

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF GEORGIA

Civil Action, File No. _____

ESEQUIEL TORRES, SERGEANT, :
U. S. ARMY :
Plaintiff :
v. :
ALBERT O. CONNOR, LT. GENERAL, :
U. S. ARMY, AS COMMANDING :
GENERAL, THIRD UNITED STATES :
ARMY :
Defendant :

C O M P L A I N T

The petition of ESEQUIEL TORRES respectfully shows as follows:

1.

The Plaintiff is a member of the United States Army, holding the rank of Sergeant, and brings this action against ALBERT O. CONNOR, AS COMMANDING GENERAL, THIRD UNITED STATES ARMY, pursuant to the provisions of Tit. 28, Sec. 2282, U.S.C., to enjoin the execution and performance by the Defendant under an Act of Congress which Plaintiff avers would be repugnant to the Constitution and violative of his Constitutional rights.

2.

The Defendant resides within the Northern District of Georgia, wherein is located the Headquarters of the Third U. S. Army, and is subject to the jurisdiction of this Court.

3.

On March 10, 1970, Plaintiff became the subject of certain criminal charges preferred against him by his commanding officer, one Captain Jared E. Hawkins, charging him with violation of the Uniform Code of Military Justice, in violation of Article 118, specifically with two specifications of murder and one specification of assault with intent to murder in violation of Article 134.

4.

On June 19, 1970, the Defendant formally and officially approved a recommendation by the Staff Judge Advocate of the Third United States Army

that the charges be referred to a General Court-Martial.

5.

Defendant on June 23, 1970, did refer the aforesaid charges against Plaintiff to a General Court-Martial comprised of members of his command, to cause Plaintiff to be subjected to trial before a General Court-Martial on charges of murder and assault.

6.

Plaintiff is a citizen of the United States, and brings this action to enjoin his prosecution by Defendant and members of his command for the aforesaid offenses, or any other offenses, and shows that if Defendant and members of his command are not enjoined from subjecting him to trial by General Court-Martial that his Constitutional rights as a citizen of the United States will be violated, and that violation thereof will cause him irreparable damage for which he has no adequate remedy at law.

7.

The alleged offenses upon which the Defendant is undertaking to subject the Plaintiff to trial by General Court-Martial are alleged to have been committed in the Republic of Vietnam, and in the vicinity of the hamlet of My Lai, village of Song My, province of Quang Ngai, - outside the continental limits or the territories and possessions of the United States, during the year 1968, at which time there was not in existence a state of War declared by the Congress pursuant to Article 1, Sec. 1, of the Constitution.

8.

The grounds of Plaintiff's application for relief are as follows:

FIRST GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of the Fifth Amendment to the Constitution providing "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger;" - there being at the time of the alleged offenses no state of declared War, and no public danger within the continental limits of the United States or its territories and possessions.

SECOND GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of the Fifth Amendment to the Constitution providing that no citizen shall "be deprived of life, liberty, or property, without due process of law; ..." - the fundamental fairness and impartiality required by the due process clause having been of necessity subverted and denied him by virtue of the following circumstances:

(a) On December 8, 1969, shortly after the public disclosure of the My Lai incident, the President and Commander-in-Chief of the Armed Forces of the United States, in response to a question concerning the My Lai incident propounded on a nationally televised press conference, responded: "... I would start first with this statement: What appears was certainly a massacre and under no circumstances was it justified."

(b) The statement of the President was reiterated in substance successively by the Secretary of the Department of Defense, the Secretary of the Army, the Chief of Staff of the United States Army, and others, all superior officers in the direct chain of command to the Defendant and to each member who might be appointed to serve on the General Court-Martial sitting in judgment upon the Plaintiff.

(c) The effect of such statements is of necessity to deprive the Plaintiff of the presumption of innocence, and constitutes, within the specific frame-work of the military establishment of the United States a pre-judgment as to his guilt, and an unmistakable direction to convict and punish the Plaintiff.

(d) The aforesaid statements constitute a specific violation of the provisions of Article 37, USMJ (10 U.S.C., Sec. 837(a), providing as follows:

"No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the Court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any

unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts."

