UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 1:20-cv-24294-KMM

RAQUEL CAMPS, *in her capacity as the personal representative of the* ESTATE OF ALBERTO CAMPS, *et al.*,

Plaintiffs,

v.

ROBERTO GUILLERMO BRAVO,

Defendant.
_____ /

OMNIBUS ORDER

THIS CAUSE came before the Court upon Plaintiffs' Motion *in Limine* to Preclude References to Communism and Cuba ("First Motion *in Limine*"), Motion for Summary Judgment to Dismiss Defendant Bravo's Seventh Affirmative Defense ("Summary Judgment Motion"), and Motion *in Limine* to Exclude Improper Statements Related to Seventh Affirmative Defense ("Second Motion *in Limine*"). ("Omnibus Mot.") (ECF No. 67). Defendant Roberto Guillermo Bravo ("Defendant") filed an omnibus response in opposition. ("Omnibus Resp.") (ECF No. 85). Plaintiffs filed an omnibus reply. ("Omnibus Reply") (ECF No. 87). The Motions are now ripe for review.

I. BACKGROUND

This is a Torture Victim Protection Act ("TVPA")[1] case arising under the Court's federal question jurisdiction pursuant to 28 U.S.C. § 1331. *See generally* ("Compl.") (ECF No. 1).

[1] Torture Victim Protection Act of 1991, Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note).

Plaintiffs are Raquel Camps in her capacity as personal representative of the Estate of Alberto Camps; Eduardo Cappello, II in his individual capacity and as personal representative of the Estate of Eduardo Cappello, I; Alicia Krueger in her individual capacity and as personal representative of the Estate of Rubén Bonet; and Marcela Santucho in her individual capacity and as personal representative of the Estate of Ana María Villarreal de Santucho. Compl. ¶¶ 14–17. Three Plaintiffs are citizens of Argentina residing in Argentina. One Plaintiff is a dual Argentine-French citizen residing in France. *Id.*

Defendant is Roberto Guillermo Bravo. From 1964 to 1979, Defendant was a commissioned officer in the Argentine military who, in August of 1972, was stationed at the Almirante Zar Naval Base in Trelew, Argentina. *Id.* ¶ 11. Defendant held a rank equivalent to that of an Ensign in the U.S. Navy. *Id.* Defendant is a naturalized citizen of the United States residing in Florida. *Id.* ¶¶ 9, 12.

As set forth in the Complaint, "Plaintiffs, the surviving family members of Rubén Bonet, Alberto Camps, Eduardo Cappello, and Ana María Villarreal de Santucho, bring this action against [Defendant] seeking compensatory and punitive damages for his role in the extrajudicial killing, attempted extrajudicial killing, and torture of their family members in the Trelew Massacre and during their week-long detention at Almirante Zar." *Id.* ¶ 7.

Plaintiffs allege as follows.

In May of 1972, the Argentine government, led by General Alejandro Agustín Lanusse, "began moving political prisoners to facilities far from their lawyers, families, and communities," as part of a pattern of "combat[ting] 'subversives'" and "systematically persecut[ing] political opponents under a so-called 'maximum security plan[.]'" *Id.* ¶¶ 19–20, 23. This plan included "eliminat[ing] core civil and political rights for political dissidents, including permitting arbitrary

detentions and use of torture in interrogations, and denying access to counsel." *Id.* ¶ 21. The Argentine government also "limited freedom of expression of its opponents and media." *Id.* ¶ 22.

As relevant here, Plaintiffs' relatives were transferred to the maximum-security Rawson Penitentiary Prison ("Rawson"). *Id.* ¶ 23. In August of 1972, twenty-five (25) political prisoners held at Rawson attempted to escape to the nearby Trelew Airport. *Id.* ¶ 24. Six of the twenty-five escaped, and nineteen, including Plaintiffs' relatives, were recaptured and transferred to the nearby Almirante Zar Naval Base, where they were all held for approximately one week. *Id.* ¶¶ 24–25. During their detention, Plaintiffs' relatives were denied contact with the outside world and subjected to armed-guard supervision. *Id.* ¶¶ 27–28. Plaintiffs contend that each prisoner was interrogated multiple times over the course of the week they were held at Almirante Zar Naval Base. *Id.* ¶ 28. Plaintiffs also allege that their relatives were subjected to "humiliating and degrading treatment amounting to torture, including sleep deprivation, stress positions, forced nudity, and mock executions," at the hand of Defendant and the other guards at Almirante Zar Naval Base. *Id.* ¶¶ 29–31.

According to the Complaint, Defendant and other officers acting in concert with him killed and/or attempted to kill Plaintiffs' relatives and the other prisoners at Almirante Zar Naval Base during the early hours of August 22, 1972. The cellblock guards had been removed from their posts the evening before. *Id.* ¶ 32. Plaintiffs allege that Defendant and those acting in concert with him, visibly drunk and armed with machine guns and pistols, then went to the cellblock where Plaintiffs' relatives were held. *Id.* ¶ 33. The cell doors were ordered opened all at once, and the prisoners were awakened by Defendant and the other officers by "kicking the cell doors, blowing whistles, and shouting insults and threats." *Id.* ¶¶ 34, 36. Plaintiffs allege that the prisoners were ordered out of their cells and told to "line up against the cell block wall, with their chins to their

chests." *Id.* ¶ 36. According to Plaintiffs, Defendant and the officers acting in concert with him then "opened fire on the prisoners with machine guns and pistols." *Id.* ¶ 37.

