

November 12 2002 *Schneider*, 310 F. Supp. 2d [251](#) (March 30 2004), *subsequently*, 412 F.3d [190](#) (No. [04-5199](#), June 28 2005) (U.S.-Chile, [murder of René Schneider](#), Oct. 22 1970).

[United States District Court for the District of Columbia](#)

FILED
NOV 12 2002
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

Civil Action No. [1:01-CV-01902](#) (HHK)

First Amended Complaint for Summary Execution, Torture, Cruel, Inhuman, or Degrading Treatment, Arbitrary Detention, Assault and Battery, Negligence, Intentional Infliction of Emotional Distress, Wrongful Death.

Jury Trial Demanded

René Schneider)
Sebastian El Cano 551)
Las Condes, Santiago)
Chile,)
)
Raúl Schneider)
1 Allee La Motte 93400)
Saint Ouen)
Paris, France,)
)
José Pertierra)
Personal representative)
of the estate of)
General René Schneider, deceased,)
1010 Vermont Avenue, NW)
Washington, DC 20005,)
)
Plaintiffs,)
)

| | |
|------------------------------------|---|
| v. |) |
| |) |
| Henry Alfred Kissinger |) |
| 350 Park Avenue |) |
| New York, NY 10022, |) |
| |) |
| United States of America |) |
| c/o United States Attorney General |) |
| John Ashcroft |) |
| 950 Pennsylvania Avenue, NW |) |
| Washington, DC 20530, |) |
| |) |
| c/o United States Attorney |) |
| for the District of Columbia |) |
| U.S. Attorney |) |
| Roscoe C. Howard, Jr. |) |
| 555 Fourth Street, NW |) |
| Washington, DC 2001, |) |
| |) |
| Defendants. |) |
| |) |

{p.2}

Amended Complaint as a Matter of Course

Preliminary Statement

1. This is an action for declaratory, compensatory and punitive damages for summary execution; wrongful death; torture; cruel, inhuman, or degrading treatment; arbitrary detention; assault and battery; intentional infliction of emotional distress; and other violations of international and domestic law. The Plaintiffs are two sons of General Schneider, who, along with the personal representative of the estate of General Schneider, bring this action on behalf of their father as well as on their own behalf. The Defendants in this action are the United States government and Henry Kissinger, former Assistant to the President for National Security Affairs. Defendant Henry Kissinger is being sued in both his official and his individual capacities.

2. Recently declassified U.S. government documents and Congressional reports have provided Plaintiffs with the information, necessary to bring this action. The documents show that the knowing practical assistance and encouragement provided by the United States and the official and ultra vires acts of Henry Kissinger resulted in General Schneider’s summary execution, torture, cruel, inhuman and degrading treatment, arbitrary detention, assault and battery, negligence, intentional infliction of emotional distress, and wrongful death.

3. The government documents show that, beginning in or about 1970, Defendants directed, controlled, committed, conspired to commit, assisted, encouraged, acted jointly to commit, aided and abetted, and/or were intimately aware of overt as well as covert activities to prevent Dr. Salvador Allende's accession to the Chilean Presidency. These activities included the organization and instigation of a military coup d'état in Chile that required the removal of General René Schneider, father of Plaintiffs René and Raúl Schneider. Each of the Defendants' **{p.3}** deliberate and designed actions were such that the Defendants knew or should have known that their acts and omissions would result in the death of General Schneider.

Jurisdiction and Venue

4. This Court has jurisdiction under 28 U.S.C. §§ [1331](#), [1350](#), [1367](#), and [1346\(b\)\(1\)](#). 28 U.S.C. § [1350](#) 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." Supplemental jurisdiction under 28 U.S.C. § [1367](#) exists as to those claims that are so related to the federal claims that they form part of the same case or controversy. 28 U.S.C. § [1346\(b\)\(1\)](#) provides federal jurisdiction for "civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred."

5. The Defendants in this action committed torts in violation of the following treaties of the United States:

a) [International Covenant on Civil and Political Rights](#), adopted Dec. 19, 1966, S. Exec. Doc. E, 95-2 (1978) 999 [U.N.T.S. 171](#), *reprinted in* 6 [I.L.M.](#) 368 (entered into force, Mar. 23, 1976) ([ratified](#) by the United States, June 8, 1992);

[SuWho?](#) [SuDoc](#) [CIS](#) [DL](#)

