

CHIQUITA'S ALLEGED VICTIMS CAN SUE FOR TORTURE, BUT NOT TERRORISM

As fatster noted, Judge Kenneth Marra has allowed the suit against Chiquita for its support of Colombian terrorists to go forward. But the ruling is fascinating, because it holds that the plaintiffs can sue for Chiquita's involvement in torture, but not for its involvement in terrorism.

Relying in part on a 1984 Robert Bork opinion finding there was “international law and the rules of warfare as they now exist are inadequate to cope with this new mode of conflict,” Marra ruled the Alien Tort Statute doesn't apply to terrorism. (Note, Marra also cited more recent District Court rulings on this issue.)

So in spite of our decade-long war against terrorism, it appears corporations can support terrorism in other countries and not be held liable.

But unlike terrorism, torture, extra-judicial killing, and crimes against humanity are widely recognized under international law to qualify for the ATS, so plaintiffs can sue for Chiquita's involvement in it.

Marra also rejected Chiquita's claim that it could not be held liable under the Torture Victims Protection Act.

Chiquita first argues that the “plain reading of the TVPA strongly suggests that it only covers human beings, and not corporations.” First Mot. at 68 (DE 93) (quoting Exxon Mobil, 393 F. Supp. 2d at 28). This limitation to individuals, Chiquita contends, bars Plaintiffs' TVPA claims against it, a

corporation. Recent Eleventh Circuit precedents, however, hold that “‘an individual’ to whom liability may attach under the TVPA also includes a corporate defendant.” *Sinaltrainal*, 578 F.3d at 1264 n.13; see also *Romero*, 552 F.3d at 1315 (“Under the law of this

Circuit, the Torture Act allows suits against corporate defendants.”). Thus, under the precedent of this Circuit, the Court rejects Chiquita’s first basis for dismissal.

Particularly gratifying, a key part of Chiquita’s liability was its intent to support AUC’s violence. Marra notes, for example, that plaintiffs had shown Chiquita supported AUC in part to quell labor unrest.

The AUC’s agreement with Chiquita involved forcing people to work using threats and illegal violence, as well as the quelling of labor and social unrest through the systematic terrorization of the population of Uraba.

[snip]

The complaints here contain sufficient “‘factual content that allows the court to draw the reasonable inference’” that Chiquita assisted the AUC with the intent that the AUC commit torture and killing in the banana-growing regions.

So in American courts, corporations like Jeppesen helping the US commit torture won’t be held liable for torture. But corporations like Chiquita helping terrorists and other governments torture may well be held liable!