



APPENDIX 5.6

EXCERPTS FROM AGAPITA TRAJANO; ARCHIMEDES TRAJANO, PLAINTIFFS-APPELLEES, v. FERDINAND E. MARCOS, DEFENDANT, AND IMEE MARCOS-MANOTOC, DEFENDANT-APPELLANT

The facts of this case are no longer in dispute, as far as U.S. courts are concerned. Imelda “Imee” Marcos-Manotoc, through forces under her control, caused the wrongful death of student Archimedes Trajano in 1977. It should be noted that these facts became undisputed because of Imee Marcos’s default in 1986. In that year, the Marcoses successfully had the case dismissed on purely legal—i.e., jurisdictional—grounds. However, that same dismissal was reversed, specifically by *Trajano v. Marcos*, 878 F2d 1439, an unpublished disposition decided on 10 July 1989. Having opted not to challenge the facts stated by the plaintiffs, the defense strategy adopted by the Marcoses led to Imee’s undoing. She tried to have the entry of default lifted in 1991 on the basis of insufficiency of service, but that attempt failed; had they not been adequately served in 1986, would the Marcoses have been able to file their defense? Despite the case having been decided with finality in the United States, it was not successfully enforced in the Philippines. *Manotoc v. Court of Appeals*, G.R. No. 130974, promulgated on 16 August 2006, written by Justice Presbitero Velasco, dismissed the civil case complaint that was meant to lead to the enforcement of the U.S. decision purely on technical grounds—i.e., once again, insufficiency of service.

No. 91-15891.

D.C. No. CV-86-207-MLR

OPINION

Appeal from the United States District Court for the District of Hawaii.

Manuel L. Real, District Judge, Presiding

Argued and Submitted

June 8, 1992—San Francisco, California

978 F.2d 493

116 A.L.R.Fed. 765, 61 USLW 2257

In re ESTATE OF FERDINAND E. MARCOS HUMAN RIGHTS LITIGATION.

Agapita TRAJANO; Archimedes Trajano, Plaintiffs-Appellees,

v.

Ferdinand E. MARCOS, Defendant,

and

Imee Marcos-Manotoc, Defendant-Appellant.

No. 91-15891.

United States Court of Appeals,
Ninth Circuit.

Argued and Submitted June 8, 1992.

Decided Oct. 21, 1992.

Bernard J. Rothbaum, Jr., Linn & Helms, Oklahoma City, Okl. (argued the case), Donald C. Smaltz, Smaltz & Anderson, Los Angeles, Cal. (signed the briefs), for defendant-appellant.

Jon M. Van Dyke, Sherry P. Broder and Lillian Ramirez-Uy, Graulty, Ikeda & Ramirez-Uy, Honolulu, Hawaii, for plaintiffs-appellees.

Ellen Lutz, Los Angeles, Cal., for amicus curiae Human Rights Watch.

Harold Hongju Koh, New Haven, Conn., Michael Ratner, New York City, for amici curiae Allard K. Lowenstein Intern. Human Rights Clinic and the Center for Constitutional Rights.

Appeal from the United States District Court for the District of Hawaii.

Before BROWNING, PREGERSON and RYMER, Circuit Judges.

RYMER, Circuit Judge:

1

After former Philippine President Ferdinand Marcos and his daughter, Imee Marcos-Manotoc, fled to Hawaii in 1986, they were sued in federal court by Agapita Trajano, a citizen of the Philippines who then lived in Hawaii, for the torture and wrongful death of Trajano's son, Archimedes, in the Philippines on August 31, 1977.¹ Marcos-Manotoc did

Figure 1. A copy of the case.

Source: United States Court of Appeals, Ninth Circuit. 1992. "Agapita TRAJANO; Archimedes Trajano, Plaintiffs-Appellees, v. Ferdinand E. MARCOS, Defendant, and Imee Marcos-Manotoc, Defendant-Appellant." No. 91-15891, D.C. No. CV-86-207-MLR.

Filed October 21, 1992

Before: James R. Browning, Harry Pregerson and Pamela Ann Rymer,
Circuit Judges

OPINION

RYMER, Circuit Judge:

After former Philippine President Ferdinand Marcos and his daughter, Imee Marcos-Manotoc, fled to Hawaii in 1986, they were sued in federal court by Agapita Trajano, a citizen of the Philippines who then lived in Hawaii, for the torture and wrongful death of Trajano's son, Archimedes, in the Philippines on August 31, 1977.¹ Marcos-Manotoc did not appear and a default judgment was entered against her. On appeal, she contends that the district court lacked subject-matter jurisdiction under the Alien Tort Statute, 28 U.S.C. § 1350, and that the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602-11, does not authorize a federal court to assert jurisdiction, over actions taken by a foreign government against its own citizens.² We have jurisdiction under 28 U.S.C. § 1291, and affirm.

