

APPENDIX A

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-7119**September Term, 2020****1:20-cv-03111-UNA****Filed On: March 3, 2021**

Helga G. Suarez Clark,

Appellant

v.

Peru Republic, et al.,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Tatel and Millett, Circuit Judges, and Sentelle, Senior Circuit Judge

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief and appendix filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the motion to appoint counsel, it is

ORDERED that the motion to appoint counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated sufficient likelihood of success on the merits. It is

FURTHER ORDERED AND ADJUDGED that the district court's November 30, 2020 order dismissing the case without prejudice pursuant to Federal Rule of Civil Procedure 8(a) be affirmed. The district court correctly concluded that the complaint failed to set out "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-7119

September Term, 2020

of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy

Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Appendix A

No. 20-7119

September Term, 2020

1:20-cv-03111-UNA

Filed On: April 13, 2021

Helga G. Suarez Clark,

Appellant

v.

Peru Republic, et al.,

Appellees

BEFORE: Srinivasan, Chief Judge, and Henderson, Rogers, Tatel, Millett, Pillard, Wilkins, Katsas, Rao, and Walker, Circuit Judges, and Sentelle, Senior Circuit Judge

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy

Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Appendix A

No. 20-7119

September Term, 2020

1:20-cv-03111-UNA

Filed On: April 13, 2021

Helga G. Suarez Clark,

Appellant

v.

Peru Republic, et al.,

Appellees

BEFORE: Tatel and Millett, Circuit Judges, and Sentelle, Senior Circuit Judge

ORDER

Upon consideration of the petition for rehearing, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy

Deputy Clerk

United States Court of Appeals

For The District Of Columbia Circuit

September Term, 2020

No. 20-7119

1:20-cv-03111-UNA

Filed On: April 13, 2021

Helda C. Suarez Clark,

Appellant

Peto Republic, et al.,

Appellees

BEFORE: Tatel and Millett, Circuit Judges, and Sentelle, Senior Circuit Judge

ORDER

Upon consideration of the petition for rehearing, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:

Mark J. Lander, Clerk

BY: /s/

Daniel J. Reidy

Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-7119

September Term, 2020

1:20-cv-03111-UNA

Filed On: February 17, 2021

Helga G. Suarez Clark,

Appellant

v.

Peru Republic, et al.,

Appellees

BEFORE: Tatel and Millett, Circuit Judges, and Sentelle, Senior Circuit Judge

ORDER

The court concludes, on its own motion, that oral argument will not assist the court in this case. Accordingly, the court will dispose of the appeal without oral argument on the basis of the record and the presentations in the brief. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j).

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Manuel J. Castro

Deputy Clerk

FILED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

11/30/2020
Clerk, U.S. District & Bankruptcy
Court for the District of Columbia

Appendix B

HELGA SUAREZ CLARK,

Plaintiff,

PERU REPUBLIC *et al.*,

Defendants.

Civil Action No. 20-3111 (UNA)

MEMORANDUM OPINION

This matter, brought *pro se*, is before the Court on review of Plaintiff's Complaint, ECF No. 1, and application to proceed *in forma pauperis*, ECF No. 2. The Court will grant the *in forma pauperis* application and dismiss the case because the complaint fails to meet the minimal pleading requirements of Rule 8(a) of the Federal Rules of Civil Procedure.

Pro se litigants must comply with the Federal Rules of Civil Procedure. *Jarrell v. Tisch*, 656 F. Supp. 237, 239 (D.D.C. 1987). Rule 8(a) of the Federal Rules of Civil Procedure requires complaints to contain "(1) a short and plain statement of the grounds for the court's jurisdiction [and] (2) a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009); *Ciralsky v. CIA*, 355 F.3d 661, 668-71 (D.C. Cir. 2004). The Rule 8 standard ensures that defendants receive fair notice of the claim being asserted so that they can prepare a responsive answer, mount an adequate defense, and determine whether the doctrine of *res judicata* applies. *Brown v. Califano*, 75 F.R.D. 497, 498 (D.D.C. 1977). It also assists the Court in determining whether it has jurisdiction over the subject matter.

