

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

DAVID MURILLO and
SILVIA MENCÍAS on behalf of themselves
and as Personal Representatives of their
deceased son, ISIS OBED MURILLO,
and his next of kin, including his SIBLINGS
Barrio La Plazuela
Av Cervantes, casa 1301
Tegucigalpa, Honduras

Plaintiff,

v.

COMPLAINT FOR
EXTRAJUDICIAL KILLING;
CRIMES AGAINST
HUMANITY of
MURDER and PERSECUTION;
WRONGFUL DEATH;
INTENTIONAL INFLICTION
OF EMOTIONAL DISTRESS;
and NEGLIGENCE

DEMAND FOR JURY TRIAL

ROBERTO MICHELETTI BAIN,

Defendant.

PRELIMINARY STATEMENT

1. This is a civil action for compensatory and punitive damages against Defendant ROBERTO MICHELETTI BAIN (hereinafter “Defendant” or “Micheletti”) for violation of state, federal, and international law committed against the Plaintiffs and their son, Isis Obed Murillo, who was shot and killed on July 5, 2009, by Honduran military forces while participating in a peaceful gathering at Toncontin International Airport in support of democratically-elected President Manuel Zelaya (hereinafter “President Zelaya” or “Zelaya”).

2. The Honduran military kidnapped and forcibly exiled President Zelaya in a *coup d’etat* on June 28, 2009. Defendant Micheletti assumed control as *de facto* head of state

immediately after Zelaya's illegal arrest and removal and acted as such from June 28, 2009 until January 27, 2010.

3. The removal of President Zelaya was universally condemned as an illegal *coup d'etat* by the United Nations, the Organization of American States, European Union, Inter-American Commission on Human Rights and numerous governments around the world, including that of the United States.¹ Defendant Micheletti was never recognized by the international community as *de jure* head of state.

4. The killing of Isis Murillo was also widely condemned by other governments as well as innumerable human rights organizations in Honduras and around the world.

5. The killing of Isis Murillo was committed as part of the severe crackdown and repression by the *de facto* government that ensued immediately following the *coup* and occurred as part of and in the context of a widespread and/or systematic attack against a civilian population, involving severe repression and political persecution of those in opposition to the *coup* that was carried out under the authority and/or direction of the Defendant Micheletti.

6. Subsequent to Isis Murillo's death, his family, including Plaintiffs, was subject to persecution consisting, *inter alia*, of threats, surveillance and harassment. Several members of the family lost employment and have had to relocate out of concern for their safety. The persecution of Plaintiffs and their family also occurred as part of and in the context of a widespread and/or systematic attack against a civilian population, involving severe

¹ Arshad Mohammad, et al., *Obama Says Coup in Honduras Is Illegal*, Reuters, June 29, 2009, available at <http://www.reuters.com/article/2009/06/29/us-honduras-usa-sb-idUKTRE55S5J220090629>; Secretary of State Press Statement, June 28, 2009, at <http://www.state.gov/secretary/rm/2009a/06/125452.htm> (last accessed June 13, 2011); Department of State, Press Statement: Termination of Assistance and Other Measures Affecting the De Facto Regime in Honduras, Sept. 3, 2009, available at: <http://www.state.gov/r/pa/prs/ps/2009/sept/128608.htm>. (last accessed June 17, 2011).

repression and political persecution of those in opposition to the *coup* that was carried out under the authority and/or direction of the Defendant Micheletti.

7. The Inter-American Commission on Human Rights (hereinafter “IACHR” or “Commission”) conducted extensive hearings about the *coup* and on-site visits and has released a number of reports, findings and statements concerning the events.

8. The IACHR is headquartered in Washington, D.C., and is an autonomous organ of the Organization of American States (hereinafter “OAS”) and derives its mandate from the OAS Charter and the American Convention on Human rights. The Commission represents all member states of the OAS, including Honduras and the United States.