Thirteen prisoners were killed. *Id.* ¶ 48. Ms. Villarreal de Santucho, who was visibly pregnant at the time, "died of multiple close-range gunshot wounds to the abdomen." *Id.* ¶ 49. Mr. Cappello "died from a gunshot wound to the face." *Id.* ¶ 50. And Mr. Bonet was shot multiple times, including "execution-style at close range" and "to the head." *Id.* ¶¶ 46, 52. Mr. Bonet later died in the infirmary because "he lay untreated for hours." *Id.* ¶ 52. According to Plaintiffs, Alberto Camps fled to his cell to hide after the first round of gunfire. *Id.* ¶ 38. Defendant entered Mr. Camps's cell and ordered him to stand up, questioned him about an earlier interrogation, and then shot him in the abdomen. *Id.* ¶ 40. Mr. Camps was critically wounded but survived the shootings. *Id.* ¶ 51. He and the other surviving prisoners were taken to the base infirmary by other officers and medical personnel who were awakened by the gunfire. *Id.* Mr. Camps was transferred to a hospital for treatment, whereafter he "was held incommunicado, and interrogated by military investigators." *Id.* ¶ 54.

Plaintiffs allege that Defendant, the officers acting in concert with him, and the Argentine military tried to cover up the killings and shootings by representing that they had been trying to prevent the prisoners from escaping. *Id.* ¶ 55. Specifically, Plaintiffs contend that two prisoners heard Defendant and the officers "yell about prisoners attempting to escape *after* the first round of shooting, while finishing off some prisoners at close range." *Id.* ¶ 56 (emphasis in original). Plaintiffs contend that Defendant told other officers who participated in the shooting that one of the prisoners attempted to grab the captain's gun. *Id.* ¶ 58. Another officer told a physician who had arrived on the scene that he had been shot, however, the physician found no injuries upon examination. *Id.* ¶ 59. Further, Plaintiffs contend that superior officers ordered conscripts to

"adhere to the escape story if asked and threatened to punish them if they did not comply." *Id.* ¶ 60. Another officer was ordered to "tell military investigators that the prisoners had attempted to escape and had beaten [an officer] in the process." *Id.* ¶ 61. Medical personnel were ordered not to discuss what they had seen. *Id.* ¶ 63.

The Argentine military conducted an investigation. *Id.* ¶ 64. Plaintiffs allege that the military investigator "presented leading questions to witnesses, failed to examine the bodies or order autopsies, failed to seize or examine the clothes of the deceased, failed to seize the weapons used in the shooting, failed to inspect the guard logbook, and failed to interview [the commanding officer] at Almirante Zar the night of the massacre." *Id.* No charges were brought. *Id.* ¶ 65. And later that evening on August 22, 1972, "the Lanusse dictatorship enacted Censorship Law No. 19797, making it a criminal offense to publish any non-government or non-military accounts about the events at Trelew and the activities of persons deemed subversives." *Id.* ¶ 66. The Complaint also recounts the persecution Plaintiffs and their relatives experienced at the hand of the Argentine authorities following the events at Almirante Zar Naval Base. *Id.* ¶¶ 73–83.

Plaintiffs contend that they have been unable to obtain relief in Argentina. *Id.* ¶¶ 67–69. According to the Complaint, in 2005 the Supreme Court of Argentina "for the first time held that crimes against humanity and other atrocities committed by the military dictatorships during the 1970s and 1980s could not be subject to an amnesty or statute of limitations." *Id.* ¶ 70. Thus, in 2006, five officers that acted in concerted with Defendant were indicted. *Id.* ¶ 71. A warrant for Defendant's arrest was issued in Argentina in 2008. *Id.* However, Argentina's first request in 2009 to extradite Defendant from the United States was not certified.[2] *Id.*; *see also In re*

[2] Argentina submitted a second extradition request in 2019, which remains pending. *See In re Extradition of Robert Guillermo Bravo*, No. 1:19-mc-23851-EGT (S.D. Fla.).

Extradition of Roberto Guillermo Bravo, No. 1:10-mc-20559-RLD (S.D. Fla. Nov. 1, 2010), ECF No. 62. As Defendant cannot be prosecuted *in absentia* in Argentina—and because civil remedies are not available in Argentina until criminal proceedings have concluded, Plaintiffs assert that they cannot seek redress in Argentina while Defendant remains in the United States. *Id.* ¶ 72.

Accordingly, Plaintiffs commenced this action on October 20, 2020, asserting the following claims: (1) a claim under the TVPA for the alleged extrajudicial killing of Mr. Bonet, Mr. Cappello, and Ms. Villarreal de Santucho; (2) a claim under the TVPA for the alleged attempted extrajudicial killing of Mr. Camps; and (3) a claim under the TVPA for the alleged torture of Mr. Bonet, Mr. Cappello, Ms. Villarreal de Santucho, and Mr. Camps. *See generally* Compl.

In his Answer and Affirmative Defenses, Defendant asserted seven affirmative defenses. ("Ans.") (ECF No. 21). The Parties have conferred and agreed to narrow the issues; three affirmative defenses remain: (1) Plaintiffs' claims "are barred by the applicable statute of limitations" ("Second Affirmative Defense"); (2) Plaintiffs "have failed to exhaust remedies available to them in Argentina" ("Fifth Affirmative Defense"); and (3) Defendant "was acquitted of all charges by a full military investigation in 1972 and later received full amnesty" ("Seventh Affirmative Defense"). *See generally* Ans.

Now, Plaintiffs seek (1) to preclude references to communism and Cuba at trial, (2) summary judgment on Defendant's Seventh Affirmative Defense, and (3) to preclude improper statements related to Defendant's Seventh Affirmative Defense. *See generally* Omnibus Mot.

II. DISCUSSION

The Court addresses each of Plaintiffs' motions in turn, beginning with Plaintiffs' First Motion *in Limine*.

A. First Motion *in Limine* to Preclude References to Communism and Cuba.

Plaintiffs represent that they anticipate Defendant will refer to the nineteen individuals killed at the Almirante Zar Naval Base as "communists" and that Defendant intends to offer evidence that the six prisoners who escaped from Rawson fled to Chile and then eventually received safe passage to Cuba. Omnibus Mot. at 3. Plaintiffs seek to preclude this argument, evidence, and suggestion.

