UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 120-cv-24294-KMM

RAQUEL CAMPS, et al.,

Plaintiff,

v.

ROBERTO GUILLERMO BRAVO,

Defendant.
_____/

DEFENDANT'S MOTION FOR DIRECTED VERDICT OR JUDGMENT AS A MATTER OF LAW[1]

Defendant, ROBERTO GUILLERMO BRAVO ("Defendant" and/or "Mr. Bravo"), by and through his undersigned counsel, pursuant to Federal Rule of Civil Procedure 50(a), moves for entry of a directed verdict, or judgment as a matter of law, on all claims asserted against it by Plaintiffs Raquel Camps on behalf of the Estate of Alberto Camps, Eduardo Cappello II in his personal capacity and on behalf of the Estate of Eduardo Cappello I, Alicia Krueger in her personal capacity and on behalf of the Estate of Rubén Bonet, and Marcela Santucho in her personal capacity and on behalf of the Estate of Ana María Villarreal de Santucho (collectively referred to as "Plaintiffs"). Defendant respectfully submits that there exists no disputed issue of material fact and that he is entitled to a directed verdict, or judgment as a matter of law, on Plaintiffs' First Claim for Relief (Extrajudicial Killing Torture Victim Protection Act ("TVPA") § 3(a), Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note), on Plaintiffs' Second Claim for Relief (Attempted Extrajudicial Killing, TVPA § *Id.*), and on Plaintiffs' Third Claim for Relief (Torture, TVPA § 3(b)), of Plaintiffs' Complaint.

[1] Although the term "directed verdict" continues to be routinely used, "Rule 50(a) was amended in 1991 to replace the term 'directed verdict' with 'judgment as a matter of law.'" *U.S. v. One 28 Foot Contender Motor Vessel*, 240 F. Appx. 842, 843 (11th Cir. 2007) (referring to Fed. R. Civ. P. 50 (1991 Amendments)).

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I. INTRODUCTION

The events giving rise to this case took place in August 22, 1972, **nearly fifty years ago.** The Federal Statute, which is the basis for this case, the Torture Victims Protection Act ("TVPA") was enacted on March 12, 1992 (twenty years after the events in question), and provides for a ten year statute of limitations which runs within ten (10) years of when the incident occurred. Thus, assuming the ten-year statute ran from enactment of the TVPA this case was time barred by 2002.

Faced with the daunting task of having to convince the Court and/or the Jury that claims which **expired at least twenty years ago** remain actionable, Plaintiffs rely upon the doctrine of equitable tolling. As we show below, this is an issue which must be decided by the Court and not the Jury.

The record evidence in this case, as established by the pleadings, years of discovery and at trial, do not show any legal or factual basis that these expired claims should be "equitably tolled." For example, there are no "extraordinary circumstances" such as a repressive regime holding power since, by Plaintiff's own admission, Argentina had a fully functioning democracy by no later than 1983. Under any measurement (assuming the ten years started running upon the enactment of the TVPA) taken from that date forward, the statute of limitations would have still expired in **twenty years** before Plaintiffs' Complaint.

Moreover, Defendant Roberto Bravo was not in hiding – he was living openly in the United States; he owned a home in Florida in his own name, incorporated several businesses in Florida using his name as the principal owner of the business (including his main source of income "RGB Group" which bears his initials), became a United States citizen, was married and lived with his three children in the United States, each of whom was enrolled in American schools, paid United States income taxes and was even an approved government contractor openly doing business with the United States government. Not to mention that his business (RGB Group) was sued in Federal

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Court several times for business related matters in the past making it extremely easy for any lawyer with internet access to locate him. Roberto Bravo was not in hiding.

There is scant evidence that Plaintiffs even looked for Bravo before the limitations period expired and what evidence there is on this point shows that at least one Plaintiff Alicia Krueger actually found him and knew where he was. Moreover, it is well documented that the incident at the Trelew military base which occurred on August 22, 1972, was a virtual cause célèbre in Argentina at or about the same time that it happened. There was ample news coverage of the events following the escape by the prisoners from the Rawson prison including, but not limited to, the presence of television news crews which were on site. That news coverage continued with respect to the incident at Trelew which occurred after nineteen of those same prisoners were captured and taken to the naval base at Trelew. Books have been written about the incident as admitted by Plaintiffs' own expert, James Brennan; there was ample news coverage of the incident in the Argentine press at or about the time that it occurred. The incident was even reported in the *New York Times.*

The incident was also investigated extensively by the Argentine government and, while Plaintiffs may disagree with the results of those investigations, there is no question that the results of those investigations were made available to the Argentine public. The incident at Trelew, specifically the fact people died there, was not a secret; it was public knowledge in Argentina and throughout the world.

Plaintiffs argument disregards the intent of Congress in enacting the TVPA when it created a very specific statute of limitations designed to provide a logical cutoff point for claims of this type. If prospective Plaintiffs were permitted to reach back into history to assert TVPA claims for past wrongs, as Plaintiffs seem to be arguing here, there is no telling how far back in history claims could be asserted.