[International Covenant on Civil and Political Rights](#), 999 [U.N.T.S. 171](#) (Dec. 16 1966, March 23 1976) {U.N. Doc.: [ST/LEG\(05\)/U5](#), ISSN: [0379-8267](#), LCCN: [48022417](#), [WorldCat](#)} ([status](#)) ([MTDSG](#)) {U.N. Doc.: [ST/LEG/SER.E/](#), ISSN: [0082-8319](#), LCCN: [48022417](#), [WorldCat](#)}. U.S. Senate **Treaty No. 95-20**; President Jimmy Carter **transmitted**, "[Human Rights Treaties, Message to the Senate](#)," [1978 PPPUS 395-396](#) {ucsb} (Feb. 23 1978) {SuDoc: [GS 4.113:978/BK.1](#), ISSN: [0079-7626](#), LCCN: [58061050](#), [DL](#), [LFDL](#), [WorldCat](#)}; Senate Executive **Document** No. 95/2-E (Feb. 23 1978), *part of, Four Treaties Pertaining to Human Rights, message from the President of the United States* {SuDoc: [Y 1.95/2:C-F/corr](#), Serial Set [95-2](#): omitted ("Senate executive documents and reports were not included in the Serial Set until 1980"), CIS: [78 S385-3](#), LCCN: [78601565](#), [GPOCat](#), LL: [paper](#), [UC](#), [WorldCat](#)}; Senate **Hearing 102-478** (Nov. 21 1991) {SuDoc: [Y 4.F 76/2:S.Hrg.102-478](#), CIS: [92 S381-25](#), LCCN: [92191239](#), [GPOCat](#), LL: [paper](#), [microfiche](#)}; Senate Executive **Report** No. [102-23](#) (March 24 1992) {[63 kb txt](#), [302kb.pdf](#)} {SuDoc: [Y 1.1/6:102-23](#), Serial Set [102-2](#): [14102](#), CIS: [92 S384-1](#), [GPOCat](#), LL: [paper](#), [microfiche](#)}; Senate **consent**, 138 [Cong. Rec. S4781-4784](#) {pf} (April [2](#) 1992, daily edition [138/49](#)) {SuDoc: [X/A.102/2:138/49](#),

ISSN: [0363-7239](#), LCCN: [80646573](#), [DL](#), [WorldCat](#)}; U.S. **ratified**, [June 8 1992](#), effective Sept. 8 1992, 1676 [U.N.T.S.](#) 543, *accord*, [T.I.F.](#) {[185kb.pdf](#)} {SuDoc: [S 9.14:2004](#), ISSN: [0083-0194](#), LCCN: [56061604](#), [DL](#)}. –CJHjr

b) [Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), G.A. Res. 39/46, 39 U.N. GAOR, Supp. No. 51, at 197, U.N. Doc A/39/51 (Dec. 10, 1984) (entered into force June 26, 1987) ([ratified](#) by the United States Oct. 21, 1994). {**p.4**} 1465 [U.N.T.S.](#) 85 (Dec. 10 1984, June 26 1987) {U.N. Doc.: [ST/LEG\(05\)/U5](#), ISSN: [0379-8267](#), LCCN: [48022417](#), [WorldCat](#)}. **Status** ([MTDSG](#)) {U.N. Doc.: [ST/LEG/SER.E/](#), ISSN: [0082-8319](#), LCCN: [48022417](#), [WorldCat](#)}. U.S. Senate **Treaty No.** [100-20](#); President **transmitted**: [May 20 1988](#) ([PPPUS](#), 1988-89) {SuDoc: [AE 2.114:988-89/BK.1](#), ISSN: [0079-7626](#), LCCN: [58061050](#), [DL](#), [LFDL](#), [WorldCat](#)}; Senate Treaty **Document** No. [100-20](#) (May 23 1988) {SuDoc: [Y 1.1/4:100-20](#), Serial [Set](#): [13857](#), CIS: [88 S385-11](#)}; Senate **Hearing** [101-718](#) (January 30 1990) {SuDoc: [Y 4.F 76/2:S.Hrg.101-718](#), CIS: [90 S381-15](#), LCCN: [90601736](#)}; Senate Executive **Report** No. [101-30](#) (August 30 1990) {SuDoc: [Y 1.1/6:101-30](#), Serial [Set](#): [13983](#), CIS: [90 S384-9](#)}; Senate **consent**: Oct. 27 1990, 136 [Cong. Rec.](#) [S17486-17492](#) (daily edition 136/150) {SuDoc: [X/A.101/2:136/150](#), ISSN: [0363-7239](#), LCCN: [80646573](#), [DL](#), [WorldCat](#)}; U.S. **ratified**, [Oct. 21 1994](#), effective Nov. 20 1994, 1830 [U.N.T.S.](#) 320, *accord*, [T.I.F.](#) {[202kb.pdf](#)} {SuDoc: [S 9.14:2004](#), ISSN: [0083-0194](#), LCCN: [56061604](#)}, *contra*, Nov. 10 1994, 22 [C.F.R.](#) § [95.1\(a\)](#) {[5 kb txt](#); [32kb.pdf](#), [DL](#)}. –CJHjr

6. Defendants committed torts in violation of the law of nations, as codified in the following international treaties, declarations, laws, and resolutions, including, but not limited to:

- a) [Charter of the United Nations](#), June 26, 1945, 59 Stat. 1031, TS 993;
- b) [Universal Declaration of Human Rights](#), G.A. Res. 217(III), U.N. Doc. A/810 at 71 ([1948](#));
- c) [Charter of the Organization of American States](#), 2 U.S.T. 2394, 119 U.N.T.S. 3, as amended. [Protocol of Buenos Aires of 1967](#) {U.S. Senate Treaty No. [100-20](#)}, 21 U.S.T. 607, 721 U.N.T.S. 324;
- d) Declaration on the Protection of All Persons From Being Subjected to [Torture and Other Cruel, Inhuman or Degrading Treatment](#) or Punishment, [G.A. Res. 3452 \(XXX\)](#), annex, [30](#) U.N. GAOR Supp. (No. 34) at 91, U.N. Doc. A/10034 (1975);
- e) [Inter-American Convention to Prevent and Punish Torture](#), Dec. 9, 1985, 25 [I.L.M.](#) 519;
- f) [American Declaration of Rights and Duties of Man](#), O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser. L.V/II.82 doc. 6 rev. 1 at 17 (1992);
- g) [Inter-American Convention on the Forced Disappearance of Persons](#), June 9, 1994, 33 [I.L.M.](#) 1529;
- h) United Nations General Assembly [Resolution and Declaration on the Protection of All Persons from Enforced Disappearance](#), Dec. 18, 1992, 32 [I.L.M.](#) 903;
- i) The Charter of the [International Military Tribunal](#), Nuremberg, August 8, 1945, confirmed by [G.A. Res.](#) 3, U.N. Doc. A/50 (1946); {**p.5**}

