UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:20-CV-24294-KMM

RAQUEL CAMPS, in her capacity as the personal representative of the ESTATE OF ALBERTO CAMPS,

EDUARDO CAPPELLO, in his individual capacity, and in his capacity as the personal representative of the ESTATE OF EDUARDO CAPPELLO,

ALICIA KRUEGER, in her individual capacity, and in her capacity as the personal representative of the ESTATE OF RUBÉN BONET,

and, MARCELA SANTUCHO, in her individual capacity, and in her capacity as the personal representative of the ESTATE OF ANA MARÍA VILLARREAL DE SANTUCHO,

Plaintiffs,

v.

ROBERTO GUILLERMO BRAVO,

Defendant.

PLAINTIFFS' REPLY IN SUPPORT OF THEIR 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

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I. INTRODUCTION

Bravo's opposition to Plaintiffs' motion *in limine* and motion for summary judgment must be read with care. It is based not on evidence, but on baseless assertions, Wikipedia articles, and hearsay memoirs of non-witnesses—none of which is admissible. When stripped of baseless factual assertion, Bravo's opposition offers very little.

With respect to Plaintiffs' motion *in limine*, Bravo's opposition confirms that he plans to improperly smear his victims as "communist terrorists" and "convicted terrorists" "with ties to communist Cuba" even though these purported "facts" (1) are utterly irrelevant to his defense, (2) were not disclosed during fact discovery, and (3) have no basis in admissible evidence. The context here is significant. Bravo claims that he shot his victims because one was shooting at him, while the others were approaching him. He will also argue that the victims were dangerous because they had previously escaped from a different prison. In this context, the victims' political views are irrelevant. Indeed, even in criminal cases, asserting self-defense does not entitle a defendant to admit irrelevant and prejudicial details about the victim. *See, e.g.*, *United States v. Wilk*, 572 F.3d 1229, 1234-35 (11th Cir. 2009) (affirming exclusion of the fact that a victim had steroids in his blood because, while the victim's actions at the time of the killing were relevant, the "the underlying reasons" for those actions were not). Here, the irrelevance of the victims' political views is confirmed by the fact that Bravo was asked at deposition about his reasons for believing the victims were violent—and he never once mentioned communism or Cuba. When combined with the fact that there is literally no admissible evidence that the victims were "communists," "convicted terrorists," or linked to "communist Cuba," such blatantly prejudicial factual assertions must be excluded.

Likewise, Bravo's opposition to Plaintiffs' motion for summary judgment as to Bravo's seventh affirmative defense fails to meet Bravo's burden to show how that defense is applicable to Plaintiffs' claims under the TVPA. Bravo offers no legal authority to establish that the 1972 military investigation and 1973 Amnesty should be given preclusive effect in this litigation. Nor

could he, given that the investigation and amnesty have not prevented the convictions of Bravo's co-perpetrators in Argentina for their roles in the Trelew Massacre. Plaintiffs are entitled to summary judgment on Bravo's seventh affirmative defense.

Finally, given that Bravo's seventh affirmative defense fails as a matter of law, he must not be permitted to distract and confuse the jury at trial by suggesting that he was exonerated by the 1972 military investigation or received amnesty.

This Court should grant Plaintiffs' motions in their entirety.

II. MOTION *IN LIMINE* TO PRECLUDE REFERENCES TO CUBA AND COMMUNISM AT TRIAL

Despite filling the first ten pages of his opposition with a bevy of inadmissible factual assertions, Bravo fails to: (1) offer any evidence establishing that ***any*** of the nineteen victims of the Trelew Massacre, let alone ***all of them***, had ties to communism or Cuba, or were "convicted terrorists"; (2) establish the relevance of such purported facts; and (3) meaningfully rebut the prejudice such baseless assertions would cause. Bravo instead doubles down on his plan to inflame the jury by baselessly referring to his victims as "communist terrorists" and "convicted terrorists" "with ties to communist Cuba." Opp. at 3, 6, 10. The Court should not allow Bravo to distract the jury with such irrelevant, unduly prejudicial, and unsupported assertions.

A. There is no admissible evidence that the victims of the Trelew Massacre were communists, had ties to Cuba, or were "convicted terrorists."

Bravo's opposition heavily cites inadmissible exhibits and websites to assert that the victims of the Trelew Massacre were communists, had ties to Cuba, or were convicted terrorists. To the extent these citations are even arguably admissible, they do not support his assertions.

First, Plaintiffs object to the following documents on the following grounds:

- The following documents are inadmissible because they were not disclosed during discovery, despite being requested.[1] Opp. Ex. 1 (ECF 85–1) (Jenkins & Johnson);

[1] *See, e.g.,* Ex. A at 1 (Bravo's Responses to Plaintiffs' First Set of Requests for Production).

