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 OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE TO PRECLUDE REFERENCES TO COMMUNISM AND CUBA, MOTION FOR SUMMARY JUDGMENT TO DISMISS DEFENDANT BRAVO'S SEVENTH AFFIRMATIVE DEFENSE AND MOTION IN LIMINE TO EXCLUDE IMPROPER STATEMENTS RELATED TO SEVENTH AFFIRMATIVE DEFENSE AND INCORPORATED MEMORANDUM OF LAW

Defendant, ROBERTO GUILLERMO BRAVO ("Mr. Bravo"), by and through his undersigned counsel, hereby files his Opposition to Plaintiffs' Motion in Limine to Preclude References to Communism and Cuba ("Motion in Limine I"), Motion for Summary Judgment to Dismiss Defendant Bravo's Seventh affirmative Defense and Motion in Limine to Exclude Improper Statements related to Seventh Affirmative Defense ("Motion in Limine II"), and in support thereof states as follows:

I. INTRODUCTION

In an effort to re-write history, and to correct the alleged wrongs of a foreign government which occurred **nearly fifty years ago**, Plaintiffs single out as a scapegoat a long time Miami resident, Defendant Roberto Bravo, for damage claims under the Torture Victim Protection Act in connection with acts which took place in Argentina when Mr. Bravo was an officer in the Argentinian Navy. In their currently pending pre-trial motion, Plaintiffs are seeking to exclude

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evidence indicating that Bravo was exonerated by an Argentinian military investigation more than forty-nine years ago which conducted a full investigation into the facts and circumstances relating to the death of multiple prisoners at the Trelew prison which occurred in 1972. The matter was fully investigated in 1972 and Bravo was exonerated by the only Tribunal with the jurisdiction to do so. Now, **fifty years later**, Plaintiffs seek a retrial; they may be entitled as a matter of law to their day in Court, but they are not entitled to suppress the military investigation and findings of the Argentine government which occurred far more closely in time. Plaintiffs' Motions should be denied.

Plaintiffs also move in limine to exclude any reference to the prisoners' ties to communism or Cuba because they fear that any such references may prejudice them before a Miami Jury. First, it is the point of jury selection to weed out the prejudices of potential jurors. Bravo expects that the Court and counsel will do their job in that regard. Second, Plaintiffs' fears of alleged juror bias have no factual basis because there is no way to tell, in advance, the bias or prejudice of any member of the jury or the jury panel. Third, Plaintiff's own estimate regarding the potential composition of the jury pool is nothing more than speculation. Fourth, Plaintiff mentions the alleged victims' political affiliations thirteen times in their complaint thereby waiving this issue and opening the door to this evidence. Fifth, the Jury is entitled to hear that the alleged victims were members of leftist terrorist organizations with ties to communist Cuba for at least two reasons – first, because it is true and, second, because it places into context the reason that the guards at the Trelew prison, on the day of the events in question, were in fear for their lives and were justified in repelling an attack by prisoners with known ties to violent terrorist groups. The Jury in this case cannot hear this case in a vacuum – all of the facts and circumstances must come to light.

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II. BACKGROUND FACTS

On August 15, 1972, a group of 25 convicted terrorists held at the Rawson Federal Penitentiary successfully escaped after killing a prison guard execution style. Six of the escapees highjacked a 96-passanger plane and fled to Chile where the socialist government of Salvador Allende gave them safe passage to Cuba. The remaining 19 escapees ultimately surrendered and were transferred to the Trelew Prison (the "Trelew Prisoners") where days later they attempted **yet another violent escape**. During the escape attempt from Trelew, one of the terrorist prisoners stole one of the guard's guns from its holster and fired a shot which was followed immediately by an attack on the prison guards by the remaining prisoners who advanced in unison on the guards including Mr. Bravo. In fear for his life, and to repel the attack and prevent an en masse escape, Bravo opened fire with his military issued machine gun. Thirteen terrorists died on the scene, three died later in a nearby hospital, and three survived.[1]

Following the events in Trelew, Mr. Bravo was the subject of a full military investigation by the Argentinean military according to the prevailing law during this period. At this time, the exclusive jurisdiction to investigate and prosecute the conduct of military officers in Argentina was vested solely in the Argentine military pursuant to Art. 29 of the Argentine Constitution. Following a full investigation, which was conducted by a judicial officer with the power to conduct the investigation, The General Auditor of the Argentinean Armed Forces issued a report wherein he exonerated Mr. Bravo and recommended that he be fully acquitted. The investigation by the Argentine military included: "testimonial statements, medical reports, ballistic reports, expert testimony regarding wounds, etc." This investigation took place within four months of the events in question.

