UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JUAN DOE I,

Plaintiff,

vs.

CARDINAL ROGER MAHONY, in his official and individual capacity, THE ROMAN CATHOLIC ARCHBISHOP OF LOS ANGELES, a corporation sole, CARDINAL NORBERTO RIVERA, in his official and individual capacity, DIOCESE OF TEHUACAN, NICOLAS AGUILAR RIVERA

Defendants.

CASE NO. CV 10-02902-JST (JEMx)

ORDER DENYING DEFENDANTS CARDINAL ROGER MAHONY'S AND THE ROMAN CATHOLIC ARCHBISHOP OF LOS ANGELES' MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION (Doc. 24)

I. INTRODUCTION

On April 20, 2010, Plaintiff Juan Doe 1, a Mexican national, filed suit against American Defendants Cardinal Roger Mahony and the Roman Catholic Archbishop of Los Angeles ("Archdiocese of Los Angeles") and Mexican Defendants Cardinal Norberto Rivera, Father Nicholas Aguilar Rivera ("Fr. Aguilar"), and the Diocese of Tehuacan pursuant to the Alien Tort Statute ("ATS"). Plaintiff alleges that, in 1997, when he was twelve-years old, he was sexually abused by Aguilar. Plaintiff alleges that this abuse occurred because the other Defendants' conspired to conceal the previous widespread sexual abuse of children committed by Fr. Aguilar.

Based on this incident, Plaintiff asserts ten causes of action: (1) rape and other sexual abuse; (2) crimes against humanity; (3) torture; (4) cruel, inhuman, and degrading treatment; (5) civil conspiracy; (6) intentional infliction of emotional distress; (7) negligence against Cardinal Rivera and the Diocese of Tehuacan; (8) negligent supervision/failure to warn against Cardinal Rivera and the Diocese of Tehuacan; (9) negligence against Cardinal Mahony and the Archdiocese of Los Angeles; and (10) negligent failure to warn against Cardinal Mahony and the Archdiocese of Los Angeles. (*See generally* First Amended Complaint, "FAC," Doc. 10.) Plaintiff alleges that Cardinal Rivera and the Diocese of Tehuacan supervised, protected, and facilitated Father Aguilar's actions in Mexico, and that Cardinal Mahony and Archdiocese of Los Angeles aided Father Rivera in avoiding detection by authorities during the time that he worked in Los Angeles in 1987 and in eventually fleeing to Mexico.

Defendants Mahony and Archdiocese of Los Angeles filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction (Doc. 24). Plaintiff opposed the Motion (Doc. 25), and Defendants replied (29). Having read the papers, heard oral argument, and taken the matter under submission, the Court DENIES Defendants' Motion to Dismiss for lack of subject matter jurisdiction.

II. BACKGROUND

On a motion to dismiss under Rule 12(b)(1), the Court must accept all factual allegations as true. *Carson Harbor Vill., Ltd. v. City of Carson*, 353 F.3d 824, 826 (9th Cir. 2004). Plaintiff alleges the following facts in his First Amended Complaint.

Since July 27, 1970, Fr. Aguilar has been an ordained Catholic Priest. (FAC ¶ 15.) From then until 1987, Fr. Aguilar was a priest for the Diocese of Tehuacan, Mexico, and a parish priest of San Sebastian Parish in Cuacnopalan, Mexico. (*Id.* ¶¶ 15-16.) During that time, Defendant Cardinal Rivera, then the Bishop of Tehuacan, had reason to believe that Fr. Aguilar had sexually abused young boys. (*Id.* ¶ 18.)

On January 27, 1987, Cardinal Rivera wrote to Cardinal Mahony, then Archbishop of Los Angeles, and recommended that Fr. Aguilar work as a priest in Los Angeles. (*Id.* ¶ 19.) In his letter, Rivera informed Mahony and the Archdiocese that Fr. Aguilar was seeking to relocate to California for "family and health reasons." (*Id.*) Around February 1987, Rivera transferred Fr. Aguilar to the Archdiocese of Los Angeles.