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II. MEMORANDUM OF LAW

A. Legal Standard for a for Directed Verdict /Judgment as a Matter of Law

A court may grant a motion for judgment as a matter of law on an issue if "the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the [nonmoving] party on that issue." FED. R. CIV. P. 50(a). "A district court should grant judgment as a matter of law when the plaintiff presents no legally sufficient evidentiary basis for a reasonable jury to find for him on a material element of his cause of action." *Ore v. Tricam Indus., Inc.*, No. 14-60269-Civ-Scola, 2017 U.S. Dist. LEXIS 171639, at *1 (S.D. Fla. Oct. 16, 2017) (granting defendants' motion for directed verdict on damages) (*citing Pickett v. Tyson Fresh Meats, Inc.*, 420 F.3d 1272, 1278 (11th Cir. 2005)).

"Although courts should 'look at the evidence in the light most favorable to the non-moving party, the non-movant must put forth more than a mere scintilla of evidence suggesting that reasonable minds could reach differing verdicts.'" *Ore*, 2017 U.S. Dist. LEXIS 171639, at *1 (*citing Abel v. Dubberly*, 210 F.3d 1334, 1337 (11th Cir. 2000)); *see also Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1446 (11th Cir. 1997) ("A mere scintilla of evidence is not sufficient to support a jury verdict."). The "standard for judgment as a matter of law . . . mirrors the standard for summary judgment under Rule 56. Thus, the court must review all of the evidence in the record, drawing all reasonable inferences in favor of the nonmoving party, but making no credibility determinations or weighing any evidence." *Ore*, at *1 (*citing Reeves v. Sanderson Plumbing Prod., Inc.*, 530 U.S. 133, 135 (2000) (citations omitted)).

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B. The TVPA and Equitable Tolling

The TVPA is subject to a ten-year statute of limitations from the date that the cause of action arose.[2] That limitations period may be subject to equitable tolling under certain defined circumstances none of which applies here.[3] The question of whether equitable tolling applies is a legal one. *See Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1153 (11th Cir. 2005) (*citing Miranda v. B&B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1531 (11th Cir. 1992)); *see also Arce v. Garcia*, 434 F.3d 1254, 1263 fn.21 (11th Cir. 2006)(upholding the district court's decision "that the equitable tolling issue should be submitted to and decided by the court rather than the jury"). Equitable tolling is "a discretionary doctrine that turns on the facts and circumstances of a particular case." *Harris v. Hutchison*, 209 F.3d 325, 330 (4th Cir. 2000); *Arce*, 434 F.3d at 1261 (depends on "a given set of facts"). For equitable tolling to apply, a litigant must establish: "(1) that he has been pursuing his rights ***diligently***, ***and*** (2) that some ***extraordinary circumstance*** stood in his way and prevented timely filing." *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 255 (2016) (emphasis added).[4]

(i) The Standard for the Due Diligence Element of Equitable Tolling

In addressing the ***due diligence*** element, this Circuit has held that a "plaintiff should act with due diligence and file his or her action in a timely fashion in order for equitable tolling to apply." *Cabello*, 402 F.3d at 1155. "[Federal courts] have generally been ***much less forgiving*** in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights." *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89 (1990). Generally, when "a statute is

[2] TVPA § 2(c), 28 U.S.C. § 1350 note.
[3] *See Arce v. Garcia*, 434 F.3d 1254, 1262 (11th Cir. 2006); S. Rep. No. 102-249, at 10-11 (1991) (calling for equitable tolling of TVPA claims "with a view toward giving justice to plaintiff's rights");H.R. Rep. No. 102-367, at 5 (1991) ("equitable tolling remedies may apply to preserve a claimant's rights" under the TVPA in certain circumstances, such as when "a defendant fraudulently conceals his or her identification or whereabouts from the claimant");
[4] All emphasis in cites throughout this motion has been added by the undersigned.

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equitably tolled, the statutory period does not begin to run until the impediment to filing a cause of action is removed." *Id.* For instance, when "the information surrounding [the person's] death became available." *Id.*

(ii) Plaintiffs Cannot Satisfy the Standard for the Court to Apply Equitable Tolling

"[Equitable] tolling is an extraordinary remedy which should be extended only ***sparingly***." *See Arce v. Garcia*, 434 F.3d 1254, 1262 (11th Cir. 2006)(*citing Irwin*, 498 U.S. at 96); *see also Jackson v. Astrue*, 506 F.3d 1349, 1354 (11th Cir. 2007). Equitable tolling "must be reserved for those *rare* instances where— due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result." *Harris*, 209 F.3d at 330; *Jean v. Dorelien*, 431 F.3d 776, 779 (11th Cir. 2005) ("extraordinary circumstances that are both beyond [plaintiff's] control and unavoidable even with diligence")(citations omitted); *Cabello*, 402 F.3d at 1148 (tolling "is reserved for extraordinary facts."). In order to apply equitable tolling, "***courts usually require some affirmative misconduct, such as deliberate concealment***." *Id.* at 1155; *see Jackson v. Astrue*, 506 F.3d 1349, 1354, 1356 (11th Cir. 2007). "Traditional equitable tolling principles require that the claimant demonstrate extraordinary circumstances such as fraud, misinformation, or deliberate concealment." *Id.* at 1355. Federal courts "define[] 'extraordinary circumstances' narrowly, and ignorance of the law does not, on its own, satisfy the constricted 'extraordinary circumstances' test. . . . ***Ignorance of the law usually is not a factor that can warrant equitable tolling***." *Id.* at 1356.[5]