[1] *See* Bravo's Response to Plaintiffs' Statement of Material Facts filed on this date. [DE 82]

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Following the General Auditor's report, the President of Argentina, Alejandro Agustin Lanusse Gelly, issued a Decree on January 23, 1973, "definitely dismiss[ing]" the proceedings against Mr. Bravo. Furthermore, on May 27, 1973, after Mr. Bravo was exonerated by the military, a new Argentinean democratic government, with the intention to bring peace to the country, enacted an Amnesty Law, Law 20.508, which exempted the guerrillas as well as members of the military from criminal liability for any crimes committed prior to May 25, 1973. Despite Plaintiffs' claims, the Amnesty Law has not been abrogated and remains in full force and effect.

The factual background and political climate in Argentina almost fifty years ago must be considered by the Court in the context of the Motions and will certainly be an issue for trial. Because it is important for the Court to understand this (and, ultimately, the Jury) we explain those circumstances below.

A. The Political Climate in Argentina in the 1970s

In Argentina in the 1970s, there were at least 17 armed insurgent groups operating which had as their expressed purpose the goal of overthrowing the military government then in power. The largest – and the most dangerous – of those terrorist groups were the Revolutionary Workers Party -People's Revolutionary Army ("PRT-ERP"), the Revolutionary Armed Forces, and the Montoneros. These were "ultra-left" terrorist groups responsible for the kidnappings and deaths that terrorized Argentina during this period.[2] It is undisputed that most of the prisoners being held

[2] These terrorist groups included the "Montoneros" and the "Ejército Revolucionario del Pueblo" ["ERP"]; most of the Trelew prisoners belonged to these groups. *See* Brian M. Jenkins and Janera A. Johnson. "International Terrorism: A Chronology" (1974 Supplement) (stating that the Montoneros and the ERP attacked business and political figures throughout Argentina, and raided military bases for weapons and explosives, they killed executives from General Motors, Ford and Chrysler, and on September 16, 1974, about 40 Montoneros bombs exploded throughout Argentina), a copy of which is attached hereto as **Exhibit "1."**

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at Trelew belonged to these terrorists groups.[3] According to an NGO dedicated to advocating on the behalf of victims of terrorism, 1,355 people, including members of the police and military, were killed by Montoneros and other left-wing armed movements.[4] In the early 1970s, the Montoneros received funds from Cuba.[5] To better understand the political climate at the relevant time in Argentina, we quote from the memoir of J. Edgar Williams,[6] a retired Foreign Service Officer who was stationed at the U.S. Embassy at Buenos Aires as Commercial Attaché for five years from 1970-1975, who describes it as follows:

> At that time, many different ***Marxist terrorist-guerrilla groups*** were being formed in Latin America as a result of the Tri-Continental Congress in Havana in 1966. Its purpose was to coordinate all pro-communist, anti-American subversive and guerrilla activities world-wide to advance the 'historically inevitable' movement towards the World Socialist Revolution. In Argentina, the main groups were the FAR Revolutionary Armed Forces), the ERP (Revolutionary Army of the People), and the Montoneros. The latter was the more active group. . . .
>
> Their first major act was the kidnaping, torture, and murder of former President Aramburu, having spied on his home from a Catholic school across the street. . . .
>
> The ERP, also a very vicious gang, like the other gangs recruited many members from among university students. I recall a case in which a new recruit's 'initiation' involved going up to a police sergeant guarding the President's suburban residence as if to ask directions, and shooting him point blank. He left a wife and three young children. This murderer was caught and dealt with appropriately. . . .

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[3] *See* Order Denying Certification of Extradition issued on November 2, 2010, in case number 1:10-mc-20559-RLD, attached hereto as **"Exhibit 2"** (stating that "This Court notes that **there has been no dispute that the three survivors were committed members of extremist and terrorist groups** that had broken out of a maximum security prison at Rawson a week earlier, during which two Rawson guards were shot, resulting in the death of one guard."); *see also* "14 Terrorist Suspects Are Slain In a Prison Break in Argentina," New York Times, August 23, 1972 (stating that the deceased prisoners "belonged to three groups – Revolutionary Army, the Montoneros and Revolutionary Armed Forces."), attached hereto as **Exhibit "3."**

[4] "The victims of Montonero terror do not count in Argentina." ABC.es. December 28, 2011. Last accessed on April 7, 2022; *see also* Wikipedia, 2022 last access on April 7, 202 at https://en.wikipedia.org/wiki/Montoneros, attached hereto as **Exhibit "4."**

[5] *See* Encyclopedia Britannica, 2022. From Encyclopedia Britannica Online, last accessed on April 7, 2022, at <http://www.britannica.com/EBchecked/topic/391049/Montonero>.

[6] J. Edgar Williams, "Living with Terrorism in Buenos Aires," www.AmericanDiplomacy.org, accessible at: http://www.unc.edu/depts/diplomat/item/2009/0406/fsl/fsl_williams.html (emphasis added), attached as **Exhibit "5."**

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> The terrorists were attacking not only Argentine government agencies and institutions, but also individuals and installations (including embassies and consulates) of foreign governments who were presumed to be supporting the Argentine government, even if only by trade and commerce. Foreign businessmen as well as diplomats were attacked and sometimes kidnaped for ransom or killed.