1. Legal Standard

"In fairness to the parties and their ability to put on their case, a court should exclude evidence *in limine* only when it is clearly inadmissible on all potential grounds." *United States v. Gonzalez*, 718 F. Supp. 2d 1341, 1345 (S.D. Fla. 2010) (citation omitted). "The movant has the burden of demonstrating that the evidence is inadmissible on any relevant ground." *Id.* (citation omitted). "Unless evidence meets this high standard, evidentiary rulings should be deferred until trial so that questions of foundation, relevancy, and potential prejudice may be resolved in proper context." *Palmetto 241 LLC v. Scottsdale Ins. Co.*, No. 19-cv-22195-BLOOM/Louis, 2020 WL 2736646, at *1 (S.D. Fla. May 26, 2020) (citation and internal quotation marks omitted). "Likewise, '[i]n light of the preliminary or preemptive nature of motions *in limine*, any party may seek reconsideration at trial in light of the evidence actually presented and shall make contemporaneous objections when evidence is elicited.'" *Id.* (citation and internal quotation marks omitted); *see also In re Seroquel Prods. Liab. Litig.*, Nos. 06-md-1769-Orl-22DAB, 07-cv-15733 Orl-22DAB, 2009 WL 260989, at *1 (M.D. Fla. Feb. 4, 2009) ("The court will entertain objections on individual proffers as they arise at trial, even though the proffer falls within the scope of a denied motion *in limine*.") (citation omitted).

2. *Analysis*

Plaintiffs request that the Court preclude Defendant, both personally or through his counsel, from "present[ing] evidence, argument, or suggestion that the nineteen victims of the Trelew Massacre or anyone potentially related to them, including the six individuals who fled Argentina after escaping Rawson Prison, had ties to communism or Cuba" because such references will inflame the jury and prejudice Plaintiffs. Omnibus Mot. at 3. According to Plaintiffs, there is no evidence that the nineteen victims had ties to communism or Cuba that are relevant to the issues in this case. *Id.* Further, Plaintiffs argue that there is no permissible basis for Defendant "to suggest that the Trelew Massacre victims' purported ties to communism or Cuba impacted his decision to open fire on August 22, 1972," and thus such references have no probative value in this case. *Id.* at 4. Rather, Plaintiffs argue that such references will only serve to inflame the jury, as more than one third of the population of Miami-Dade County, Florida has ties to Cuba, and 28 percent of the population of the county has ties to Venezuela—Plaintiffs contend that it is "inevitable that a representative Miami jury pool will have family or friends who fled communist regimes in Cuba, Venezuela, and other countries in Latin America." *Id.*

In response, Defendant argues that "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," who, according to Defendant, had just "days earlier engaged in a previous prison break." Omnibus Resp. at 10. Accordingly, Defendant argues that the "strong connection between the Trelew Prisoner's political views and their ties with Communism and Cuba" are inextricably intertwined and are not being dragged into these proceedings solely for prejudicial impact. *Id.* at 11–12

(quoting *United States v. US Infrastructure*, 576 F.3d 1195, 1211 (11th Cir. 2009)). Defendant thus argues that he intends to 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." *Id.* at 12. Further, Defendant argues that references to the decedents' political affiliations and ties to Cuba are an "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." *Id.* at 13. Last, Defendant argues that Plaintiffs put the decedents' political affiliations at issue because they referred to the decedents as "political prisoners" in the Complaint. *Id.* at 13–14.

In reply, Plaintiffs argue that there is no admissible evidence that the decedents or any other victim of the Trelew Massacre were communists, had ties to Cuba, or were "convicted terrorists." Omnibus Reply at 2–4. Specifically, as to the evidence Defendant points to in support of his argument that the decedents were communists or had ties to Cuba, Plaintiffs argue that that evidence (1) was not disclosed during discovery, (2) is inadmissible hearsay or factual findings made in a court order, or (3) consists of lengthy exhibits containing multiple sources without any indication which source or sources therein Defendant relies on. *Id.* Further, Plaintiffs reply that the decedents' political affiliations are not relevant to any issue in this case, as whether the decedents were communists or had ties to Cuba does not "make it more or less likely that the victims were violent." *Id.* at 4–5 (citing *United States v. Wilk*, 572 F.3d 1229 (11th Cir. 2009)). Rather, Plaintiffs argue that "[i]f anything, Bravo's argument amounts to impermissible character evidence that communists or those with ties to Cuba have a greater propensity to violence." *Id.* at 5 (citing Fed. R. Evid. 404). Plaintiffs also note that Defendant did not testify during his deposition that the decedents' political affiliations or purported ties to Cuba or communism had any bearing on his belief that they were dangerous. *Id.* Last, Plaintiffs argue that there is no

contradiction between referring to the decedents as political prisoners and Plaintiffs' request to exclude references to communism and Cuba, as the decedents were "detained despite never having been convicted of any crimes." *Id.* at 6.

The Court agrees that evidence, argument, or suggestion that the nineteen decedents had ties to communism or Cuba is inadmissible and must be excluded from trial.

Under Federal Rule of Evidence 401, evidence is relevant if "it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action." Fed. R. Evid. 401. Relevant evidence is generally admissible and irrelevant evidence is not admissible. *See* Fed. R. Evid. 402. But even when evidence is relevant, courts may exclude it "if its probative value is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, [or] misleading the jury," among others. Fed. R. Evid. 403.

Here, Defendant seeks to reference the decedents' purported political affiliations and links to communism and Cuba because he was "in fear for his life and was justified in the use of force to repel an unprovoked attack by communist terrorists." Omnibus Resp. at 10. Defendant further expresses that "[t]he 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 objects – the accomplishment of a political revolution in Argentina through the use of violence." *Id.* at 12. Thus, Defendant appears to argue that evidence, argument, or suggestion that the decedents and those connected to them had ties to communism or Cuba is relevant to a theory of self-defense.[3]

[3] Notably, Defendant did not plead self-defense as an affirmative defense. Self-defense is not one of the seven affirmative defenses pled in Defendant's Answer and Affirmative Defenses, and his only remaining affirmative defenses are his Second, Fifth, and Seventh, which pertain to the statute of limitations, exhaustion of remedies in Argentina, and Defendant's claim that he was acquitted by a full military investigation in 1972, respectively. *See* Ans. at 5; *see also* (ECF No. 80).