On March 16, 1987, Mahony assigned Fr. Aguilar to be the associate pastor at Our Lady of Guadalupe Church in Los Angeles. On March 23, 1987, Rivera sent Mahony a confidential letter that, according to Rivera, "provided a summary of Aguilar's homosexual problems," including the sexual abuse of minors while serving as a priest in Mexico. (*Id.* ¶ 23.) On May 18, 1987, Mahony assigned Fr. Aguilar to serve as the associate pastor at St. Agatha in Los Angeles. (*Id.* ¶ 24.)

In December 1987, two altar boys from Our Lady of Guadalupe informed their mother that Fr. Aguilar molested them. (*Id.* ¶ 25.) The mother then reported this abuse to Fr. Bill McClean, pastor of Our Lady of Guadalupe. (*Id.* ¶ 26.) Sister Renee, the Principal of Our Lady of Guadalupe, was also informed that Fr. Aguilar was molesting children. (*Id.* ¶ 29.) On January 8, 1988, the Archdiocese of Los Angeles was notified that Fr. Aguilar was molesting children in Los Angeles. (*Id.* ¶ 32.)

On January 8, 1988, Fr. McClean informed Monsignor Thomas Curry, the Vicar for Clergy for the Archdiocese of Los Angeles, of Fr. Aguilar's alleged sexual abuse. (*Id.* ¶

33.) The next day, Monsignor Curry confronted Fr. Aguilar about the allegations, at which time Fr. Aguilar informed Curry that he would be returning to Mexico. (*Id.* ¶ 36.) Monsignor Curry did not notify law enforcement of Fr. Aguilar's intent to leave the country or of his alleged sexual abuse. (*Id.*) On the evening of January 9, 1988, a relative of Fr. Aguilar took him to Tijuana. (*Id.* ¶ 37.)

On January 11, 1988, Sister Renee reported to the police that Fr. Aguilar had molested children at Our Lady of Guadalupe. (*Id.* ¶ 39.) That same day, Monsignor Curry wrote a letter to Bishop Rivera at the Diocese of Tehuacan stating that "it is with great sorrow that I write to you, but it has come to our attention that several families in Our Lady of Guadalupe Parish, Los Angeles, where [Fr. Aguilar] served for some months on his first coming here, accuse him of acting very inappropriately with their children." (*Id.* ¶ 40.) On February 23, 1988, Monsignor Curry wrote another letter to Rivera that enclosed an article from the Los Angeles Times dated February 20, 1988 titled "Priest Sought in Alleged Molestation of Altar Boys," which purportedly described allegations of Fr. Aguilar's sexual molestation of children in several Los Angeles parishes. (*Id.* ¶ 42.)

In March 1988, Mahony and Rivera exchanged a number of letters regarding Fr. Aguilar. On March 4, 1988, Mahony wrote to Rivera about Fr. Aguilar, stating that "it is almost impossible to determine precisely the number of young altar boys he has sexually molested, but the number is large . . . This priest must be arrested and returned to Los Angeles to suffer the consequences of his immoral actions." (*Id.* ¶ 43.) On March 17, 1988, Rivera wrote back to Mahony: "You will understand that I'm not in a position to find him, much less force him to return to appear in court . . . In the letter of presentation of January 27, 1987, I included an identification photograph, and in the confidential letter of March 23 of the same year, I provided a summary of the priest's homosexual problems." (*Id.* ¶ 45.) Ten days later, Mahony responded by letter, saying: "I would like to tell you that I have not received any letter from you dated March 23, 1987, nor any other information concerning the homosexual problems of the priest, . . . We have here in the

Archdiocese of Los Angeles a clear plan of action: we do not admit priests with any homosexual problems." (*Id.* ¶ 46.)