B. The First Escape from Prison by the Trelew Prisoners

The Trelew Prisoners, among other convicted terrorists members of the above-referenced organizations, were housed in Unit 6 of the Rawson Federal Penitentiary, a maximum security prison, by order of the Argentina Federal Criminal Court of the Nation. On August 15, 1972, a mere two weeks before their attempted escape from Trelew, 25 terrorists successfully escaped from Rawson penitentiary, during which prison break they shot a guard in the head.[7] With an accomplice who was waiting with a car, six of the leaders made it to the Trelew Airport, where they boarded a commercial airplane with 96 passengers which had already been hijacked by 3 accomplices onboard. They fled to Chile, where the socialist government gave them safe harbor and allowed them to escape to Cuba,[8] where the Island's Communist Party received them with ceremonial honors and rallies. The remaining 19 escapees took over the Trelew Airport, holding

[7] *See* "Massacre in Trelew: the daughters of a murdered prison guard ask for justice." Clarin.com. May 27, 2012. Retrieved April 6, 2022, a copy of which is attached hereto as **Exhibit "6"** (stating that in their escape, the guerrillas shot dead one guard (Gregorio Valenzuela) and another (Justino Galarraga) was critically wounded. According to Galarraga (who survived by feigning death), Valenzuela was shot in the head as he lay wounded by Santucho's pregnant wife"). **Note that Santucho's pregnant wife, Ana Maria Villareal de Santucho, is Plaintiff Marcela Santucho's mother, *i.e.*, the terrorist that shot the prison guard Valenzuela on the head per witness Galarraga.**

[8] *See* Wikipedia, 2022 last access on April 7, 202 at https://en.wikipedia.org/wiki/Enrique_Gorriarán_Merlo (stating that "[Gorriaran] was part of the group of insurgents that organized the [Rawson] prison break that occurred during the night of 15 August 1972. . . . The successful ones, Gorriarán Merlo among them, fled to Chile, at that time under the Socialist administration of Salvador Allende, and from there were granted safe passage to Cuba.").

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captives in a standoff with Marine forces, until they negotiated their surrender. For reasons of security, they were housed at Trelew Admiral Zar Naval Airbase.

C. The Failed Trelew Prison Break

Only days later, on August 22, 1972, The Trelew Prisoners **once again** attempted to escape during an inspection of their cells, when one of the terrorists attacked a military officer from behind with a "Karate" move, took the Captain's standard-issue weapon, and fired a shot at the guards. Almost immediately thereafter, other terrorists began advancing upon the guards at the prison, including Mr. Bravo. Confronted by dangerous terrorists, who had already successfully escaped from Rawson prison and who had killed a prison guard, and who had seized the weapon of a guard at Trelew, then-Lt. Bravo and other military personnel opened fire in order to defend themselves, repel the attack, and prevent an escape. Thirteen extremists died on the scene, six survived but later three died at the hospital. Three extremists survived the incident, including Plaintiff Raquel Camps' father Alberto Camps.[9]

D. The 1972 Military Investigation, Report, the Decree and the 1973 Amnesty Law

Following these events, a full military investigation was conducted by a military Judge, reviewed by high-ranking military officials, and discussed in a Report ("Report") by the General Auditor of the Armed Forces (the "1972 Military Investigation").[10] According to Art. 29 of the Argentine Constitution, the law in Argentina at the time required all matters of military misconduct to be under the exclusive jurisdiction of the Argentine military.[11] That jurisdiction was vested in

[9] The fact that there were survivors is wholly inconsistent with the theory that this was, as has been portrayed in the media, a "massacre" and a planned execution.

[10] *See* [DE 68-3]. Also attached hereto as **Exhibit "7."**

[11] *See* Testimony of Alfredo Solari at pp.65-66 in Notice of Filing Transcript of the 2010 Extradition Hearing [DE 83] filed concomitantly with this Opposition. *See also* Notice of Filing Trial Exhibits from 2010 Extradition Hearing [DE 84] also filed concomitantly with this Opposition.

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the Argentine military is similar to the jurisdiction vested in the United States Military for criminal acts which occur within and among members of the United States military per Title 10 of the United States Code.

Nonetheless, that the Report issued by the Argentine military on December 5, 1972, which was the main arm of the Argentine government, with jurisdiction over the events at Trelew, confirmed the facts set forth above. The General Auditor concluded:

> [T]here is no convincing evidence, **not even circumstantial evidence**, which would allow criminal charges to be brought against the personnel who intervened in the suppression in order to prevent the escape and PUJADAS' rash behavior. In this sense, I agree with the opinion of the Investigative Judge, that the grounds for exemption from responsibility set out in Art. 34, paragraphs 4, 5, and 6 of the Criminal Code come into play here in relation to the military personnel's conduct.