First, it is not clear what relevance the nineteen decedents' purported political views and ties to Cuba have to Defendant's purported decision to act in his defense. Plaintiffs persuasively argue that the alleged fact of the nineteen decedents' communist views and/or ties to Cuba do not tend to prove or disprove that they were acting violently in the moments leading up to the gunfire that caused their deaths or injuries. Omnibus Mot. at 5. The Eleventh Circuit criminal case *United States v. Wilk* is instructive on this point:

> Fatta's post-mortem examination revealed that he had steroids in his blood, and Wilk sought to admit this evidence as relevant to his self-defense claim. In excluding the evidence, the district court found that with respect to Wilk's defense, Fatta's steroid use was clearly irrelevant, would not tend to prove or disprove any material fact at issue, and that the prejudicial effect and confusion of the issues substantially outweighed any probative value of the evidence. Wilk maintains that this evidence was relevant to his defense because a person on steroids can act aggressively and erratically, which would have corroborated his testimony that the officers acted like armed home invaders instead of police officers.
>
> [. . .]
>
> Wilk fails to show how the district court abused its discretion in excluding the steroid evidence. *We agree with the district court that Fatta's and the other officers' actions at the time of entry were relevant to Wilk's defense, but that the underlying reasons for Fatta's mode of entry tended to neither prove nor disprove any material fact at issue*. . . .

United States v. Wilk, 572 F.3d 1229, 1234 (11th Cir. 2009) (emphasis added). Likewise, in this case, the nineteen decedents' actions in the moments leading up to the gunfire that caused their deaths or injuries are relevant to Defendant's claim that he acted in self-defense. However, evidence, argument, and/or suggestion that the reason the nineteen decedents were held at the Almirante Zar Naval Base—because of purported ties to communism and Cuba (no matter how violent Defendant claims the decedents were based on those purported affiliations, *see* Omnibus Resp. at 4–6)—is not relevant to Defendant's claim that he acted in self-defense in that instant. Accordingly, the Court finds that evidence, argument, and suggestion that the nineteen decedents

had ties to communism or Cuba is not relevant to Defendant's claim of self-defense and thus is inadmissible under Federal Rules of Evidence 401 and 402 if offered to prove that defense.

Second, and more to the point, the Court is convinced that Defendant seeks to use the nineteen decedents' purported political views and ties to Cuba as evidence of a propensity for violence. Defendant concedes as much in his Omnibus Response. *See* Omnibus Resp. at 13 ("[I]n the instant case, the Trelew Prisoners' political [affiliations] are [an] 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.") (emphasis added). Evidence, argument, and/or suggestion that the nineteen decedents acted violently because they were violent, based on their purported ties to communism or Cuba, is quite clearly inadmissible character evidence under Federal Rule of Evidence 404(a)(1). That rule prohibits evidence of a person's character or character trait "to prove that on a particular occasion the person acted in accordance with the character or trait."[4] Fed. R. Evid. 404(a)(1). The exception permitting evidence of a victim's propensity for violence does not apply in this case for the simple reason that this is not a criminal case. *Cf.* Fed. R. Evid. 404(a)(2) ("The following exceptions [to Rule 404(a)(1)] apply in a ***criminal case***: . . . (B) a defendant may offer evidence of an alleged victim's pertinent trait . . . .") (emphasis added); *United States v. Lafond*, No. 1:13-CR-92-WSD, 2014 WL 273266, at *3 (N.D. Ga. Jan. 23, 2014) ("When a defendant alleges self-defense, evidence of a victim's propensity for violence may be shown based upon the defendant's knowledge of the victim's alleged past violent conduct."). Accordingly, the Court agrees with Plaintiffs that evidence, argument, and/or suggestion that the nineteen decedents had ties to communism and Cuba such that the decedents were violent is

[4] The admissibility of evidence regarding the Rawson prison break under Rule 404(b)(2) is a separate question not presently before the Court.

inadmissible under Federal Rule of 404(a)(1) to prove that the decedents acted violently on the particular occasion in question.

Last, the Court is presented with the issue of whether references to the decedents' purported political affiliations and ties to Cuba is necessary to tell the "complete story surrounding the facts basis of this lawsuit." Omnibus Resp. at 13. To be clear, the Court has found that evidence, argument, and/or suggestion that the nineteen decedents had ties to communism and Cuba is not relevant to, and therefore, not admissible to prove that Defendant acted in self-defense. In addition, that evidence, argument, and/or suggestion is inadmissible to prove the decedents had a propensity for violence and acted violently at Almirante Zar Naval Base the evening in question. Thus, evidence, argument, and/or suggestion that the decedents were communists or tied to Cuba is inadmissible and excluded for the purposes the Court understands Defendant as offering it for. Given that this evidence is both irrelevant and improper character evidence, it is inadmissible and therefore excluded. The Court need not conduct an analysis under Federal Rule Evidence 403, which applies to the exclusion of relevant evidence. *See* Fed. R. Evid. 403.

Accordingly, Plaintiffs' First Motion *in Limine* is GRANTED. Defendant and his counsel may not introduce evidence, argument, or suggestion that the nineteen decedents had ties to communism or Cuba to prove that he acted in self-defense.

B. Motion for Summary Judgment as to Defendant's Seventh Affirmative Defense.

Next, in their Summary Judgment Motion, Plaintiffs move for partial summary judgment on Defendant's affirmative defense that he was "acquitted of all charges by a full military investigation in 1972 and later received full amnesty." Omnibus Mot. at 5 (quoting Ans. at 5).