As applied in the Eleventh Circuit, equitable tolling is appropriate in only the following extraordinary circumstances:

[5] *See also Wakefield v. Railroad Retirement Bd.*, 131 F.3d 967, 970 (11th Cir. 1997); *Sandvik v. U.S.*, 177 F.3d 1269, 1272 (11th Cir. 1999)(refusing to equitably toll statute of limitations on the basis of plaintiff's attorney's negligence); *see also Irwin*, 498 U.S. at 96 ("[T]he principles of equitable tolling . . . do not extend to what is at best a garden variety claim of excusable neglect.").

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- During the time the defendant was ***absent from the United States*** or from any jurisdiction in which similar action may be maintained by the plaintiff. *See* S. Rep. No. 102-249, at 10-11 (1991); *Jean*, 431 F.3d at 780.
- The period when a defendant has ***immunity*** from suit. *See* S. Rep. No. 102-249, at 10-11 (1991); *Jean*, 431 F.3d at 780; *see also Collett v. Socialist Peoples' Libyan Arab Jamahiriya*, 362 F. Supp. 2d 230 (DDC 2005) ("the statute of limitations for the plaintiffs' claims must be tolled to begin when the defendants were stripped of their immunity").
- The period of time in which the plaintiff is ***imprisoned*** or otherwise incapacitated. *See* S. Rep. No. 102-249, at 10-11 (1991).
- Where the defendant ***misleads*** the plaintiff, allowing the statutory period to lapse. *Cabello*, 402 F.3d at 1155.
- When the plaintiff has no reasonable way of ***discovering*** the wrong perpetrated against him. *Cabello*, 402 F.3d at 1155; *Arce*, 434 F.3d at 1262.
- Where the defendant has ***concealed his or her whereabouts***. *See* S. Rep. No. 102-249, at 10-11 (1991); *Jean*, 431 F.3d at 780; *Cabello*, 402 F.3d at 1155.
- Where plaintiff has been unable to discover the ***identity of the offender***. *See* S. Rep. No. 102-249, at 10-11 (1991); *Cabello*, 402 F.3d at 1155.
- Where both the plaintiff and defendant reside in the United States but where the situation in the home state nonetheless remains such that the ***fair administration of justice*** would be impossible, even in U.S. courts. *See* S. Rep. No. 102-249, at 10-11 (1991); *Cabello*, 402 F.3d at 1155 (tolled until Chilean military regime left power); *Jean*, 431 F.3d at 780 (tolled until the Haitian military regime left power); *Arce*, 434 F.3d at 1262 (tolled until the Salvadorean military left power).
- Absent regime change, ***those in power may wish to protect their former leaders*** against charges of human rights abuses. The quest for domestic and international legitimacy and power may provide regimes with the incentive to intimidate witnesses, to suppress evidence, and to commit additional human rights abuses against those who speak out against the regime. *See* cases cited above.

As we show below, none of the above circumstances are present here. Nonetheless, even if this Court determines that equitable tolling is appropriate, the court "must establish when exactly the ten-year statute of limitations began to run." *Cabello*, 402 F.3d at 1155. The doctrine "allows a court to toll the statute of limitations until such time that the court determines would have been fair for the statute of limitations to begin running on the plaintiff's claims." *Arce*, 434 F.3d at 1262-65. In considering the start date, courts agree that "the statutory period does not begin to run until the impediment to filing a cause of action is removed," so the ten years can start running. *Cabello*, 402 F.3d at 1156. In *Cabello*, for instance, the Eleventh Circuit found that the clock began to run in 1990,

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"when the information surrounding Cabello's death became available" and when "the "military dictatorship lost power." *Id.* In *Jean*, the Eleventh Circuit "toll[ed] the statute of limitations until [defendant] was removed from his position, the repressive security forces were dismantled, and the democratically elected government resumed power." 431 F.3d at 781. In *Arce*, the Circuit court agreed that the statute of limitations was tolled until the military regime fell ending the Salvadorean civil war because "only then could the evidence have come to light and [plaintiff] have made his claims without fear of reprisal against family and friends in El Salvador." 434 F.3d at 1265.

However, this Circuit has also held that since statute of limitations must be "strictly enforced . . . [m]ere ambient conflict in another country does not, by itself, justify tolling for suits filed in the United States." *Id.* The reason is because such statutes "promote justice by preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Burnett v. NY Cent. R.R. Co*., 380 U.S. 424 (1965). That is why this Circuit cautioned that "[a] lenient approach to equitable tolling ***would revive claims dating back decades***, **if not centuries**, when most or all of the eyewitnesses would no longer be alive to provide their accounts of the events in question." 434 F.3d at 1265. The *Jackson* Court held that the "'[p]rocedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a ***vague sympathy for particular litigants***." *Jackson*, 506 F.3d at 1354 (refusing to toll due to lack of extraordinary circumstances and evidence that defendant "engaged in any act of affirmative misconduct in an effort to mislead").