THIRD GROUND

To subject Plaintiff to trial by General Court-Martial would contravene the provisions of the due process clause of the Fifth Amendment of the Constitution, upon the following considerations:

(a) The individuals of the General Court-Martial charged with the findings of guilt or innocence and the imposition of sentence will be chosen by the Defendant, who has already determined that the Plaintiff should be placed on trial for charges of murder and assault. The members of the Court will be members of the Defendant's command, subject to his orders and discipline, and reliant for promotion within the U.S. Army upon his authority. All members of the Court, absent any specific request by the Plaintiff, will be officers of the United States Army, and none, absent his request, will be enlisted persons. Further, were Plaintiff to request enlisted personnel on the Court, no more than one-third of the members could be enlisted persons (under the Uniform Code of Military Justice), and these would all be appointed by the Defendant. The circumstances of the selection and composition of the members of the Court of necessity deprive the Plaintiff of a tribunal comprised of disinterested and impartial triers of fact, thus denying him of due process of law.

(b) Under the provisions of the Uniform Code of Military Justice, any accused, including Plaintiff, might be found guilty of the crime of murder and sentenced to confinement at hard labor for life - all upon the votes of only three-fourths of the members of the Court, there being no requirement of unanimity of findings and sentence, as required in Federal criminal proceedings. This disparity serves to place the Plaintiff in greater jeopardy of his liberty than attend in the Federal criminal procedure, thereby depriving him of due process of law.

FOURTH GROUND

To subject Plaintiff to trial by General Court-Martial would contravene the provisions of the due process clause of the Fifth Amendment of the

Constitution, upon the following considerations:

Article 56, U.S.M.J. (10 U.S.C., Sec. 856) provides that a person convicted by a general court-martial shall be punished as the court-martial shall direct, the Congress having specified no form, manner, or means of punishment by legislative enactment. On June 19, 1969, by Executive Order No. 11476, the President of the United States set punishment for murder at death or life imprisonment, for assault with intent to murder at twenty years confinement at hard labor. Plaintiff stands in jeopardy of being deprived of his liberty not by Congressional enactment specifying punishment, as is the case with all Federal criminal prosecutions, but by Executive Order, subject to be determined by one individual alone, the same constituting an unconstitutional delegation of authority by the Legislative Branch and an unconditional exercise of power by the Executive Branch, thereby depriving Plaintiff of due process of law.

FIFTH GROUND

To subject Plaintiff to trial by General Court-Martial would contravene the provisions of the due process clause of the Fifth Amendment of the Constitution, upon the following considerations:

The background and sequence of events leading up to the public disclosure of the circumstances of the My Lai incident; the widespread public notoriety attendant thereto; the incessant publicity generated thereby - much in the nature of shock and outrage; the large volume of widely circulated books and articles pertaining thereto, one of which won a Pulitzer Prize; the conduct of high-ranking officers of the U.S. Army in first keeping secret reports concerning My Lai hamlet, then preferring charges against a large number of high-ranking officers, followed by the withdrawal of charges against many officers - all combine to cast the entire U.S. Army establishment in the posture as the accused, and to place it on the defensive, from which position it is inevitable that the U.S. Army will attempt to extricate and exculpate itself from severe public censure by seeking to place blame on one or more scapegoats. Under the circumstances aforesaid, it is impossible that Plaintiff receive a fair and impartial trial at the hands of the U.S. Army, whereby he is deprived of due process of law.

SIXTH GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of the Sixth Amendment to the Constitution, providing "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, ..." - the alleged crimes upon which Plaintiff is sought to be tried being alleged as committed in the Republic of Vietnam, beyond the continental limits of the United States, its territories and possessions.

SEVENTH GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of the Sixth Amendment to the Constitution providing, "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, ..." - the Uniform Code of Military Justice (10 U.S.C., Sec. 851, et seq.), under which Defendant is proceeding to try Plaintiff providing for no jury, and, more specifically, for no impartial jury of the state and district wherein the alleged crimes were alleged to have been committed.

EIGHTH GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of the Sixth Amendment to the Constitution, providing "In all criminal prosecutions the accused shall enjoy the right ... to be confronted with the witnesses against him; ..." - the procedure under which Plaintiff is to be subjected to trial providing that testimony against him might be adduced by deposition, without confrontation of witnesses, and without witnesses appearing before the General Court-Martial, and without the General Court-Martial having the opportunity to observe their demeanor, or otherwise test their credibility.