Charter of the International Military Tribunal {[copy](#)}, *annexed to, Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis* (London, August 8 1945) (the “London Agreement”), *reprinted*, 58 [Stat.](#) 1544, 1 [I.M.T.](#) 8, [10-18](#) {[16.5mb.pdf](#), [source](#)}, [82 U.N.T.S.](#) 277; “Extradition and punishment of war criminals,” U.N. Doc. [A/RES/3\(I\)](#) (U.N. General Assembly, [1st](#) session, [resolution](#), February 13 1946) (draft, A/50); “Affirmation of the Principles of International Law Recognized by the Charter of the Nürnberg Tribunal,” U.N. Doc. [A/RES/95\(I\)](#) {[copy](#), [copy](#)} (draft, A/236) (U.N. General Assembly, 1st session, resolution, December 11 1946).

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- j) The [Rome Statute of the International Criminal Court](#), United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, July 17, 1998, U.N. Doc. A/CONF. 183/9, *reprinted in* 37 [I.L.M.](#) 999;
- k) [Statute](#) for the [International Criminal Tribunal for Rwanda](#), Nov. 8, 1994, U.N. SCOR, 49th Sess., 3453rd mtg., at 1, U.N. Doc. S/RES/955, *reprinted in* 33 [I.L.M.](#) 1598 (1994);
- l) [Declaration on the Elimination of Violence Against Women](#), G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993); and
- m) [Inter-American Convention on the Prevention, Punishment, & Eradication of Violence Against Women](#), 33 [I.L.M.](#) 1534 (entered into force Mar. 5, 1995).

7. Plaintiffs’ causes of action also arise under:

- a) [Torture Victim Protection Act of 1991](#), [Pub. L. 102-256](#), 106 [Stat.](#) 73 (1992) (codified at 28 U.S.C. § [1350 Note](#));
- b) 28 U.S.C. § [1350](#);
- c) The laws of Chile;
- d) Laws of the District of Columbia, including but not limited to, common law principles of wrongful death, assault and battery, and intentional infliction of emotional distress; and
- e) Customary international law.

8. Personal jurisdiction and venue are proper in this Court under 18 U.S.C. § [1965\(a\)](#) and 28 U.S.C. § [1391\(b\)](#) because a substantial part of the acts and omissions giving rise to the claims occurred in this district and Defendants purposefully availed themselves of this forum. {p.6}

9. The allegations in this complaint seek relief under, inter alia, the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ [1346\(b\)\(1\)](#), [2671-2680](#). The claims set forth herein were presented to the Department of State and Central Intelligence Agency. This Court has jurisdiction to hear these claims because plaintiffs have exhausted administrative remedies, as required by 28 U.S.C. § [2675\(a\)](#). Plaintiffs herein allege these FTCA claims in the alternative without waiving claims against Defendant Kissinger for acts outside the scope of his employment and against all Defendants for violations of peremptory norms of international law. Plaintiffs maintain that these intentional acts can never be properly within the scope of lawful employment.

10. Plaintiffs argue, in the alternative, that if this Court deems Defendant Kissinger to have acted within the scope of his employment, then the United States is liable for its employee’s negligent failure to prevent summary execution, torture, cruel, inhuman or degrading treatment, arbitrary detention, wrongful death, and assault and battery. The United States is

also liable for intentional infliction of emotional distress and Defendant Kissinger's tortious violations of international law conducted in the scope of employment.

11. The United States does not enjoy sovereign immunity from this suit because, among other reasons:

- a) the acts complained of are violations of peremptory norms of international law to which no person or state may claim immunity;
- b) the Federal Tort Claims Act waives sovereign immunity where the United States substitutes itself for an employee that has committed a "negligent or wrongful act or omission while acting within the scope of his office or employment." 28 U.S.C. § [1346\(b\)\(1\)](#). Plaintiffs allege that Defendant Kissinger is liable for "a tort ... committed in violation of the law of nations or a treaty of the United States" **{p.7}** pursuant to § [1350](#). If the United States is allowed to substitute itself for Defendant Kissinger, then the United States is liable for violations of § [1350](#) and the underlying violations of international law because the FTCA provides that "the United States shall be liable ... in the same manner and to the same extent as a private individual under like circumstances" 28 U.S.C. § [2674](#) (1994).
- c) the Administrative Procedures Act waives sovereign immunity in actions "seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority". 5 U.S.C. § [702](#) (1976).

Parties

Plaintiffs

12. General **René Schneider**, the Chilean Army Commander-in-Chief, and a strong believer in the Chilean Constitution and its mandate, suffered and was murdered in violation of the laws of the United States, the laws of the District of Columbia, the laws of Chile, and international law. Plaintiffs **René** and **Raúl** Schneider have suffered for thirty years and continue today to suffer the irreplaceable loss of their father. Plaintiffs have also been harmed and continue to be harmed by the Defendants' cover-up of the true facts of their father's death.