9. The IACHR observed that any of the measures allegedly taken to secure the removal of Zelaya were “patently unlawful”² which was the conclusion also reached by the United States Ambassador to Honduras as evidenced by a recently released U.S. State Department cable.³

10. The IACHR found that serious human rights violations were committed under the *de facto* regime including “killings, arbitrary declarations of a state of emergency, excessive use of force against public demonstrations, arbitrary detention of thousands of persons,” and “arbitrary restrictions on the right to freedom of expression and other serious violations of political rights.”⁴

11. Likewise, the United Nations Office of the High Commissioner for Human Rights (hereinafter “OHCHR”) deployed a mission to Honduras in order to report to the United

² *Honduras: Human Rights and the Coup D’etat*, Inter-Am. C.H.R., OEA/Ser.L/V/II, Dec. 30, 2009, available at: <http://www.cidh.oas.org/countryrep/Honduras09eng/Toc.htm>, at para. 79 (last visited June 13, 2011) (hereinafter “IACHR Honduras Report”).

³ See e.g., *Wikileaks on Latin America: Honduras coup ‘illegal,’* Los Angeles Times, Nov. 29, 2010, <http://latimesblogs.latimes.com/laplaza/2010/11/wikileaks-latin-america-venezuela-honduras-paraguay-argentina.html> (last visited June 13, 2011).

⁴ IACHR Honduras Report, *supra* note 2 at para. 79.

Nations General Assembly about the human rights situation since the *coup*. The OHCHR mission also met with key actors in the *de facto* government as well as civil society leaders and organizations, victims and witnesses of human rights violations.

12. The OHCHR mission confirmed human rights violations involving the “excessive use of force by the security forces and massive numbers of arrests, disrespect for the principles of legality, necessity and proportionality through the imposition of restrictions on fundamental rights, and selective and discriminatory application of Honduran legislation.”⁵

13. The mission further noted that there was consistent, credible information from a number of different sources showing that “security forces carried out serious assaults on persons in the aftermath of the *coup d’etat*, including acts of torture, ill-treatment of detainees and the systematic use of excessive force against people participating in demonstrations.”⁶

JURISDICTION AND VENUE

14. This Court has jurisdiction over Plaintiff’s claims under 28 U.S.C. §1331 (federal question jurisdiction), Pub. L. No. 102-256, 106 Stat. 73 (1992) codified at 28 U.S.C. §1350, note (Torture Victim Protection Act), and 28 U.S.C. §1350 (the Alien Tort Statute) which provides federal jurisdiction for “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.” Plaintiffs also invoke supplemental jurisdiction under 28 U.S.C. §1367 over state law claims.

15. Venue is proper pursuant to 28 U.S.C. §§ 1391(b)(1) and (3) and (d) and this Court has personal jurisdiction over Defendant.

⁵ Report of the United Nations High Commissioner for Human Rights on the Violations of Human Rights in Honduras Since the Coup D’etat on 28 June 2009, A/HRC/13/66, March 3, 2010, at p. 1, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-66.pdf> (last accessed June 13, 2011).

⁶ *Id.* at para. 24.

THE PARTIES

Plaintiff

16. Plaintiff David Murillo is the father of decedent Isis Murillo, who was killed by Honduran military forces on July 5, 2009. He is a citizen and resident of Honduras and is suing on his own behalf and on behalf of his deceased son.

17. Plaintiff Silvia Mencías is the mother of Isis Murillo, who was killed by Honduran military forces on July 5, 2009. She is a citizen and resident of Honduras and is suing on her own behalf and on behalf of her deceased son.

Defendant

18. Upon information and belief, Defendant Micheletti is a citizen of Honduras, but owns a residence in the state of Texas, which he purchased subsequent to the *coup d'etat*. In addition to his residence, Defendant Micheletti also owns other properties, possesses business interests and has an agent for service in the state of Texas. Defendant was president of the Honduran National Congress before the *coup d'etat* of June 28, 2009, and assumed the role as head of the *de facto* government on the same day as the *coup*. At all times relevant hereto Defendant Micheletti held and exercised *de facto* control of executive power in Honduras and exercised authority over the government, military and Honduran National Police (hereinafter "HNP") as *de facto* head of state.

ALLEGATIONS OF FACT

Coup d'Etat of June 28, 2009: Arbitrary Arrest, Kidnapping, Forced Exile

19. In the early morning hours of Sunday, June 28, 2009, at or about 5 a.m., hooded Honduran Army troops stormed the presidential residence in Tegucigalpa and forcibly seized and kidnapped President Zelaya, the democratically-elected president of Honduras.

20. The soldiers fired their weapons at the door of the residence to gain entry into the home in which President Zelaya's daughter Xiomara Hortensia Zelaya was also staying and who was forced to hide under a bed to escape capture by the troops.