Plaintiff is a resident of Peru, who has sued the Republic of Peru and Peruvian officials for sweeping misconduct. The 133-page pleading is neither short nor plain. A complaint, such as this, “that is excessively long, rambling, disjointed, incoherent, or full of irrelevant and confusing material will patently fail [Rule 8(a)’s] standard,” as will “a complaint that contains an untidy assortment of claims that are neither plainly nor concisely stated, nor meaningfully distinguished from bold conclusions, sharp harangues and personal comments.” *Jiggetts v. District of Columbia*, 319 F.R.D. 408, 413 (D.D.C. 2017), *aff’d sub nom. Cooper v. District of Columbia*, No. 17-7021, 2017 WL 5664737 (D.C. Cir. Nov. 1, 2017) (internal quotation marks and citations omitted). Most importantly, plaintiff’s convoluted allegations do not establish jurisdiction under the Foreign Sovereign Immunities Act, which is the “sole basis for obtaining jurisdiction over a foreign state in our courts.” *Nemariam v. Fed. Democratic Republic of Ethiopia*, 491 F.3d 470, 474 (D.C. Cir. 2007) (internal quotation marks and citation omitted). Consequently, this case will be dismissed. A separate order accompanies this Memorandum Opinion.

Date: November 30, 2020

/s/ _____
KETANJI BROWN JACKSON
United States District Judge

FILED

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

11/30/2020
Clerk, U.S. District & Bankruptcy
Court for the District of Columbia

Appendix B

HELGA SUAREZ CLARK,

Plaintiff,

PERU REPUBLIC *et al.*,

Defendants.

Civil Action No. 20-3111 (UNA)

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is

ORDERED that Plaintiff's application to proceed *in forma pauperis*, ECF No. 2 is
GRANTED, and the remaining pending motions, ECF Nos. 4, 5, are **DENIED**; it is further
ORDERED that the complaint and this case are **DISMISSED** without prejudice.

This is a final appealable Order.

Date: November 30, 2020

_____/s/
KETANJI BROWN JACKSON
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HELGA STARRS CLARK,

Plaintiff

PERI REPUBLIC, INC.,

Defendant.

Civil Action No. 20-311 (TINA)

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is
ORDERED that Plaintiff's application to proceed in forma pauperis, ECF No. 2 is
GRANTED, and the remaining pending motions, ECF Nos. 4, 5, and **DENIED**; it is further
ORDERED that the complaint and this case are **DISMISSED** without prejudice.

This is a final appealable Order.

LETANU BROWN JACKSON
United States District Judge

Date: November 30, 2020

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HELGA SUAREZ CLARK,

Plaintiff,

-against-

PERU REPUBLIC, et al.,

Defendants.

18-CV-1740 (CM)

TRANSFER ORDER

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, who resides in Peru and appears *pro se*, brings this action under the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992), note following 28 U.S.C. § 1350.¹ She sues the Republic of Peru, Peruvian government officials, United Nations officials, Organization of American States officials, and others.² While Plaintiff's amended complaint is not very clear, Plaintiff seems to allege that she is both an American citizen and a Peruvian citizen. Her claims appear to arise out of injuries that she suffered in Peru. To the extent that Plaintiff is an American citizen, the Court construes Plaintiff's amended complaint as asserting claims under the Anti-Terrorism Act, 18 U.S.C. § 2333, *et seq.*

¹ Plaintiff has consented to electronic service of Court documents. (ECF No. 4.)

² After Plaintiff filed her original complaint, she filed a motion for leave to file an amended complaint with an attached proposed amended complaint. (ECF No. 5.) The Court denies this motion as unnecessary. *See* Fed. R. Civ. P. 15(a)(1) (allowing amendment of a pleading once as a matter of course); *see also Tracy v. Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010) (special solicitude afforded to *pro se* litigants includes "relaxation of the limitations on the amendment of pleadings"). The Court regards Plaintiff's proposed amended complaint as her actual amended complaint, and as the operative pleading for this action.

Plaintiff has also filed a motion for leave to file a supplemental pleading. (ECF No. 7.) The Court grants that motion as well. *See* Fed. R. Civ. P. 15(d) (allowing supplemental pleadings); *Tracy*, 623 F.3d at 101. The Court regards that motion (ECF No. 7) and Plaintiff's "Offer to Arbitrate" (ECF No. 8) as supplements to Plaintiff's amended complaint.

Plaintiff moves to transfer this action to the United States District Court for the District of Columbia. (ECF No. 6.) For the reasons discussed below, the Court grants that motion and transfers this action to the United States District Court for the District of Columbia.

