

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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<b>JANE W</b> , IN HER INDIVIDUAL CAPACITY, AND IN	:
HER CAPACITY AS THE PERSONAL REPRESENTATIVE	:
OF THE ESTATES OF HER RELATIVES JAMES W, JULIE W,	: CIVIL ACTION
AND JEN W; <b>JOHN X</b> , IN HIS INDIVIDUAL CAPACITY, AND	: NO.: 18-569
IN CAPACITY AS THE PERSONAL REPRESENTATIVES OF	:
THE ESTATES OF HIS RELATIVES JANE X, JULIE X, JAMES X,	:
AND JOSEPH X; <b>JOHN Y</b> , IN HIS INDIVIDUAL CAPACITY; AND	:
<b>JOHN Z</b> , IN HIS INDIVIDUAL CAPACITY	:
Plaintiffs	:
v.	:
	:
MOSES W. THOMAS	:
Defendant	:

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**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2018, upon consideration of the Motion to Dismiss of Defendant Moses W. Thomas it is HEREBY ORDERED that the Motion is GRANTED and Plaintiffs' claims against the Defendant are DISMISSED with prejudice.

BY THE COURT:

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Defendant	:

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**DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

Defendant, MOSES W. THOMAS, by and through the undersigned counsel, hereby file this Motion to Dismiss for Failure to State a Claim pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of this Motion, Defendant incorporates the attached Memorandum of Law. Defendant respectfully request that this Court dismiss all claims against him.

Date: April 24, 2018

Respectfully submitted,  
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Defendant	:

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**MEMORANDUM IN SUPPORT OF DEFENDANT’S MOTION TO DISMISS**

Plaintiffs, Jane W, John X, John Y, and John Z have filed a Complaint which fails to state a claim for relief against Defendant, Moses W. Thomas; therefore, Plaintiffs’ claims Defendant should be dismissed.

I. BACKGROUND

Plaintiffs allege that their case arose from the brutal massacre of unarmed civilians seeking shelter in the St. Peter’s Church (hereinafter “the Lutheran Church”) in Monrovia, Liberia during the Liberia civil war. See Complaint (hereinafter “Cmplt”) at ¶1. Plaintiff allege that on July 29, 1990, Defendant, Moses W. Thomas, was the head of a specialized branch of the Government’s Armed Forces of Liberia. (hereinafter “AFL”). According to Plaintiffs, on July 29, 1990, at Defendant’s command, armed forces surrounded the Lutheran Church and indiscriminately shot or hacked to death approximately 600 sleeping civilian men, women, and children who were taking refuge in the Lutheran Church. According to Plaintiffs, the Lutheran

Church Massacre was part of a larger campaign of violence against the Mano and Gio ethnic groups by the AFL. Cmplt at ¶2. Plaintiffs claim that they were in the Lutheran Church on July 29, 1990, that they witnessed the slaughter of hundreds of civilians, including their own family members and that they survived the Lutheran Church Massacre by hiding under piles of dead bodies. Two of the Plaintiffs, Jane W. and John X, allege that, in addition to their individual claims, they are also seeking recovery as personal representatives of the estates of relatives (James W., Julie W., Jen W., Jane X, Julie X, James X, and Joseph X) who were all killed at the Lutheran Church on July 29, 1990. ¶9.

Plaintiffs are Liberian citizens currently residing in Liberia. Defendant is a Liberian citizen and has been residing in the United States since 2000. ¶¶ 8, 9. On February 12, 2018, Plaintiffs filed a fourteen (14) count Complaint against Defendant seeking compensatory and punitive damages against Defendant under the Torture Victim Protection Act of 1991<sup>1</sup> (herein after “TVPA”) and under the Alien Tort Statute (hereinafter “ATS), 28 U.S.C. §1350<sup>2</sup> for Defendant’s alleged action on July 29, 1990. For reasons that follow, Plaintiffs’ Complaint should be dismissed.

## II. ARGUMENT

Motion to Dismiss for Failure to State of Claim Pursuant to Federal Rule of Civil Procedure 12(b)(6)

### A. Standard for Dismissal for Failure to State a Claim

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<sup>1</sup> The Torture Victim Protection Act of 1991 (TVPA; Pub.L. 102–256, H.R. 2092, 106 Stat. 73, enacted March 12, 1992) allows for the filing of civil suits in the United States against individuals who, acting in an official capacity for any foreign nation, committed torture and/or extrajudicial killing.

<sup>2</sup> The Alien Tort Statute (ATS), 28 U.S.C. § 1350; ATS), also called the Alien Tort Claims Act (ATCA) provides that "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States. In their Complaint, Plaintiff referred to statute simply as the Alien Tort Statute. In this memorandum, ATS and ATCA are used interchangeably.