21. President Zelaya was then taken at gunpoint to the Toncontin airport just outside of Tegucigalpa and forced onto the presidential plane which was then flown to the Soto Cano Airbase. Also known as 'Palmerola,' the facility serves as a military base and airfield that is also home to a number of United States troops and operations.

22. The plane carrying Zelaya remained on the tarmac at Soto Cano for approximately twenty minutes, with Zelaya still under armed guard, before departing for a destination unknown to Zelaya at the time.

23. At approximately 7:30 a.m., the plane landed in San Jose, Costa Rica. Upon landing at the airport in San Jose, President Zelaya was forcibly removed from the plane and left standing on the runway as the plane then immediately took off.

24. No order or warrant of any kind was presented, shown or mentioned at any time during the storming of Zelaya's residence, his arrest or forced removal from the country.

25. President Zelaya, still in his pajamas, was soon after contacted by Costa Rican President Oscar Arias by phone at the airport at which time Zelaya reported to him what had occurred. Zelaya requested that the media be notified and a press conference was quickly scheduled.

26. Upon news of these events, President Zelaya's unlawful removal was immediately and universally denounced as illegal and a *coup d'etat* by, *inter alia*, the United Nations, the Organization of American States, the Inter-American Commission of Human Rights and the

European Union, as well as by numerous governments around the world, including the United States, with calls for Zelaya's immediate return and reinstatement.

27. Back in Honduras, power supply was cut throughout many communities resulting in an information blackout, rendering it impossible for those in Honduras to get more information and news concerning the status of Zelaya and the government.

28. Additionally, television and radio broadcasts were suspended.

29. Honduran security forces entered some news outlets and ordered them to stop broadcasting and cut off power supply.

30. Sometime later that morning and after President Zelaya had already been kidnapped by the military, forcibly removed from the country and abandoned on a runway in Costa Rica, the National Congress convened a session where the Secretary of the Congress read a purported letter of resignation from President Zelaya wherein ill-health and "political erosion" were cited in the letter as reasons for his stepping down.

31. The terms of the purported resignation also extended to Zelaya's cabinet members.

32. By a purportedly unanimous vote, Legislative Decree 141-09 was adopted which ordered that "citizen Manuel Zelaya Rosales be removed from the office of President" and that "citizen Roberto Micheletti Bain be... constitutionally appointed [...] to the office of Constitutional President of the Republic for the remainder of the current term."

33. The alleged resignation and subsequent decree were used by the Defendant and other leaders involved in the *coup* conspiracy to suggest initially that there had been no *coup*, but a democratic transition.

34. In Costa Rica, President Zelaya announced to the media that he had not signed any letter of resignation.

35. Shortly thereafter, Micheletti and other proponents of the *coup* stopped referring to his resignation and began instead to suggest that Zelaya's removal had been pursuant to an arrest order issued by the Supreme Court.

The Killing of Isis Obed Murillo

36. On July 5, 2009, President Zelaya attempted to return to Honduras and restore the democratically-elected government. Zelaya intended to fly by airplane to Honduras and land at Toncontin International Airport in Tegucigalpa, the capital.

37. Isis Obed Murillo was 19 years old and originally from the department of Olancho in Honduras and worked at a supermarket stocking groceries in the Villeda Morales community before the *coup*.

38. Isis Obed Murillo, along with members of his family, joined with thousands of other opponents of the *coup* at the airport on July 5, 2009 for a non-violent, peaceful gathering to welcome Zelaya back and support the restoration of the democratically-elected government.

39. Zelaya's plane was not allowed to land at Toncontin as the Honduran military had blocked the runway with military vehicles.

40. Upon information and belief, the Honduran Army stationed sharpshooters on nearby buildings.

41. At or around the time that Zelaya's plane was attempting to land and was being blocked from doing so, the Honduran Army shot Isis Murillo in the head and killed him.

42. Others present at the gathering attempted to get Isis to a hospital but he died moments after being shot.

43. To date, no one has been charged or prosecuted for the killing of Isis Murillo.

44. Conditions in Honduras render any attempt at redress impossible.

45. According to prosecutors in the Human Rights Unit of the Honduran Attorney General's office, military officials have obstructed their investigations and further that "[d]uring the de facto government of Roberto Micheletti, lack of cooperation of military and police personnel was '*absolute*' and '*a common practice*'".⁷ (emphasis added)

46. With respect to Isis Murillo's case, prosecutors stated that the military refused outright to cooperate and that the courts refused to order the military's cooperation.

