



Filartiga v. Pena-Irala: Complaint

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

DOLLY M. E. FILARTIGA and

DR. JOEL FILARTIGA,

Plaintiffs,

VERIFIED COMPLAINT

- against - 79 Civ.917 ()

AMERICO NORBERTO PENA-IRALA, JURY TRIAL REQUESTED

LEONEL CASTILLO, as Commissioner JUDGE NICKERSON

of the United States Immigration

and Naturalization Service and

GEORGE VICIAN, as District Director,

Immigration and Naturalization

Service, New York.

Defendants.

PRELIMINARY STATEMENT

Plaintiffs, for their Verified Complaint, say and allege:

1. This is an action for damages for violation of human rights for the wrongful torture and murder of the decedent, Joel (Joelito) Filartiga, under the treacies of the United States, the law of nations and the laws of the states of the United States.

JURISDICTION

2. The jurisdiction of this Court arises under 28 U.S.C. §§1331, 1350, 1651, 2201 and 2202 and the doctrine of nendent jurisdiction.

3. The amount in controversy exceeds \$10,000 exclusive of interest and costs, in that the value of the rights of which nplaintiffs have been deprived isin excess of \$10,000.

4. Plaintiffs' causes of action arise under Article 2, §2, Clause 1 and Article 6, Clause 2 of the Constitution of the United States; 28 U.S.C. §§1350, 2201-2202; 8 U.S.C. §1252(c): the wrongful death statutes; the the U.N. Charter; the Universal Declaration on Human Rights; the U.N. Declaration Against Torture; the American Declaration of the Rights and Duties of Man; and other pertinent declarations,

documents, and practices constituting the customary international law of human rights and the law of nations.

PARTIES

PLAINTIFFS

5 Plaintiff Dr. Joel Filartiga is the father of the decedent and resides in Ybycui, Paraguay. He sues on his own behalf and as personal representative of the decedent.

6. Plaintiff Dolly M. E. Filartiga is the sister of the decedent and resides in Washington, D.C. She arrived in the United States on April 28, 1978 with a visitor's visa. On April 5, 1979 she filed with the Immigration and Naturalization Service an application for political asylum in the United States.

DEFENDANTS

7. Defendant Americo Norberto Pena-Irala is a former Inspector General of Police of Asuncion, Paraguay. He is presently in the United States as an illegal alien and subject to a deportation order entered April 5, 1979 by Immigration Judge Anthony M. DeGaeto. He is being held in custody of the U.S. Immigration and Naturalization Service at the Brooklyn Navy Yard.

8. Defendant Leonel Castillo is the Commissioner of the Immigration and Naturalization Service, U.S. Department of Justice.

9. Defendant George Vician is the District Director of the Immigration and Naturalization Service, U.S. Department of Justice.

10. All defendants are sued in their official and individual capacities.

Statement of Facts

11. On information and belief, on March 29, 1976, the decedent, seventeen-year-old Joel (Joelito) Filartiga was kidnapped and tortured to death by defendant Americo Norberto Pena-Irala and others.

12. Approximately four hours later, plaintiff Dolly Filartiga was awakened by Paraguayan police officials who summoned her to the defendant Pena-Irala's home. There she was led to the mutilated body of her brother. A photograph of his whipped, slashed and electric-shocked corpse is attached hereto as Exhibit A.

13. As Dolly Filartiga was running screaming from the house where her brother lay, Pena approached her, yelling and gesticulating and said: "Here you have what you have been looking for so long and what you deserve. Now shut up."

14. Joelito Filartiga was the son of plaintiff Dr. Joel Filartiga, a noted medical philanthropist, and artist of international reputation, whose paintings depict the oppression and suffering of the people of Paraguay. Dr. Filartiga is a leading political opponent of General Stroessner, the dictator-President of Paraguay. He has been arrested three times for his political opposition and tortured in 1966.

15. On information and belief, Joelito Filartiga was tortured and murdered by the defendant and others in retaliation for the political activities and opinions of his father.

16. On April 28, 1976, plaintiff Dolly Filartiga and her mother were wrongfully summoned to the Criminal Court in Asuncion where they were charged with

harassment of Pena's house ("Atropellio a Domicilio"), and battery on Jorge Villalba, Pena's stepson, and sentenced, without trial, to jail, They were released after six hours.