C. Overview of Extraordinary Circumstances Found Warranting Equitable Tolling

Courts in this Circuit addressing TVPA claims have found equitable tolling appropriate only in the following extraordinary circumstances:

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Case	Facts re: Extraordinary Circumstances	Decision
Cabello v. Fernandez-Larios, 402 F.3d 1148 (11th Cir. 2005)	• Plaintiff killed in 1973 by Chilean military officers. • Chilean military officials deliberately concealed identity of officers involved, manner of death, and plaintiff's burial location from family until 1990. • Chilean government provided three conflicting death certificates of plaintiff. • Defendant secretly entered the United States in 1987. • Defendant lived in an undisclosed location under the protection of the US government. • In 1990, Chilean military regime was replaced by civilian government. • In 1999, Plaintiff's survivors filed suit against Fernandez.	The Eleventh Circuit affirmed the District Court decision to toll the statute of limitations until 1990 when the bodies of thirteen prisoners killed were located and exhumed, which occurred only after General Pinochet left office. The Eleventh Circuit agreed to "**toll[] the statute of limitations until the military dictatorship lost power** because, until then, 'the Chilean political climate prevented the Cabello family from pursuing any efforts to learn of the incidents surrounding Cabello's murder.'" *Id.* at 1155
Jean v. Dorelien, 431 F.3d 776 (11th Cir. 2005)	• Plaintiff was tortured in 1993 by Haitian military officers. • Defendant remained in military with responsibility over personnel and administration of justice until 1994. • In 1994, the military regime was replaced by a democratic government. • Defendant entered the US in 1994. • Action was filed in 2003.	The court held that "extraordinary circumstances [existed] to toll the statute of limitations until [defendant] was removed from his position, the repressive security forces were dismantled ***and the democratically elected government resumed power***." Thus, the Eleventh Circuit tolled the limitations period until Defendant left power in 1994 as well as during the time that defendant was absent from the United States.
Arce v. Garcia, 434 F.3d 1254 (11th Cir. 2006	• Plaintiffs were kidnapped and tortured in 1979 to 1983 by Salvadoran military officers. • Defendants held positions of power until 1983 and 1989, respectively. • Defendants became US residents in 1989. • Salvadorean civil war ended in 1992 when a Peace Agreement was reached. • Action was commenced in 1999.	The trial court decided that the question of whether or not equitable tolling is warranted should be made by the Judge and not the Jury. The Eleventh Circuit upheld the trial court's decision of "**tolling the statute of limitations until the end of the civil war in 1992**."

In ***all*** of the cases listed above, the Eleventh Circuit tolled the statute of limitations until such time when the respective countries (Chile, Haiti or El Salvador) no longer had the military regime in power which participated in the TVPA violation at issue and had elected a democratic government. The same consistent holding is found in federal cases throughout the country applying the doctrine of equitable tolling in TVPA cases.[6]

[6] In the following cases outside this Circuit, the courts have found equitable tolling appropriate in these extraordinary circumstances: *Forti v. Suarez-Mason*, 672 F. Supp. 1531, 1550 (N.D. Cal. 1987)(in a case against an *Argentinean* military officer -in the same military government as the case here- for acts committed between 1977-1981, the district court tolled the statute of limitations until the democratic government was in power, defendant left Argentina, was located and no longer in hiding in 1987, same year plaintiff filed the complaint); *Hilao v. Estate of Marcos*, 103 F.3d 767, 773 (9th Cir. 1996) (tolling the statute of limitations against Ferdinand Marcos until the Marcos regime in the Philippines was overthrown in 1986, same year plaintiff filed the complaint); *Doe v. Unocal Corp.*, 963 F. Supp. 880,

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D. There is No Factual or Legal Basis to Apply Equitable Tolling in this Case.

Equitable tolling is appropriate only if "extraordinary circumstances [such as those] that are both beyond the plaintiff's control and unavoidable even with diligence." *Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1155 (11th Cir. 2005). In this case, Plaintiffs have failed to satisfy the two-prong test to determine the availability of equitable tolling both by lack of due diligence and failure to demonstrate extraordinary facts that prevented them from filing this action.

(i) Plaintiffs Failed to Pursue Their Rights "Diligently"

The following facts are undisputed:

(i) Argentina returned to a democratic government in 1983 (Complaint at ⁋ 69).

(ii) The Supreme Court of Argentina held in 2005 that crimes by the military dictatorship could be prosecuted (Complaint at ⁋ 70; Krueger Deposition Transcript at 57: 22-24 – 58:1).

(iii) The other officers involved at Trelew began being prosecuted and indicted in Argentina in 2006 (Complaint at ⁋ 71).

(iv) Plaintiffs had confidence in the Argentinean justice system since at least 2006. (Krueger Deposition Transcript at 57:22-24 – 58:1).