A Los Angeles Police Department ("LAPD") investigation found that Fr. Aguilar sexually abused at least 26 minors in the nine-month period that he served as a priest in Los Angeles. (*Id.* ¶ 41.) On April 7, 1988, the LAPD charged Fr. Aguilar with 19 felony counts of lewd acts upon a child. (*Id.* ¶ 47.)

In October 1994, Fr. Aguilar raped a thirteen-year old altar boy named Joaquin Aguilar Mendez during a mass at a parish in Mexico City, and threatened the boy to keep quiet. (*Id.* ¶ 48.) The boy's parents informed a priest at the parish, who told them to report the incident to the police, which they did. (*Id.* ¶¶ 49, 51.)

In 1997, Fr. Aguilar was placed back at the Diocese of Tehuacan, where he worked at various churches, including San Vicente de Ferrer. (*Id.* ¶ 56.) That year, Fr. Aguilar raped and sexually abused Plaintiff, who was twelve years old at the time. (*Id.* ¶ 57.) In 2003, a Mexican court found Fr. Aguilar guilty of one count of sexual abuse that occurred in 1997, unrelated to Plaintiff, and sentenced him to one year in prison.

On April 20, 2010, Plaintiff filed this suit alleging claims under the ATS and California law against Fr. Aguilar and the above-referenced agents of the Catholic Church. Plaintiff alleges that the Holy See, i.e. the Vatican, has known about the widespread problem of childhood sexual abuse committed by its clergy for centuries, but has concealed and, therefore, perpetuated the abuse. (*Id.* ¶ 97.) Plaintiff alleges that the Holy See directed its bishops in the United States and abroad to conceal from its parishioners and the general public the sexual abuse committed by its priests. (*Id.* ¶ 100.) Plaintiff alleges that Fr. Aguilar's sexual abuse and Cardinal Rivera's, Diocese of Tehuacan's, Cardinal Mahony's, and Archdiocese of Los Angeles' conspiracy to conceal such abuse amounts to crimes against humanity, torture, and cruel, inhuman, and degrading treatment in violation of the ATS. Plaintiff also alleges that Cardinal Rivera, Diocese of Tehuacan, Cardinal Mahony, and the Archdiocese of Los Angeles are liable for Fr. Aguilar's sexual abuse through vicarious liability. (*Id.* ¶¶ 106-151.)

On May 6, 2010, the Honorable Percy Anderson issued an Order to Show Cause why the action should not be dismissed for lack of subject matter jurisdiction. (Doc. 5.) Upon receiving Plaintiff's response, Judge Anderson took the matter under submission. (Doc. 11.) The case was then transferred to this Court. On November 19, 2010, Defendants Mahony and the Archdiocese of Los Angeles filed the instant Motion to Dismiss for Lack of Subject Matter Jurisdiction. (Doc. 24.)

III. LEGAL STANDARD

A. Alien Tort Statute

The Alien Tort Statute ("ATS") (also referred to as the Alien Tort Claims Act, or "ATCA," and Alien Tort Act, or "ATA") was enacted by the first Congress in 1789. The Judiciary Act of 1789, Sept. 24, 1789, ch. 20, § 9, 1 Stat. 77. It reads in its entirety: "The 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. Thus, an ATS claim requires a (1) tort claim, (2) filed by an alien, that (3) alleges a violation of the law of nations or a treaty of the United States. *See Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111, 116 (2d Cir. 2010) ("ATS provides jurisdiction over (1) tort actions, (2) brought by aliens (only), (3) for violations of the law of nations"); *Aldana v. Del Monte Fresh Produce, N.A.*, 416 F.3d 1242, 1246 (11th Cir. 2005) ("To obtain relief under the ATA, plaintiffs must be (1) an alien, (2) suing for a tort, which was (3) committed in violation of international law.").