See Report of the General Auditor of the Armed Forces, p. 4 (emphasis added). The Report also stated that the allegations made by the survivors – "that they had tried to kill them after the shootout had ended" was completely disproved by the testimony of the medical and ballistic experts which "demonstrate their falseness" and that the military officers had "limited [their actions] to comply with their obligation of guarding these extremely dangerous subjects, acting appropriately." *Id.*

The Report specifically addressed the role of Roberto Bravo in the second attack and attempted escape of the terrorists at Trelew:

> As far as Lieutenant BRAVO, I agree with what was stated in pgs. 406/407 by the Chairman of the Joint Chiefs of Staff who had determined that the previously named officer should not be sanctioned. I should add that in my opinion BRAVO acted appropriately when faced with a very difficult circumstance in which he had to fulfill his task, as the leader of the guard responsible for guarding the fanatically dangerous detainees. It is evident that through his actions he not only saved the life of an officer, but also prevented the escape and the almost certain occurrence of other events with unforeseeable consequences. Simple routine compliance with the instructions he had received, to open fire immediately, would without a doubt have caused the death of Captain SOSA, given the way in which the events took place.

Id. at p. 5. The Report finally concluded:

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> Given everything that was stated, and based on the facts and laws I have indicated, I believe that it is appropriate to resolve this case with a ***definitive acquittal***, as provided by Art. 338, section 2 of the CNM.

Id. (emphasis added).

The clear exoneration and acquittal of Mr. Bravo in that report was then transmitted to the President of Argentina for his review and action. The Decree No. 425, signed by President Alejandro Lanusse14 on January 23, 1973, (the "Decree"), stated:

> HAVING SEEN preliminary proceeding GFH 221115/72, No. 1/72 "S" (Ad-Hoc), the information provided by the Chairman of the Joint Chiefs of Staff and the resolution of the Auditor General of the Armed Forces and
>
> CONSIDERING:
>
> Said preliminary proceeding was prepared, at the petition of the Joint Commanders in Chief based on the events that occurred on the 22nd day of August of 1972, during an armed escape attempt carried out by a group of prisoners charged with terrorist activities and escape from Rawson Prison before the Hon. Federal Criminal Court of the Nation, who were being temporarily held at the "Almirante Zar" Air Naval Base in the City of Trelew, Province of Chubut, declared as "emergency zone";
>
> That the exhaustive investigation completed, testimonial statements, medical reports, ballistic reports, expert testimony regarding wounds, etc., are insufficient to warrant judgment for reproach of any kind against the intervening military personnel, due to that fact that such examinations allow for the conclusion, beyond doubt, ***that they acted, facing an extremely dangerous group, in strict compliance with their orders, and in legitimate exercise of their authority***;
>
> That neither does any accusation arise within the scope of discipline, taking into account that, as stated previously, the actions of the personnel that suppressed the escape intent and motivated by the special circumstances under which the group of prisoners had been placed in their custody, the danger the prisoners posed and the intent to prevent their escape with unforeseen consequences;
>
> Therefore;
>
> THE PRESIDENT OF THE NATION OF ARGENTINA DECREES:
>
> ARTICLE 1ST: ***To definitely dismiss*** the present preliminary proceeding under the terms of article 338, clause 2nd, of the Code of Military Justice (LM 14029)
>
> ARTICLE 2ND: To communicate this decree, present it to the National Bureau of Official Registry, record it and return it to the Commander in Chief of the Navy, for the pertinent purposes.

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See Decree at [DE 68-4]; *also attached* as **Exhibit "8"** (emphasis added). On May 27, 1973, after Mr. Bravo was exonerated by the military decision, Argentina new democratic government passed Amnesty Law 20.508, (the "1973 Amnesty Law") in an attempt to pacify the country. [DE 68-5], attached hereto as **Exhibit "9"**. The 1973 Amnesty Law applies, on its terms, to illegal activities engaged by guerrilla members as well as by military personnel and prohibited criminal liability for any acts that took place prior to May 25, 1973, including the events at Trelew. The Amnesty Law 20.508 has never been repealed, abrogated, or found to be unconstitutional. Thus, the Amnesty Law remains in full force and effect.

III. ARGUMENT

A. Plaintiffs May Not Preclude Bravo From Introducing Evidence of the Prisoners' Political Affiliations Which Unequivocally Demonstrate their Predilection and Repeated Use of Acts of Violence as a Method of Obtaining Regime Change in Argentina During the 1970s.