DISCUSSION

Under the Alien Tort Statute, “[t]he 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.” 28 U.S.C. § 1350. Congress created an express cause of action for Alien Tort Statute violations by passing the Torture Victim Protection Act (“TVPA”), *Jesner v. Arab Bank, PLC*, 138 S. Ct. 1386, 1403 (2018), that is, it “creat[ed] an express cause of action for victims of torture and extrajudicial killing in violation of international law,” *id.* at 1398. The torture or extrajudicial killing must be committed “under actual or apparent authority, or color of law, of any foreign nation.” TVPA §2(a). Alien Tort Statute relief is only available to “an alien.” § 1350; *see Jesner*, 138 S. Ct. at 1404 (plurality opinion, Kennedy, J.).

The Anti-Terrorism Act allows a plaintiff “injured in his or her person, property, or business by reason of an act of international terrorism . . . [to] sue . . . in any appropriate district court of the United States.” 18 U.S.C. § 2333(a).³ But unlike the Alien Tort Statute, the Anti-

³ For the purpose of the Anti-Terrorism Act, the term “international terrorism” means activities that:

- (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
- (B) appear to be intended – (i) to intimidate or coerce a civilian population; (ii) to influence the policy of a government by intimidation or coercion; or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping; and
- (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are

Terrorism Act “provides a cause of action only to ‘national[s] of the United States[.]’⁴ and their ‘estate[s], survivors, or heirs.’” *Jesner*, 138 S. Ct. at 1404 (quoting § 2333(a)) (first alteration in original) (plurality opinion, Kennedy, J.).

A. Venue for Alien Tort Statute/TVPA claims

The Alien Tort Statute, also known as the Alien Tort Claims Act, and the TVPA do not contain their own venue provisions. *See Shaoulian-Tehrani v. Khatami*, No. 06-CV-6868 (DC), 2008 WL 1790386, at *4 (S.D.N.Y. Apr. 21, 2008). Under the general venue statute, 28 U.S.C. § 1391, a civil action against a foreign state may be brought:

(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; . . . (3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in [28 U.S.C. § 1603(b)]; or (4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

28 U.S.C. § 1391(f). Otherwise, under § 1391, a civil action may be brought in:

(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court’s personal jurisdiction with respect to such action.

accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

18 U.S.C. § 2331(1).

⁴ The Anti-Terrorism Act borrows its definition of the term “national of the United States” from Section 101(a)(22) of the Immigration and Nationality Act (“INA”). 18 U.S.C. § 2331(2). Under the INA, “the term ‘national of the United States’ means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.” 8 U.S.C. § 1101(a)(22).

§ 1391(b). For venue purposes, a “natural person” resides in the district where the person is domiciled, and an “entity with the capacity to sue and be sued” resides in any judicial district where it is subject to personal jurisdiction with respect to the civil action in question.

§ 1391(c)(1), (2). But “a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants.” § 1391(c)(3).

Plaintiff sues the Republic of Peru, and individuals residing in Peru, including Peruvian government officials. But she also sues (1) the Peruvian Consul General in New York, (2) officials employed by the United Nations’s Office of the High Commissioner for Human Rights, also located in New York, (3) other individuals located at 866 United Nations Plaza, in New York, and (4) officials employed by the Organization of American States’s Inter-American Commission on Human Rights, in Washington, D.C. While Plaintiff’s amended complaint is not a model of clarity, her claims seem to arise from injuries she sustained in Peru, including injuries resulting from acts by Peruvian government officials. While she names defendants located in New York and in Washington, D.C., she alleges few, if any, facts about them; she alleges a substantial amount of facts about the Republic of Peru and individuals, including Peruvian government officials, who reside in Peru.

Because Plaintiff’s Alien Tort Statute/TVPA claims against the Republic of Peru arise from events that allegedly occurred within Peru, the only proper venue for those claims is the United States District Court for the District of Columbia.⁵ See § 1391(f)(4). Plaintiff’s Alien Tort Statute/TVPA claims against persons residing in Peru can be brought in any federal district

⁵ This Court declines to address whether Plaintiff’s Alien Tort Statute/TVPA claims against the Republic of Peru must be dismissed under the Foreign Sovereign Immunities Act (“FSIA”).

court. *See* § 1391(c)(3). Thus, the United States District Court for the District of Columbia is the only venue in which all of Plaintiff's Alien Tort Statute/TVPA claims for which she has alleged substantial facts – her claims against the Republic of Peru and individuals residing in Peru – can be considered.