B. Motion to Dismiss for Lack of Subject Matter Jurisdiction: Rule 12(b)(1)

Under Rule 12 of the Federal Rules of Civil Procedure, a party may assert the defense of lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). A motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) can be facial or factual. *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004). "In a facial attack, the challenger asserts that the allegations contained in a complaint are insufficient on their face to invoke federal jurisdiction." *Id.* For example, a state law claim filed in

federal court. "By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by themselves, would otherwise invoke federal jurisdiction." *Id.* (finding defendant's 12(b)(1) motion to be factual, where defendant challenged whether grass residue constituted solid waste under the Resource Conservation and Recovery Act). "In resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." *Id.*

IV. DISCUSSION

Because there are Mexican nationals on both sides of this case, diversity jurisdiction does not exist. *See Craig v. Atl. Richfield Co.*, 19 F.3d 472, 476 (9th Cir. 1994) (presence of foreign plaintiff and foreign defendants defeats diversity). Plaintiff must therefore rely on the presence of a federal question to establish jurisdiction. 28 U.S.C. § 1331. Here, Plaintiff has alleged several claims under the ATS, a federal statute that grants district courts original jurisdiction over civil claims (1) brought by an alien (2) for torts (3) committed in violation of customary international law. 28 U.S.C. § 1350; *see Kiobel*, 621 F.3d at 116.

A. Distinction Between Rule 12(b)(1) and Rule 12(b)(6)

The Court is aware of the procedural circumstances that preceded Defendants' instant Motion. As referenced above, before the case was transferred to this Court, an Order to Show Cause was issued regarding subject matter jurisdiction, and the matter was taken under submission. Defendants then filed their Motion to Dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1). The Court notes that many of Defendants' arguments as to why the Court lacks subject matter jurisdiction address whether Plaintiff has sufficiently alleged his ATS claims. Subject matter jurisdiction does not rely on whether a plaintiff has sufficiently stated a claim, however, so the Court need not address such arguments for purposes of this Motion. The question of whether Plaintiff has

adequately alleged claims under the ATS is more appropriately presented in a Rule 12(b)(6) motion.

That is because there exists a clear distinction between the question presented on a motion to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) and the question presented on a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6): "the former determines whether the plaintiff has a right to be in the particular court and the latter is an adjudication as to whether a cognizable legal claim has been stated." *Trs. of the Screen Actors Guild-Producers Pension & Health Plans v. NYCA, Inc.*, 572 F.3d 771, 775 (9th Cir. 2009) (quoting 5B Wright & Miller, Federal Practice and Procedure § 1350 (3d ed. 2004)). Indeed, in contrast to "a merits question," "subject matter jurisdiction . . . refers to a tribunal's power to hear a case" which "presents an issue quite separate from the question whether the allegations the plaintiff makes entitle him to relief." *Morrison v. Nat'l Austl. Bank Ltd.*, 130 S. Ct. 2869, 2877 (2010). "Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy." *Bell v. Hood*, 327 U.S. 678, 682 (1946); *see also Orff v. United States*, 358 F.3d 1137, 1150 (9th Cir. 2004) ("The core holding in *Bell* was 'that the nonexistence of a cause of action was no proper basis for a jurisdictional dismissal.'" (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S 83, 96 (1998))); *Kingman Reef Atoll Invs., L.L.C. v. United States*, 541 F.3d 1189, 1995 (9th Cir. 2008) ("Unless the jurisdictional issue is inextricable from the merits of a case, the court may determine jurisdiction on a motion to dismiss for lack of jurisdiction under Rule 12(b)(1)."). The Court is cognizant of this distinction and, moreover, the limits it places on a district court when considering a Rule 12(b)(1) motion.