17. Dr. Filartiga filed a lawsuit against the defendant Pena and the Paraguayan police for the murder of his son. On September 30, 1976, Dr. Filartiga's attorney, Horacio Galeano Perrone, was arrested and shackled to a wall in the central police headquarters. The defendant Pena arrived and threatened to kill Dr. Galeano, Dr. Filartiga, and Dr. Filartiga's thirteen-year-old daughter if they continued to press the lawsuit against him and the police for Joelito's murder

18. Judge Rojas Via has unduly delayed the Filartiga case in the courts, and no relief can be obtained, as the Paraguayan judiciary is an appendage of the executive branch.

19. On behalf of Joelito Filartigo and Dr. Joel Filartiga, a complaint has been filed with the Chairman of the Inter-American Commission on Human Rights, Organization of American States, (attached hereto as Exhibit B).

20. On information and belief, defendant Pena has been living in Brooklyn, New York for the last nine months. On April 4, 1979, he was arrested by agents of the U.S. Immigration and Naturalization Service. He was ordered deported on April 5, 1979. (Attached hereto are Exhibits C and D, articles from the New York Times reporting on his discovery and detention.) Prior to September, 1978, the whereabouts of defendant Pena were unknown to plaintiffs.

FIRST CAUSE OF ACTION AGAINST

AMERICO NORBERTO PENA-IRALA

21. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

22. As a result of the acts of defendant Pena, the deceased sustained pain and suffering and bodily injuries causing death.

23. At the time of these acts, the deceased was in good health and physical condition.

24. As a result of these acts, plaintiffs incurred damages by reason of decedent's wrongful death.

25. As a result of the deliberate confrontation of plaintiff Dolly Filartiga with the tortured body of her brother, she suffered emotional pain and suffering.

26 As a result of the unlawful sentencing and jailing of Dolly Filartiga, she suffered deprivation of liberty and emotional pain and suffering.

27. The aforesaid acts of the defendant Pena constitute violations of the treaties of the United States and the law of nations.

SECOND CAUSE OF ACTION AGAINST

AMERICO NORBERTO PENA-IRALA

23. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

29. As a result of the acts of defendant Pena, the deceased sustained pain and suffering and bodily injuries causing death.

30. At the time of these acts, the deceased was in good health and physical condition.

31. As a result of these acts, plaintiffs incurred damages by reason of decedent's wrongful death.

32. AS a result of the deliberate confrontation of plaintiff Dolly Filartiga with the tortured body of her brother, she suffered emotional pain and suffering.

33. As a result of the unalwful sentencing and jailing of Dolly Filartiga, she suffered deprivation of liberty and emotional pain and suffering.

34. The aforesaid acts of the defendant Pena constitute violations of the wrongful death statutes.

Prayer for Relief

WHEREFORE, plaintiffs pray that this Court

1. Assume jurisdiction or this cause;
2. Enter a judgment awarding compensacory and punitive damages to be paid by the defendant Pena to plaintiff Joel Filartiga as personal representative of Joelita

Filartiga, deceased, and to Dolly Filartiga, in the sum of \$10,000,000 plus interest, costs and disbursements;

3. Enter an order prohibiting defendant Castillo, his agents, employees and assigns, and all persons acting in concert or participation with him, from deporting defendant Americo Norberto Pena-Irala;

4 Award plaintiffs reasonable attorneys fees and costs;

5. Award plaintiffs such other and further relief as to this Court seems just and reasonable.

Respectfully submitted,

PETER WEISS

RHONDA COPELON

JOHN W. CORWIN

JOSE ANTONIO LUGO

c/o Center For Constitutional Rights

853 Broadway

New York, New York 10003

(212) 674- 3303

MICHAEL MAGGIO

Goren and Maggio

1801 Columbia Road, N.W.

Suite 100

Washington, D. C.

(202) 483- 8055

Attorneys for Plaintiffs

Dated: New York, New York

April 6, 1979

[DIANA Homepage](#)

[Cases Page](#)

[Avalon Home Page](#)

Project DIANA : Filartiga v. Pena-Irala: Complaint
is located at : <http://www.yale.edu/lawweb/avalon/diana/filartiga/13june.html>;

This document was last updated on: 12/03/2006 16:43:04

© 1996-2005 Project DIANA at Yale Law School.
The Lillian Goldman Law Library in Memory of Sol Goldman.