I

In August of 1977, Ferdinand Marcos was President of the Philippines, Marcos-Manotoc was the National Chairman of the Kabataang Barangay, and Fabian Ver was in charge of military intelligence. Archimedes Trajano was a student at the Mapua Institute of Technology. On the 31st of August, Trajano went to an open forum discussion at which Marcos-Manotoc was speaking. When Trajano asked a question about her appointment as director of an organization, he was kidnapped, interrogated, and tortured to death by military intelligence personnel who were acting under Ver's direction, pursuant to martial law declared by Marcos, and under the authority of Ver, Marcos, and Marcos-Manotoc. He was tortured and murdered for his political beliefs and activities. Marcos-Manotoc controlled the police and military intelligence personnel who tortured and murdered Trajano, knew they were taking him to be tortured, and caused Trajano's death.

In February of 1986, Marcos, Marcos-Manotoc, General Ver and others left the Philippines and arrived at Hickam Air Force Base in Hawaii. On March 20, 1986, Agapita Trajano filed her complaint in the United States District Court for the District of Hawaii.³ The complaint seeks damages on behalf of the estate of Archimedes Trajano

for false imprisonment, kidnapping, wrongful death, and a deprivation of rights, and on behalf of Trajano's mother for emotional distress. Default was entered against Marcos-Manotoc on May 29, 1986. In 1991, she moved to set aside entry of default on the ground of insufficiency of service. The motion was denied and, after a damages hearing, judgment was entered based on the court's findings that Trajano was tortured and his death was caused by Marcos-Manotoc. The court concluded that this violation of fundamental human rights constitutes a tort in violation of the law of nations under 28 U.S.C. § 1350, and awarded damages of \$4.16 million and attorneys' fees pursuant to Philippine law.⁴

There is no doubt, as the district court found, that causing Trajano's death was wrongful, and is a tort.¹⁵ Nor, in view of Marcos-Manotoc's default, is there any dispute that Trajano's death was caused by torture. And, as we have recently held, "it would be unthinkable to conclude other than that acts of official torture violate customary international law." *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 717 (9th Cir.1992).

We believe, therefore, that Trajano's suit as an alien for the tort of wrongful death, committed by military intelligence officials through torture prohibited by the law of nations, is within the jurisdictional grant of § 1350.

Marcos-Manotoc argues, however, that the district court erred in assuming jurisdiction of a tort committed by a foreign state's agents against its nationals outside of the United States, and having no nexus to this country. If § 1350 were construed to confer jurisdiction under these circumstances, she asserts, it would exceed the constitutional limits on federal court jurisdiction under Article III of the Constitution. We disagree.

¹⁵Marcos-Manotoc does not contend that the actions alleged do not give rise to tort liability for wrongful death both in the Philippines and in Hawaii. Because the case comes to us after entry of a default judgment, and she does not appeal the district court's award of damages pursuant to Philippine law, we have no call to decide issues pertaining to choice of law.

IV

At most, Marcos-Manotoc argues, the district court had jurisdiction under § 1350 to determine whether Trajano had a separate, substantive

cause of action; none exists, she contends, because neither the treaties set out in the complaint nor the law of nations provides a private cause of action.²² Thus, to the extent the court's decision relies upon either treaties or international law, Marcos-Manotoc submits it is erroneous.

The district court in fact agreed with Marcos-Manotoc that § 1350 is simply a jurisdictional statute and creates no cause of action itself. It proceeded to determine damages on default under Philippine law. From this we assume that the court did not rely on treaties or international law to provide the cause of action, only to establish federal jurisdiction. Indeed, the complaint alleges that Trajano's claims arise under wrongful death statutes, as well as international law. Since Marcos-Manotoc's appeal is only to the extent the district court founded Trajano's right to sue on treaties or the law of nations, it lacks merit because the tort is admitted. That it was committed in violation of international law supplies the jurisdictional key to federal court under § 1350. We cannot say the district court erred.