The Persecution of Plaintiffs and Decedent's Family

47. Plaintiff David Murillo was also present at the gathering at Toncontin airport where his son Isis was shot and killed, which caused him severe mental pain and suffering and emotional and physical distress.

48. Subsequent to Isis' killing, Plaintiffs and their family began receiving threatening and/or harassing calls and texts.

49. Subsequent to Isis' killing, Plaintiffs and their family were subjected to surveillance and harassment by police and other actors.

50. Shortly after Isis' death, police helicopters flew low over Plaintiffs' home approximately four times. The helicopter would circle over the house so low that Plaintiff could see police looking at him through binoculars and could see their weapons drawn.

⁷ *Honduras After the Coup: Ongoing Violence, Intimidation, and Impunity in Honduras*, Human Rights Watch, Dec. 2010, available at: <http://www.hrw.org/en/reports/2010/12/21/after-coup-0> (hereinafter "HRW Report")

51. On at least one occasion, fliers were dropped from the helicopter which stated that what happened to Plaintiff David Murillo's son would also happen to him.

52. Plaintiff received other messages via text and phone which contained similar threats.

53. Plaintiffs were forced to relocate to another community in an effort to escape the constant threats, surveillance and harassment and have had difficulty finding work and feeling secure in their persons, home and communities.

54. Plaintiffs' daughter was followed to and surveilled at work several times by persons who took her photograph. She was ultimately fired from the job as a result of the controversy surrounding her brother's death and the harassment she received at work.

55. The threats, harassment, surveillance and menacing actions of the police and others associated with the *coup* state have compounded the grief, shock, trauma and mental suffering of the Plaintiffs and decedent's other next of kin.

Persecution of Opponents of the *Coup* and *Coup* Regime

56. Upon Micheletti's assumption of power, severely repressive tactics were used to crack down on protests, and numerous and grave human rights violations were committed against those opposed to the *coup* on a widespread and/or systematic basis.

57. The period of the *de facto* regime's rule in Honduras was characterized by widespread and/or systematic attacks against the civilian population of Honduras, in particular politicians, public officials, media outlets, human rights defenders and citizens who opposed the *coup* and the *coup* government.

58. The attacks included the severe deprivation of fundamental rights, including, *inter alia*, the rights to life, liberty, expression, and assembly.

59. Defendant Micheletti oversaw an intensive and stark increase in the militarization of Honduran territory through the widespread and arbitrary use of roadblocks, arbitrary detentions and mobilization and use of military and police forces with regard to public demonstrations and enforcement of media bans.

60. In particular, the IACHR observed that the grave human rights violations committed under the Micheletti regime included:

“killings, an arbitrary declaration of a state of emergency, disproportionate use of force against public demonstrations, criminalization of public protest, arbitrary detention of thousands of persons, cruel, inhuman and degrading treatment, poor detention conditions, militarization of Honduran territory, an increase in incidents of racial discrimination, violations of women’s rights, severe and arbitrary restrictions on the right to freedom of expression, and serious violations of political rights.”⁸

61. The IACHR also concluded that “security forces conducted thousands of unlawful and arbitrary detentions, without an order from a competent authority” and that detainees were not brought before a competent authority to review the lawfulness of their detention and many were held incommunicado.

62. The IACHR further found that the conditions under which persons were detained combined with the disproportionate use of force by the Army, Police and Cobra Special Strike Force “meant that thousands of [persons] were subjected to inhuman, cruel and degrading treatment and even torture.”⁹

63. Additionally, the *de facto* regime issued a number of executive decrees that, according to the IACHR, imposed unreasonable and illegitimate restrictions on the rights to freedom of expression and assembly.¹⁰

⁸ IACHR Honduras Report, *supra* note 2 at para 6.

⁹ *Id.* at para. 554.

¹⁰ *Id.* at para. 556.

64. Immediately after the *coup*, Micheletti's *de facto* regime issued an emergency decree suspending constitutional guarantees of personal liberty and not to be held incommunicado, and the rights of association, assembly and freedom of movement. The decree was enforced by security forces.