The undisputed facts are as follows.[5]

On August 22, 1972, Defendant and other members of the Argentine Navy shot and killed sixteen prisoners and wounded three others at the Almirante Zar Naval Base in Trelew, Argentina.[6] Pls.' 56.1 ¶ 1 (citing Deposition of Roberto Guillermo Bravo ("Bravo Dep.") (ECF No. 68-1) at 15:1–21, 93:18–21). Thereafter, General Jorge Bautista of the Argentine Navy conducted an investigation into the shootings ("1972 Military Investigation"). Pls.' 56.1 ¶ 2; Def.'s Resp. 56.1 ¶ 2. On December 5, 1972, based on the purported findings of the 1972 Military Investigation, the General Auditor of the Armed Forces of Argentina recommended that the military acquit all members of the Argentine military involved in the Trelew shootings of any wrongdoing ("General Auditor Report"). Pls.' 56.1 ¶ 3; Def.'s Resp. 56.1 ¶ 3. On January 23, 1973, based on the General Auditor Report, the Office of the President of Argentina issued a decree dismissing the "preliminary proceedings" investigating the shootings ("Lanusse Decree"). Pls.' 56.1 ¶ 4; Def.'s Resp. 56.1 ¶ 4. In May of 1973, the Argentine government issued Law 20.508, which provided amnesty for crimes "perpetrated for political, social, trade union or student motives" before May 26, 1973 ("1973 Amnesty Law"). Pls.' 56.1 ¶ 5; Def.'s Resp. 56.1 ¶ 5.

Thereafter, in 2012, a trial court in Argentina adjudicated Defendant's co-perpetrators—former Argentine Navy Officers Luis Emilio Sosa ("Sosa") and Emilio Jorge Del

[5] The undisputed facts are taken from Plaintiffs' Statement of Material Facts ("Pls.' 56.1") (ECF No. 68), Defendant's Response Statement of Material Facts ("Def.'s Resp. 56.1") (ECF No. 82), Plaintiffs' Reply Statement of Material Facts ("Pls.' Reply 56.1") (ECF No. 88), and a review of the corresponding record citations and exhibits.

[6] Defendant purports to dispute this fact, contending that he was acting in self-defense at all material times. Def.'s Resp. 56.1 ¶ 1 (citing Bravo Dep. at 8:17–82:5, 82:9–83:25, 92:10–93:17, 111:18–21). However, Defendant's assertion is not responsive to the fact adduced in Plaintiff's Statement of Material Facts, and it implicitly concedes that he participated in the shooting. The Court finds that paragraph 1 of Plaintiffs' Statement of Material Facts is not genuinely disputed.

Real ("Del Real")—guilty of homicide committed with malice for the killing of sixteen prisoners and attempted homicide committed with malice of three other prisoners during the Trelew Massacre. Pls.' 56.1 ¶ 6; Def.'s Resp. 56.1 ¶ 6. Sosa and Del Real were sentenced to life imprisonment. Pls.' 56.1 ¶ 7; Def.'s Resp. 56.1 ¶ 7.

In reaching its determination, the trial court in Argentina wrote that the 1972 Military Investigation was an "administrative proceeding[], in which the accused . . . were not even charged with a crime." Pls.' 56.1 ¶ 8 (quoting October 15, 2012 Decision of Argentine Trial Court ("Argentine Trial Ct. Decision") (ECF No. 60-6) at 189–90). Because the 1972 Military Investigation was "closed by a decree issued by the *de facto* government" and the "administrative military summary proceedings [did] not constitute judicial proceedings with a final and irrevocable judgment, but a disciplinary decision," the trial court in Argentina did not afford the 1972 Military Investigation preclusive effect and the investigation did not exculpate Sosa and Del Real. *Id.*; *see also* Pls.' 56.1 ¶ 9 (quoting Argentine Trial Ct. Decision at 267–68) (writing that the 1972 Military Investigation was an "administrative proceeding[]" that was "not a legal action with a final and irrevocable ruling but rather a process of disciplinary nature upon which *res judicata* may not be alleged in strict sense, because there has been no prior legitimate proceeding").

Sosa's and Del Real's convictions were later affirmed by an appellate court in Argentina in 2014. Pls.' 56.1 ¶ 10 (citing Declaration of Máximo Langer ("Langer Decl.") (ECF No. 68-6) ¶ 6; March 19, 2014 Decision of Federal Court of Cassation ("Argentine Appellate Ct. Decision") (ECF No. 68-7) at 87); Def.'s Resp. 56.1 ¶ 10. In affirming the convictions, the appellate court in Argentina wrote that it "consider[ed] that the investigation carried out during the course of the abovementioned proceedings was merely formal since the authorities involved, all of them from the armed forces . . . did not guarantee independence or impartiality." Pls.' 56.1 ¶11 (quoting

Argentine Appellate Ct. Decision at 44). The appellate court in Argentina continued, "the authorities involved only reproduced the official version of events which was spread by the de facto government authorities." Argentina Appellate Ct. Decision at 44.

The appellate court noted the failure of the 1972 Military Investigation to seize and examine the victims' clothes, the weapons used, the guard book, or the bullets found in the walls and floor, in addition to the investigation's failure to examine the bodies of the victims or verify the testimony of the survivors. Pls.' 56.1 ¶ 12 (citing Argentine Appellate Ct. Decision at 68). Ultimately, the appellate court in Argentina wrote that the Lanusse Decree and the General Auditor Report that came of the 1972 Military Investigation were "based on the premise that an attempted escape was actually made and failed to perform a serious and comprehensive analysis of the events and of the statements given by the survivors." Pls.' 56.1 ¶ 13 (quoting Argentine Appellate Ct. Decision at 44). Thus, after discussing other cases, the court further wrote:

> All this leads to the conclusion that the decision adopted by virtue of Executive Order No. 425/73 was just the channel through which the alleged perpetrators were made to escape justice and leave the crime committed against the inmates at the Almirante Zar Base unpunished.
>
> Therefore, the conclusion reached in these proceedings by no means implies a final judgment in a material sense that may hinder preliminary investigations in criminal proceedings.

Argentine Appellate Ct. Decision at 45; Pls.' 56.1 ¶ 14.