Opp. Ex. 4 (ECF 85–4) (ABC.es); Opp. Ex. 6 (ECF 85–6) (Clarin.com); Opp. Ex. 10 at 4–6 (ECF 85–10) (WSJ); Opp. at 5 n.4 (Montoneros Wikipedia); Opp. at 5 n.5 (Montoneros Encyclopedia Britannica); Opp. at 6 n.8 (Enrique Merlo Wikipedia). Parties are "generally precluded" from introducing requested evidence not produced prior to the discovery cutoff. *Jones v. Royal Caribbean Cruises, Ltd.*, 2013 WL 8695361, at *3 (S.D. Fla. Apr. 4, 2013).[2]

- Bravo cites a 2010 court order denying Argentina's initial extradition request to suggest that three of his victims were members of "extremist and terrorist groups" (Opp. Ex. 2) (ECF 85–2). But factual findings in a court order are not admissible for their truth in another proceeding, and Bravo has not shown that this finding is otherwise admissible. *See, e.g.*, *United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994) ("[A] court may take notice of another court's order only for the limited purpose of recognizing the 'judicial act' that the order represents or the subject matter of the litigation.").
- Bravo relies on excerpts from a J. Edgar Williams memoir published in 2009 (Opp. Ex. 5) (ECF 85–5). These are the inadmissible hearsay opinions of a non-witness to this case, with no personal knowledge of the massacre's victims.
- Bravo cites in passing to a 130-page compendium filing (ECF 84–1) without specifying which documents or statements in that filing he relies on. Opp. at 7 n.11. The Court and Plaintiffs "are not like pigs, hunting for truffles buried in briefs." *Chavez v. Sec'y Fla. Dep't of Corr.*, 647 F.3d 1057, 1061 (11th Cir. 2011). This Court should not consider this document.

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[2] These documents should also be excluded for the separate reason that they are unreliable hearsay. *See United States v. Lawson*, 677 F.3d 629, 650–51 (4th Cir. 2012) (collecting cases admonishing use of Wikipedia due to its "lack of reliability"). Bravo should be more restrained in citing such sources given that Wikipedia's entry on the Trelew Massacre states it was a "mass execution" in which the Argentine military "forced the prisoners to fake a new escape, then executed them as revenge by the dictatorship for the successful escape of some of their comrades during the initial prison break." *See* https://en.wikipedia.org/wiki/Trelew_massacre.

The only documents Bravo cites that are even arguably admissible are four newspaper columns from the 1970s. Opp. Ex. 3 (ECF 85–3) and Ex. 10 (ECF 85–10) at 1–3. Even if Bravo could establish they qualify under the ancient documents hearsay exception, F.R.E. 803(16), none of the articles establish the Trelew Massacre victims were communists, had ties to Cuba, or were convicted terrorists. Three of the articles say nothing about the Trelew Massacre or its victims. *See* Opp. Ex. 10 (ECF 85–10) at 1–3. And the other article states only that the Trelew Massacre victims were "alleged terrorists" and "reported to have belonged" to various groups. *See* Opp. Ex. 3 (ECF 85–3). So even if the document constitutes an ancient document, its reporting where the declarant himself has no personal knowledge is inadmissible. F.R.E. 803 Adv. Comm. Note ("In a hearsay situation, the declarant is, of course, a witness, and neither [Rule 803] nor Rule 804 dispenses with the requirement of firsthand knowledge."). Moreover, citing a facially unreliable, 50-year-old newspaper article written by a reporter without personal knowledge of the Trelew Massacre or its victims to suggest ***all of the victims*** had ties to communism, Cuba, or terrorism is unduly prejudicial in the extreme. F.R.E. 403. Bravo's attempt to malign his victims as "communists" and "convicted terrorists" with "ties to Cuba" has no evidentiary basis.

B. Bravo's factual assertions that the Trelew victims were "communists" with "ties to Cuba" are irrelevant and were withheld during discovery.

The political affiliations of the victims of the Trelew Massacre—whether they were communists, capitalists, or otherwise—are irrelevant to the issues in this case. In a situation where Bravo will be arguing that he ordered the shooting of the victims because one was shooting at him, others were charging at him, and he understood that they had escaped from a prison previously, there is no meaningful relevance to their perceived political views. Neither communist views nor ties to Cuba make it more or less likely that the victims were violent.