65. The state of emergency was determined by the IACHR to have been illegitimately and unlawfully decreed, arbitrarily used by the *de facto* regime, discriminatorily applied and illegitimately extended.

66. The IACHR identified 7 cases of extra-judicial killings of opponents of the *coup* and/or *de facto* regime, including Isis Murillo, in the weeks after the *coup*.

67. The Micheletti regime also began targeting political opponents who held office.

68. The IACHR confirmed many reports of public officials, including "ministers, governors, members of Congress and mayors" opposed to the *coup*, who "were targets of political reprisals, threats, acts of violence, budgetary cuts and even military occupation of their offices."¹¹

69. The IACHR confirmed through its investigations and on-site visits that "dissonant or critical opinions were prohibited and the security forces were authorized to search and confiscate broadcasting and transmission equipment, when in the opinion of the *de facto* authorities, the media were engaging in behavior prohibited under existing laws."¹²

70. Immediately after the *coup*, the National Telecommunications Commission instructed cable television providers to take international channels, in particular CNN and TeleSUR, off the air.

¹¹ IACHR Honduras Report, *supra* note 2 at para. 555.

¹² *Id.* at para. 557.

71. On the day of the *coup*, military forces took over Radio Juticalpa, located in the department of Olancho, and Radio La Catracha and TV Station Cholusat Sur, which were kept off the air by the military for eight days.

72. On July 16, 2009, approximately 20 military officers were ordered to close Radio Progreso and take it off the air on the grounds that it was 'inciting insurrection.' Military officers forcibly entered the station and ordered the radio staff to stop broadcasting.

73. Executive Decree PCM-M-016-2009, was issued by the Micheletti regime on September 22, 2009, and prohibited any publication "that offends human dignity or the dignity of public officials, or that violates the law and government decisions."¹³

74. Under the decree, the National Telecommunications Commission was authorized to interrupt broadcasting by any radio station, television channel or cable system that in its judgment was in violation of the decree.

75. Based on that decree, on September 28, 2009, security forces raided the premises of Channel 36, Radio Globo, Radio La Catracha, and Radio Cholusat Sur and confiscated their broadcasting equipment.

76. The stations had been critical of the *coup* and *de facto* government.

77. Likewise, on October 7, 2009, Executive 'Decision' 124-2009 was issued which ordered the National Telecommunications Commission and "other competent organs of the State" to "revoke the permits and operating licenses" previously "granted to operators of radio and television stations that broadcast messages that seek to justify hatred against the nation and violation of protected rights and claims... ."

78. The aforementioned acts of killings, arbitrary detentions and threats, harassment, reprisals, subjection to cruel, inhuman and degrading treatment, and media bans and

¹³ *Id.* at para 504.

ensorship were part of a widespread and/or systematic attacked against a civilian population, namely the political opposition to the *coup* and *coup* government and were intended to weaken, threaten, and/or terrorize any opposition to the *coup* and *de facto* government.

79. Defendant Micheletti served as *de facto* head of state from June 28, 2009, until January 27, 2010, at which time Porfirio Lobo assumed the role of head of state after elections which were widely criticized as not being free and fair.

80. Defendant Micheletti was never recognized by the international community as *de jure* head of state of Honduras.

Defendant Micheletti's Command Responsibility

81. At all times relevant hereto Micheletti held *de facto* control of executive power in Honduras and exercised authority over the government, military and Honduran National Police as *de facto* head of state.

82. Defendant Micheletti himself asserted that the Honduran military was wholly subject to civilian authority in an article in the Wall Street Journal. Defendant asserted that “[the government of Honduras] is and has always been an entirely civilian government” and that Zelaya’s “removal was ordered by an entirely civilian and elected Congress.”¹⁴

83. Subsequent to the *coup*, a letter surfaced which was dated June 26, 2009, from Defendant Micheletti to General Romeo Vasquez Velasquez (hereinafter “Vasquez Velasquez”), head of the Honduran armed forces, in which Micheletti wrote to “remind” the general “of the mission to be performed on 28 June” and that “those people who say they are Hondurans who want to change our constitution do not deserve to be in this country.”

¹⁴ Roberto Micheletti, *The Path Forward for Honduras*, Wall Street Journal, Jul. 27, 2009, available at http://online.wsj.com/article_email/SB10001424052970204886304574311083177158174-1MyQjAxMDA5MDIwNzEyNDcyWj.html (last visited June 13, 2011).