13. Plaintiff **José Pertierra** is the personal representative of General René Schneider suing on behalf of his estate. Plaintiff Pertierra has the capacity to sue under Fed. R. Civ. P. [17\(b\)](#).

14. **Victor Guillermo** Schneider is the son of General René Schneider and is a legal beneficiary of the estate of General René Schneider. However, Victor Guillermo Schneider has expressly stated that he wishes not to be a party in these proceedings and relinquishes all claims related to the estate of René Schneider. **{p.8}**

Defendants

15. Defendant **Henry Alfred Kissinger** is a naturalized U.S. citizen who served as Assistant for National Security Affairs to President **Richard Milhous Nixon** from 1969 to 1973.

Defendant Kissinger, acting outside the scope of his employment, designed, ordered, implemented, directed, assisted, conspired with, and encouraged a group of coup plotters to kidnap and assassinate General Schneider in order to instigate a coup d'état against Chilean President-elect Dr. Salvador Allende. Defendant Kissinger knowingly and deliberately aided and abetted, and sought and accepted the work product of known conspirators, terrorists and other wrongdoers to further his objectives. Defendant Kissinger's actions were deliberate and

willful and are the proximate cause of Plaintiffs' prolonged suffering and mental anguish that continues to the present date.

Facts Common to All Claims

16. On September 4, 1970, the leader of the leftist coalition party, Dr. **Salvador Allende**, won a slight plurality of the votes (36.3%) in Chile's presidential election. In accordance with the Chilean Constitution, the Chilean Congress, in joint session, would determine the next president among the first and second contenders in the absence of a clear victor. Traditionally, the Congress, after the requisite 36-day period, had confirmed the candidate with the highest popular vote. Accordingly, it was expected that on October 24, 1970, the Chilean Congress would ratify Dr. Allende as Chile's first Socialist president.

17. On September 8, 1970, Defendant Kissinger requested that the U.S. Embassy in Chile submit "a cold blooded assessment of the pros and cons and problems and prospects involved should a Chilean military coup be organized now with U.S. assistance."

18. On September 12, 1970, assessing the situation from Chile, U.S. Ambassador to Chile **Edward Korry** stated, "[The] Chilean military will not, repeat not, move to prevent Dr. Allende's {p.9} accession, barring [the] unlikely situation of national chaos and widespread violence." The CIA in Santiago was convinced that the military in Chile in its present state was "unwilling to seize power."

19. The Defendants then, in an effort to prevent Dr. Allende from assuming office, proceeded on two tracks. "Track I" comprised covert political, economic, and propaganda activities approved by the 40 Committee, a sub-cabinet level body of the Executive Branch chaired by Defendant Kissinger whose overriding purpose was to exercise control over covert operations abroad. These activities were designed to induce Dr. Allende's opponents in Chile to prevent his assumption of power, either through political or military means. "Track II" activities, in turn, were directed "towards actively promoting and encouraging the Chilean military to move against Allende."

20. Track II was organized, coordinated and operated by Defendants outside the normal channels for covert operations. With the exception of Defendant Kissinger, who was chairman of the 40 Committee, and top CIA officials, the 40 Committee was entirely excluded and kept uninformed of Track II. Moreover, the State Department was not informed of Track II. Defendant Kissinger issued orders directly to the CIA, which were carried out by the CIA's station in Santiago and its collaborators.

21. In the month after September 15, Tracks I and II moved together. Ambassador Korry was authorized to encourage a military coup and to intensify contacts with Chilean military officers to assess their willingness and support of a coup. Ambassador Korry was also authorized to make his contacts in the Chilean military aware that if Dr. Allende were seated the military could expect no further military assistance from the United States. {p.10}

22. On September 21, 1970, Ambassador Korry reported to Defendant Kissinger that "General Schneider would have to be neutralized, by displacement if necessary" in order to effect a coup and prevent Dr. Allende from assuming office.

23. On September 23, 1970, the CIA Santiago office reported to the CIA in Washington that General Schneider would be a stumbling block to achieving the goal of promoting a coup in Chile.

24. Between October 5 and October 20, 1970, the CIA made 21 contacts with key military and carabinero (police) officials in Chile. Certain Chileans who were inclined to stage a coup were given assurances of strong support by Defendants both before and after a coup.

25. Under the orders and supervision of Defendants, the CIA established, maintained contacts with, and worked with three different groups of coup plotters. Key individuals included retired General **Roberto Viaux** and General **Camilo Valenzuela**, Commander of the Santiago Garrison. All groups made it clear, and Defendants were aware, that any coup would require the elimination of General Schneider, who felt deeply that the Constitution required that the Army not intervene in the constitutional process.

26. Defendant Kissinger obtained information about the extremist right-wing officer General Viaux, who had ties to *Patria y Libertad* (Fatherland and Freedom), the most prominent right-wing paramilitary group in Chile, and who was willing to accept a secret U.S. commission to remove General Schneider. The Defendants had the knowledge and awareness of General Viaux's intent and military training, and of the human rights abuses he had committed and was likely to commit. {p.11}

27. The CIA provided *Patria y Libertad* with \$38,000 between September 4 and October 24, 1970, "in an effort to create tension and a possible pretext for intervention by the Chilean military."

28. Within the first weeks of October 1970, General Viaux came to be regarded by Defendants as "the best hope for carrying out the CIA's Track II mandate." As late as October 13, 1970, the CIA gave General Viaux \$20,000 in cash and promised him a life insurance policy of \$250,000.

