

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO.:

05-25387 CA 27

MILAGROS MARIA SUAREZ, as
Co-Personal Representative and
Rafael Del Pino, Jr., as Co-
Personal Representative of
the Estate of Rafael Del Pino,

Plaintiff,

vs.

THE REPUBLIC OF CUBA, a
sovereign national, FIDEL CASTRO
RUZ, individually and as President of
the Council of State and the Council of Ministers,
et al., CUBAN REVOLUTIONARY ARMED
FORCES, and RAUL CASTRO RUZ, individually
and as Minister of the Revolutionary Armed Forces,
and PARTIDO COMUNISTA DE CUBA,
an agency and instrumentality of the REPUBLIC
OF CUBA, EL MINISTERIO DEL INTERIOR,

Defendants.

THE ORIGINAL FILED
IN THE OFFICE OF
CLERK OF DISTRICT & COUNTY COURTS
MIAMI-DADE COUNTY, FLORIDA
DEC 29 2005

COMPLAINT

Plaintiffs, MILAGROS SUAREZ, as Co- Personal Representative and Rafael
Del Pinor, Jr., as Co-Personal Representative of the Estate of Rafael Del Pino, sues

the Defendants, EL MINISTERIO DEL INTERIOR, FIDEL CASTRO RUZ ("FIDEL CASTRO" OR "CASTRO"), THE REPUBLIC OF CUBA ("CUBA"), the CUBAN REVOLUTIONARY ARMED FORCES, RAUL CASTRO RUZ and the PARTIDO COMUNISTA DE CUBA, (collectively referred as the "Castro regime") and further alleges as follows:

PRELIMINARY STATEMENT AND EXECUTION

1. This is an action which seeks redress, namely, compensatory and punitive damages, for the inhumane and tortuous acts and execution committed by Defendants, FIDEL CASTRO RUZ, THE REPUBLIC OF CUBA, the CUBAN ARMED FORCES, RAUL CASTRO RUZ, PARTIDO COMUNISTA DE CUBA and EL MINISTERIO DEL INTERIOR, and those operating under their direction and orders for the torture and execution by hanging of Plaintiff, Rafael Del Pino. Plaintiff alleges that Defendants, FIDEL CASTRO RUZ and RAUL CASTRO RUZ ordered, authorized encouraged or permitted agents of the Cuban government, EL MINISTERIO DEL INTERIOR, and the Cuban Revolutionary Armed Forces and PARTIDO COMUNISTA DE CUBA to commit acts of torture, and the hanging of Rafael Del Pino. Accordingly, Defendants are liable under domestic and international law for Plaintiff's death.

JURISDICTION AND VENUE

2. Defendants, FIDEL CASTRO RUZ, CUBA, the CUBAN ARMED FORCES, RAUL CASTRO RUZ and the PARTIDO COMUNISTA DE CUBA, EL MINISTERIO DEL INTERIOR, are responsible for acts of torture as defined by customary international law and the Torture Victim Protection Act ("TVPA"), Pub. L. No. 102-256, 106 Stat. 73 (1992)(codified at 28 U.S.C. §1350, note). Accordingly, this Court has jurisdiction over this action based on the Alien Tort Claims ("ATCA"), 28 U.S.C. §1350, and U.S.C. §1331.

3. Defendant CUBA and the other Defendants acting under its authority are not immune from suit pursuant to 28 U.S.C. §1605(a)(7) or any other applicable international agreements.

4. This cause is a civil action made by the Plaintiffs for both tort, torture and the wrongful death by hanging committed in violation of the law of nations or a treaty of the United States.

5. This is an action for damages in excess of \$15,000 and within the minimal jurisdictional limits of this court.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(d); §§1391(f)(1) and Section 1330 and 1331. Plaintiff's claim also brought pursuant to

the Foreign Sovereign Immunities.

7. The Defendants are subject to suit in a Court of competent jurisdiction in any State Court in the United States pursuant to the provisions of 28 U.S.C. §1605 Rein v. Socialist People's Libyan, Arabs, 995 F. Supp. 325 (EDNY 1998) Act 28 U.S.C. §1602, et seq.

PARTIES

8. Rafael Del Pino, was a U.S. Citizen and at one time was in the United States Armed Forces.

9. Defendant CUBA is a "foreign state" within the meaning of 28 U.S.C. §1603(a). CUBA has been designated a "state sponsor of terrorism" under Section 6(j) of the Export Administration Act of 1979 and section 620 of the Foreign Assistance Act of 1961 at the time many of the acts set forth in this complaint occurred. The United States does not have diplomatic relations with CUBA. CUBA can be contacted via the Permanent Representative of Cuba to the United Nations, 14 East 79th Street, New York, N.Y., 10021.