84. Two days later, it was Gen. Vasquez Velasquez who ordered and oversaw President Zelaya's kidnapping and forced exile.

85. Micheletti's letter of June 26, 2009, to Gen. Vasquez is evidence that he was asserting authority over the military even before the *coup* was complete.

86. The IACHR noted the significant increase in the militarization of Honduran territory when Micheletti assumed power and the increased use of military and security forces against demonstrators, political opponents and human rights defenders and to enforce media bans like those mentioned above.

87. Human rights prosecutors in the Honduran Attorney General's office noted that under Micheletti, the military's lack of cooperation with human rights investigations was "*absolute*" and "*a common practice*," indicating that he was heavily influencing the policies and practices of the military and was responsible for a total failure to prosecute or punish subordinates for established and grave human rights violations.

88. Micheletti authorized, ordered, planned, condoned, induced and/or instigated the military to carry out executive decrees and decisions that he promulgated, particularly with respect to targeted repression of the media and confiscation of equipment, and to threaten and intimidate political opponents.

89. A superior-subordinate relationship existed between Micheletti and the person or persons who committed the offenses alleged herein.

90. Micheletti knew or should have known, owing to the circumstances at the time, that his subordinates had committed, were committing, or planned to commit the offenses alleged herein.

91. Micheletti failed to take all necessary and reasonable measures to prevent these abuses or failed to punish the subordinates after the commission of the acts alleged herein.

FIRST CLAIM FOR RELIEF
Extrajudicial Killing

92. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 91 of this Complaint as if fully set forth herein.

93. With regard to the events alleged herein, Defendant acted under the apparent authority and/or color of law as *de facto* head of state of Honduras.

94. The killing of decedent was deliberate and not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees that are recognized as indispensable by civilized peoples. The killing was not lawfully carried out under the authority of any country or court.

95. The killing of Decedent constitutes extrajudicial killing as defined by the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350, note). Additionally, the killing constitutes torts committed in violation of the law of nations, and thus of the United States, as reflected in federal common law which incorporates extrajudicial killing as a violation, pursuant to 28 U.S.C. §§ 1331 and 1350. The conduct constitutes violations of the law of nations and customary international law prohibiting extrajudicial killing, reflected, expressed, defined, and codified in multilateral treaties and other international instruments and domestic judicial decisions, and other authorities.

96. Defendant's acts and omissions caused Plaintiff and Decedent's next of kin to suffer damages, including severe physical and mental pain and suffering, in amounts to be determined at trial.

97. Defendant's acts and omissions were deliberate, willful, intentional, wanton, malicious, and/or oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

98. Defendant is liable for said conduct in that he requested, confirmed, ratified, incited and/or conspired with the Honduran Armed Forces and National Police or persons or groups acting in coordination with the Armed Forces or under their control to bring about these violations.

99. In addition, or in the alternative, Defendant is liable for the conduct committed by subordinates, caused the violations alleged and caused plaintiff and decedent's family to experience severe mental pain and suffering.

100. The conduct alleged is actionable under the Alien Tort Statute, 28 U.S.C. 1350, and the Torture Victim Protection Act, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. 1350 note).

SECOND CLAIM FOR RELIEF
Crime Against Humanity of Murder

101. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 100 of this Complaint as if fully set forth herein.

102. The killing of decedent was committed as part of a widespread or systematic attack against a civilian population and was committed with knowledge of the attack.

103. Defendant's acts and omissions caused Plaintiff and Decedent's next of kin to suffer damages, including severe physical and mental pain and suffering, in amounts to be determined at trial.

104. Defendant's acts and omissions were deliberate, willful, intentional, wanton, malicious, and/or oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

105. Defendant is liable for said conduct in that he requested, confirmed, ratified, incited and/or conspired with the Honduran Armed Forces and National Police or persons or groups acting in coordination with the Armed Forces or under their control to bring about these violations.

106. In addition, or in the alternative, Defendant is liable for the conduct committed by subordinates, caused the violations alleged and caused Plaintiffs and decedent's family to experience severe mental pain and suffering.

107. The conduct alleged violates the customary international law prohibiting crimes against humanity and is actionable under the Alien Tort Statute.

THIRD CLAIM FOR RELIEF

Crime Against Humanity of Persecution: Killing of Isis Murillo

108. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 107 of this Complaint as if fully set forth herein.