29. On October 14, 1970, the CIA Santiago office reported to the CIA Washington office that General Viaux planned "to kidnap ... General Schneider 'within 48 hours' as part of a coup plan which counts with the cooperation of Valenzuela."

30. Although the term "kidnap" was initially employed, Defendants never gave any instruction to leave General Schneider unharmed, which would have been both reasonable and necessary if they truly wished to prevent such harm, especially given the CIA's delivery of deadly weapons to the coup plotters. It was foreseeable to Defendants, and they did foresee, that the kidnapping would create a grave risk of death to General Schneider and consequent harm to his family. The Defendants acted under circumstances evidencing a depraved and reckless indifference to human life.

31. On October 15, 1970, Defendant Kissinger gave specific instructions to the CIA to "continue keeping the pressure on every Allende weak spot in sight—now, after the 24th of October, after 5 November, and into the future until such time as new marching orders are given." Defendant Kissinger knew that the CIA was in contact with other groups of plotters who had demonstrated their continued commitment to leading a coup against Dr. Allende. Defendant Kissinger never ordered the CIA to disassociate themselves from these people.

Defendant {p.12} Kissinger never ordered Track II to be dismantled or the CIA to stop its efforts in pursuit of a military coup.

32. On October 16, 1970, CIA officials cabled the CIA Station in Santiago based on their conversation with Kissinger. The cable, which was conveyed verbatim to General Viaux, reiterated the “firm and continuing policy [of the United States] that Allende be overthrown by a coup.” It stated that Washington’s objectives were to send a message to General Viaux to “discourage him from acting alone,” to “continue to encourage him to amplify his planning,” and to “encourage him to join forces with other coup planners so that they may act in concert either before or after October 24” (the day that the Chilean congress was to meet to confirm Dr. Allende as the nation’s first elected Socialist president). Lastly, the cable reassured General Viaux, “you will continue to have our support.”

33. The October 16, 1970 Washington CIA cable to its officers in Santiago stressed that the CIA’s “operating guidance” was to continue their work of promoting a successful coup in spite of “other policy guidance” that they may receive from other branches of the U.S. government. Reflecting his concern for secrecy, Defendant Kissinger expressed in an October 15, 1970 cable that: ¶

“It is imperative that these actions [the plan to kidnap General Schneider and assist in promoting a coup in Chile] be implemented clandestinely and securely so that the USG [United States Government] and American hand be well hidden.”

34. On October 16, 1970 a cable also informed the CIA station in Santiago that it should expect delivery of six gas masks and six tear gas canisters that had been requested by one of the groups of coup plotters to carry out General Schneider’s kidnapping. The gas masks and the tear gas had been dispatched from Washington through special courier. {p.13}

35. The Defendants maintained contact with all groups of plotters. On October 17, 1970, members of the Valenzuela group expressed their willingness to sponsor a coup and informed the CIA through U.S. Army Attache **Paul** [if this is first reference to him] {sic} **Wimert** of their plan to kidnap General Schneider. They also requested eight to ten tear gas grenades, three 45-caliber machine guns, and 500 rounds of ammunition to accomplish the task.

36. On October 18, 1970, four days before General Schneider was murdered, U.S. Army Attache detailed to the CIA in Chile Paul [this is awkward — consider re-phrasing] {sic} Wimert met with a Viaux associate and delivered a supply of six tear gas grenades to members of the Valenzuela group, as previously requested.

37. On October 19, 1970, submachine-guns and ammunition were sent by “sterile” diplomatic pouch to members of the Valenzuela faction. That same day, the CIA Santiago office created an “emergency channel” of communication with General Viaux.

38. On the evening of October 19, 1970, the Valenzuela group, aided by some in the Viaux group, and equipped with the tear gas grenades delivered by the CIA, attempted to kidnap General Schneider as he left an official dinner. The attempt failed because General Schneider left in a private car rather than his official vehicle. A member of the group assured U.S. Army Attache Wimert that another attempt would be made on October 20, 1970. The CIA Santiago office reported the failed attempt to kidnap General Schneider to the CIA in Washington on October 20, 1970.

39. On October 20, 1970, another attempt to kidnap General Schneider was made, following payments by the CIA of \$50,000 each to General Valenzuela and his chief associates. These payments were authorized on the condition that the Valenzuela group would make another {p.14} kidnapping attempt; but they again failed to kidnap General Schneider during their October 20, 1970 attempt.

40. At 2 a.m. on October 22, 1970, U.S. Army Attache Wimert delivered three “sterile” submachine guns with ammunition to a member of the Valenzuela group for yet another kidnapping attempt. At or about 8 a.m. that same day, a Viaux-led kidnapping group finally succeeded in removing General Schneider by fatally wounding him as his automobile was intercepted on his way to work. An unloaded machine gun was found at the scene of the killing. That day, the CIA Santiago office reported to the CIA in Washington that the assailants who shot General Schneider used the same kind of weapon delivered several hours earlier by U.S. Army Attache Wimert to a member of the Valenzuela group. Furthermore, the report stated that the CIA Santiago office “know[s] that General Valenzuela was involved,” and is “certain” that numerous other associates were involved.

41. According to the later verdict of the Chilean military courts, the death of General Schneider involved both the group led by General Viaux and the group led by General Valenzuela. General Viaux was convicted by a Chilean military court on charges of kidnapping and conspiring to cause a coup. General Valenzuela was convicted of conspiring to cause a coup.