NINTH GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of the Sixth Amendment to the Constitution, providing

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, ..." - the charges against the Plaintiff being for acts alleged to have occurred more than two years prior to the filing of this application, the surrounding circumstances thereof having been well known to Plaintiff's superior officers within the U.S. Army since the alleged dates of such occurrences.

TENTH GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of the Sixth Amendment to the Constitution, providing "... the accused shall enjoy the right ... to have compulsory process for obtaining witnesses in his favor, ..." - the Plaintiff through his counsel, on June 2, 1970, having requested of the Central Intelligence Agency, an agency of the United States, the names and identities of persons operating within Quang Ngai province, and specifically charged with the implementation of Operation Phoenix, and the Central Intelligence Agency on June 15, 1970, having responded to such request as follows: "As a matter of policy, this Agency does not comment on inquiries or allegations concerning its activities. In the event a judicial proceeding should result in a subpoena, appropriate response will be made at that time."

Whereupon by the refusal of an agency of the United States to disclose the identity of persons having information necessary and pertinent to Plaintiff's defense, Plaintiff has been denied the right of compulsory process for obtaining witnesses in his favor.

ELEVENTH GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of the Sixth Amendment to the Constitution providing "In all criminal prosecutions the accused shall enjoy the right ... to have the assistance of counsel for his defense." - the Plaintiff having been deprived of the effective assistance of counsel for his defense upon the following considerations:

(a) On June 20, 1969, Plaintiff was ordered to report to the Office of the Inspector General, Headquarters, Department of the Army, Washington, D.C., whereupon he was placed under oath and subjected to an interrogation by

a certain Colonel William V. Wilson. At that time he was asked a series of questions relating to the circumstances attending Quang Ngai province, and advised that if he desired counsel the latter would be available "solely as your advisor." Plaintiff thereupon requested that his company commander (who was not a lawyer, or trained in law) be furnished as his counsel, stating "If he was here and he told me to say what has to be said, I will do that, Sir." Plaintiff's company commander was not made available to him as "counsel", nor was any other person made available to him as counsel, and the aforesaid Colonel Wilson proceeded to propound a series of questions to Plaintiff, at a time when Plaintiff was suspected of the commission of the crime of murder and then and there in the custody of the Inspector General for purposes of investigation and interrogation. Thereafter, he was instructed by said Colonel Wilson "not to discuss this investigation or the questions and answers covered" - whereby he has been deprived of the effective assistance of counsel.

(b)(1) Subsequent to the aforesaid interrogation, the United States Army undertook to implement the successive steps required by the Uniform Code of Military Justice which might lead to the trial of Plaintiff by General Court-Martial. In the latter part of February 1970, Plaintiff was transferred to Ft. McPherson, Georgia, the location of Headquarters, Third U.S. Army, commanded by Defendant, and then advised that there would be made available to him for consultation a Captain of the Judge Advocate General's Corps stationed at Headquarters, Third U.S. Army. In addition to his responsibility to "counsel with" Plaintiff, the said Captain was assigned two other cases involving charges of murder, assault, and maiming arising out of the My Lai incidents, and other normal duties of a Judge Advocate Officer, including the defense of a large number of court-martial cases. Additionally, the said Captain was detailed the responsibility of Chief, Defense Branch for all My Lai cases, which involved seven additional My Lai defendants. The press of other official duties upon the said Captain made it impossible for him adequately to prepare a defense and represent Plaintiff in proceedings then pending against him.

(2) In connection with the My Lai incidents, the Defendant, within the Headquarters of Third U.S. Army has made assignment of approximately ten

Judge Advocate Officers and approximately fifteen enlisted personnel whose duties, in whole or in part, include the discharge of functions essential to the prosecution and possible conviction of the Plaintiff.

(3) In the preparation of his defense, Plaintiff has requested successively of Defendant and members of his command investigative assistance to locate and interview witnesses on his behalf, all of which has been denied. At the same time, the United States Army has detailed an indeterminate number of investigators from Department of Army and lower command levels to develop factual material which might be used in the prosecution of the Plaintiff.