109. The conduct described herein deprived Isis Murillo of his fundamental right to life, contrary to international law.

110. The person or persons who killed Isis Murillo targeted him on political grounds, by reason of his affiliation with a group or collectivity, namely pro-Zelaya supporters and opponents of the *coup*.

111. The conduct was committed as part of a widespread or systematic attack directed against a civilian population and was committed with knowledge of the attack.

112. Defendant's acts and omissions caused Plaintiffs and Decedent's other next of kin to suffer damages, including severe physical and mental pain and suffering, in amounts to be determined at trial.

113. Defendant's acts and omissions were deliberate, willful, intentional, wanton, malicious, and/or oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

114. Defendant is liable for said conduct in that he requested, confirmed, ratified, incited and/or conspired with the Honduran Armed Forces and National Police or persons or groups acting in coordination with the Armed Forces or under their control to bring about these violations.

115. In addition, or in the alternative, Defendant is liable for the conduct committed by subordinates, caused the violations alleged and caused plaintiffs and decedent's family to experience severe mental pain and suffering.

116. The conduct alleged violates the customary international law norm prohibiting persecution and crimes against humanity and is actionable under the Alien Tort Statute.

FOURTH CLAIM FOR RELIEF
Crime Against Humanity of Persecution: Plaintiffs and Decedent's Family

117. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 116 of this Complaint as if fully set forth herein.

118. The conduct alleged herein deprived Plaintiffs and decedent's other next of kin of fundamental rights, contrary to international law, including, *inter alia*, their right to be free from cruel, inhuman and degrading treatment, their right to be secure in their persons, and their rights to association, peaceful assembly and equal protection of the law.

119. Plaintiffs and decedent's next of kin were targeted on political grounds, by reason of their affiliation with a group or collectivity, namely pro-Zelaya supporters and opponents of the *coup*.

120. The conduct was committed as part of a widespread or systematic attack directed against a civilian population and was committed with knowledge of the attack.

121. Defendant's acts and omissions caused Plaintiffs and Decedent's other next of kin to suffer damages, including severe physical and mental pain and suffering, in amounts to be determined at trial.

122. Defendant's acts and omissions were deliberate, willful, intentional, wanton, malicious, and/or oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

123. Defendant is liable for said conduct in that he requested, confirmed, ratified, incited and/or conspired with the Honduran Armed Forces and National Police or persons or groups acting in coordination with the Armed Forces or under their control to bring about these violations.

124. In addition, or in the alternative, Defendant is liable for the conduct committed by subordinates, caused the violations alleged and caused plaintiffs and decedent's family to experience severe mental pain and suffering.

125. The conduct alleged violates the customary international law norm prohibiting crimes against humanity and is actionable under the Alien Tort Statute.

FIFTH CLAIM FOR RELIEF
Crime Against Humanity of Inhumane Acts

126. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 125 of this Complaint as if fully set forth herein.

127. The conduct alleged herein caused great suffering, and/or serious injury to body or to mental or physical health, by means of an inhumane act or acts.

128. The conduct was committed as part of a widespread or systematic attack against a civilian population, with knowledge of the attack.

129. Defendant's acts and omissions caused Plaintiff and Decedent's next of kin to suffer damages, including severe physical and mental pain and suffering, in amounts to be determined at trial.

130. Defendant's acts and omissions were deliberate, willful, intentional, wanton, malicious, and/or oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

131. Defendant is liable for said conduct in that he requested, confirmed, ratified, incited and/or conspired with the Honduran Armed Forces and National Police or persons or groups acting in coordination with the Armed Forces or under their control to bring about these violations.

132. In addition, or in the alternative, Defendant is liable for the conduct committed by subordinates, caused the violations alleged and caused plaintiff and decedent's family to experience severe mental pain and suffering.

133. The conduct alleged violates the customary international law norm prohibiting crimes against humanity and is actionable under the Alien Tort Statute.

SIXTH CLAIM FOR RELIEF
**Violation of the Right to Life, Liberty and Security of Person
and Freedom of Assembly and Association**

134. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 133 of this Complaint as if fully set forth herein.

135. The killing of Isis Murillo violated his right to life, liberty and security of person, and his rights to association and peaceful assembly, for which Defendant may be held liable.