The Eleventh Circuit's decision in *United States v. Wilk* is on point, and all the more persuasive because it involved a criminal defendant. 572 F.3d 1229 (11th Cir. 2009). There, Wilk asserted he acted in self-defense at his criminal trial relating to his shooting of Deputy

Sheriff Fatta, who had entered Wilk's home with other law enforcement officers. *Id.* at 1234. Wilk tried to smear the victim's character at trial by seeking to introduce evidence that Fatta had steroids in his blood. *Id.* The district court excluded the evidence as irrelevant and the Eleventh Circuit affirmed. *Id.* As the Eleventh Circuit explained: "Fatta's and the other officers' actions at the time of entry were relevant to Wilk's defense, but … the underlying reasons for Fatta's mode of entry tended to neither prove nor disprove any material fact at issue." *Id.*

That exact analysis applies here. Bravo's assertions that the Trelew victims shot or charged at him at the time of the shootings are relevant to his claim of self-defense. But communist views and ties to Cuba tend "to neither prove nor disprove" that the victims acted violently. If anything, Bravo's argument amounts to impermissible character evidence that communists or those with ties to Cuba have a greater propensity to violence. F.R.E. 404.

Moreover, here, the victim's political affiliations are clearly irrelevant because Bravo did not consider these affiliations in assessing whether the victims were dangerous. When given multiple opportunities at deposition to explain why he believed the prisoners were dangerous, Bravo did not mention the victims' political affiliations, much less their purported ties to communism or Cuba. ECF 67–1 at 157:16-164:12. In fact, Bravo never once mentioned either communism or Cuba during his seven-hour deposition. Bravo cannot rely on purported "facts" that did not inform his perceptions about the Trelew victims to now argue self-defense. *Brown v. State*, 300 So. 3d 332, 334 (Fla. Dist. Ct. App. 2020) (excluding evidence about a victim where "no evidence showed that Brown knew about" it and accordingly "finding it was not relevant to Brown's state of mind" for purposes of self-defense theory). Bravo's opposition entirely ignores the inconsistency between his deposition testimony from eight months ago and his current argument that his victims' political affiliations spurred him to shoot them.

Further, Bravo's failure to raise these issues at deposition is an independent basis to exclude references to Cuba and communism. *Circuitronix, LLC v. Shenzhen Kinwong Elec. Co., Ltd.*, 2019 WL 13066364 at *3 (S.D. Fla. Feb. 8, 2019) (excluding evidence where party failed to disclose it in response to deposition questions because "to allow [party] to present that evidence

at trial would leave [opposing party] no ability to meaningfully respond either with contrary facts or with impeachment evidence"); s*ee also Ctr. for Individual Rights v. Chevaldina*, 2018 WL 2432109 at *11 (S.D. Fla. May 30, 2018) (excluding evidence where failure to disclose during discovery period prevented opposing party from taking relevant discovery).

Finally, Bravo claims that there is some great contradiction between Plaintiffs' motion *in limine* and the fact that Plaintiffs referred to the Trelew victims as political prisoners. There is no contradiction. The Trelew prisoners were detained despite never having been convicted of any crimes. Bravo had the entire discovery period to produce evidence of the criminal convictions that resulted in the victims' imprisonment at the Rawson Penitentiary (before they were relocated to Trelew) yet he has produced none. Indeed, the military investigation that Bravo touts in his opposition refers to the victims as "subversives" and "extremists"—a standard autocratic label for political opponents. But just because the Trelew prisoners were politically disfavored does not make them communists; nor is it appropriate for Bravo to suggest that communists are violent. Accordingly, nothing in Plaintiffs' presentation justifies Bravo prejudicially referring to the Trelew victims as communists or terrorists with ties to Cuba.

C. References to communism and Cuba and "convicted terrorists" would be highly prejudicial.

Bravo does not meaningfully rebut that describing the prisoners as communists or suggesting they had ties to communist Cuba will prejudice Plaintiffs. Courts have routinely excluded references to a parties' political views when there is undue risk of inflaming the jury or distracting from the issues in the case. *See* Mot. at 4–5 (collecting cases). Bravo's only argument on this point appears in a footnote suggesting this Court should disregard all of the cases Plaintiffs cite in their motion showing that the exclusion of largely irrelevant political beliefs is routine, arguing instead that those cases involved different factual contexts. Opp. at 14, n.16. But that is precisely the point—courts have found *across varying factual contexts* that references to political beliefs and national ties must not be permitted where the probative value is minimal or nonexistent. The same is true here, where the risk of undue prejudice resulting from suggestions

of the victims' purported ties to communism and Cuba is undeniably high with a Miami jury. *See Lewis v. Jones*, 2015 WL 1003408 at *8-9 (N.D. Fla. March 6, 2015) (excluding evidence of victim's gang membership because it was highly prejudicial and exclusion did not deprive defendant of ability to mount self-defense theory where victim allegedly "pulled a gun on him"). The same is true of baselessly referring to the victims as "terrorists." *See United States v. Ramadan*, 2021 WL 4060981 at *1 (E.D. Mich. 2021) (excluding evidence due to "extreme prejudice reference to terrorism or development of terrorism related themes would cause").