The trial and appellate courts in Argentina both wrote that Argentina's 1973 Amnesty Law does not apply to the shootings and killings of the Trelew Massacre because they were crimes against humanity to which amnesties are inapplicable under Argentine law. Pls.' 56.1 ¶ 15 (citing Langer Decl. ¶ 8; Argentine Trial Ct. Decision at 211–22, 283–88; Argentine Appellate Ct. Decision at 28–43, 73–76). Thus, the trial court decision reflects that it did not apply the 1973 Amnesty Law to bar the convictions of Sosa and Del Real, as the charged offenses were a crime

against humanity. Pls.' 56.1 ¶ 16 (citing Langer Decl. ¶ 8; Argentine Trial Ct. Decision at 218). The appellate court decision reflects that it affirmed the decision of the trial court. Pls.' 56.1 ¶ 17.

Defendant purports to dispute many of the facts above, asserting that the 2012 Argentine Trial Court Decision and the 2014 Argentine Appellate Court Decision cannot be used against him because he did not participate in those proceedings. Def.'s Resp. 56.1 ¶¶ 8–9, 11–17. The Court finds that Defendant's assertions are not responsive to the facts adduced in Plaintiff's Statement of Material Facts, which concern the contents of Argentine trial and appellate court decisions. Defendant asserts a legal conclusion that the decisions do not apply to him, and thereby fails to genuinely dispute the contents of those decisions.

Plaintiffs further adduce that the 1973 Amnesty Law does not state whether it was intended to apply extraterritorially outside of Argentina. Pls.' 56.1 ¶ 18 (citing 1973 Amnesty Law). Defendant disputes whether the 1973 Amnesty Law is geographically limited to Argentina. Def.'s Resp. 56.1 ¶ 18.

Defendant adduces the following undisputed, additional facts regarding the events on August 22, 1972 at the Almirante Zar Naval Base. Sosa was in charge of the soldiers guarding the prisoners on August 22, 1972 and that Defendant was the lowest-ranked of the four officers present. Def.'s Resp. 56.1 ¶¶ 19–20 (citing Bravo Dep. at 57:6–10, 57:13–58:7). Defendant was isolated on the base during the investigation into the August 22, 1972 shootings. Def.'s Resp. 56.1 ¶ 21 (citing Bravo Dep. at 120:12–121:8). Defendant asserts his opinion that he believes the investigation shows he "did the right thing." Def.'s Resp. ¶ 22 (citing Bravo Dep. at 126:13–127:19). Last, the Parties do not dispute that the 1972 Military Investigation included a reenactment of the incident. Def.'s Resp. 56.1 ¶ 23 (citing Bravo Dep. at 171:15–180:25).

Plaintiffs do not dispute these facts; however, they assert each is immaterial to the legal

issues presented by their Summary Judgment Motion, which they argue deals with whether a foreign military investigation provides a defendant with a legal defense to a civil lawsuit in the United States. Pls.' Reply 56.1 ¶¶ 19–23.

1. Legal Standard

Summary judgment is appropriate where there is "no genuine issue as to any material fact [such] that the moving party is entitled to a judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56). A genuine issue of material fact exists when "a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (citation omitted). "For factual issues to be considered genuine, they must have a real basis in the record." *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1303 (11th Cir. 2009) (citation omitted). Speculation cannot create a genuine issue of material fact sufficient to defeat a well-supported motion for summary judgment. *See Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005).

The moving party has the initial burden of showing the absence of a genuine issue as to any material fact. *Clark v. Coats & Clark, Inc.*, 929 F.2d 604, 608 (11th Cir. 1991). In assessing whether the moving party has met this burden, a court must view the movant's evidence and all factual inferences arising from it in the light most favorable to the non-moving party. *Denney v. City of Albany*, 247 F.3d 1172, 1181 (11th Cir. 2001).

Once the moving party satisfies its initial burden, the burden shifts to the non-moving party to present evidence showing a genuine issue of material fact that precludes summary judgment. *Bailey v. Allgas, Inc.*, 284 F.3d 1237, 1243 (11th Cir. 2002); Fed. R. Civ. P. 56(e). "If reasonable minds could differ on the inferences arising from undisputed facts, then a court should deny summary judgment." *Miranda v. B & B Cash Grocery Store, Inc.*, 975 F.2d 1518, 1534 (11th Cir.

1992) (citation omitted). But if the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial, and summary judgment is proper. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (citation omitted).

"An affirmative defense is one that admits to the complaint, but avoids liability, wholly or partly, by new allegations of excuse, justification, or other negating matters." *Adams v. Jumpstart Wireless Corp.*, 294 F.R.D. 668, 671 (S.D. Fla. 2013). When a plaintiff moves for summary judgment on a defendant's affirmative defense, "the defendant bears the initial burden of showing that the affirmative defense is applicable." *Off. of Thrift Supervision v. Paul*, 985 F. Supp. 1465, 1470 (S.D. Fla. 1997); *see also Blue Cross & Blue Shield of Ala. v. Weitz*, 913 F.2d 1544, 1552 n.13 (11th Cir. 1990) ("Once a defendant shows that the applicable statute of limitations bars the claim, the burden shifts to the plaintiff to demonstrate that an exception or tolling provision applies."). "The defending party must rely on or submit record evidence in support of the purported affirmative defenses to create a genuine issue of material fact preventing the entry of summary judgment." *United States v. Marder*, 208 F. Supp. 3d 1296, 1318 (S.D. Fla. 2016) (quoting *Meth Lab Cleanup, LLC v. Spaulding Decon, LLC*, No. 8:14–CV–3129–T–30TBM, 2015 WL 4496193, at *7 (M.D. Fla. July 23, 2015)). "Only upon such a showing does the burden shift to plaintiff regarding that affirmative defense." *Thrift Supervision*, 985 F. Supp. at 1470. With the burden shifting to the plaintiff, "[a] court may grant partial summary judgment on an affirmative defense if the plaintiff shows that the defendant cannot maintain the defense by a preponderance of the evidence." *Anderson v. Mascara*, 347 F. Supp. 3d 1163, 1175 (S.D. Fla. 2018).