B. Venue for Anti-Terrorism Act claims

Anti-Terrorism Act claims “against any person⁶ may be instituted in the district court of the United States for any district where any plaintiff resides or where any defendant resides or is served, or has an agent.” 18 U.S.C. § 2334(a). Plaintiff does not reside in the United States. And the Republic of Peru has an embassy in Washington, D.C., as well as a consulate in New York. The Republic of Peru therefore has agents in both this judicial district and in the District of Columbia. Thus, it appears that both this Court and the United States District Court for the District of Columbia are proper venues for Plaintiff's Anti-Terrorism Act claims against the Republic of Peru.⁷ Plaintiff does not indicate whether any of the other defendants against whom she has raised claims with supporting facts – individuals residing in Peru – can be served, or have an agent, in any judicial district within the United States. It is therefore unclear which court is a proper venue for Plaintiff's Anti-Terrorism Act claims against those defendants.

C. 28 U.S.C. § 1404(a)

The Court may transfer claims “[f]or the convenience of the parties and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a). “District courts have broad discretion in making determinations of convenience under Section 1404(a) and notions of convenience and fairness

⁶ For the purposes of the Anti-Terrorism Act, “the term person’ means any individual or entity capable of holding a legal or beneficial interest in property.” 18 U.S.C. § 2331(3).

⁷ This Court declines to address whether Plaintiff's Anti-Terrorism Act claims against the Republic of Peru must be dismissed under the FSIA.

are considered on a case-by-case basis.” *D.H. Blair & Co. v. Gottdiener*, 462 F.3d 95, 106 (2d Cir. 2006).

In determining whether transfer is appropriate, courts consider the following factors: (1) the convenience of witnesses; (2) the convenience of the parties; (3) the locus of operative facts; (4) the availability of process to compel the attendance of unwilling witnesses; (5) the location of relevant documents and the relative ease of access to sources of proof; (6) the relative means of the parties; (7) the forum’s familiarity with the governing law; (8) the weight accorded to the plaintiff’s choice of forum; (9) trial efficiency; and (10) the interest of justice, based on the totality of circumstances. *Keitt v. N.Y. City*, 882 F. Supp. 2d 412, 458-59 (S.D.N.Y. 2011); *see also N.Y. Marine and Gen. Ins. Co. v. LaFarge No. Am., Inc.*, 599 F.3d 102, 112 (2d Cir. 2010) (setting forth similar factors).

Under § 1404(a), transfer of this action appears to be appropriate. Plaintiff’s claims appear to arise from acts of the Republic of Peru, and acts carried out by individuals, including Peruvian government officials, in Peru. Because the United States District Court for the District of Columbia is the only venue in which Plaintiff can assert both Alien Tort Statute/TVPA claims and Anti-Terrorism Act claims against the Republic of Peru, the Court grants Plaintiff’s motion to transfer this action to that court. *See* § 1404(a).

CONCLUSION

The Court directs the Clerk of Court to assign this matter to my docket and note service on the docket.

The Court denies Plaintiff’s motion for leave to file an amended complaint as unnecessary. (ECF No. 5.) The Court directs the Clerk of Court to file Plaintiff’s proposed amended complaint that is attached to that motion as the amended complaint (and as the

operative pleading) for this action. The Court grants Plaintiff's motion for leave to supplement her amended complaint. (ECF No. 7.) The Court regards that motion (*id.*) and Plaintiff's "Offer to Arbitrate" (ECF No. 8) as supplements to Plaintiff's amended complaint.

The Court also grants Plaintiff's motion to transfer this action to the United States District Court for the District of Columbia (ECF No. 6), and directs the Clerk of Court to transfer this action to that court. This Court leaves to the transferee court any decisions regarding Plaintiff's application to proceed without prepayment of fees (ECF No. 1) and her application for the Court to request *pro bono* counsel (ECF No. 3). A summons shall not issue from this Court. This order closes this case.

The Court certifies, pursuant to 28 U.S.C § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: June 12, 2018
New York, New York



COLLEEN McMAHON
Chief United States District Judge