B. Approach to a Rule 12(b)(1) Motion

"It is firmly established in our cases that the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, i.e., the courts'

statutory or constitutional power to adjudicate the case." *Steel Co.*, 523 U.S at 89. "Before deciding that there is no jurisdiction, the district court must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and the laws of the United States." *Bell*, 327 U.S. at 681. Where the complaint "is so drawn as to seek recovery directly under the Constitution or laws of the United States, the federal court, but for two possible exceptions later noted, *must entertain the suit*." *Id.* at 682 (emphasis added). "The reason for this is that the court must assume jurisdiction to decide whether the allegations state a cause of action on which the court can grant relief as well as to determine issues of fact arising in the controversy." *Id.* "Jurisdiction, therefore, is not defeated . . . by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover." *Id.* "For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." *Id.*

"The previously carved out exceptions are that a suit may sometimes be dismissed for want of jurisdiction where the alleged claim under the Constitution or federal statute clearly appears to be immaterial and made solely for the purposes of obtaining jurisdiction or where such a claims is wholly insubstantial and frivolous." *Id.* at 682-83. "Dismissal for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only when the claim is 'so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy.'" *Steel Co.*, 523 U.S. at 89 (quoting *Oneida Indian Nation v. Cnty. of Oneida*, 414 U.S. 661, 666 (1974)). "[O]nce the court determines a plaintiff's jurisdiction-conferring claims are not frivolous and immaterial, there is no further inquiry regarding the merits of the claim for purposes of jurisdiction." *Hagans v. Lavine*, 415 U.S. 528, 542 n.10 (1974).

The Supreme Court has stated that:

> a court may dismiss a claim as factually frivolous only if the facts alleged are "clearly baseless," a category encompassing

> allegation that are "fanciful," "fantastic," and "delusional[.]" As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them. An in forma pauperis complaint may not be dismissed, however, simply because the court finds the plaintiff's allegations unlikely.

Denton v. Hernandez, 504 U.S. 25, 32-33 (1992) (internal citations omitted). Justice Harlan, concurring in *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 410 (1971), defined "frivolous claims" as "claims with no legal merit." *Bivens*, 403 U.S. at 410 (Harlan, J., concurring). The Ninth Circuit has held that "a complaint is frivolous where none of the legal points are arguable on their merits." *Goland v. United States*, 903 F.2d 1247, 1258 (9th Cir. 1990); *see Harrah's Club v. Van Blitter*, 902 F.2d 774, 777 (9th Cir. 1990) ("A frivolous appeal is defined as one in which the result is obvious, or where the appellants' claims are utterly meritless."). Further, a "claim is insubstantial only if 'its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the inference that the questions sought to be raised can be the subject of controversy.'" *Hagans*, 415 U.S. at 538 (quoting *Goosby v. Osser*, 409 U.S. 512, 518 (1973)). The Ninth Circuit has defined "immaterial," in the Rule 12(f) context, as "that which has no essential or important relationship to the claim for relief or the defenses being pleaded." *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir. 1993), *rev'd on other grounds*, 510 U.S. 517 (1994).

C. Defendants' Motion

Defendants assert multiple arguments as to why the Court lacks subject matter jurisdiction under the ATS, most of which address the merits of Plaintiff's claims and, as explained above, are misplaced in a Rule 12(b)(1) motion. Defendant argues that: (1)

Plaintiff's ATS claims are barred by the ATS's statute of limitations; (2) the Archdiocese of Los Angeles cannot be liable under the ATS because it is a corporation; (3) Plaintiff was not a victim of a crime under international law; (4) Plaintiff has not exhausted remedies under Mexican law; and (5) Plaintiff cannot state an ATS claim against Cardinal Mahony under a conspiracy theory. Defendant's only arguments that potentially address jurisdiction are statute of limitations and exhaustion. *See Aloe Vera of Am., Inc. v. United States*, 580 F.3d 867, 871 (9th Cir. 2009) (recognizing a category of "jurisdictional statutes of limitations"); *Burns v. United States*, 764 F.2d 722, 724 (9th Cir. 1985) (holding that statute of limitations under Federal Tort Claims Act is jurisdictional); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 n.8 (1987) ("Exhaustion is required as a matter of comity, not as a jurisdictional prerequisite" and may "render[] it appropriate for the federal courts to decline jurisdiction in certain circumstances"). The Court addresses those points first.

