

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 120-cv-24294-KMM

RAQUEL CAMPS, et al.,

Plaintiff,

v.

ROBERTO GUILLERMO BRAVO,

Defendant.

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**DEFENDANT’S REPLY IN FURTHER SUPPORT OF HIS MOTION FOR DIRECTED  
VERDICT**

Defendant, ROBERTO GUILLERMO BRAVO (“Defendant” and/or “Mr. Bravo”), by and through his undersigned counsel, hereby files his Reply in Support of his Motion for Directed Verdict [D.E. 138], and in support thereof states as follows:

**I. INTRODUCTION**

There is not a single TVPA case in this Circuit, or in the country, that supports Plaintiffs’ novel scheme that the statute of limitations is tolled “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.”<sup>1</sup> Undersigned counsel’s exhaustive search found no case law on this point. The cases cited by Plaintiffs in support of that premise in DE 106 do not hold that. Yet, Plaintiffs are asking this Court to ignore the well-settled precedent in federal courts (and the fifty-year-late filing), and (i) toll the statute of limitations *indefinitely* in this *civil action* because a *criminal case may be* pursued at some point in Argentina against Defendant; or, to toll it during the time Plaintiffs participated in a criminal action because its process is as cumbersome as a Truth Commission established by a country after a civil war. Of course, there is no legal basis for

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<sup>1</sup> See Plaintiffs’ Proposed Jury Instruction 5.1, D.E. 106, p. 114.

Plaintiffs' theories and this Court should refuse any attempt to create a new standard based on the facts of this case. This Court should reject Plaintiffs' proffered jury instruction, which reads as follows: "where plaintiffs did not pursue their claims in the United States while they were participating in or relying on accountability processes in the country where the incident occurred, or where the defendant was immune from suit". Jury Instruction Draft provided by the Court on June 3, 2022, at 5:00 p.m. at page 24.

## II. ARGUMENT

As a threshold matter, Plaintiffs have failed to properly invoke the doctrine of equitable tolling. Plaintiffs seemed to suggest during argument at trial that the issue of statute of limitations was raised the day before the case goes to the jury.<sup>2</sup> Defendant raised the statute of limitations as one of his affirmative defenses filed on January 25, 2021. DE 21. Since then, Plaintiffs failed to file any request with this Court to apply for equitable tolling much less satisfy their burden to establish extraordinary circumstances, or advance any notion as to what are the tolling times, the period relevant to the calculations, and the evidence that somehow takes us until the late date of October 2020 when the complaint commencing the instant action was filed. As this Court noted, in the TVPA cases where tolling was applied, the courts did so because "it tolled to a point known that plaintiffs had established." Tr. at p. 18. Here, there is no such time alleged or established by Plaintiffs and Defendant has been prejudiced as a result.

The argument at trial revealed that Plaintiffs waver as to what is their theory of the case regarding when the statute of limitations begins to run in this action. At times, Plaintiffs seemed to argue that the statute of limitations must be tolled *indefinitely* against Defendant;<sup>3</sup> hence,

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<sup>2</sup> See Trial Transcript of June 30, 2022, ("Tr."), at p. 15 ("We'd certainly want to brief it if this – this is obviously a direction in which we are going where this particular argument, which this issue which the Court is raising and is one we're getting you know, the day before this is supposed to be submitted to a jury wasn't raised by the defendant").

<sup>3</sup> As this court noted, "let's take that to its natural conclusion then. **There is no statute of limitations for Mr. Bravo then.**" Tr., p. 19. Indeed, by Plaintiffs' reasoning, the statute of limitations imposed by Congress would be illusory.

suggesting that tolling must wait until a resolution on the pending extradition. *Id.* at 19.<sup>4</sup> Other times, Plaintiffs suggest that the statute of limitations should be tolled until the denial of the first extradition. And, that tolling is warranted during the pendency of the criminal proceeding in Argentina that culminated in a conviction against third parties. *Id.* Unfortunately for Plaintiffs, there is no legal support for any of these conclusory claims in any of the cases cited or that exist.

