

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAMONA MATOS RODRIGUEZ, *et al.*,

Plaintiffs,

v.

**PAN AMERICAN HEALTH
ORGANIZATION, *et al.*,**

Defendants.

Civil Action No. 20-928 (JEB)

MEMORANDUM OPINION

Most public attention on human trafficking and forced labor understandably focuses on destitute victims who live on the margins of society. In this case, however, those allegedly taken advantage of were Cuban physicians, who assert that their government, through threats and intimidation, coerced them into providing medical services in Brazil, restricted their movement and contacts while abroad, and withheld and eventually confiscated the lion's share of their wages. Plaintiffs, four Cuban physicians now living in the United States, claim that they were victims of the Mais Medicos program, a medical mission operated by the Brazilian government in conjunction with Cuba, from 2013 to 2017. Plaintiffs, however, do not name Cuba or Brazil as defendants in this lawsuit. Instead, they bring this putative class action against the Pan American Health Organization, an international body affiliated with the World Health Organization and tasked with advancing public health in the Western Hemisphere. Plaintiffs charge that PAHO provided, or knowingly benefited from others having provided, their forced labor, and they seek damages under the Trafficking Victims Protection Act and the Racketeer Influenced and Corrupt Organizations Act.

PAHO now moves to dismiss, principally contending that it is immune from suit under the International Organizations Immunities Act (IOIA) or, failing that, the United Nations Charter or the World Health Organization Constitution. Until recently, this would have been an easy issue, as it was generally accepted that international organizations like PAHO are absolutely immune from suit under the IOIA. The Supreme Court, however, recently overruled that approach, holding in Jam v. International Finance Corp., 139 S. Ct. 759 (2019), that the IOIA provides international organizations the same (less-than-absolute) degree of immunity enjoyed by foreign sovereigns under the Foreign Sovereign Immunities Act. PAHO's Motion thus presents several novel questions, including how to apply the FSIA's exception for "commercial activity" to an international organization like PAHO and whether the immunity-conferring provisions of the U.N. Charter or WHO Constitution are binding domestic law capable of being enforced by federal courts.

The Court ultimately concludes that it has jurisdiction over PAHO as to several, though not all, of Plaintiffs' claims against it. The Court also rejects PAHO's alternative request that this suit be dismissed for reasons of international comity and its argument that it has not been properly served. The case will therefore proceed.

I. Background

A. Factual Background

As this Opinion mainly concerns PAHO's assertion of immunity, the Court need set out only briefly the relevant facts as alleged by Plaintiffs. (There is no occasion to assess the veracity of these factual assertions, which the Court must accept as true at this stage.) Plaintiffs claim that they were recruited into the Mais Medicos program "under threat of harsh social, economic, political personal, reputational, and legal repercussions" from the Cuban regime and

that they were not told where they would be sent or what work they would perform. See ECF No. 50 (Second Amended Complaint), ¶ 2. As to PAHO in particular, Plaintiffs’ allegations center on its role in facilitating Mais Medicos as an essential intermediary between the Cuban and Brazilian governments.

Beginning in 2012, officials from both countries began discussing the possibility of Brazil’s joining the many countries to which Cuba “export[s] . . . medical services.” Id., ¶ 40; see id., ¶¶ 41–47. Per multiple State Department reports cited in the Complaint, “medical missions” comprised of Cuban doctors “constitute a significant source of Cuban government income,” and “[s]ome participants in [those] missions as well as other sources allege that Cuban officials force or coerce participation in the program.” Id., ¶ 30. As relevant here, Cuban officials proposed sending six thousand specialists in internal medicine to Brazil. Id., ¶ 41. As discussions wore on, it became clear to Brazilian officials that any arrangement between the two countries could not be implemented as an “intergovernmental agreement” because, if it were, it would “have to be submitted to [Brazil’s] Congress” as well as other government ministries and “would generate controversy.” Id., ¶ 45 (quoting remarks of Brazil’s ambassador to Cuba). The need to arrive at a “legal framework” for the program that would avoid a “bilateral agreement,” “which would require approval by the Brazilian Congress,” led Brazilian officials to “present[] [to Cuba] the proposal to use the Pan American Health Organization as an intermediary, characterizing the contracting of services as cooperation in the medical field.” Id., ¶ 47 (quoting December 2012 diplomatic cable).