Plaintiffs would obviously prefer to paint the circumstances of these events, which occurred more than fifty years ago, as a senseless unprovoked massacre with no rational basis. Plaintiffs should not be permitted to confuse the Jury with a one-sided story when there is a plethora of relevant facts that puts the entire series of events which occurred at Trelew in context and explains why Lieutenant Bravo was in fear for his life and was justified in the use of force to repel an unprovoked attack by communist terrorists. The evidence in this case will show that the Trelew prisoners days earlier engaged in a previous prison break (from Rawson Federal Penitentiary), wherein some of their comrades successfully hijacked an airplane, flew that plane to Chile, where they obtained safe passage to Cuba by the socialist government of Allende. The 19 captured escapees, *i.e.*, the Trelew Prisoners, attempted to do the same thing again – motivated

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by the very same communist political doctrine which unashamedly advocates the tactic of violent revolution.[12]

(i) Applicable Law

Evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence" and "that fact is of consequence in determining the action." FED. R. EVID. 401. A court, however, may exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice under Rule 403 of the Federal Rules of Evidence. "Unfair prejudice" means "an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." FED. R. EVID. 403, Advisory Committee's note. "Rule 403 is an ***extraordinary*** remedy that must be used sparingly because it results in the exclusion of concededly probative evidence." *United States v. US Infrastructur*e, 576 F.3d 1195, 1211 (11th Cir. 2009), cert. denied 130 S. Ct. 1918, 176 L. Ed. 2d 368 (2010). And "the balance 'should be struck in favor of admissibility.'" *United States v. Dixon*, 901 F.3d 1322, 1345 (11th Cir. 2018) (internal citations omitted).

The Eleventh Circuit in *US Infrastructure* rejected a party's argument that certain evidence was inadmissible on Rule 403 undue prejudice grounds, stating "in cases where this Court has found ***other acts evidence inextricably intertwined with the crimes charged, the Court has refused to find that the evidence should nonetheless be excluded as unduly prejudicial*** . . . ." *Id.* (emphasis added). "[T]he test under Rule 403 is whether the other acts evidence was '***dragged in***

[12] *See generally* A.Shaff, Marxist Theory on Revolution and Violence, *Journal of the History of Ideas*, Vol.34 No.2 (April – June, 1973)(recognizing that the Communist Manifesto itself openly advocates that…"a social revolution is to be identified with an overthrow of that existing social system by violence"); *New World Encyclopedia*, Communism (recognizing that the violent overthrow of the existing social order is an essential component of the process of a communist revolution).

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by the heels' ***solely*** for prejudicial impact." *Id.* (*quoting United States v. Veltmann*, 6 F.3d 1483, 1500 (11th Cir. 1993)); *see also United States v. McNair*, 605 F.3d 1152, 1206 (11th Cir. 2010). Thus, if the challenged references are relevant "to the chain of events surrounding the charged crimes, including the context" in which the events took place, the evidence cannot be excluded under Rule 403. *Id.* Here, given the strong connection between the Trelew Prisoner's political views and their ties with Communism and Cuba with the crimes charged against Mr. Bravo, it cannot possibly be argued that such references are being "dragged in by the heels solely for prejudicial impact." The rationale for Mr. Bravo's decision to defend himself and others through the use of force is informed by the Trelew Prisoners' actual history of violence, their penchant to escape from prison using such violence and the overarching theme of their objectives – the accomplishment of a political revolution in Argentina through the use of violence. [13] Mr. Bravo will testify at trial that these facts were known to him at the time of the events in question and informed his decision as to whether to take action and what type of action was required. That decision did not take place in a vacuum – it took place in the context of a series of preceding events about which the prison guards at Trelew were well aware before the first shot was fired. This knowledge, coupled with the seizure by one of the prisoners of the gun of one of the Trelew guards, explains why Mr. Bravo and others had a well-founded fear of significant bodily harm without decisive action.[14]

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[13] *See* Fn. 3; *see also* New York Times articles dated April 16, 1972, August 9, 1971 and November 23,1975, and recent article in The Wall Street Journal by award winning columnist, Mary Anastasia O'Grady's dated April 2, 2017, "Not Justice In Argentina," wherein the media references the Cuban and Communist ties when relating the political climate in Argentina at that time and during the events basis for the Complaint **Composite Exhibit "10."**

[14] *See* Morris v. McNeil, No. 2:03-cv-533-FtM-29SPC, 2008 U.S. Dist. LEXIS 69245, at *31 (M.D. Fla. Sep. 12, 2008) (citing *Smith v. State*, 606 So. 2d 641, 642-43 (Fla. 1st DCA 1992) which held that "[i]n Florida, evidence of the dangerous character of the victim is admissible to show, or as tending to show, that the defendant acted in self-defense."). Thus, when self-defense

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(ii) References to Trelew Prisoners' Political Affiliations and Ties to Cuba and Communism Are Admissible Because They Demonstrate the Complete Story Surrounding the Facts Basis of this Lawsuit.