136. The conduct alleged herein also deprived Plaintiffs and decedent's family of their rights to security of person, right to association and to peaceful assembly in violation of customary international law.

137. Defendant's acts and omissions caused Plaintiff and Decedent's next of kin to suffer damages, including severe physical and mental pain and suffering, in amounts to be determined at trial.

138. Defendant's acts and omissions were deliberate, willful, intentional, wanton, malicious, and/or oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

139. Defendant is liable for said conduct in that he requested, confirmed, ratified, incited and/or conspired with the Honduran Armed Forces and National Police or persons or groups acting in coordination with the Armed Forces or under their control to bring about these violations.

140. In addition, or in the alternative, Defendant is liable for the conduct committed by subordinates, caused the violations alleged and caused plaintiff and decedent's family to experience severe mental pain and suffering.

141. The conduct alleged violates customary international law and is actionable under the Alien Tort Statute.

SEVENTH CLAIM FOR RELIEF
Wrongful Death

142. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 141 of this Complaint as if fully set forth herein.

143. Defendant owed a duty to Decedent to refrain from intentional and wantonly harmful or outrageous conduct. Defendant owed a duty to Decedent because he was a foreseeable victim of the attack on the Zelaya supporters.

144. Defendant breached that duty by authorizing, or failing to prevent or punish the opening of fire on the crowd of pro-democracy Zelaya supporters, where Defendant knew or should have known that persons in the crowd would be killed and wounded.

145. As a direct and proximate cause of Defendant's breach of duty, Decedent was killed. It was reasonably foreseeable that the opening of fire by the military would result in such a death.

146. Plaintiffs are the personal representatives of their deceased son and bring this suit on their own behalf and on behalf of siblings.

147. Defendant's acts and omissions described herein caused Plaintiff and all of Decedent's next of kin to suffer damages due to mental pain and anguish, medical and funeral expenses, and loss of future support and services, including pecuniary damages, in an amount to be proven at trial.

148. Defendant's acts and omissions were deliberate, willful, intentional, wanton, malicious, and/or oppressive, and should be punished by an award of punitive damages in an amount to be determined at trial.

EIGHTH CLAIM FOR RELIEF
Intentional Infliction of Emotional Distress

149. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 148 of this Complaint as if fully set forth herein.

150. The acts described herein constitute extreme and outrageous conduct against the Decedent. The acts terrorized Decedent's family, including Plaintiffs.

151. Defendant Micheletti intended to cause Plaintiffs and decedent's family to suffer emotional distress, or in the alternative, Defendant or his agents engaged in conduct with reckless disregard of the high probability of causing Plaintiff and decedent's next of kin to suffer emotional distress.

152. Plaintiffs and decedent's family suffered severe emotional distress and the outrageous conduct of Defendant was a cause of the emotional distress suffered by Plaintiffs and decedent's family.

153. Defendant Micheletti or his agents' outrageous conduct constitutes intentional infliction of emotional distress and Plaintiffs are entitled to compensatory and punitive damages in amounts to be ascertained at trial.

NINTH CLAIM FOR RELIEF
Negligence

154. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 153 of this Complaint as if fully set forth herein.

155. Defendant failed to use ordinary or reasonable care to avoid injury to decedent, Plaintiffs and the rest of decedent's family. Defendant's negligence was a cause of injury, damage, loss or harm to Plaintiffs and decedent's family.

156. As a result of these acts, Plaintiffs and decedent's family suffered emotional harm including, but not limited to, physical and mental injury, pain and suffering, and severe emotional distress. Defendant's conduct constitutes negligence and Plaintiffs are entitled to compensatory and punitive damages in amounts to be ascertained at trial.

PRAYER FOR RELIEF

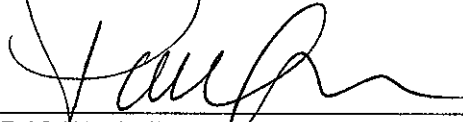
WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

- a. For compensatory damages in an amount to be proven at trial;
- b. For punitive and exemplary damages in an amount to be proven at trial;
- c. For reasonable attorneys' fees and costs of suit;
- d. For a declaratory judgment holding that Defendant's conduct was in violation of the law of nations.
- e. For all such other and further relief as the Court may deem just and proper.

A jury trial is demanded on all issues.

Dated: 6/22/11

Respectfully submitted,



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