(v) **Plaintiffs knew the identify of Defendant Bravo in the early *1970s*** (Krueger Deposition Transcript at 73:17-25. 74:1) ("Q. After your husband died, at one point you learned that Mr. Roberto Bravo may have had some connection to that; correct? . . . A: Yes. I did receive that information. Q. And, in fact, you learned that in pretty short order after your husband's death. A. Yes. That's correct.) or,

(vi) **Plaintiffs knew the exact whereabouts of Bravo in *2008*** (Krueger Deposition Transcript at 56:18-57:2) ("Q. . . . And in 2008, I read in the newspaper some information about the whereabouts of one of the perpetrators [Bravo]. I found out he was in Miami, or that's what they said. So I started an information lookup. I found a lot of information about the life of this person. And that's when we started to try to pinpoint his location. Q. So around 2008, you knew that Mr. Bravo was in Miami, in the United States? A. That's what they said. Yes."); (Krueger Deposition Transcript at 86:5-11 (Q. . . . You told us on your direct that you learned

897 (C.D. Cal. 1997)(tolling statute of limitations until the Burmanese dictatorship left power); *Doe v. Saravia*, 348 F. Supp. 2d 1112 (E.D. Cal. 2004)(tolling statute of limitations until after the Salvadorean civil war had ended); *Chavez v. Carranza*, 559 F.3d 486, 492–94 (6th Cir. 2009)(tolling the statute of limitations until after El Salvador held national elections after the civil war); *Bashe Abdi Yousuf v. Mohamed Ali Samantar*, No. 1:04cv1360 (LMB/JFA), 2012 U.S. Dist. LEXIS 122403, at *1 (E.D. Va. Aug. 28, 2012)(tolling statute of limitations until defendant's whereabouts in the United States were known); *Warfaa v. Ali*, 1 F.4th 289, 291 (4th Cir. 2021)(tolling the statute of limitations until 1997, when the regional government of Somali and acquired semiautonomous status); *Jane W. v. Thomas*, 560 F. Supp. 3d 855, 874 (E.D. Pa. 2021)(tolling the statute of limitations until 2011 where the binding recommendations of the Truth and Reconciliation Commission were declared unconstitutional by the Liberian Supreme Court, which "'eviscerated' the TRC's authority to provide meaning justice to war crimes victims").

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in 2008 that Roberto Bravo was living in Miami. Do you recall that? A. Yes. Q. Why didn't you sue him then? A. Because I didn't know at the time how to proceed.").

Plaintiffs have failed to show the due diligence to support their request for equitable tolling as there is no showing of any attempt by Plaintiffs to file suit against Bravo within ten years of any of the above events. In fact, they provided no testimony or other evidence to demonstrate any diligence to justify waiting decades, until October 2020, to bring this case.[7] Indeed, the evidence suggests that Plaintiffs gave scant, if any, thought to seeking a legal remedy against Defendant Bravo until this action was filed. They hardly pursued these claims "diligently" as the Eleventh Circuit requires before equitable tolling may be invoked. In fact, despite learning Bravo's precise whereabouts, which occurred at the latest in ***2008***, and despite learning the availability of such a remedy from third parties (*i.e.*, the news),[8] Plaintiffs nonetheless failed to file this action. Plaintiffs' excuse seems to be that "I didn't know that there was a possibility of having a lawyer in the United States where, you know, we could have a case such as the case today. I didn't have that understanding or information to proceed at that time." Krueger Deposition Transcript at 86:12-17. Unfortunately for Plaintiffs, ignorance of the law does not warrant equitable tolling. *See Jackson*, 506 F. 3d at 1356 ("ignorance of the law usually is not a factor that can warrant tolling" as it does "show[] that her limited legal experience prevented her in some extraordinary way from timely filing").

Moreover, at least one Plaintiff, Alicia Krueger, has not even lived in Argentina since 1978 so any alleged impediment created by the Argentine government could not have applied to her.[9] Additionally, taking Plaintiffs' allegations as true, the last alleged wrong in this case which

[7] Krueger Deposition Transcript at 79:8-79:11 ("Q: Are you aware of any other civil proceedings, other than this one and the one you initiated in 1972? A. No.").
[8] Krueger Deposition Transcript at 86:10-17 ("I had read about [this remedy] in the news, in Argentinian newspapers and even in one in France.").
[9] *See* Krueger Deposition Transcript at 36:20-22.

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Plaintiffs have identified occurred "[i]n 2006, [when] members of the military from Almirante Zar spied on lawyers and others involved in investigating the Trelew [events] in an attempt to impede the investigation." Complaint at ¶ 82. Thus, taking Plaintiff's allegations at face value, as pleaded in their Complaint, the statute of limitations would still have expired on or before 2016.

Moreover, even taking Plaintiffs' allegation made at trial that the statute of limitations should be tolled up to and including the time that extradition was denied in the United States, that argument also fails because there was nothing preventing Plaintiffs from filing their TVPA claims against Bravo in the United States regardless of whether he was successfully extradited or not. As Defendant has made clear, at all times since 1972, the United States Court have been open for business.

