11 271. These decisions have awarded damages on the basis of
12 the following factors:

- 13 i. Brutality of the act;
- 14 ii. Egregiousness of defendant's conduct;
- 15 iii. Unavailability of criminal remedy;
- 16 iv. International condemnation of act;
- 17 v. Deterrence of others from committing similar acts;
- 18 vi. Provision of redress to plaintiff, country and
19 world.

20 272. For all the reasons discussed, these factors support
21 the award of substantial damages in this case. In many ways,
22 this case is different from any other because of the national and
23 international stature of the victim, his importance to any effort
24 to avoid war, and the violence that followed his death.

25 Archbishop Romero was widely recognized as the one person who
26 could act as a bridge between the divided sectors of Salvadoran
27 society and was seen by the U.S. government and many others as
28 absolutely crucial to any nonviolent or less-violent resolution

1 of the crisis gripping El Salvador at the time. With his death
2 and the elimination of the bridge between the polarized sectors
3 of Salvadoran society, El Salvador descended into civil war.

4 273. Plaintiff has suffered a loss only partially
5 compensable in money and is entitled to significant compensatory
6 and punitive damages, in the respective amounts of \$5 million and
7 \$5 million for a total damage award of \$10 million.

8 V. CONCLUSION


9 274. For all reasons stated, plaintiff is entitled to
10 judgment on the claim of extrajudicial killing under the TVPA and
11 on the claims of extrajudicial killing and crimes against
12 humanity under the ATCA, in the total amount of \$12 million
13 against defendant, Saravia, plus his costs of suit.

14 275. The Redacted Findings of Fact and Conclusions of Law
15 shall be publically filed.

16 276. The Unredacted Findings of Fact and Conclusions of Law
17 shall be filed UNDER SEAL.

18
19 SO ORDERED.

20
21 DATED: November 23, 2004.

22
23 
24 _____
25 Oliver W. Wanger
26 UNITED STATES DISTRICT JUDGE
27
28

rcf

United States District Court
for the
Eastern District of California
November 24, 2004

* * CERTIFICATE OF SERVICE * *

1:03-cv-06249

Doe

v.

Saravia

, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on November 24, 2004, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

Nicholas W Van Aelstyn
Heller Ehrman White and McAuliffe
333 Bush Street
San Francisco, CA 94104

OWW

Carolyn Patty Blum
PRO HAC VICE
Law Office of Carolyn Blum
291 West 12th Street
New York, NY 10014

Matthew James Eisenbrandt
Center for Justice and Accountability
870 Market Street
Suite 684
San Francisco, CA 94102

Jack L. Wagner, Clerk

BY: 

Deputy Clerk