Whereupon, in withholding effective assistance of counsel from Plaintiff, and assigning an inordinate number of military personnel to prosecute and assist in prosecuting Plaintiff, he has been deprived of the effective assistance of counsel for his defense.

TWELFTH GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of the Eighth Amendment to the Constitution providing "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted" - the trial of Plaintiff by a General Court-Martial, and the possibility of punishment thereby, including confinement at hard labor for the remainder of his natural life constituting cruel and unusual punishment upon the following considerations:

(a) At the time of the alleged commission of the offenses, it was the official policy of the United States Army to send members of its command in the Republic of Vietnam, including Plaintiff, on tactical military missions known as "search and destroy missions", the purpose therefor being to discover and kill as many persons as possible who might not be known supporters of the Government of the Republic of Vietnam in Saigon.

(b) At the time of the alleged commission of the offenses, it was the official policy of the United States Army to declare certain geographical areas as "free-fire zones", and to direct and deliver general, indiscriminate, and undirected aerial bombing and artillery barrages against all persons, structures, crops, and livestock within such free-fire zones; that at the time of the alleged offenses, Quang Ngai province, Song My village, and My

Lai hamlet - the place where the offenses were alleged to have been committed - were officially designated as "free-fire zones".

(c) At the time of the alleged offenses and before and after the same, and consistent with the policy of the United States Armed Forces, prolonged aerial bombing known officially as "saturation bombing", had resulted in the deaths of an indeterminate number of Vietnamese civilians, including non-combatants, the total tonnage of explosives delivered by U.S. air, ground and naval bombardment between 1965 and April 1970 amounting to 9,279,294 tons.

(d) At the time of the alleged offenses, and before and after the same, it was the official policy of the United States Government through its agency known as the Central Intelligence Agency to bring about the systematic and calculated assassination of an indeterminate number of civilians within Quang Ngai province (which encompassed My Lai hamlet), the official name for such systematic program of assassination being "Operation Phoenix".

(e) At the time of the alleged commission of the offenses, it was the official policy of the United States Army in Quang Ngai province and other combat zones in the Republic of Vietnam to stress the importance and desirability to members of its command (including the Plaintiff) of reporting to higher headquarters the number of dead bodies observed following military action, the same being known as "body count"; that it was the official policy of the United States Army to approve and commend units reporting high body counts, to the extent that following the circumstances in March 1968, generally known as the My Lai incident, General William Westmoreland, then senior United States military commander within the Republic of Vietnam, by official telegraph commended the unit of which Plaintiff was then a member (said unit being 2nd Platoon, C Company, Task Force Barker, Americal Division), upon the report by Plaintiff's superior officers of the "body count" at My Lai.

(f) The entire conduct of the hostilities in Vietnam, from Presidential direction down to platoon leadership, placed a heavy stress upon the destruction of human lives, as exemplified by:

(1) Elements of the 9th Infantry Division, U.S. Army, operating

in the Delta area of the Republic of Vietnam, awarding to members of its command a decoration known as the "Kill Cong Badge", so termed by reason of the inscription thereon of the Vietnamese words meaning "kill Cong";

(2) By the general exhortation of military commanders urging members of their command to destroy human life, as exemplified by the statement of Colonel George Patton, III, advising officers of his command, the 11th Armored Cavalry Regiment, that he "liked to see the arms and legs fly", and by the distribution by said Colonel Patton as a card of Christmas greeting containing photographs of the dead Vietnamese bodies;

(3) By the practice, prevalent among some members of the armed forces in Vietnam of collecting ears and fingers, cut from dead Vietnamese bodies.

(g) The official policy of the United States Government, its tactics, strategies, and procedures, resulted in the indiscriminate destruction of human lives, including thousands of non-combatants, to the extent that through April 4, 1970, according to compilations by the Department of Defense, 618,061 Vietnamese who were not adherents of the Saigon Government had been killed.