**a. Tolling the Statute of Limitations Indefinitely Is Contrary to Congress' Intent**

Plaintiffs argue that “an event has not occurred yet that has closed the door on the criminal proceedings” in Argentina. Tr. At p. 21. Plaintiffs suggest that *if* and *when* a court issues a judgment that precludes Plaintiffs from seeking criminal relief against Defendant, presumably a second denial of extradition, that is when the statute of limitations begins to run. *Id.* at p. 22. In other words, because the “triggering event hasn’t happened yet” then the statute of limitations has not commenced. *Id.* Based on this premise, they conclude that Plaintiffs’ claims are not barred.

In support, Plaintiffs rely on *Jane W. v. Thomas*, 560 F. Supp. 3d 855 (E.D. Pa. Sept. 15, 2021). In *Thomas*, civil war broke out in Liberia stemming from ethnic tensions. *Id.* at 866. The first civil war lasted from 1989 to 1997. *Id.* at 867. “The war left 200,000 civilians dead, prompted 750,000 people to flee the country, and internally displaced another 1.2 million.” *Id.* The second civil war lasted from 1999 until 2003, when the combatants sign[ed] a peace agreement. *Id.* A two year transition government followed and in 2005 democratic elections were held. *Id.* In 2006, the new government established the “Truth and Reconciliation Commission” (“TRC”). *Id.* at 874. The TRC’s final report was issued in 2009. *Id.* 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

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<sup>4</sup> “[Y]our statute of limitations’ position depends still on the pending extradition and potential for criminal proceedings in Argentina, right? A. That’s correct.”)

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.” *Id.*

In *Thomas*, the ruling *eviscerating* plaintiffs’ “prospect for *criminal* accountability,” was the Liberian Supreme Court decision. Plaintiffs argue that *that* ruling has not occurred yet in this case. Tr. at p.15. Plaintiffs claim that until that triggering event happens, *i.e.*, if and when this Court makes a pronouncement regarding the second extradition proceeding, then, and only then, prospect for *criminal* accountability can be had for the Plaintiffs here. Until then, according to Plaintiffs, the statute of limitations would remain *indefinitely* in limbo.

To be clear, **there is absolutely no legal support in the United States for that premise.** That is not what *Thomas* held. *Thomas* is restricted by its very specific and distinguishable facts. Plaintiffs’ attempt to force the facts of this case to a comparison between a government-sanctioned TRC and a Liberian Supreme Court decision falls short. Moreover, this case is not regarding “criminal accountability.” This case is about money. This case is about the damages that Plaintiffs are seeking in the millions of dollars for events that took place fifty years ago that they claim could not be filed either here or in Argentina until the extradition request is addressed by this Court. The truth is that Plaintiffs could have filed in Argentina<sup>5</sup> just as they could have filed here before their claims expire, but failed to do so.

The Eleventh Circuit has been clear regarding the importance of statute of limitations and the high burden of proof for extraordinary circumstances. “It should not be surprising in view of

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<sup>5</sup> Article 1774 of the Civil and Commercial Code in Argentina states as follows: “a civil action and a criminal action arising from the same facts can be pursued independently. In the cases in which the damaging act configures at the same time a crime in criminal law, the civil action can be interposed before the criminal judges, according to the requirements of the procedural codes and special laws.” There was no impediment for Plaintiffs to file suit for damages in Argentina as the action can be filed before the civil judge or before the criminal judge.

the *deference* congressionally mandated periods for limitations demand.” *Jackson v. Astrue*, 506 F.3d 1349, 1354 (11 Cir. 2007)(emphasis added). 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.” *Id.* (emphasis added) (denying equitable tolling for failure to demonstrate extraordinary circumstances). There is no case in this country that states that a statute of limitations in a *civil* case has to be left open *indefinitely* until a decision is reached on whether “*criminal* accountability” can be had. This Court should reject this argument.