Even taking the facts in the light most favorable to Plaintiffs, the evidence shows they failed to give any account of any obstacles they encountered in filing this complaint, whether due to extraordinary difficulties in interviewing witnesses or any direct threats of retaliation made against their witnesses, their family, or themselves ***after 2008***, when they admitted knowing the location of Defendant Bravo in Miami. Indeed, Plaintiffs have not presented any evidence that their witnesses or family members have been exposed to any risk of intimidation by anyone after 2008.[10] The desire to accord relief to sympathetic plaintiffs is simply not adequate to support for this Court to ignore the "procedural requirements established by Congress for gaining access to the federal courts" and the erosion of constitutional guarantees of due process. *Jackson*, 506 F.3d at 1354; *see also Gerling Global Reins. Corp. of America v. Nelson,* 123 F.Supp.2d 1298, 1304 (N.D.Fla.2000) (holding that "if extraordinary events could properly be held to render constitutional principles inapplicable, then the Holocaust would be first on the list of events qualifying for that

[10] Taking Plaintiffs' allegations as true, the last wrong in this case appears to have occurred "[i]n 2006, [when] members of the military from Almirante Zar spied on lawyers and others involved in investigating the Trelew [events] in an attempt to impede the investigation." Complaint at ¶ 82. Defendant is using the latest date, 2008, for this analysis.

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special treatment. There is not, however, any such constitutional exemption for events extraordinary or otherwise.").

Further, the evidence shows that, **in 2012,** Plaintiff Krueger contacted her current counsel, The Center for Justice and Accountability.[11] However, Plaintiffs did not commence this action until 2020, *eight years later.* By that time, the statute of limitations had already expired. Thus, Plaintiffs cannot claim limited legal experience prevented them in some extraordinary way from timely filing this action. *See Jackson*, 506 F.3d at 1354 ("the principles of equitable tolling . . . do not extend to what is at best a garden variety claim of excusable neglect."). In fact, by 2012, Plaintiffs knew the identity and whereabouts of Defendant, relied upon the Argentina government to prosecute actions, obtained convictions, and even retained US counsel with known expertise in TVPA cases. Yet, they **still** did not file this action until 2020 after more than eight years had passed. Therefore, Plaintiffs have failed to meet the first element for equitable tolling to be warranted.

(ii) Plaintiffs Failed to Demonstrate Extraordinary Circumstances for Late Filing

Plaintiffs have failed to demonstrate that extraordinary circumstances prevented them from filing this action until 2020. First, Plaintiffs have not identified in any of their pleadings (or even in their jury instructions, a precise date in which they believe the statute of limitations should be tolled until, together with a factual basis for same). However, even if they did, the facts of this case do not meet the standard to apply equitable tolling.[12]

A. Bravo Did Not Engage in Any Conduct Which Prevented Plaintiffs from Timely Bringing Suit.

[11] Krueger Deposition Transcript at 82:13-18 ("Q. When did you first contact [The Center for Justice and Accountability] in connection with your husband's death? . . . A. When I started the 2012 trial.").

[12] Plaintiffs had the burden to establish the tolling times and the period relevant to that calculation, including how that period ran somehow until the later date of October 2020 when the complaint commencing the instant action was filed. It is unclear for Defendant until which time Plaintiffs argue that the Statute of Limitations should be tolled.

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First, Plaintiffs do not allege, nor can they, that either Bravo or Argentina engaged in any "affirmative misconduct, such as deliberate concealment," which would justify the tolling of the statute of limitations. *See Cabello*, 402 F.3d at 115; *see also Jackson*, 506 F.3d at1356 ("to apply equitable tolling courts usually require some **affirmative conduct** such as deliberate concealing"). Indeed, Plaintiffs knew that their family members had died at Trelew; they knew the identity of the perpetrators, and the whereabouts of Bravo. Bravo did nothing that Plaintiffs have been able to articulate that somehow prevented Plaintiffs from timely filing their claims.

B. Bravo Never Concealed His Whereabouts

Plaintiffs allege no acts of fraudulent concealment of either the information regarding the events at Trelew or of Bravo's whereabouts which would support a claim of equitable tolling.[13] It is undisputed that Plaintiffs knew since the early the 1970s that their relatives died at Trelew on August 22, 1972, the manner of their death, circumstances surrounding the events, and the military officers who were present. *See* Death Certificates at PX0075; *see* Krueger Deposition Transcript at 73:17-25. 74:1 ("Q. After your husband died, at one point you learned that Mr. Roberto Bravo may have had some connection to that; correct? . . . A: Yes. I did receive that information. Q. And, in fact, you learned that in pretty short order after your husband's death. A. Yes. That's correct."). Contrary to the facts in *Cabello*, the Argentinean government in this case did not conceal the manner in which the prisoners died nor concealed their place of burial. *Cabello*, 402 F.3d at 1155. In fact, all the bodies of the Trelew prisoners, including Plaintiffs' relatives, were released to the families for proper funeral arrangements shortly after they died. *See* Plaintiffs' Exhibits PX0039 , PX0045, PX00102, PX00103, PX00104, PX00105, PX00108, PX00109, PX00110. PX00113. There were no conflicting death certificates. There was no cover-up of the events surrounding

[13] It is uncontroversial that fraudulent concealment must be pled in order to toll the statute of limitations in non-fraud cases. *Henderson v. Wash. Nat'l Ins. Co.*, 454 F.3d 1278, 1282 (11th Cir. 2006).