A motion to dismiss, pursuant to Federal of Civil Procedure 12(b)(6), may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to plaintiff, plaintiff is not entitled to relief. Holder v. City of Allentown, 987 F.2d 188, 194 (3d Cir.1993); Bartholomew v. Fischl, 782 F.2d 1148, 1152 (3d Cir.1986). The Court may not dismiss the complaint unless plaintiff can prove no set of facts which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957); Graves v. Lowery, 117 F.3d 723, 726 (3d Cir.1997); Unger v. National Residents Matching Program, 928 F.2d 1392, 1395 (3d Cir.1991); Angelastro v. Prudential-Bache Sec., Inc., 764 F.2d 939, 944 (3d Cir.1985). "The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed. 2d 90 (1974). In setting forth a valid claim, a party is required only to plead "a short plain statement of the claim showing that the pleader is entitled to relief." Fed. R.Civ.P. 8(a). To withstand a motion to dismiss, "a plaintiff is not required to provide evidence of or prove the truthfulness of his complaint." Quinones v. Szorc, 771 F.2d 289, 291 n. 3 (7th Cir.1985). The court, however, is not required to accept conclusory allegations. Papasan v. Allain, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986). Thus, the complaint "must set forth sufficient information to suggest that there is some recognized legal theory upon which relief may be granted." District of Columbia v. Air Florida, Inc., 750 F.2d 1077, 1078 (D.C.Cir.1984).

Pursuant to Federal Rule of Civil Procedure 8(c), an assertion that the applicable statute of limitations bars a claim constitutes an affirmative defense to an action. The Third Circuit, however, has held that a Rule 12(b) (6) dismissal on statute of limitations grounds is warranted when "the time alleged in the statement of a claim shows that the cause of action has not been

brought within the statute of limitations." Cito v. Bridgewater Township Police Dep't, 892 F.2d 23, 25 (3d Cir.1989) (quoting Bethel v. Jendoco Constr. Corp., 570 F.2d 1168, 1174 (3d Cir.1978)); *see also* Rycoline Prods., Inc. v. C & W Unlimited, 109 F.3d 883, 886 (3d Cir.1997).

**B. Plaintiffs' Complaint Should be Dismissed for Plaintiffs' Failure to Comply with the Statute of Limitations Under The Torture Victim Protection Act of 1991 (TVPA)**

Although Plaintiffs' filed a fourteen count Complaint, all of Plaintiffs' claims for recovery are based on the Torture Victim Protection Act of 1991 (TVPA) and the Alien Tort Statute (ATS). Plaintiffs allege "[t]his Court has jurisdiction over Plaintiffs' claims . . . because these claims arise under the Torture Victim Protection Act of 1991 ("TVPA"), Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. §1350 note), and under the Alien Tort Statute ("ATS"), 28 U.S.C. §1350." Cmplt at ¶5.

The Court should dismiss Plaintiffs' Complaint in its entirety because all of Plaintiffs' claims are barred by the applicable statute of limitations under both the TVPA and the ATS.

The TVPA provides in pertinent part as follows:

SEC. 2. ESTABLISHMENT OF CIVIL ACTION.

(a) LIABILITY- An individual who, under actual or apparent authority, or color of law, of any foreign nation--

(1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or

(2) subjects an individual to extrajudicial killing 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.

**(b) EXHAUSTION OF REMEDIES-** A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.

**(c) STATUTE OF LIMITATIONS-** No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose. *(Emphasis added)*

As set forth in Section 2(b) of the TVPA, “a court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred. Plaintiffs allege that they are citizens of Liberia currently residing in Liberia. Plaintiffs have not alleged what, if any, remedy they sought in Liberia prior to filing this action in the District Court for the Eastern District of Pennsylvania. Accordingly, the Court should decline to hear Plaintiffs’ claims.

In addition to Plaintiffs’ failure to exhausted adequate and available remedies in Liberia, this Court cannot hear Plaintiffs’ claims because the claims are time barred under both the TVPA and the ATS. The TVPA has an expressed ten (10) year statute of limitations. Pursuant to Section 2(c) of the TVPA, “[n]o action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.” In their Complaint, Plaintiffs alleged “[t]his case arises from the brutal massacre of unarmed civilians seeking shelter in the St Peter’s Lutheran Church . . . in Monrovia, Liberia . . . [o]n July 29, 1990.” Cmplt at ¶¶1, 2, 26, 27, 28.