1. Statute of Limitations and Exhaustion

As to Defendants' statute of limitations argument, the Ninth Circuit has held that the statute of limitations under the ATS is ten years. *Deutsch v. Turner Corp.*, 324 F.3d 692, 717 (9th Cir. 2003). The ATS is subject to equitable tolling for incapacitation. *Hilao v. Estate of Marcos*, 103 F.3d 767, 773 (9th Cir. 1996); *see also* Cal. Civ. Proc. Code § 352(a) (tolling the time to file a cause of action until a person turns eighteen). Alternatively, under California law, children who are victims of sexual abuse have until their twenty-sixth birthday to file a cause of action. Cal. Civ. Proc. Code § 340.1 ("In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority"). Plaintiff alleges that he was sexually abused by Fr. Aguilar in 1997 when Plaintiff was twelve-years old. (FAC ¶ 57.) Plaintiff turned eighteen in 2003. Plaintiff filed his Complaint in 2010. Under either the application of equitable tolling to ATS or California's statute of limitations for childhood sexual abuse, Plaintiff's claim is timely and not barred by the statute of limitations.

As to exhaustion, it is not required for ATS claims. *Sarei v. Rio Tinto, PLC*, 550 F.3d 822, 824 (9th Cir. 2008) ("[W]e decline to impose an absolute requirement of exhaustion in ATS cases."). "The defendant bears the burden to plead and justify an exhaustion requirement, including the availability of local remedies." *Id.* at 832. Defendants argue that "principles of comity require a Plaintiff bringing an ATS claim to exhaust remedies under domestic law before proceeding in a United States Federal Court." (Def.'s Mot. at 12.) The Court is not convinced. Defendants' authority for this proposition, *Rio Tinto*, explicitly states that exhaustion is not required, and that if an exhaustion requirement were to be imposed in certain cases, the burden of justifying that requirement, including the availability of local remedies, would fall to the defendants. *Rio Tinto*, 550 F.3d at 831-32. Defendants have failed to justify an exhaustion requirement or address whether any such local remedies are available.

2. Subject Matter Jurisdiction Over Plaintiff's ATS Claims

As to subject matter jurisdiction under the ATS, in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), the Supreme Court implicitly assumed, without explicitly deciding, that jurisdiction was appropriate if a plaintiff brings a claim under the ATS regardless of whether the cause of action is ultimately found actionable by the federal court. *See generally id.* (reversing the Ninth Circuit's grant of summary judgment without mentioning subject matter jurisdiction). "It is a cardinal principle of federal 'arising under' jurisdiction that 'any non-frivolous assertion of a federal claim suffices to establish federal question jurisdiction, even if that claim is later dismissed on the merits.'" *Screen Actors*, 572 F.3d at 775 (quoting *Cement Masons Health & Welfare Trust Fund for N. Cal. v. Stone*, 197 F.3d 1003, 1008 (9th Cir. 1999)).

Here, Plaintiff's claims under the ATS are not frivolous, and therefore present a federal question over which this Court has original jurisdiction. Plaintiff alleges ATS claims for (1) rape and sexual abuse, (2) crimes against humanity, (3) torture, (4) cruel, inhuman, and degrading treatment, and (5) conspiracy based on Fr. Aguilar's alleged rape

and sexual abuse of him, and Cardinal Mahony's, the Archdiocese of Los Angeles', Cardinal Rivera's, and the Diocese of Tehuacan's conspiracy to conceal and not report such acts. This is sufficient to establish subject matter jurisdiction under the ATS because Plaintiff, an alien, alleges torts committed in violation of customary international law. *See Kiobel*, 621 F.3d at 116.