III. MOTION FOR SUMMARY JUDGMENT AS TO BRAVO'S SEVENTH AFFIRMATIVE DEFENSE

A. Bravo has failed to show his seventh affirmative defense is applicable here.

Bravo has failed to meet his "initial burden of showing that [his] affirmative defense is applicable." *Office of Thrift Supervision v. Paul*, 985 F. Supp. 1465, 1470 (S.D. Fla. 1997). "An affirmative defense is established only when a defendant admits the essential facts of a complaint and sets up other facts in justification or avoidance." *Tsavaris v. Pfizer, Inc.*, 310 F.R.D. 678, 682 (S.D. Fla. 2015). "When the only question a court must decide is a question of law, summary judgment may be granted." *Saregama India Ltd. v. Mosley*, 635 F.3d 1284, 1290 (11th Cir. 2011).

Bravo's argument appears to be that, by simply introducing the General Auditor's Report (the "Report"), the Lanusse Decree (the "Decree"), and the 1973 Amnesty Law (the "1973 Amnesty"), he has met his burden to show that those documents provide him with an affirmative defense applicable to this case. Opp. at 15-16. Bravo is wrong. Plaintiffs do not dispute the existence of the Report, Decree, or 1973 Amnesty. But as a matter of law, there is no basis to conclude these documents absolve Bravo of liability under the TVPA. *See* Mot. at 8 (collecting legislative history and caselaw showing TVPA was enacted to address situations where the home nation prevented victims from pursuing justice by tolerating human rights abuses).

Bravo has made no showing as to why these documents are "applicable to this case" as affirmative defenses and absolve him of liability. The only thing Bravo has demonstrated is that they exist and what they say. At best, Bravo appears to be suggesting that the Argentine

military's 1972 investigative findings and the 1973 Amnesty preclude Plaintiffs' claims under res judicata or collateral estoppel. But as noted in Plaintiffs' motion, Bravo has made no showing either doctrine is applicable; nor did he do so in his opposition. Accordingly, Bravo has failed to meet his burden to show the applicability of his seventh affirmative defense to Plaintiffs' claims, and Plaintiffs are entitled to summary judgment as a matter of law.

B. The 1972 investigation and 1973 Amnesty do not absolve Bravo.

Even if Bravo had made an initial showing that the 1972 investigation or 1973 Amnesty law could be applicable to Plaintiffs' TVPA claims, the record makes clear that the investigation and amnesty did not absolve Bravo of liability in Argentina. Bravo's co-perpetrators were convicted for the very same incident in 2012, ***despite*** the 1972 investigation and ***despite*** the 1973 Amnesty. In determining a question of foreign law, "the district court may consider ***any relevant material or source*** … whether or not submitted by a party or admissible under the Federal Rules of Evidence." *Trinidad Foundry & Fabricating, Ltd. v. M/V K.A.S. Camilla*, 966 F.2d 613, 615 (11th Cir. 1992) (citing Fed. R. Civ. P. 44.1) (emphasis added).[3] Here, Plaintiffs' unrebutted evidence of Bravo's co-perpetrators' subsequent convictions demonstrates conclusively that the 1972 investigation did not result in a legal acquittal. Nor has Bravo explained why the military's criminal investigation would preclude civil liability in a court of the United States. *See United States v. One Assortment of 89 Firearms*, 465 U.S. 354, 362 (1984) (noting that a criminal acquittal cannot preclude claims in a civil suit).

Likewise, as to the 1973 Amnesty, even if Bravo made an initial showing that the Amnesty applies to him, it would have no effect on Bravo's liability under the TVPA because nothing in the text of the Amnesty states that it is intended to apply extraterritorially. *See* Mot. at

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[3] Contrary to Bravo's suggestion, Plaintiffs do not argue that "the Argentina Decisions are binding in this proceeding and are recognized judicially." Opp. at 17. Rather, Plaintiffs argue that such decisions are relevant and important to this Court's determination of foreign law in this instance. Moreover, while irrelevant to Plaintiffs' arguments, the cases cited by Bravo are inapposite to the question of whether foreign law may be considered *prima facie* binding. *See, e.g.*, *Branca by Branca v. Sec. Ben. Life Ins. Co.*, 773 F.2d 1158, 1161-62 (11th Cir. 1985).