Plaintiffs only cite to exclude references to the Trelew Prisoners' Cuba and Communism ties is *Evans v. Cernics, Inc.*,[15] an unreported and nonbinding opinion from Pennsylvania which is clearly inapposite here. *Evans* was a disability discrimination case where plaintiff alleged that he was fired due to his medical condition. *Id.* at *2. In its case in chief, plaintiff sought to introduce evidence of defendant's political affiliation. *Id.* at *3. The court determined that "[e]vidence about defendants' political affiliation is irrelevant because it does not make it more or less probable ***that Defendants discriminated and/or retaliated against plaintiff in violation of the ADA and the PHRA***." *Id.* Understandably, in an ADA case, a defendant's political affiliation does not come into play. However, in the instant case, the Trelew Prisoners' political are integral part of the story about why the prisoners were imprisoned to begin with, their penchant for violence and the objective of their political cause. This is not a disability discrimination case.

Finally, Plaintiffs' allegations put at issue the political affiliation of the Trelew Prisoners. Indeed, a review of the complaint shows that Plaintiffs repeatedly claim that the Trelew Prisoners were "political prisoners." *See* [D.E. 1] (referencing the political nature of the Trelew Prisoners **at least 13 times**). As stated by the Eleventh Circuit, "in view of plaintiffs' own references to the subject," references to the Trelew Prisoners' political ties to Cuba and Communism should be allowed. *See Wilson v. Attaway*, 757 F.2d 1227, 1243 (11th Cir. 1985) (affirming trial court's decision to allow reference to communist ties due in part to "plaintiffs' own references to the

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is raised, evidence of the victim's reputation is admissible to disclose his or her propensity for violence and the likelihood that the victim was the aggressor, while evidence of prior specific acts of violence by the victim is admissible to reveal the reasonableness of the defendant's apprehension at the time of the incident.

[15] 2017 U.S. Dist. LEXIS 177501, at *1 (W.D. Penn Oct. 26, 2017).

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subject."). The alleged undue prejudice, if any, could be remedied by an instruction to the jury.[16] As such, references of the Trelew Prisoners' far-left political affiliations and ties to Communism and Cuba are relevant and should not be excluded.

B. Summary Judgment on Mr. Bravo's Seventh Affirmative Defense (Military Report and Amnesty Law) Must Be Denied Because the Defenses Is Supported by the Record Evidence Before the Court and His Burden Has Been Met.

i. Summary Judgment Standard for an Affirmative Defense

"Summary judgment is appropriate where the pleadings, affidavits, depositions, admissions, and the like show that there is ***no genuine dispute as to any material fact*** and the movant is entitled to judgment as a matter of law." *Urquilla-Diaz v. Kaplan Univ.*, 780 F.3d 1039, 1050 (11th Cir. 2015)(emphasis added). "[T]o survive summary judgment, the nonmoving party must . . . make a showing sufficient to permit the jury to reasonably find on its behalf." *Id.* When a plaintiff is seeking summary judgment on the defendant's affirmative defenses, such as it is the case here, "***the defendant bears the initial burden of showing that the affirmative defense is applicable***." *Office of Thrift Supervision v. Paul*, 985 F. Supp. 1465, 1470 (S.D. Fla.1997)(emphasis added). "Once a defendant shows that the applicable [affirmative defense] bars the claim, the burden shifts to the plaintiff to demonstrate that an exception . . . applies." *Paul*, 985 F. Supp. at 1470.

[16] Plaintiffs cite to five cases in support of their claim that references to the Trelew Prisoners' far left political affiliation would cause "undue prejudice." None of those cases are applicable here. Just as in *Evans*, in those cases the political affiliation of the party had ***nothing*** to do with the case and were in no way related to the facts being sued upon. *US v. Bagaric*, 706 F.2d 42 (2d Cir. 1983 (RICO claim); *Hong v. St. Louis*, 698 F. Supp. 180 (E.D. Mo. 1988)(car accident); Am. Heartland Port, Inc. v. Am. Port Holdings, Inc., Civil Action No. 5:11CV50, 2014 U.S. Dist. LEXIS 88374, at *2 (N.D.W. Va. June 30, 2014) (breach of contract); *McKiver v. Muphy Brown, LLC*, 980 F.3d 937 (4th Cir. 2020)(nuisance); *Vigneulle v. Tahsin Indus. Corp. USA*, No. 2:15-cv-02268-RDP, 2018 U.S. Dist. LEXIS 49986, at *1 (N.D. Ala. Mar. 27, 2018)(products liability).

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When a defendant fails to come forward with evidence sufficient to support an affirmative defense, summary judgment is appropriate. 985 F. Supp. at 1470; *RPM Nautical Found., Inc. v. New Stock Island Props., LLC*, No. 11-10086-CIV, 2013 U.S. Dist. LEXIS 190831, at *12 (S.D. Fla. Mar. 20, 2013). If, however, defendant comes forward with record evidence for his defense, the burden shifts back to the plaintiff regarding that affirmative defense. *Id.* at 1470; *see also Collazo v. Progressive Select Ins. Co*., Civil Action No. 20-25302-Civ-Scola, 2021 U.S. Dist. LEXIS 220540, at *4 (S.D. Fla. Nov. 15, 2021). If plaintiff does not satisfy its burden, summary judgment must be denied. *See id.*

Here, Mr. Bravo has introduced the 1972 Military Investigation[17] and the 1973 Amnesty Law in support of his defense. That is sufficient for Mr. Bravo to meet his burden at this stage. The burden now shifts to Plaintiffs to prove these documents do not create an issue of material fact that warrant summary judgment. Plaintiffs failed to meet this burden. Thus, summary judgment must be denied.

ii. Bravo Has Met His Burden of Showing Record Evidence in Support of the Seventh Affirmative Defense.