(h) The operation of My Lai, out of which the charges against the Plaintiff arose, involved a company consisting of approximately 100 men, of which a majority have now been discharged from the military service, and accordingly, are beyond the jurisdiction of the United States Army Court-Martial system. Of those so discharged from service, many are the subject of investigation of charges similar to those preferred against Plaintiff. The failure of the United States Army to prosecute all members of its command responsible for the indiscriminate destruction of human lives (as exemplified by the dismissal of all charges in the "Green Beret Case"), the inability of the U.S. Army to prosecute other members of Plaintiff's unit who have been discharged from the Army, and the initiation of prosecution of this Plaintiff, with the possibility of punishment by confinement at hard labor for life, constitute, under all the circumstances, cruel and unusual punishment.

THIRTEENTH GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of Article III, Section 1 of the Constitution, providing

"The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish", and the provisions of Article III, Section 2, of the Constitution, providing "The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority ..."; and the provisions of Article III, Section 2, clause 3, of the Constitution, providing "The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such place or places as the Congress may by law have directed" -

Plaintiff being placed in jeopardy of his liberty by a General Court-Martial, and not by a jury, for an alleged offense not committed within any state, and the Congress having made no direction as to the place or places where trial in such cases might lawfully be held.

FOURTEENTH GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of the Constitution in that there is an absolute want of judicial power to punish Plaintiff for any of the alleged acts charged against him, upon the following considerations:

(a) The alleged acts are charged to have been committed in a foreign nation, the Republic of Vietnam, against nationals of that foreign nation.

(b) At the time of the alleged commission, the United States was not in a state of declared War in that Congress had not declared a state of War to exist, Congress having the sole power to declare War under Article 1, Section 18, clause 14, of the Constitution.

(c) The places of the alleged commissions, My Lai hamlet and Quang Ngai province, were areas not under the control, supervision, influence, protection, or security of United States Armed Forces, or those of the Government of the Republic of Vietnam, but were controlled by elements hostile and antagonistic to the United States and the Republic of Vietnam.

(d) Prior to the time of the alleged commissions, Plaintiff had

been ordered by the U.S. Army to leave the territorial limits of the United States, and was directed by military orders to enter My Lai hamlet and Quang Ngai province along with other members of C Company.

(e) The acts alleged to have been committed by Plaintiff were acts allegedly committed upon the persons of nationals of a foreign country, within areas officially designated as part of the Republic of Vietnam, but in fact beyond the control of the Republic of Vietnam, and hostile to it.

(f) Any alleged commissions by Plaintiff under all of these circumstances could constitute, at most, a violation of the Law of Nations, and not a violation of rules for the government and regulation of the land and naval forces.

(g) Article 1, Section 8, clause 10, provides that "The Congress shall have Power ... to define and punish Piracies and Felonies committed on the high seas, and offenses against the Law of Nations ..." - the foregoing being the only Constitutional grant of power which might render a citizen of the United States subject to criminal prosecution conducted by the United States and within the United States during peacetime, and not during the existance of a declared state of War for alleged commissions within the territory of a foreign nation and against civilians who were nationals of a foreign nation.

Whereupon, Congress having failed to "define and punish offenses against the Law of Nations" in terms applicable to the alleged acts charged against Plaintiff, and Plaintiff being charged under no such definition and prescription of punishment, the United States has no Constitutionally prescribed jurisdiction over him in connection with any such alleged acts, and he should be discharged, as in the nature of the writ of habeas corpus.

FIFTEENTH GROUND

To subject Plaintiff to trial by General Court-Martial will contravene the provisions of the Constitution in that there is an absolute want of judicial power to punish Plaintiff for any of the alleged acts charged against him, upon the following considerations:

(a) The conduct of hostile military action by the U.S. Army at the time and place of the alleged offenses charged against Plaintiff was pursuant

to the instructions of the President of the United States - and was not authorized by the Congress through a declaration of War.

(b) The conduct of hostile military action by elements of the U.S. Army in Quang Ngai province and My Lai at the time of the alleged commissions charged against Plaintiff were without Constitutional or otherwise lawful authority.

(c) The use of military force at such time and place and in such manner was without lawful and duly constituted authority, to-wit, a declaration of War by Congress.