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Trelew. Plaintiffs knew in detail the alleged wrongs committed against their family members. Thus, there was no concealment by the Argentinean authorities or Bravo to justify tolling the statute of limitations on these grounds.

Moreover, Plaintiffs do not allege that Mr. Bravo misled Plaintiffs or concealed his whereabouts or that his entry into the United States was fraudulent, stealthy, or concealed somehow. As a matter of fact, Defendant's entry into the United States was conducted in accordance with U.S. law and is a matter of public record readily available now, as it has been for decades. Had Plaintiffs merely examined immigration records from the 1980s on, they would have become aware of Defendant's legal residence in the U.S. as early as 1980, more than four decades ago, and a few years after Defendant left the military and Argentina. But even if we assume that Plaintiffs had no access to immigration information, by Plaintiffs' own admission, they were aware as early as 2008 that Mr. Bravo lived in Miami, more than fourteen years ago. Therefore, it is undisputed that since the 1970s Plaintiffs were in possession of all the necessary information surrounding the death of their family members, and since 2008 -at the latest- they knew the exact location of Defendant to pursue their claims in the United States. By failing to bring this action until 2020, Plaintiffs effectively "slept on their rights" and equitable tolling has no application here. But even if this Court were to toll the statute of limitations until 2008, the date where Plaintiffs learned the exact location of Bravo, the statute of limitations expired on Plaintiffs' claims in 2018, **two years before this action was filed**. Therefore, Plaintiffs' claims are legally barred.

C. There Has Been No Military Government in Argentina Since 1983

By Plaintiffs' own admission, Argentina returned to a democratic government in 1983. Complaint at ¶ 69. Since then, there were no further military dictatorships preventing the Trelew prisoners' relatives from pursing their claims or gathering relevant information to do so. Thus, even if this Court were to toll the statute of limitations until 1983, the date where the military

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dictatorship was no longer in power in Argentina, the statute of limitations expired on Plaintiffs' claims in 1993, **twenty nine years before this action was filed**. Or, if we take Plaintiffs' allegations as true that until 2006 "members of the military . . . spied on lawyers and others involved in investigating the Trelew [events] in an attempt to impede the investigation," Complaint at ¶ 82, the statute of limitations still expired on Plaintiffs' claims in 2016, **four years before this action was filed**. Therefore, in either case, Plaintiffs' claims are barred. *See Cabello*, 402 F.3d at 1155 (tolled until Chilean military regime left power); *Jean*, 431 F.3d at 780 (tolled until the Haitian military regime left power); *Arce*, 434 F.3d at 1262 (tolled until the Salvadorean military left power).

D. Defendant Had No Immunity in Argentina Since 2005

Assuming that Defendant was immune to prosecution in Argentina, per Plaintiffs' own admission, in 2005 the Supreme Court of Argentina held that crimes by the military dictatorship were no longer subject to the statute of limitations or amnesty, and could be freely prosecuted. Complaint at ¶ 70; Krueger Deposition Transcript at 57: 22-24 – 58:1. In fact, Plaintiffs did just that by filing civil and criminal actions in Argentina. *See* PX00202,. Thus, even if this Court were to toll the statute of limitations until 2005, the date in which Defendant was no longer immune to prosecution, the statute of limitations expired on Plaintiffs' claims in 2015, **five years before this action was filed**. Therefore, Plaintiffs' claims are legally barred.

E. Bravo Has Lived Openly in the United States Since 1973

Bravo left Argentina and moved to the United States in 1973. Further, it is also undisputed that Bravo became a permanent resident of the United States in 1980, and a citizen in 1987. Thus, Defendant's presence in this same jurisdiction, *i.e.,* Miami, Florida, has been permanent and continuous since the early 1980s. Bravo never concealed his whereabouts. Thus, even if this Court were to toll the statute of limitations until the latest date **1987**, the year in which Defendant became

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a United States' citizen, the statute of limitations expired on Plaintiffs' claims in 1997, **twenty-five years before this action was filed**. Therefore, Plaintiffs' claims are legally barred.

F. Argentina Has Allowed for the Fair Administration of Justice since 2006

Assuming that the political climate in Argentina was dire in the 1970s, 1980s, and even the 1990s (which it was not after the 1983 democratic elections), per Plaintiffs' own admission, since 2006, the situation in Argentina was such that a "fair administration of justice" was possible. *See* Krueger Deposition Transcript at 57:22-24 – 58:1 (stating that Plaintiff had confidence in the Argentinean justice system since at least 2006 when the prosecutions against the perpetrators of Trelew started). This is true as that same year she renewed her civil and criminal actions in the Argentinean courts. Thus, since at least 2006, Plaintiffs had the ability to gather all necessary information and witnesses regarding the events at Trelew and, thus, there was no longer a fear of reprisal or intimidation. Hence, even if this Court were to toll the statute of limitations until 2006, the date in which Plaintiffs admittedly felt that a fair administration of justice was possible in Argentina, the statute of limitations expired on Plaintiffs' claims in 2016, **four years before this action was filed**. Therefore, Plaintiffs' claims are legally barred.