**b. Tolling the Statute of Limitations Until Extradition Decision Is Not Supported.**

Plaintiffs’ second theory is that this Court should apply tolling until the time that the first extradition was decided, in November 2010. *See* fn. 5. It is unclear where the support for this premise comes from since nothing was offered during the exchange with the Court on that issue. Plaintiffs simply claim that it “would be a reasonable conclusion for the jury to draw.” Tr. at p. 20. And, that the jury can even find that a decision on the first extradition, could be the triggering event referred to in the above section, *i.e.*, the Supreme Court of Liberia’s rejection of the TRC’s recommendations. *Id.* at 22.<sup>6</sup> After an extensive search, we found no authority that even suggests that tolling is warranted while a criminal proceeding or extradition request is being processed or is resolved. However, a plaintiff from Argentina brought an action under the Alien Tort Statute against a former Argentine general after extradition process had commenced and the fact that an extradition was ongoing did not matter in the equitable tolling considerations.

In *Forti*, the crimes against the plaintiffs took place from 1977 to 1979. 672 F. Supp. at 1544. In 1983, after democratic elections were held, plaintiff filed a criminal complaint against the defendant in Argentina. *Id.* at 1538. Shortly thereafter, extraditions proceedings began and in early

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<sup>6</sup> “[T]hat the event happened that closed the door was the denial of the first extradition. I mean, if that’s how the jury goes, we could live with that.” Tr. at p.22.

1987, the government of Argentina filed an extradition request against Defendant with the Northern District of California. *See* 694 F. Supp. 676 (N.D. Cal. 1988) (Case No. CR-87-23-MISC.-DIJ). In January 1987, defendant was arrested in California “pursuant to a provision arrest warrant at the request of the Republic of Argentina.” 672 F. Supp. at 1536. Defendant fled Argentina in early 1984 and was in hiding until 1987 when he was arrested. *Id.* at 1550.

Since the issue came before the *Forti* court on a motion to dismiss, the court found that plaintiffs had alleged “issues of equitable tolling from 1977 to 1984 [new government], and from 1984 to 1987 [defendant’s whereabouts known],” and did not dismiss the complaint. *Id.* at 1551. Although the extradition and the criminal case in Argentina were pending at the time, the Northern District of California considered several factors for tolling the statute of limitations: (i) military regime was no longer in power; (ii) the fear of reprisals by the people in power; (iii) fair justice system in Argentina; and, (iv) defendant’s concealment of his whereabouts. *Id.* at 1550. Notably, however, the court **did not** consider either the pending criminal case in Argentina or the pending extradition proceeding. *See id.*<sup>7</sup>

In sum, even when a criminal proceeding and extradition proceedings are pending in Argentina, ***the same jurisdiction were the facts of this case arose***, the court seemed to focus on the same main factors detailed in Defendant’s Motion for Directed Verdict, DE 138, that all other courts focus on. Pending criminal action or pending extradition are not one of them. Just as the plaintiffs in *Forti*, the Plaintiffs here should have brought an action shortly after Argentina had a fair justice system or shortly after they learned the whereabouts of the defendant. Instead, they

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<sup>7</sup> The Northern District of California decided to “temporary stay” the damages action under the ATCA due to Defendant’s hardship “while the defense prepares for the extradition proceedings.” *Id.* at 1552. However, after the extradition was granted in 1988, the court resumed the action and entered judgment against defendant. *See* judgment available at <https://ccrjustice.org/sites/default/files/assets/Forti%20Judgment.pdf> (last accessed July 1, 2022).

waited and waited until it was so late that they are trying novel theories that are not applicable to either the facts or the law to salvage their case.

**c. Tolling the Statute of Limitations During a Foreign Criminal Proceeding is Unsupported**

Plaintiffs' *current* and most theory is that this Court should equitably toll the statute of limitations during the time that Plaintiffs were engaged in the criminal proceedings in Argentina, which presumably culminated with the 2012 judgment. Tr. p. 17. In support of this premise they cite, again, *Thomas*. During argument at trial, Plaintiffs' counsel argued that the "[l]evel of involvement in Truth and Reconciliation Commissions is similar, if not less than, the involvement in ongoing criminal proceedings in the [Argentina]," and, "it applies equally to the circumstances in this case because it's still a domestic proceeding that has the possibility to provide accountability and justice to the plaintiffs." *Id.* at 13. Counsel continued and stated that **"it's plaintiffs' position that the time and effort required to participate in criminal proceedings in Argentina is analogous and similar to that required to participate in TRC proceedings in other situations."** *Id.* at 17.