7, 10; *Chavez v. Carranza*, 559 F.3d 486, 494–95 (6th Cir. 2009) (refusing to apply Salvadoran Amnesty law in U.S. litigation under, *inter alia*, the TVPA where it could not be interpreted to apply extraterritorially). Indeed, even caselaw Bravo cites in support of his argument that the 1973 Amnesty applies to him supports ***Plaintiffs***' position, not his own. In *Access Telecom, Inc. v. MCI Telecommunications Corp.*, 197 F.3d 694, 714 (5th Cir. 1999), the Fifth Circuit held that, "[r]ecognizing the difficulty of interpreting foreign law, courts may defer to foreign government interpretations." Bravo offers no explanation why this Court should not likewise defer to the Argentine government's determination that the 1972 investigation and 1973 Amnesty did not absolve him of wrongdoing during the Trelew Massacre. Although this Court need not reach this issue, given the non-extraterritorial applicability of the 1973 Amnesty, Plaintiffs' unrebutted evidence—Professor Langer's declaration and Argentinean court decisions—establishes that, under Argentinean law, the 1973 Amnesty Law cannot be applied to the Trelew Massacre. *See* SMF (ECF No. 68) ¶¶ 15-17, ECF No. 68-6 at 4, 35-36; *Chavez*, 559 F.3d at 495.

C. Bravo's response to Plaintiffs' statement of material facts does not create a genuine dispute of material fact.

Bravo's responses to Plaintiffs' Statement of Material Facts do not create actual disputes of material fact, are almost entirely based on legal arguments rather than factual evidence, and cannot serve as a basis to deny summary judgment. *See, e.g.*, *Gomez v. Target Corporation*, 2017 WL 3601806 at *1 (S.D. Fla. Aug. 2, 2017) ("intermingl[ing] legal arguments with the statement of purported facts … fails to provide the Court with information about what is truly disputed").

First, in response to Material Fact No. 1 that, "[o]n August 22, 1972, members of the Argentine Navy—including Defendant Roberto Guillermo Bravo—shot and killed 16 prisoners and wounded 3 others at the Almirante Zar Naval Base in Trelew, Argentina," Bravo asserts that "[a]t all times material, Defendant, Roberto Guillermo Bravo, was acting in self-defense." This response does not dispute any portion of Material Fact No. 1.

Second, in response to Material Fact Nos. 8-9 and 11-17—which reproduce statements from the Argentine court decisions convicting Bravo's co-perpetrators for their roles in the

Trelew Massacre—Bravo asserts that he "did not participate in this proceeding so it is disputed that these proceedings can be used against him." This is a legal argument that the decisions cannot be used against Bravo; it is not a dispute of material fact. And Bravo provides no basis why this Court cannot consider the findings of the Argentine courts under Fed. R. Civ. P. 44.1.

Finally, in response to Material Fact No. 18 that "[t]he 1973 Amnesty does not state that it was intended to apply extraterritorially and outside of Argentina," Bravo asserts the legal conclusion that "[t]he 1973 Amnesty is not geographically limited." This response presents a legal argument, unsupported by any evidence or testimony in the record, and does not create a dispute of material fact as to what the 1973 Amnesty states.

IV. BRAVO SHOULD BE PRECLUDED AT TRIAL FROM STATING HE WAS ACQUITTED OR RECEIVED AMNESTY.

Bravo's claim that Plaintiffs are "seek[ing] to exclude Mr. Bravo from introducing any reference to the 1972 Military Investigation, Report and Decree" mischaracterizes Plaintiffs' motion. Opp. at 19. Plaintiffs seek only to preclude Bravo from erroneously stating he was legally acquitted or received amnesty. The unrebutted evidence shows that the 1972 military investigation was preliminary and lacked independence and impartiality. Mot. at 9–10; *supra* 8–9. Plaintiffs have also shown that the 1973 Amnesty does not apply to the Trelew Massacre. *Id.* There is no basis for Bravo to claim he was acquitted for his acts in Argentina or that he received amnesty,[4] and allowing him to do so would risk confusing and misleading the jury. Mot. at 11. This Court should prohibit Bravo from making such assertions at trial.

V. CONCLUSION

For the reasons stated above, this Court should grant Plaintiffs' motions in their entirety.

Dated: April 14, 2022

By: */s/ A. Margot Moss*
A. MARGOT MOSS

[4] That Argentina is currently seeking Bravo's extradition to prosecute him for his role in the Trelew Massacre belies his characterization of the military investigation and amnesty.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on April 14, 2022, we electronically filed the foregoing document with the Clerk of the Court using CM/ECF. We also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

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