Plaintiffs alleged in their Complaint that they were at the Lutheran Church on July 26, 1990. Plaintiff Y alleged that he was shot in the leg on July 29, 1990 and Plaintiff Z alleged that he was stabbed in the arm. ¶¶33,34. Although Plaintiffs Jane W and John X did not allege any physical injury, they alleged being present and witnessing the incident on July 29, 1990. The

statute of limitations set forth under the TVPA is ten (10) years. Limitations period begin to run when plaintiff knows or should know of the injury that constitutes the basis of the claim. See Montgomery v. De Simone, 159 F.3d 120, 126 (3d Cir. 1998). In the case at bar, Plaintiffs allege they suffered injuries as a result of Defendant's alleged actions on July 26, 1990. Plaintiffs did not filed suit against Defendant until February 12, 2018, almost 28 years later. Because more than ten (10) cause of action passed between the incident that allegedly injured Plaintiffs and Plaintiffs' initiation of this lawsuit, the Court should dismiss Plaintiffs' Complaint in its entirety.

**C. Plaintiffs' Complaint Should be Dismissed for Plaintiffs' Failure to Comply with the Statute of Limitations Under the Alien Tort Claims Act ("ATCA")**

The Alien Tort Claims Act ("ATCA") does not contain a statute of limitations. Iwanowa v. Ford Motor Co., 67 F. Supp. 2d 424 (D.N.J. 1999). When Congress fails to provide a statute of limitations for claims arising under federal statutes, courts should apply the limitations period of the "most closely analogous statute of limitations under state law." DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 152, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983); However, there exists a narrow exception to this rule when another federal statute or rule "clearly provides a closer analogy than available state statutes, and when the federal policies at stake and the practicalities of litigation make the [federal statute] a significantly more appropriate vehicle for interstitial lawmaking." Id. at 172.; Forti v. Suarez-Mason, 672 F. Supp. 1531, 1547 (N.D.Cal.1987).

The Third Circuit has stated, and the Supreme Court has affirmed, that courts must "take seriously [the Supreme Court's admonition] that analogous state statutes of limitations are to be

used unless they frustrate or significantly interfere with federal policies." United Steelworkers v. Crown Cork & Seal Co., 32 F.3d 53 (1994).

To determine whether to apply a federal or state limitations period to a claim under the ATCA, "the Court must first identify the closest analogies under both federal and state law." Forti v. Suarez-Mason, 672 F. Supp. 1531 (1987). "[A]ctionable claims under the [ATCA] involve harm to the person that is universally recognized" by the international community as violating the law of nations. The most closely analogous state law, under Pennsylvania law, is for the recovery of damages for personal injuries which is two (2) years from the date of the injury. 42 Pa. Con. Stat. Ann. §5524.

The closest analogy under federal law is the Torture Victim Protection Act of 1991 ("TVPA"). Xuncax v. Gramajo, 886 F. Supp. 162 (D. Mass 1995) (holding that the TVPA is the most analogous statute to the ATCA). Since the enactment of the TVPA, courts addressing claims under the ATCA have applied the TVPA limitations period. Cabiri v. Assasie-Gyimah, 921 F. Supp. 1189, 1195-96 (S.D.N.Y.1996); Xuncax, 886 F. Supp. At 192-93; *see also* Wesley Papa, et al. v. United States and the U.S. Immigration & Naturalization Service, 281 F.3d 1004 (Court of Appeals, 9th Circuit, 2002) holding that

The TVPA, like the ATCA, furthers the protection of human rights and helps 'carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights'. Moreover, it employs a similar mechanism for carrying out these goals: civil actions. The provisions of the TVPA were added to the ATCA, further indicating the close relationship between the two statutes. All these factors point towards borrowing the TVPA's statute of limitations for the ATCA.

Thus, this Court shall apply the TVPA limitations period Plaintiffs' claims under international law. The TVPA explicitly provides a ten-year limitations period. *See* 28 U.S.C. §1350, note 2(c). The alleged incident occurred on July 29, 1990 and Plaintiffs filed the instant

action on February 12, 2018, almost 28 years later. Given that more than ten (10) years passed between the incident that allegedly injured Plaintiffs and Plaintiffs' initiation of this lawsuit, the Court should dismiss Plaintiffs' Complaint in its entirety.

### **III. CONCLUSION**

For the foregoing reasons, the Court should grant this Motion and dismiss Plaintiffs' Complaint against Defendant with prejudice.

Respectfully submitted,  
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Date: April 26, 2018

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Plaintiffs	:
v.	:
MOSES W. THOMAS	:
Defendant	:

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**CERTIFICATE OF SERVICE**

I hereby certify that on the date below, the Defendants’ Motion to Dismiss was filed via the Court’s electronic filing system and is available for downloading and thus served upon the parties of record.

Date: April 26, 2018

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