(iii) Tolling Is Not Warranted While Plaintiffs Were Participating in Argentina's Legal Actions.

Finally, Plaintiffs' suggestion that "courts repeatedly applied tolling where plaintiffs did not pursue their claims in the United States while they were participating in or relying on accountability process in the country where the incident occurred," is false and unavailing. [D.E. 106, p. 124]. Plaintiffs cite two cases in support of this claim: *Jane W. v. Thomas*, 560 F. Supp. 3d 855 (E.D. Pa. 2021) and *S. African Apartheid Litig. v. Daimler AG*, 617 F. Supp. 2d 228 (S.D.N.Y. 2009). Both cases are unpersuasive and distinguishable from the facts of this case.

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Jane and *Daimler* are cases based on actions that took place in Liberia and South Africa, respectively, countries that were going through a "Truth and Reconciliation Commission" ("TRC") process at the relevant times. A TRC also known as "truth commission" or "truth and justice commission" is an ***officially sanctioned*** non-judicial body organized for a limited time ***by a government***; it is usually set up at a time of transition for the specific purpose of examining serious human rights violations. *See* Priscilla B. Hayner, UNSPEAKABLE TRUTHS: CONFRONTING STATE TERROR AND ATROCITY 14 (2002); *see also* THE TRUTH ABOUT TRUTH COMMISSIONS, 35 Cardozo L. Rev. 2263, 2265. The objectives of truth commissions often include promoting truth-telling and reconciliation, psychological healing for victims, establishing an accurate historical record, recommending reparations for victims, ensuring minimal accountability, restoring dignity to victims, making recommendations for institutional reform, as well as preventing violence and repetition of abuses. *See* Hayner, *supra*, at 15-16. In general, truth commissions issue a final report with findings and recommendations which can result in states or jurisdictions prosecuting perpetrators of violence and promoting justice for victims. Eric Brahm, TRUTH COMMISSIONS, BEYOND INTRACTABILITY (June 2004), http://www.beyondintractability.org/essay/truth-commissions.

In *Jane*, the Liberian government established the TRC in 2006 and the TRC's report was issued in 2009. 560 F. Supp. 3d at 874. While the enabling statute for the TRC made the recommendations binding on the Liberian government, the Liberia Supreme Court held its report nonbinding and the statute unconstitutional in 2011. *Id.* "This ruling 'eviscerated' the TRC's authority to provide meaningful justice to war crimes victims." *Id.* Therefore, the Eastern District of Pennsylvania tolled the TVPA's statute of limitations until 2011 because "any hope that victims of the Liberian civil wars had that the Liberian government might enact the TRC's recommendations ended in 2011."

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In *Daimler*, plaintiffs filed the action in 2002 but there were factual disputes as to until when the political climate in South Africa prevented plaintiffs from bringing suit: plaintiffs argued 1993, defendants argued 1991. 617 F. Supp. 2d at 286. Given this factual dispute, the Southern District of New York declined to address the tolling issue on a motion to dismiss. *Id.* In *dicta*, the court held that since the South African TRC commenced held hearings between 1996 and 2002, and issued its final report in March 2003, it was not "unreasonable for plaintiffs to wait until 2002 to file their claims . . . given the tremendous time and energy required for plaintiffs to file their TRC grievances." *Id.* The court ruled that the issue needed "factual development." *Id.*

In this case, the Argentinean government had not established a TRC to investigate the incident at Trelew or for any other reason relevant in this case. Indeed, there is not even an allegation by Plaintiffs to that effect. Plaintiffs imply that because they were "participating in or relying" in lawsuits in the Argentina courts, it is the same as an TRC process and the statute should be tolled. Plaintiffs have failed to provide any support for the premise that a Truth and Reconciliation Commission is comparable to a regular legal action because it does not exist. The premise is false. The process of a TRC is a "lengthy and difficult" one and cannot be equated to a common lawsuit by Plaintiffs in Argentina. *Daimler*, 617 F. Supp. 2d at 286. As a result, Plaintiffs' argument that this Court must apply tolling while they were "participating in or relying on" cases in Argentina, is unavailing and fails as a matter of law.

G. Conclusion.

For the foregoing reasons, this Honorable Court should respectfully apply the law to the facts of this case and conclude that Plaintiffs failed to prove by a preponderance of evidence that they acted diligently to pursue their rights and that extraordinary circumstances existed to warrant equitable tolling until the late date of October 20, 2020. Plaintiffs' Complaint is, accordingly,

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barred by the statute of limitations, and judgment should be entered for Defendant, Roberto Guillermo Bravo, on all counts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 28, 2022, a true and correct copy of the foregoing document was electronically filed through CM/ECF. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system.

By: */s/ Steven W. Davis*
STEVEN W. DAVIS, ESQ.