(d) The legal status of members of Plaintiff's unit, C Company, Task Force Barker, Americal Division, at such time and place was not that of "land and naval forces", but only of armed men acting upon the instructions of another, who, although occupying the position of President of the United States, was without lawful authority to commit the land and naval forces of the United States in hostile military engagements with any force, nation, or principality, wherever situated, and, specifically, was without lawful authority to order Plaintiff and members of his unit into military combat in Quang Ngai province.

Whereupon, by reason of such unlawful and unauthorized instructions to and use of members of the U.S. Army, including Plaintiff, Plaintiff's unit and Plaintiff individually were not at such time and place acting as "members of the land or naval forces" within the meaning of Article 1, Section 8, clause 14, of the Constitution, and any "Rules for the Government and Regulation of the land and naval forces" enacted by Congress pursuant to such provision are not applicable to any conduct of Plaintiff at said time and place, and Plaintiff should be discharged, as in a writ of habeas corpus.

9.

By reason of the aforesaid facts and circumstances, the acts of the Defendant as an officer and agent of the United States Government engaged in the execution and operation of Acts of Congress, specifically the Uniform Code of Military Justice (10 U.S.C. 851, et seq.), are repugnant to the Constitution of the United States and deprive Plaintiff of his rights, privileges, and immunities thereunder.

WHEREFORE, Plaintiff prays that

- (a) The Court receive this petition and order it filed;
- (b) That copies thereof be served as provided by law upon the Defendant, and upon the Attorney General of the United States and the United States Attorney for the Northern District of Georgia; and
- (c) That a District Court of three judges be impaneled according to law to hear this application; and
- (d) That the Defendant, his agents, subordinates, and members of his command, be restrained ex parte from taking any further steps to place Plaintiff on trial by a general court-martial pending a hearing upon this application; and
- (e) That the District Court of three judges grant an interlocutory injunction enjoining and restraining the Defendant, his agents, subordinates, and members of his command, from undertaking to prosecute the Plaintiff by a General Court-Martial; and
- (f) That the Defendant, his agents, subordinates, and members of his command, be permanently enjoined from prosecuting the Plaintiff by a general court-martial, and that Plaintiff be discharged; or, in the alternative, that the District Court of three judges order the charges transferred to the District Court for the Northern District of Georgia, to be tried by a jury as provided by law; and
- (g) That Defendant have such other and further relief as equity and justice shall require.

CHARLES L. WELTNER
Counsel for Plaintiff

Counsel:

CHARLES L. WELTNER
2130 First National Bank Tower
Atlanta, Georgia

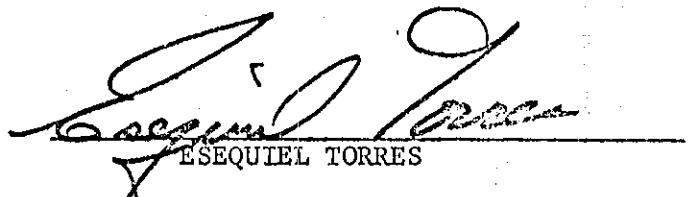
S. GEORGE BERKLEY
25 West Flagler Street
Miami, Florida

W. WYCHE FOWLER, JR.
2400 First National Bank Tower
Atlanta, Georgia

STATE OF GEORGIA

COUNTY OF FULTON

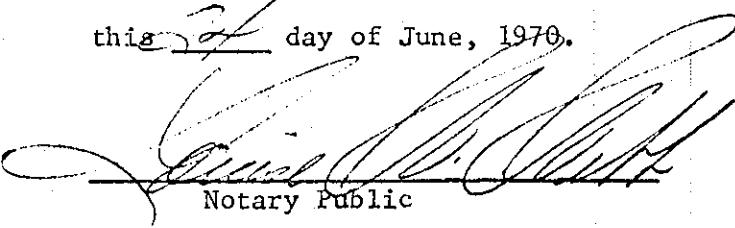
Personally appeared before the undersigned officer, authorized to administer oaths, ESEQUIEL TORRES, who, after being duly sworn, on oath says and deposes that the allegations of fact contained in the foregoing Petition are true and correct.



Esequiel Torres

Sworn to and subscribed before me

this 27 day of June, 1970.



Notary Public

Notary Public, Georgia State at Large
My Commission Expires Oct. 13, 1971