Plaintiffs know that Mr. Bravo has record evidence in support of his Seventh Affirmative Defense. In fact, Plaintiffs refer to both the 1972 Military Investigation and Report and the 1973 Amnesty Law in their Complaint. [D.E. 1] at ⁋⁋ 64, 65, 70. Yet, they seek to preclude Mr. Bravo from introducing into evidence these documents claiming that the Military Investigation and Report are "incomplete" and "administrative" and have no preclusive effect in this case." Motion in Limine II at p. 6. Plaintiffs cite to *United States v. MacDonald*, 585 F.2d 1211 (4th Cir. 1978),

[17] As stated, under the laws of Argentina in 1972 and 1973, the military had full jurisdiction to investigate and, if warranted, to prosecute any individuals for the actions at Trelew pursuant to Article 29 of the Argentine Constitution.

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for the proposition that the 1972 Military Investigation be excluded. However, *MacDonald*, does not stand for that proposition. *MacDonald* stands for the proposition that a double jeopardy plea cannot be made when a U.S. military tribunal does not convict or acquit even when a military investigation recommended dismissing all charges.[18] This is not a criminal case and, thus, Mr. Bravo has not sought a double jeopardy defense.[19] Hence, *MacDonald* is inapplicable here.

Here, Mr. Bravo has made a showing that the 1972 Military Investigation and Report and the 1973 Amnesty Law are applicable to this case and support his Seventh Affirmative Defense. Further, Plaintiffs do not contest that these documents exist and were issued by the authorities they purport to be issued by and at the time they purport to be issued. Plaintiffs do not dispute that they relate to the incident which give rise to their complaint and to Mr. Bravo. As such, Mr. Bravo has met his burden at this stage.

The burden then shifts to the Plaintiffs to establish that the two documents are inapplicable and present no issue of material fact to grant summary judgment. To that effect, Plaintiffs' basis for attack are (i) the opinion issued by an Argentina Trial Court in 2012; and, (ii) the 2014 Argentina Appellate court decision affirming same (the "Argentina Decisions"). According to Plaintiffs, the Argentina Decisions opined that the 1972 Military Investigation was an

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[18] In *MacDonald*, a father was accused of killing his family. *United States v. MacDonald*, 531 F.2d 196 (4th Cir. 1976). Since the father was a member of the military, a preliminary investigation ensued by the Army and dismissed the charges.585 F.2d 1212. Years later, after further investigations by the FBI and other agencies, the father was charged with murder. 531 F.2d 201. During trial, the father raised the defense of double jeopardy and the Fourth Circuit affirmed the trial court's rejection of same concluding that double jeopardy did not apply because the defendant was never tried by a U.S. military tribunal, despite having a military investigation dismissing charges. *Id.*

[19] In civil cases, however, Fed. R. Evid. 803(8) provides a hearsay exception in civil actions for factual findings resulting from an investigation made pursuant to authority granted by law. *See McQuaig v. McCoy*, 806 F.2d 1298, 1302 (5th Cir. 1987) (citing to *Rainey v. Beech Aircraft Corp.*, 784 F.2d 1523, 1527-28 (11th Cir. 1986) (admitting into evidence findings of fact in a Coast Guard report).

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"administrative proceeding" and "lacked impartiality and competence." *See* Motion in Limine II, at p. 9. As to the 1973 Amnesty Law, according to Plaintiffs, the Argentina Decisions conclusively found that it was "inapplicable" to the events at issue here.

Plaintiffs seem to believe that the Argentina Decisions are binding in this proceeding and are recognized judicially in this Circuit without further ado. That is simply not the case.[20] Before comity can be extended, this Court is required to undergo an analysis that includes factors such as reciprocity. Generally, a court should evaluate: "(1) whether the foreign court was competent and used 'proceedings consistent with civilized jurisprudence,' (2) whether the judgment was rendered by fraud, and (3) whether the foreign judgment was prejudicial because it violated American public policy notions of what is decent and just." *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227, 1237-38 (11th Cir. 2004). Analyzing whether comity applies to a foreign judgment bears similarity to analyzing whether res judicata applies to a domestic judgment. *International Trans., Ltd. v. Embotelladora Agral Regiomontana*, 347 F.3d 589, 593 (5th Cir. 2003). "Essentially, once the parties have had an opportunity to present their cases fully and fairly before a court of competent jurisdiction, the results of the litigation process should be final." *Id.* (citations omitted).

