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Sixth Circuit upholds judgment against former El Salvador military commander

Andrew Gilmore at 8:06 AM ET



[JURIST] A three-judge panel of the **US Court of Appeals for the Sixth Circuit** [official website] **upheld** [opinion, PDF] Tuesday a district court decision finding former El Salvador chief military commander **Nicolas Carranza** [CJA backgrounder] liable for murder and torture committed during the **El Salvador civil war** [PBS backgrounder] in the 1980s. In 2005, a Tennessee federal jury **found Carranza liable** [JURIST report] for acts of murder and torture in El Salvador under the **Alien Tort Statute** (ATS) and the **Torture Victims Protection Act** (TVPA) [texts]. Carranza had appealed the jury verdict, claiming that the district court abused its discretion by holding that extraordinary circumstances justified equitable tolling of the statute of limitations, not granting comity to a Salvadoran amnesty law, and making various evidentiary rulings. He also argued that the district court erred in its jury instruction concerning command responsibility. In the opinion, Judge Eugene Siler addressed the Sixth Circuit's reasons for upholding the district court's decision to allow equitable tolling of the statute of limitations for claims under the ATS and the TVPA:

We have identified five factors a district court should consider when determining whether to equitably toll the statute of limitations: (1) lack of notice of the filing requirement, (2) lack of constructive knowledge of the filing requirement, (3) diligence in pursuing one's rights, (4) absence of prejudice to the defendant, and (5) the plaintiff's reasonableness in remaining ignorant of the particular legal requirement. ...

In sum, we conclude that the ten-year limitations period applicable to TVPA claims also governs claims under the ATS, equitable tolling principles apply, and the existence of extraordinary circumstances provides a justification for the application of the equitable tolling doctrine.

In February, Carranza was **indicted** [CJA press release, PDF] by the US Department of Justice (DOJ) for two counts of immigration fraud. During the **2005 trial** [JURIST report], the jury heard testimony by five Salvadoran citizens who alleged they were tortured or had family members killed by soldiers who served under Carranza, the top commander of El Salvador's security forces during the civil war. A verdict was reached in favor of four of the five accusers with the jury awarding \$500,000 in compensatory damages to each plaintiff. The lawsuit accused Carranza, who moved to Memphis, Tennessee in 1985, of allowing crimes against humanity during the war. The Salvadoran plaintiffs brought their case in US court under the ATS, also called the Alien Tort Claims Act (ATCA), which allows foreign victims of serious human rights abuse abroad to sue perpetrators in federal court.