10. The CUBAN ARMED FORCES is a political subdivision of Cuba, and can be contacted via the Permanent Representative of Cuba to the United Nations, 14 East 79th Street, New York, NY 10021.

11. Defendant FIDEL CASTRO RUZ is an individual over the age of eighteen and otherwise sui juris. Castro is the dictator leader of CUBA, seizing power in 1959 and referring to himself openly as the "lider maximo" and "jefe supremo". FIDEL CASTRO is also the leader of the PARTIDO COMUNISTA DE CUBA, the Communist Party of Cuba. FIDEL CASTRO RUZ resides in Havana, Cuba.

12. Defendant, RAUL CASTRO RUZ, is the brother of FIDEL CASTRO RUZ, and is the Commander-in-Chief of the CUBAN ARMED FORCES, the President of the Ministry of Cuban Revolutionary Armed Forces and former Director of the Cuban Secret Services. RAUL CASTRO RUZ resides in Havana, Cuba.

13. EL MINISTERIO DEL INTERIOR is an "agency or instrumentality of a foreign State".

14. Defendant PARTIDO COMUNISTA DE CUBA, the Communist Party of CUBA, is an "agency or instrumentality of a foreign state" within the meaning of 28 U.S.C., §1603(b).

15. Since at least the 1960s, FIDEL CASTRO RUZ and the Castro regime have been absent from the jurisdiction of the Southern District of Florida. CASTRO

was present in the United States and subject to the jurisdiction of its courts in 2000 when he spoke at the Millennium Summit in New York.

16. The substantive cause of action is based upon the Civil Liability for Acts of State Sponsored Terrorism, 28 U.S.C.A. §1605. Said statute creates a cause of action against agents of a foreign state that act under the conditions specified in section 1605(a)(7) of the Foreign Sovereign Immunities Act. See Alejandro v. The Republic of Cuba and the Cuban Air Force, 42 F. Supp. 2d 1317 (SD Fla. 1999).

17. A foreign nation is liable for damages and vicariously liable for punitive damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death. Cuba is vicariously liable for the actions of its agent/instrumentality, the MINISTRY OF THE INTERIOR's and the other Defendants actions pursuant to 28 U.S.C. §1606. See Gibbons v. Republic of Ireland, 532 F. Supp. 668, (DC DC 1982)(an agent or instrumentality can be held liable for punitive damages); de Leteiler v. Republic of Chile, 502 F. Supp. 259 (DCDC 1980); see also, Anderson v. Islamic Republic of Iran, 90 F. Supp. 2d 107, (D.DC 2000)(awarding punitive damages to American who had been held hostage and tortured by Islamic terrorists sponsored by Iranian Ministry of Information).

18. Summary executions are considered "extrajudicial killing" within the meaning of 28 U.S.C. §1350. See *Lafontant v. Aristide*, 844 F. Supp. 128 (E.D.N.Y. 1994)(dicta). At all times relevant hereto, Rafael del Pino was executed by hanging.

19. Defendant, CUBA, is designated to be a state sponsor of terrorism under the terms and provisions of 56(j) of Export Administration Act of 1979, 50 U.S.C. §2405(j).

20. At all times material hereto, Milagros Maria Suarez and Rafael Del Pino are the surviving daughter and son of Rafael Del Pino, and are the proper party to bring and maintain this action on her behalf.

21. At all times relevant hereto RAFAEL DEL PINO, was a citizen of the United States and resident in Miami, Florida.

22. Prior to his capture, RAFAEL DEL PINO, was a friend of FIDEL CASTRO RUZ and was involved in the Cuban Revolution.

23. Sometime before FIDEL CASTRO RUZ took power in Cuba, Rafael Del Pino became aware that FIDEL CASTRO RUZ was a communist and was in conspiracy with the Russian government in order to be one of Russia allies.

24. After learning of Fidel Castro's political views, Rafael Del Pino escaped to the United States of America, where he became a United States Citizen and served in the Armed Forces.

25. In 1959, Fidel Castro Ruz, agent and a spy, Fernando Fuertes convinced and tricked Rafael Del Pino to fly to Cuba to pick up family member.

26. Rafael Del Pino agreed to fly to Cuba and when he arrived in Cuba, Fidel Castro's military was waiting for him and a gun battle ensued. Rafael Del Pino was shot and sustained injuries and was immediately imprisoned by the Castro Regime.

27. Therefore, Rafael Del Pino was placed in a sham trial.

28. Rafael Del Pino was convicted and sentenced to 30 years in Cuban jail.

29. While serving his 30 year sentence, Castro and his regime tortured and eventually killed Rafael Del Pino by hanging him.