42. On October 23, 1970, the CIA commented on the attack on General Schneider, saying, “It was agreed ... that a maximum effort has been achieved, and that now only the Chileans themselves can manage a successful coup. The Chileans have been guided to the point where a military solution is at least open to them.”

43. On October 25, 1970, three days after the armed kidnapping attempt, General René Schneider died from his gun shot wounds. Defendants’ deliberate and willful acts and omissions {p.15} were the proximate cause of General Schneider’s death. Defendants, without remorse, considered General Schneider’s death as a step forward in their ultimate objective “that Allende be overthrown by a coup.”

44. Bruce MacMaster, a CIA career employee, made efforts on behalf of the CIA to obtain “hush money” for jailed members of the Viaux group after the assassination and before the coup plotters could implicate the CIA: “In an effort to keep prior contact secret, maintain good will of the group, and for humanitarian reasons, \$35,000 was passed.”

45. After the Schneider killing, U.S. Army Attache Wimert and CIA Santiago Station Chief **Henry Hecksher** retrieved the payments of \$50,000 that had been paid to General Valenzuela and his associates. U.S. Army Attache Wimert also retrieved the guns with the serial numbers filed off, the ammunition, the tear gas, and the gas masks, and went to the port town of Valparaiso and dumped them all in the ocean.

First Claim for Relief

(Summary Execution)

46. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 45 as fully set forth herein.

47. The acts described herein were deliberate, willful, wanton, intentional, malicious and oppressive and are the proximate cause of General Schneider's summary execution. The acts were carried out under color of official authority for purposes other than as lawful punishment pursuant to a conviction in accordance with due process.

48. The act of summary execution described herein is in violation of the common law of the United States, the statutes and common law of the District of Columbia, the laws of Chile, the {p.16} international treaties, agreements, conventions and resolutions described in paragraphs 5-7 herein, and customary international law.

49. General Schneider was placed in great fear for his life and suffered severe mental agony prior to his summary execution. The summary execution of General Schneider caused his sons, René and Raúl Schneider, to suffer prolonged severe mental anguish that continues to the present day.

50. By virtue of Defendants' gross misconduct, Plaintiff Pertierra, as personal representative of General Schneider's estate, is entitled to recover compensatory damages provided by law for General Schneider's estate. As a result of the summary execution of General Schneider, Plaintiffs also suffered pecuniary losses, as well as the loss of the society, comfort, attention, services, and/or support of their father.

51. Defendants' deliberate, willful, wanton, intentional, malicious and oppressive conduct gives rise to Plaintiffs' demand for punitive damages.

Second Claim for Relief

(Torture)

52. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 45 as fully set forth herein.

53. The acts described herein were deliberate, willful, wanton, intentional, malicious and oppressive and are the proximate cause of General Schneider's torture. The acts described herein caused General Schneider to be in great fear for his life and caused him to suffer prolonged physical and psychological pain and suffering before his death. As a result, Plaintiffs have suffered prolonged mental anguish that continues to the present day. {p.17}

54. Defendants' directed and controlled acts were such that they knew or should have known that they would result in General Schneider's arbitrary detention, torture, and murder. The Defendants' instigation, acquiescence, and consent as used in Article 1 of the [Convention Against Torture](#), prior to the activity, demonstrates awareness of such activity and thereafter breach of their legal responsibility. Both the actual knowledge and willful blindness by Defendants fall within the definition of "acquiescence" and "consent" in Article 1 of the Convention Against Torture.

55. The acts described herein constitute torture in violation of the common law of the United States, the statutes and common law of the District of Columbia, the laws of Chile, the international treaties, agreements, conventions and resolutions described in paragraphs 5-7 herein, and customary international law.

56. By virtue of Defendants' gross misconduct, Plaintiff Pertierra, as personal representative of the estate, is entitled to recover compensatory damages provided by law for the estate of General Schneider.

57. Defendants' deliberate, willful, wanton, intentional, malicious and oppressive conduct gives rise to Plaintiffs' demand for punitive damages.

Third Claim for Relief

(Cruel, Inhuman, or Degrading Treatment)

58. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 45 as fully set forth herein.

59. Defendants' acts described herein were deliberate, willful, wanton, intentional, malicious and oppressive and are the proximate cause of General Schneider's cruel, inhuman and degrading treatment. The acts described herein had the intent and the effect of grossly **{p.18}** humiliating and debasing General Schneider, forcing him to act against his will and conscience, inciting fear and anguish, breaking physical or moral resistance and forcing him to flee and take extraordinary precautions in an effort to stay alive. As a result, Plaintiffs have suffered prolonged mental anguish that continues to the present day.

60. General Schneider's kidnapping and murder was designed to intimidate all Chileans from opposing a coup and, in particular, was designed to intimidate and harass Plaintiffs and other members of their family by, among other things, putting them in fear for their lives should they attempt to seek justice.

61. The acts described herein are in violation of the common law of the United States, the statutes and common law of the District of Columbia, the laws of Chile, the international treaties, agreements, conventions and resolutions described in paragraphs 5-7 herein, and customary international law.

62. By virtue of Defendants' gross misconduct, Plaintiff Pertierra, as personal representative of the estate, is entitled to recover compensatory damages provided by law for the estate of General Schneider.

63. Defendants' deliberate, willful, wanton, intentional, malicious and oppressive conduct gives rise to Plaintiffs' demand for punitive damages.