As an initial matter, Plaintiffs conceded to this Court that there are no "truth and reparation proceedings happening in Argentina in this case," and if they did, it "happened a decade or two ago." *Id.* at 14. Therefore, it is undisputed that a TRC, in the legal sense of *Thomas* and of *In re S. African Apartheid Lit.*,<sup>8</sup> has no bearing in this case. What Plaintiffs argue is that criminal proceedings in Argentina are so cumbersome that they equate to the time and effort that a truth commission entails. Plaintiffs have offered no evidence at trial, any assertion in any pleading, nor any legal basis to support this premise. Neither have they put forward any allegation or evidence that criminal proceedings in Argentina also provide damages to a plaintiff. Thus, Plaintiffs have

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<sup>8</sup> 617 F. Supp. 2d 228, 291 (S.D.N.Y. 2009).

failed to meet their burden to establish how and Argentinean criminal case equates in time, effort, and national importance to a Truth and Reconciliation Commission. *See* Arguments in Defendant's DE 138.

As to Plaintiffs' veiled arguments that courts "aren't so narrow as to requiring a truth and reconciliation commission" in every case and that this Court should toll the statute of limitations based "in the interests of justice," are also misplaced. It was *Arce* the case in which the Eleventh Circuit cited that the legislative history provided "consideration of all equitable tolling principles in calculating this period with a view toward giving justice to plaintiffs' rights. *Arce v. Garcia*, 434 F.3d 1254, 1262 (11th Cir. 2006). However, the Circuit Court of Appeals considered the same factors as the other federal courts (military regime no longer in power, when no more thwart efforts to redress violence, fair administration of justice, etc, and held that the statute of limitations was tolled "until the end of the civil war in 1992" in El Salvador.

Plaintiffs also argued at trial that "generalized fear is sufficient to toll the statute of limitations" Tr. at p. 13. According to Plaintiffs, the case *Warfaa v. Ali*, 1 F.4th 289, 291 (4th Cir. 2021), supports the premise that a "repressive regime [that] generates widespread fear" tolls the statute of limitations. *Id.* at p. 28. *Warfaa* does not hold that the statute of limitations is going to be tolled indefinitely because at some point in the past the military regime intimidated the plaintiff. Plaintiffs cannot be left in charge of making the determination of when the statute of limitations starts by vaguely claiming that they were in fear of reprisal. That would leave the statute of limitations commencement in permanent limbo to start and run at the whim of Plaintiffs. That cannot be the law.

### III. Issue of Equitable Toling is a Matter of Law.

Although Plaintiffs are really trying to craft an issue of fact, the law is clear, "When [] the district court's equitable tolling ruling is based **not on the 'existence of certain facts'**, but instead

rests **on whether those facts demonstrate a failure to bring a timely claim**, resolution of this challenge turns on questions of law which are reviewed de novo.” *Warfaa*, 1 F.4th at 293. As in here, where the facts unequivocally show that Plaintiffs failed to file this claim timely, the issue is to be resolved by the Judge as a matter of law. The following facts are undisputed in this case:

- (i) Argentina returned to a democratic government in 1983 (Complaint at ¶ 69).
- (ii) The Supreme Court of Argentina held that crimes by the military dictatorship could be prosecuted in 2005 (Complaint at ¶ 70; Krueger Deposition Transcript at 57: 22-24 – 58:1).
- (iii) The other officers 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 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.”).

#### IV. **Conclusion**

This Court was lenient with Plaintiffs and asked them to show the law in support of their theory of the case that tolling is warranted while a criminal or extradition proceeding was ongoing in Argentina. They have failed to come forward with any legal support for their theory. They cite the same inapposite cases that this Court has disregarded. Simply, there is no law and there are no facts that can justify this Court to create a new standard and apply the doctrine of equitable tolling to the facts of this case. Plaintiffs’ Motion for Directed Verdict should be granted.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on July 1, 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.