Looking specifically at Plaintiff's allegations against Fr. Aguilar, federal courts have recognized rape and sexual abuse as an actionable offense under the ATS as a crime against humanity. *Doe v. Qi*, 349 F. Supp. 2d 1258, 1325 (N.D. Cal. 2004); *see also* Rome Statute, art. 7, (g) (specifically listing rape as an example of a crime against humanity); United Nations Convention on the Right of the Child, art. 34 (1989) ("States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse."). Torture is also an actionable offense under the ATS. *Sosa*, 542 U.S. at 732 ("[F]or purposes of civil liability, the torturer has become – like the pirate and slave trader before him – *hostis humani generis*, an enemy of all mankind" (quoting *Filartiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980)); *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 717 (9th Cir. 1992) (classifying torture as a *jus cogens* offense, i.e. a violation of a "preemptory norm of international law"); *see also* Rome Statute, art. 7, (f) (specifically listing torture as an example of a crime against humanity); Universal Declaration of Human Rights, art. 5 ("No one shall be subjected to torture"). Finally, the prevailing view in the case law is that cruel, inhuman, and degrading treatment generally constitutes an actionable international law norm under the ATS, and is treated similarly to torture. *See, e.g.*, *Sarei v. Rio Tinto PLC*, 650 F. Supp. 2d 1004, 1028-29 (collecting cases); *Doe v. Nestle, S.A.*, --- F. Supp. 2d ---, 2010 WL 3969615, at *13 (C.D. Cal. Sept. 8, 2010) ("the Court assumes for purposes of this Order that Plaintiffs have adequately alleged cruel, inhuman, or degrading treatment with respect to Defendants' alleged severe beatings, extended confinements, and deprivation of food"); *Tachiona v. Mugabe*, 234 F. Supp. 2d 401, 437 (S.D.N.Y. 2002) ("Despite the absence of a distinct definition for what constitutes cruel, inhuman or degrading treatment, various authorities and international

instruments make clear that this prohibition is conceptually linked to torture by shades of misconduct discernible as a continuum . . . . That it may present difficulties to pinpoint precisely where on the spectrum of atrocities the shades of cruel, inhuman, or degrading treatment bleed into torture should not detract from what really goes to the essence of any uncertainty: that, distinctly classified or not, the infliction of cruel, inhuman or degrading treatment by agents of the state, as closely akin to or adjunct of torture, is universally condemned and renounced as offending internationally recognized norms of civilized conduct"); *Qi*, 349 F. Supp. 2d at 1321 (holding that "cruel, inhuman, or degrading treatment has been condemned by numerous sources of international law"). The Court therefore determines that Plaintiff's claims concerning Fr. Aguilar's alleged rape and sexual abuse of Plaintiff are neither legally nor factually frivolous, and the Court need not decide whether Plaintiff sufficiently states such claims to determine that the Court has subject matter jurisdiction in this matter.

Because the Court has subject matter jurisdiction over Fr. Aguilar under the ATS, the Court has supplemental jurisdiction over the remaining Mexican and American Defendants pursuant to pendent party jurisdiction under 28 U.S.C. § 1367(a). Under section 1367, "in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over the other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). This "include[s] claims that involve the joinder or intervention of additional parties." *Id.*; *Exxon Mobil Corp. v. Allapattah Srvs., Inc.*, 545 U.S. 546, 558 (2005) ("The last sentence of § 1367(a) makes it clear that the grant of supplemental jurisdiction extends to claims involving joinder or intervention of additional parties."). Here, the ATS and common law claims against Cardinal Mahony, the Archdiocese of Los Angeles, Cardinal Rivera, and the Diocese of Tehuacan "derive from a common nucleus of operative fact" and, thus, form part of the same case and controversy. *See United Mine Workers of Am. v. Gibbs*,

383 U.S. 715, 725 (1966). Thus, supplemental jurisdiction over these Defendants is proper.

V. CONCLUSION

For the reasons stated above, the Court DENIES Defendants' Motion to Dismiss for lack of subject matter jurisdiction.

DATED: February 25, 2011

JOSEPHINE STATON TUCKER
UNITED STATES DISTRICT JUDGE