Not only Mr. Bravo was not a party to the case where there Argentina Decisions were rendered, Plaintiffs here have not even argued that this Court should grant comity to these foreign court decisions. Indeed, for instance, it is unknown whether Argentina courts recognize as binding orders from U.S. Courts, another factor to be considered. It follows that since Plaintiffs have no

[20] *See, e.g.*, *Branca v. Security Benefit Life Ins. Co.*, 789 F.2d 1511, 1513 (11th Cir. 1986) (holding that, in action on life insurance policy, "Argentine decree is not prima facie evidence of date of insured's death"); *see also Corporacion Salvadorena de Calzado, S.A. v. Injection Footwear Corp.*, 533 F. Supp. 290, 299 (S.D. Fla. 1982) (applying Florida's doctrine of reciprocity, district court refused to recognize El Salvadorean judgment).

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other argument as to why the 1972 Military Investigation and the 1973 Amnesty Law should not be considered, they have failed to meet their burden and summary judgment must be denied.

Finally, it is important to note that the 1973 Amnesty Law is currently in full force and effect. Contrary to Plaintiffs' implication, nothing in the Argentinean court decisions suggests that the law has been ruled to be inapplicable to Mr. Bravo.[21] Moreover, not even Plaintiffs' Motion in Limine suggest that the 1973 Amnesty Law has been repealed or abrogated by the Argentinean Congress. Notably, however, other two amnesty laws were repealed by the Argentinean Congress, namely Amnesty Laws No 23.521 and No 23.492, but not the 1973 Amnesty Law (No. 20.508). It is clear that the 1973 Amnesty Law and the TVPA are in conflict. Thus, comity is warranted. This Court should give the 1973 Amnesty Law full comity as it is requested herein by Mr. Bravo.

Further, assuming arguendo that Plaintiffs' claim is correct (which is not) and the 1972 Military Investigation and 1973 Amnesty Law do not apply to Mr. Bravo, then why have Plaintiffs made no attempt in the last 10 years at least to pursue any of their claims before an Argentinean court? Argentina is entitled to regulate and provide redress of its own controversies for events that took place in Argentina, between Argentinean citizens, where all the witnesses and relevant documents are, if not dead or destroyed for the passage of nearly 50 years since the events at issue.

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[21] This Court should not be persuaded by Plaintiffs' reliance on the case of *Chavez v. Carranza*, 559 F.3d 486, 490 (6th Cir. 2009) for the premise that an amnesty law would only apply if on its face it applied extraterritorially. Motion in Limine II at p. 10. First, this case is non-binding in this Circuit. Second, a law enjoining only courts cannot mandate any extraterritorial effects to courts outside their jurisdiction. No sovereign can dictate the judicial conduct of another by law. Further, it goes against the established principle of law that courts defer to foreign government interpretations regarding their foreign law to require such an application. *See, e.g., Access Telecom, Inc. v. MCI Telecommunications Corp.,* 197 F.3d 694, 714 (5th Cir. 1999), cert. denied, 531 U.S. 917, 148 L. Ed. 2d 200, 121 S. Ct. 275 (2000). Moreso when the 1973 Amnesty Law was invoked as recently as 2005 by then President Nestor Kirschner to restore the military rank and full back pay to a Navy Midshipman named Julio Caesar Urien, who had been convicted in 1972 of "mutiny with blood shed" for which he could have received the death penalty, but for the grant of amnesty under this law.

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C. Under Rule 403, Bravo is Entitled to Introduce References of His Seventh Affirmative Defense.

Plaintiffs seek to exclude Mr. Bravo from introducing any reference to the 1972 Military Investigation, Report and Decree, and the 1973 Amnesty Law under the veil that these references "will confuse and mislead the jury" because "there is no legal basis for Bravo to make either claim. Motion in Limine II, at p. 11. Once again, Plaintiffs' basis for this premise seems to be the Argentina Decisions as Plaintiffs quote their opinion that the 1972 Military Investigation was "preliminary," lacked impartiality, and was incomplete. Further, Plaintiffs also repeat the same argument that the 1973 Amnesty Law does not apply to Bravo under Argentine or U.S. law without any evidentiary support to these allegations.

As stated in section III(A)(i)&(ii) herein, the challenged references to the 1972 Military Investigation and the 1973 Amnesty Law are clearly relevant "to the chain of events surrounding the charged crimes," and thus the evidence cannot be excluded under Rule 403. Here, it cannot possibly be argued that such references are being raised to "confuse the jury." Because such references are inextricably intertwined and because of their significant relevance to the scheme and chain of events surrounding the charged conduct, the evidence cannot be excluded. Thus, the Motion in Limine II should also be denied.

IV. CONCLUSION

For all the reasons stated herein, this Court should deny Plaintiffs' Motion in Limine I and Motion in Limine II.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 7, 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.