WRONGFUL DEATH CLAIM

30. Plaintiff re-alleges and reasserts paragraphs 1 through 28 as if fully set forth herein.

31. In 1979, Defendants, CUBA and the MINISTRY OF THE INTERIOR, FIDEL CASTRO RUZ, RAUL CASTRO RUZ, PARTIDO

COMUNISTA DE CUBA, intentionally, unlawfully, and with complete disregard for human life, tortured and killed RAFAEL DEL PINO by hanging him.

32. Defendants, CUBA and the MINISTRY OF THE INTERIOR caused the deliberate and wrongful death of RAFAEL DEL PINO by directing and participating in the torture and execution of the deceased.

33. As a direct and proximate result of the Defendants' actions, MILAGROS MARIA SUAREZ, as surviving daughter, and RAFAEL DEL PINO, JR., as surviving son of the Estate of Rafael Del Pino suffered the following damages:

a. Milagros Maria Suarez, surviving daughter, suffered severe mental pain and anguish, loss of support, protection, companionship and all damages awardable pursuant to the wrongful death and;

b. Rafael Del Pino, Jr., surviving son, lost the support, loss of his father's love, mental pain and anguish, companionship and protection and all damages awardable pursuant to the wrongful death and;

c. The Estate of Rafael Del Pino lost net accumulations and sustained economic losses, and;

e. Additionally, the Plaintiff demands for any and all other damages to which Plaintiffs may be entitled to pursuant to the wrongful death statute.

WHEREFORE, Plaintiffs, MILAGROS MARIA SUAREZ and RAFAEL DEL PINO, JR., as Successors Personal Representatives of the Estate of Rafael Del Pino, deceased, on behalf of survivors and as Personal Representative of the Estate of Rafael Del Pino, surviving daughter of Rafael Del Pino, and the Estate of Rafael Del Pino, demand judgment against all Defendants.

COUNT II-PUNITIVE DAMAGES

34. Plaintiff realleges and reassert paragraphs 1 through 32 as if fully set forth herein.

35. The extreme and outrageous acts of Defendants, CUBA and its MINISTRY OF THE INTERIOR, FIDEL CASTRO RUZ, CUBAN ARMED FORCES, RAUL CASTRO RUZ, PARTIDO COMUNISTA DE CUBA, REPUBLIC OF CUBA, and EL MINISTERIO DEL INTERIOR of intentionally torturing and executing the deceased, RAFAEL DEL PINO, constitute willful and/or wanton acts.

36. Pursuant to 28 U.S.C. § 1606, Plaintiff is entitled to recover punitive damages from Defendants, the MINISTRY OF THE INTERIOR, FIDEL CASTRO

RUZ, CUBAN ARMED FORCES, RAUL CASTRO RUZ, PARTIDO COMUNISTA DE CUBA, REPUBLIC OF CUBA and EL MINISTERIO DEL INTERIOR latter being vicariously liable for his extreme and outrageous conduct. See West v. Multibanco Comerex, S.A., 807 F. 2d 820, (9th Cir. 1987) cert denied. 107 S. Ct. 2483.

37. Defendants' actions violate the following laws, agreements, conventions, resolutions and treaties, which constitute specific examples of the applicable law of nations or customary international law:

- (i) Torture Victim Protection Act, 28 U.S.C. § 1350;
- (ii) United Nations Charter, 59 Stat. 1031, 3 Bevans 1153 (1945);
- (iii) Universal Declaration of Hum Rights, G.A. Res.217A(iii), U.N. Doc. A/810 (1948);
- (iv) International Covenant on Civil and Political Rights, G.A. Res. 2220(XXI), 21 U.N. Doc. GAOR Supp. (n. 16) at 52, U.N. Doc A/6316 (1966);
- (v) Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, G.A. res 39/46, 39 U.N. Doc., GAOR Supp. (No.51) at 197, U.N., Doc. A/39/51 (1984) (ratified 10/28/98);

(vi) Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 U.N. Doc., GAOR Supp. (No.34) at 91, U.N. Doc. A/10034 (1976);

(vii) Common law of the State of Florida, including but not limited to intentional infliction of emotional distress.

WHEREFORE, Plaintiffs, MILAGROS MARIA SUAREZ, daughter and RAFAEL DEL PINO, JR., as Personal Representative of the Estate of RAFAEL DEL PINO, deceased, demands judgment against the Defendants, THE REPUBLIC OF CUBA, FIDEL CASTRO RUZ, CUBAN ARMED FORCES, RAUL CASTRO RUZ, PARTIDO COMUNISTA DE CUBA, REPUBLIC OF CUBA and EL MINISTERIO DEL INTERIOR, punitive damages, costs, interests and all other relief which this Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff requests trial by jury of all factual issues so triable against the individual defendants named in this complaint.