2. Analysis

Plaintiffs argue that the facts related to their Summary Judgment Motion are undisputed and their motion "presents a pure issue of law because it focuses solely on the purported legal effect (or lack thereof) of undisputed facts that took place in Argentina (*i.e.*, the 1972 military investigation, the 1973 Amnesty, and the 2012 and 2014 Argentine court decisions convicting Bravo's co-perpetrators in the Trelew Massacre)." Omnibus Mot. at 8. That is, Plaintiffs argue that Defendant fails to bear his burden of showing that the 1972 Military Investigation and 1973 Amnesty Law have a preclusive effect on Plaintiffs' TVPA claims in this case. *Id.* First, as to the 1972 Military Investigation, Plaintiffs argue that the TVPA exists to provide a means of adjudicating human rights abuses, such as those alleged in this case, in U.S. courts. *Id.* Further, Plaintiffs argue that the 1972 Military Investigation does not preclude Plaintiffs' claims in U.S. court because "the investigation was incomplete and administrative," preliminary, nonjudicial, and did not result in an acquittal. *Id.* at 9 (citing *United States v. MacDonald*, 585 F.2d 1211, 1212 (4th Cir. 1978)). Plaintiffs also argue that an appellate court in Argentina found the Lanusse Decree and General Auditor Report do not imply a final judgment. *Id.* (quoting Pls.' 56.1 ¶ 14). Last, Plaintiffs argue that Defendant fails to establish any of the elements of claim preclusion. *Id.* at 10 (citing *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1296 (11th Cir. 2001)). Second, as to the 1973 Amnesty Law, Plaintiffs argue that courts in Argentina have held that the 1973 Amnesty Law does not apply to the Trelew Massacre. *Id.* (citing Pls.' 56.1 ¶ 15). And in any event, Plaintiffs argue that foreign amnesty laws do not apply extraterritorially unless it is clear from the face of the law. *Id.*

In response, Defendant argues that he has met his burden of adducing record evidence in support of his Seventh Affirmative Defense, specifically the 1972 Military Investigation and

Report and the 1973 Amnesty Law. Omnibus Resp. at 15. In support, Defendant argues that the cases cited by Plaintiffs are inapplicable, and in any event, he has established that the 1972 Military Investigation and Report and the 1973 Amnesty Law are applicable to and support his affirmative defense. *Id.* at 15–16 (citing *United States v. MacDonald*, 585 F.2d 1211 (4th Cir. 1978)). Defendant further argues that the 2012 and 2014 Argentine trial and appellate court rulings are not binding in this case, he was not a party to those proceedings, and Plaintiffs fail to argue that this Court should grant comity to those decisions. *Id.* at 17. Moreover, Defendant argues that the 1973 Amnesty Law is still in effect and there is no indication the Argentine court rulings excepting Defendant's co-perpetrators apply to Defendant. *Id.* at 18.

In reply, Plaintiffs argue that they do not dispute the existence of the General Auditor Report, the Lanusse Decree, or the 1973 Amnesty Law; rather, they argue that these documents do not as a matter of law absolve Defendant of liability under the TVPA. Omnibus Reply at 7. Plaintiffs argue that Defendant fails to show why the General Auditor Report, Lanusse Decree, or 1973 Amnesty Law are applicable to this case. *Id.* Further, Plaintiffs argue that, even if the 1972 Military Investigation, General Auditor Report, the Lanusse Decree, and the 1973 Amnesty Law are applicable to Plaintiff's TVPA claims, the record clearly indicates that Defendant is not absolved of criminal liability in Argentina because his co-perpetrators were nonetheless convicted of offenses arising from the same incident. *Id.* at 8. Plaintiffs argue that the 2012 and 2014 Argentine trial and appellate court decisions are both relevant to this Court's determination of foreign law and conclusively establish as a matter of law that the 1972 Military Investigation and 1972 Amnesty Law did not result in a legal acquittal. *Id.* Further,

The question before the Court is a legal one: whether the Seventh Affirmative Defense is applicable to the instant case. The Court agrees that Defendant has failed to bear his burden of

establishing that the Seventh Affirmative Defense is applicable and precludes him from being held liable in a civil case in a Federal court of the United States. Defendant's Seventh Affirmative Defense reads in full as follows: "Mr. Bravo was acquitted of all charges by a full military investigation in 1972 and later received full amnesty, so the Complaint must be dismissed." Ans. at 5. It is apparent that Defendant is attempting to assert as an affirmative defense that he is shielded from liability in this civil action because (1) he was acquitted of all criminal charges arising from the incident on August 22, 1972 by the Argentine military via the 1972 Military Investigation and resulting Lanusse Decree, and/or (2) he was afforded full amnesty under Argentine law, specifically the 1973 Amnesty Law.

Here, the Parties do not dispute the existence of the materials Defendant has adduced in support of his claim. *See* Omnibus Resp. at 16; Omnibus Reply at 7 ("Plaintiffs do not dispute the existence of the Report, Decree, or 1973 Amnesty). Nor, as noted above, does Defendant genuinely and properly dispute the existence or contents of the 2012 and 2014 Argentine trial and appellate court decisions—he only disputes whether they can be used against him. However, Defendant has not established the Seventh Affirmative Defense is applicable in this case: That is, he fails to show why a foreign military investigation purportedly finding no basis to seek criminal liability against him, followed by a foreign presidential decree purportedly formalizing that finding and dismissing further investigation, conclusively precludes ***civil*** liability for a ***civil*** cause of action arising under United States law in a United States court. To the contrary, as Plaintiffs correctly note, the well-established principal in U.S. law is that criminal acquittals do not, as a matter of law, preclude civil liability for causes of action arising from the same set of facts due to the differing standards of proof. *See United States v. One Assortment of 89 Firearms*, 465 U.S. 354 (1984). Nor does Defendant establish why a foreign law providing ***criminal*** amnesty conclusively

precludes ***civil*** liability in a United States court. *See* 1973 Amnesty Law ("The following events . . . shall be ***pardoned*** under this amnesty law . . . ."). More to the point, Defendant fails to argue in his Omnibus Response that his purported acquittal or amnesty result in claim or issue preclusion in this case. *See generally* Omnibus Resp. Defendant adduces evidence in support of his Seventh Affirmative Defense without explaining the legal basis by which the affirmative defense bars Plaintiffs' claims.