Fourth Claim for Relief

(Arbitrary Detention)

64. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 45 as fully set forth herein.

65. As a result of Defendants' acts, General René Schneider was placed in great fear for his life, deprived of freedom, separated from family, forced to endure severe physical and **{p.19}** psychological abuse and agony, and was ultimately murdered. This arbitrary detention caused Plaintiffs to suffer prolonged mental anguish that continues to the present day.

66. Defendants' acts described herein resulting in the arbitrary detention of General Schneider were illegal and unjust. General Schneider was detained without a warrant, probable cause, articulable suspicion or notice of charges and was not taken to trial.

67. Defendants' actions described herein constitute arbitrary detention in violation of the common law of the United States, the statutes and common law of the District of Columbia, the laws of Chile, the international treaties, agreements, conventions and resolutions described in paragraph 1 **{sic: 5}** herein, and customary international law.

68. By virtue of Defendants' gross misconduct, Plaintiff Pertierra, as personal representative of the estate, is entitled to recover compensatory damages provided by law for the estate of General Schneider.

69. Defendants' deliberate, willful, wanton, intentional, malicious and oppressive conduct gives rise to Plaintiffs' demand for punitive damages.

**Fifth Claim for Relief
(Wrongful Death)**

70. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 45 as fully set forth herein.

71. Defendants' acts described herein were deliberate, willful, wanton, intentional, malicious and oppressive and are the proximate cause of General Schneider's wrongful death, and are actionable under the common law of the United States, the statutes and common law of the District of Columbia, the laws of Chile, the international treaties, agreements, conventions and resolutions described in paragraphs 5-7 herein, and customary international law. The death of **{p.20}** General Schneider was the result of the wrongful acts of Defendants, who designed, ordered and implemented a program to eliminate him by using military personnel acting under their direction and control. These directed and controlled actions were done such that they knew or should have known that those actions would result in the wrongful death of General Schneider.

72. As a proximate result of Defendants' acts and/or omissions resulting in the wrongful death of General Schneider, Plaintiffs have suffered pecuniary loss resulting from the loss of society, comfort, attention, services, and support of their father.

73. By virtue of Defendants' gross misconduct, Plaintiff Pertierra, as personal representative of the estate, is entitled to recover compensatory damages provided by law for the estate of General Schneider.

74. Defendants' deliberate, willful, wanton, intentional, malicious and oppressive conduct gives rise to Plaintiffs' demand for punitive damages.

**Sixth Claim for Relief
(Assault and Battery)**

75. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 45 as fully set forth herein.

76. Defendants' acts described herein were deliberate, willful, wanton, intentional, malicious and oppressive and are the proximate cause of General Schneider's assault and battery described herein, and are actionable under the laws of the United States, the laws of the District of Columbia, and the laws of Chile.

77. As a result of Defendants' actions, General Schneider was placed in great fear for his life, and suffered physical and psychological abuse and agony. Defendants' actions further resulted in Plaintiffs' prolonged mental anguish and suffering that continues to the present date. **{p.21}**

78. By virtue of Defendants' gross misconduct, Plaintiff Pertierra, as personal representative of the estate, is entitled to recover compensatory damages provided by law for the estate of General Schneider.

79. Defendants' deliberate, willful, wanton, intentional, malicious and oppressive conduct gives rise to Plaintiffs' demand for punitive damages.

Seventh Claim for Relief

(Intentional Infliction of Emotional Distress)

80. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 45 as fully set forth herein.

81. Defendants' acts described herein were deliberate, willful, wanton, intentional, malicious and oppressive and are the proximate cause of General Schneider's murder, forcible disappearance, torture, arbitrary detention and other acts of cruel and degrading treatment constituting outrageous conduct in violation of all normal standards of decency, and lack privilege or justification.

82. Defendants' outrageous conduct was willful, designed, calculated, intentional, and oppressive and caused General Schneider to suffer humiliation, mental anguish and extreme emotional and physical distress. Plaintiffs suffered and continue to suffer severe emotional distress and mental anguish arising from Defendants' acts.

83. Defendants' outrageous conduct constitutes the intentional infliction of emotional distress and is actionable under the laws of the United States and the laws of the District of Columbia.

84. Defendants' repeated attempts to kidnap and eliminate General Schneider caused Plaintiffs, their father, and their family to be in great fear for their lives. Further, these actions {p.22} resulted in the separation of Plaintiffs' father from his family, thereby causing Plaintiffs severe suffering as well as psychological abuse and agony.

85. By virtue of Defendants' gross misconduct, Plaintiff Pertierra, as personal representative of the estate, is entitled to recover compensatory damages provided by law for the estate of General Schneider.

86. Defendants' deliberate, willful, wanton, intentional, malicious and oppressive conduct gives rise to Plaintiffs' demand for punitive damages.

Eighth Claim for Relief

(Negligent failure to prevent summary execution, arbitrary detention, cruel, inhuman, or degrading treatment, torture, wrongful death and assault and battery)

87. This claim arises under the Federal Tort Claims Act, 28 U.S.C. § [1346\(b\)\(1\)](#).

88. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 45 as fully set forth herein.