The district court's approach comports with the view that the First Congress enacted the predecessor to § 1350 to provide a federal forum for transitory torts (a tort action which follows the tortfeasor wherever he goes), see *Filartiga*, 630 F.2d at 885 (tracing transitory tort doctrine to 1774 decision of Lord Mansfield), whenever such actions implicate the foreign relations of the United States. See *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427 n. 25, 84 S.Ct. 923, 940 n. 25, 11 L.Ed.2d 804 (1964) (citing § 1350 as example of congressional intent to make claims implicating foreign affairs cognizable in federal courts); *Tel-Oren*, 726 F.2d at 790 (Edwards, J., concurring) ("As best we can tell, the aim of section 1350 was to place in federal court actions potentially implicating foreign affairs. The intent was not to provide a forum that otherwise would not exist ... but to provide an *alternative* forum to state courts."). The district court's approach also allows the "law of nations" and "treaty" prongs of § 1350 to be treated consistently, in that the cause of action comes from municipal tort law and not from the law of nations or treaties of the United States. This avoids the anomalous result which troubled Judge Bork in *Tel-Oren*, that whereas *Filartiga* found a private right of action by implying it from principles of international law, no private cause of action can ever be implied from a non-self-executing treaty. See *Tel-Oren*, 726 F.2d at 820 (Bork, J., concurring).

For these reasons we affirm the judgment in Trajano's favor. Her suit as an alien against Marcos-Manotoc for having caused the wrongful death of her son, by official torture in violation of a *jus cogens* norm of

international law, properly invokes the subject-matter jurisdiction of the federal courts under § 1350.

AFFIRMED.

²²Because Congress passed the Torture Victim Protection Act, *supra* n. 18, after the district court's decision, we have no occasion to consider its applicability to the present case.

NOTES

1. This appeal pertains only to the action against Marcos-Manotoc. Several amici appear in support of Trajano: the Allard K. Lowenstein International Human Rights Clinic, the Center for Constitutional Rights, and Human Rights Watch. The United States filed a brief as amicus curiae in connection with an earlier appeal from an order dismissing the action against Ferdinand Marcos on act of state grounds; the brief covers the issues raised in Marcos-Manotoc's appeal and we have considered it as well.
2. Marcos-Manotoc also argues that the action is time-barred by the two-year Hawaii statute of limitations, Haw.Rev.Stat. § 657-7, but this is an affirmative defense which was waived by virtue of her default. Because the statute of limitations is not jurisdictional, we do not consider this issue. See *United States v. DeTar*, 832 F.2d 1110, 1114 (9th Cir. 1987).
In her reply brief, Marcos-Manotoc claims that the district court did not have personal jurisdiction over her because she was not properly served. The district court found to the contrary. Because this issue was raised for the first time in her reply brief, Marcos-Manotoc has waived this issue as well. See *Nevada v. Watkins*, 914 F.2d 1545, 1560 (9th Cir.1990), cert. denied, 111 S.Ct. 1105, (1991).
3. Marcos moved to dismiss on act of state grounds, and the district court's order granting that motion was reversed on appeal in light of our intervening decision in *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1360-61 (9th Cir.1988) (en banc) (civil RICO action brought by the Philippines against Marcos not barred by act of state doctrine), cert. denied, 490 U.S. 1035, 109 S.Ct. 1933, 104 L.Ed.2d 404 (1989). See *Trajano v. Marcos*, 878 F.2d 1439 (9th Cir.1989). The Judicial Panel on Multidistrict Litigation then consolidated two other actions against Marcos in the District of Hawaii and two actions in the Northern District of California, and assigned them to the Honorable Manuel L. Real, sitting pursuant to an intracircuit assignment under 28 U.S.C. § 292(b). The four actions consolidated with Trajano's are not before us at this time.
4. The district court awarded the estate of Archimedes Trajano \$236,000 for lost earnings pursuant to Article 2206(1) of the Philippine Civil Code; \$175,000 for moral damages including physical suffering, mental anguish, fright, bodily injury, and wrongful death pursuant to Articles 2217, 2204, and 2206 of the Philippine Civil Code; awarded Agapita Trajano \$1,250,000 for mental anguish pursuant to Article 2206(3) of the Philippine Civil Code; and awarded both Mrs. Trajano and the estate \$2,500,000 in punitive damages pursuant to Articles 2229 and 2231 of the Philippine Civil Code, as well as \$246,966.99 in costs and attorneys' fees pursuant to Article 2208(1), (5), (9), and (11) of the Code.