Even if the Seventh Affirmative Defense were applicable to this case, the undisputed facts establish that Defendant was not absolved of criminal liability under Argentine law. The determination of foreign law is treated as a question of law rather than a finding of fact. *See Animal Sci. Prod., Inc. v. Hebei Welcome Pharm. Co.*, 138 S. Ct. 1865, 1872–73 (2018). Thus, "[i]n determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence." Fed. R. Civ. P. 44.1. "This rule 'allows the introduction of any evidence to be brought before the court as long as the evidence 1) is relevant and 2) relates to a determination of foreign law." *World Fuel Servs., Inc. v. M/V PARKGRACHT*, 489 F. Supp. 3d 1340, 1345–46 (S.D. Fla. 2020) (quoting *Grupo Televisa, S.A. v. Telemundo Commc'ns Grp., Inc.*, 2005 WL 5955701, at *6 (S.D. Fla. Aug. 17, 2005)). Moreover, "[i]n the spirit of 'international comity,' a federal court should carefully consider a foreign state's views about the meaning of its own laws," but federal courts are not bound thereby. *Animal Sci. Prod*, 138 S. Ct. at 1869, 1873.

The Court is not convinced that the 1973 Amnesty Law would apply to Defendant even if the Seventh Affirmative Defense were applicable in this case. Defendant disputes the 2012 and 2014 Argentine trial and appellate court decisions because he claims they cannot be used against him as he did not participate in those proceedings. However, he does not dispute the existence of

the two decisions. There, the Argentine trial and appellate courts found that Argentina's 1973 Amnesty Law does not apply to the shootings and killings by the perpetrators of the Trelew Massacre because they were crimes against humanity to which amnesty does not extend under Argentine law. *See* Pls.' 56.1 ¶ 15 (citing Langer Decl. ¶ 8; Argentine Trial Ct. Decision at 211–22, 283–88; Argentine Appellate Ct. Decision at 28–43, 73–76). The apparent inapplicability of the 1973 Amnesty Law to Defendant's purported involvement in the Trelew Massacre is further evidenced by Argentina's decision to twice seek Defendant's extradition from the United States, first in 2009 and again in 2019, ***despite*** the 1973 Amnesty Law.[7] Even as Defendant interprets it, the 1973 Amnesty Law "on its terms . . . prohibited criminal liability for any acts that took place prior to May 25, 1973." Omnibus Resp. at 10. But as Defendant later observes, "this is not a criminal case." *Id.* at 16. For these reasons, the Court finds that, even if the Seventh Affirmative Defense were applicable to this case and even if Argentina's criminal 1973 Amnesty Law remains in effect as Defendant argues, *see id.* at 18, the 1973 Amnesty Law does not absolve Defendant of civil liability in this case.

In short, although Defendant has adduced evidence in support of his Seventh Affirmative Defense, he has failed to establish that his Seventh Affirmative Defense is applicable and bars Plaintiffs' claims as a matter of law. Defendant also fails to establish that he has been absolved of liability under the 1973 Amnesty Law. Accordingly, Plaintiffs' Summary Judgment Motion is GRANTED.

[7] Pursuant to Federal Rule of Evidence 201, the Court takes judicial notice of the dockets in the following extradition proceedings initiated at Argentina's request: *In re Extradition of Bravo*, No. 1:19-mc-23851-EGT (S.D. Fla.); *In re Extradition of Bravo*, No. 1:10-mc-20559-RLD (S.D. Fla. Nov. 1, 2010).

C. Second Motion *in Limine* to Exclude Improper Statements Related to Seventh Affirmative Defense.

Last, Plaintiffs request that the Court bar Defendant from advancing "(1) any characterization that the 1972 military investigation resulted in an 'acquittal' or 'exoneration,' and (2) any suggestion that the 1973 Amnesty applied to [Defendant]" because such references may confuse or mislead the jury. Omnibus Mot. at 11. Defendant responds that references to the 1972 Military Investigation and 1973 Amnesty Law are relevant to the chain of events surrounding the charged crimes and are inextricably intertwined, thus the evidence cannot be excluded. Omnibus Resp. at 19. In reply, Plaintiffs argue that they only seek to preclude Defendant from "erroneously stating that he was legally acquitted or received amnesty." Omnibus Reply at 10.

The Court agrees. Defendant may not refer to the 1972 Military Investigation, General Auditor Report, or Lanusse Decree as a legally effective "acquittal" or "exoneration." To be clear, though, Defendant is prohibited from characterizing this evidence as an "acquittal" or "exoneration," but he is not prohibited from introducing this evidence for another proper purpose not inconsistent with this Order. As to the 1973 Amnesty Law, the Court has found that Argentine law does not extend amnesty to Defendant's involvement in the Trelew Massacre. Thus, Defendant or his counsel may not suggest that the 1973 Amnesty Law absolves him of liability.

Accordingly, Plaintiffs' Second Motion *in Limine* is GRANTED.

III. CONCLUSION

UPON CONSIDERATION of the Motions, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED as follows:

1. Plaintiffs' Motion *in Limine* to Preclude References to Communism and Cuba is GRANTED.

2. Plaintiffs' Motion for Summary Judgment to Dismiss Defendant Bravo's Seventh Affirmative Defense is GRANTED.
3. Plaintiffs' Motion *in Limine* to Exclude Improper Statements Related to Seventh Affirmative Defense is GRANTED.

DONE AND ORDERED in Chambers at Miami, Florida, this 17th day of May, 2022.

K. MICHAEL MOORE
UNITED STATES DISTRICT JUDGE

c: All counsel of record