89. Defendant United States Government negligently and wrongfully authorized, funded and armed Viaux and Valenzuela to participate in illegal activities, in violation of international, state and federal law, having knowledge: (i) that the assassins had a long history of provoking and participating in violence and lawlessness, (ii) that such violence and lawlessness was reasonably likely to occur on October 22, 1970, (iii) that the reasonably likely consequences of such violence and lawlessness would be harm to the victim such as that which occurred, and (iv) that Kissinger and other United States employees could have prevented such harmful conduct by not providing funding, arms and support to the coup plotters.

90. Plaintiffs argue in the alternative and without waiving their ultra vires arguments, that at the time of the wrongful acts, Defendant Kissinger and other United States agents were {p.23}

employees of federal agencies, including the National Security Council and Central Intelligence Agency, and were acting within the scope of their office or employment.

91. These negligent and wrongful acts or omissions were the proximate cause of General Schneider's summary execution, arbitrary detention, cruel, inhuman, or degrading treatment, torture, wrongful death and assault and battery. As a result, General Schneider was placed in great fear for his life and suffered severe mental agony prior to his summary execution. The attack on General Schneider caused his sons, René and Raúl Schneider, to suffer prolonged severe mental anguish that continues to the present day.

92. By virtue of Defendant's gross misconduct, Plaintiff Pertierra, as personal representative of General Schneider's estate, is entitled to recover compensatory damages provided by law for General Schneider's estate. As a result of the negligent failure to prevent the attack of General Schneider, Plaintiffs also suffered pecuniary losses, as well as the loss of the society, comfort, attention, services, and/or support of their father.

93. If the defendant were a private person it would be liable to the Plaintiffs in accordance with the laws of the District of Columbia.

Ninth Claim for Relief

(Intentional Infliction of Emotional Distress)

94. This claim arises under the Federal Tort Claims Act, 28 U.S.C. § [1346\(b\)\(1\)](#).

95. Plaintiffs reallege and incorporate by reference the allegations set forth in paragraphs 1 through 45 as fully set forth herein.

96. Defendant United States Government, through its employees acting within the scope of their office or employment, deliberately, willfully, wantonly, intentionally, maliciously and oppressively caused General Schneider's murder, forcible disappearance, torture, arbitrary {p.24} detention and other acts of cruel and degrading treatment constituting outrageous conduct in violation of all normal standards of decency, and lack privilege or justification.

97. Plaintiffs argue in the alternative, and without waiving their ultra vires claims, that Defendant's employees, acting in the scope of their office or employment, committed outrageous conduct that was willful, designed, calculated, intentional, and oppressive and caused General Schneider to suffer humiliation, mental anguish and extreme emotional and physical distress. Plaintiffs suffered and continue to suffer severe emotional distress and mental anguish arising from the acts of Defendant's employees.

98. The repeated attempts by Defendant's employees to kidnap and eliminate General Schneider caused Plaintiffs, their father, and their family to be in great fear for their lives. Further, these actions resulted in the separation of Plaintiffs' father from his family, thereby causing Plaintiffs' severe suffering as well as psychological abuse and agony.

99. By virtue of the gross misconduct of Defendant's employees, Plaintiff Pertierra, as personal representative of the estate, is entitled to recover compensatory damages provided by law for the estate of General Schneider.

100. If the defendant were a private person, it would be liable to the Plaintiffs in accordance with the laws of the District of Columbia.

Jury Trial Demand

A jury trial consisting of twelve jurors is demanded for all issues so triable.

Prayer for Relief

Wherefore, Plaintiffs pray for judgment against the Defendants as follows:

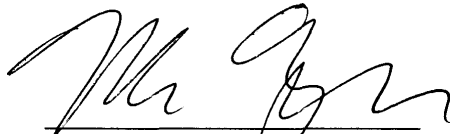
101. For compensatory damages according to proof in an amount to be determined at trial but which is in excess of \$1,000,000 for the suffering that resulted from the summary execution, {p.25} torture, cruel, inhuman, or degrading treatment, arbitrary detention, wrongful death, assault and battery, intentional infliction of emotional distress, and other violations of the common law of the United States, the statutes and common law of the District of Columbia, the laws of Chile, the international treaties, agreements, conventions and resolutions described in paragraphs 5-7 herein, and customary international law alleged and described herein.

a) For punitive and exemplary damages according to proof in an amount to be proven at trial, but which is at least twice the compensatory damages, to punish the Defendants' willful, designed, calculated, intentional, and oppressive overt and covert activities alleged and described herein.

b) For reasonable attorney's fees and costs of suit, according to proof.

c) For such other and further relief as the court may deem just and proper. {p.26}

Respectfully submitted,



Michael E. Tigar, Esq.
1025 Connecticut Ave, NW, Suite 1012
Washington, D.C. 20036.

{Signature}

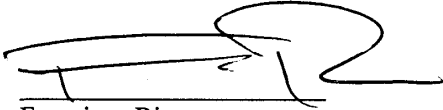
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Suite 1012
Washington, D.C. 20036.
(202)-274-4088
D.C. Bar No. 103762
Attorney for Plaintiffs
Dated: November 12, 2002
Washington, DC {p.27}

Certificate of Service

I hereby certify that on this 12th day of November, 2002, I served by first-class mail, postage pre-paid, a true copy of the foregoing **Amended Complaint as a Matter of Course** on counsel for Defendants listed below:

Richard Montague
U.S. Department of Justice

Civil Division
Suite 8122
1425 New York Avenue, N.W.
Washington D.C. 20005
Attorney for Defendants



Francisco Rivera

{Signature}
Francisco Rivera

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CIA: 'Effect the Removal of Schneider'

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