PAHO’s alleged conduct in that middleman role falls into two main buckets. First, and Plaintiffs’ main focus, PAHO agreed to serve as a financial intermediary between the two countries. Rather than having the Brazilian government pay Cuba directly as compensation for

the physicians, it would pay PAHO, which would then pay the Cuban regime. Id., ¶¶ 18, 38, 50–51. This role fulfilled an earlier agreement between PAHO and Cuba, in which PAHO had endeavored to help “triangulat[e] . . . health care cooperation and the moving of resources.” Id., ¶¶ 19(c), 49. Formalizing its go-between status, PAHO entered into several agreements with the Brazilian government and a Cuban government-affiliated firm, which “called for Brazil to make payment to PAHO’s Citibank account in Washington, D.C.” Id., ¶ 18. “Pursuant to these agreements, PAHO collected hundreds of millions of dollars every year from Brazil and it remitted 85% to Cuba, paid 10% or less to the doctors, and kept 5% for itself.” Id. Over the life of the Mais Medicos program, which terminated in 2018, that 5% fee amounted to over \$75 million. Id. Plaintiffs claim that this money was not all used for legitimate administrative expenses of PAHO’s program-related actions. Id., ¶¶ 87, 103.

Second, Plaintiffs allege that PAHO played an important role in “enforc[ing]” the terms of the Mais Medico program and “cover[ing] up” its objectionable elements. Id., ¶ 38. The SAC repeatedly asserts in general terms that, true to that role, PAHO helped “organize[], administer[], and enforce[]” Mais Medicos. Id., ¶ 3; see also id., ¶¶ 15, 18, 57, 86. In addition, Plaintiffs claim that PAHO officials proposed shaping the relevant agreements to hide the fact that Cuba was also sending “consultants” (read: government minders) along with its physicians. Id., ¶ 52; see also id., ¶ 85. PAHO also allegedly hired Cuban intelligence officers to provide on-the-ground surveillance and help ensure doctors’ compliance with their harsh employment conditions. Id., ¶¶ 5, 86, 100, 113. Among those conditions, Plaintiffs were not allowed their passports and thus could not travel; their day-to-day movements were limited and subject to pre-approval by their minders; their social-media presences were monitored; they were paid a relative pittance; and they were required to propagandize for Cuba to their patients. Id., ¶¶ 27,

98, 113. PAHO's pressure campaign was not limited to the Cuban doctors themselves; one senior PAHO official allegedly "pressured the Brazilian Attorney General to intervene and shut down, or divert," cases brought in the Brazilian court system by Cuban doctors. Id., ¶ 19(e).

B. Procedural History

Plaintiffs filed this action in late 2018 in the U.S. District Court for the Southern District of Florida. See ECF No. 1 (Complaint). After they filed an amended complaint, see ECF No. 9, PAHO moved to transfer the case to this district on the ground that it is the only appropriate venue under the IOIA. See ECF No. 18 (Mot. to Transfer) at 6–10. The Florida district court agreed and transferred the case, see ECF No. 46, after which Plaintiffs filed their now-operative Second Amended Complaint. That Complaint, styled as a putative class action on behalf of all Cuban physicians allegedly forced into participating in the Mais Medicos program, contains two counts, one asserting violations of the Trafficking Victims Protection Act (TVPA), 18 U.S.C. §§ 1589–1590, and one of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1962(c)–(d). See SAC, ¶¶ 129–36, 139–44. Although both statutes are primarily criminal in nature, each allows victims to obtain civil recovery of "damages and reasonable attorneys fees." Id. § 1595(a) (TVPA); see id. § 1964(c) (RICO). PAHO now moves to dismiss for lack of subject-matter jurisdiction on the grounds that it is immune from suit under the IOIA, the U.N. Charter, and the WHO Constitution. See ECF No. 54-1 (PAHO MTD) at 1. It also argues that abstention principles favor dismissal under the doctrine of international comity and that PAHO was not properly served. Id. at 2.

C. Plaintiffs' Claims

Before assessing these arguments, the Court pauses to note an important wrinkle: while the several alleged TVPA violations are all contained within "Count I" of the operative

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