UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

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

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

Plaintiffs,

v.

ROBERTO GUILLERMO BRAVO,

Defendant.
_______________________________________ /

FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON EQUITABLE TOLLING

THIS CAUSE is before the Court to decide whether the statute of limitations in this case was equitably tolled, and if so, for how long the statute of limitations was tolled. The issue of equitable tolling was submitted to the jury after a 5-day jury trial in the Southern District of Florida on Plaintiffs' claims under the Torture Victim Protection Act of 1991 ("TVPA"), Pub. L. No. 102-256, 106 Stat. 73 (1992) (codified at 28 U.S.C. § 1350 note). Following the trial and upon consideration of Defendant's post-trial motions, the Court on March 31, 2023 entered an Order on Defendant Roberto Guillermo Bravo's Renewed Motion for Judgment as a Matter of Law, or Alternatively, Motion for New Trial (ECF No. 162). In the Court's March 31, 2023 Order, the Court granted Defendant's Motion, in part, to the extent the Motion renewed Defendant's objection to submitting the question of equitable tolling to the jury. (ECF No. 177 at 15). Pursuant to this Court's Order (ECF No. 177), the Parties submitted proposed Findings of Fact and Conclusions of Law on equitable tolling. (ECF Nos. 178, 179). The Court has carefully considered the evidence and testimony presented at the trial, the Parties' respective submissions, the record as a whole, the applicable law, and is otherwise fully advised in the premises. Pursuant to Federal Rule of Civil Procedure 52(a), the Court sets forth the following findings of fact and conclusions of law regarding the equitable tolling of the statute of limitations.

I. RELEVANT PROCEDURAL BACKGROUND

The posture in which the Court makes these Findings of Fact and Conclusions of Law was summarized in the Court's March 31, 2023 Order (ECF No. 177) on Defendant's Renewed Motion for Judgment as a Matter of Law or, Alternatively, Motion for New Trial (ECF No. 162). The Court briefly recounts the procedural history of this case here to provide context for these Findings of Fact and Conclusions of Law.

A. Pretrial Proceedings

Plaintiffs commenced this action by filing their Complaint (ECF No. 1, "Compl.") in this Court on October 20, 2020. Plaintiffs are Raquel Camps ("Camps") in her capacity as personal representative of the Estate of Alberto Camps; Eduardo Cappello, II ("Capello") in his individual capacity and as personal representative of the Estate of Eduardo Cappello, I; Alicia Krueger ("Krueger") in her individual capacity and as personal representative of the Estate of Rubén Bonet; and Marcela Santucho ("Santucho") in her individual capacity and as personal representative of the Estate of Ana María Villarreal de Santucho. (Compl. ¶¶ 14–17). Defendant is Roberto Guillermo Bravo ("Bravo" or "Defendant"). From 1964 to 1979, Bravo was a commissioned officer in the Argentine military who, in August 1972, was stationed at the Almirante Zar Naval Base in Trelew, Argentina. (Compl. ¶ 11).

In their Complaint, Plaintiffs Cappello, Krueger, and Santucho asserted a claim under the TVPA for extrajudicial killing of their family members. (Compl. ¶¶ 93–102). Plaintiff Camps asserted a claim under the TVPA for the attempted extrajudicial killing of her father. (Compl. ¶¶ 103–110). And all Plaintiffs asserted a claim under the TVPA for torture of their family members. (Compl. ¶¶ 111–124).

Throughout the pretrial proceedings in this case, Defendant did not file any pretrial motions, including motions to dismiss, motions for summary judgment, or pretrial evidentiary motions. While the Parties' raised their positions on the equitable tolling of the statute of limitations in their Joint Pretrial Stipulation, *see* (ECF No. 91 ("Pretrial Stip.") at 8–9), the issue of who would decide the question of equitable tolling—the Court or the Jury—first appeared in the Parties' Joint Proposed Jury Instructions, (ECF No. 106 at 118, 127).

B. Trial

On June 26, 2022, this case was reassigned to the undersigned United States Magistrate Judge for all further proceedings upon the consent of the parties and pursuant to 28 U.S.C. § 636(c) and Magistrate Judge Rule 1(h) of the Local Rules of the Southern District of Florida. (ECF Nos. 123, 124). On June 27, 2022, the case proceeded to trial commencing before a jury in Miami, Florida. (ECF No. 133).

Over the course of the trial, the Court and the Jury heard testimony from: (i) Miguel Marileo, a funeral home worker who handled the remains of the victims from the Almirante Zar Naval Base; (ii) Julio Ulla, whose brother was killed at the Almirante Zar Naval Base; (iii) Carlos Marandino, a member of the Argentine Navy stationed at the Almirante Zar Naval base the night of the killings; (iv) Carlos Celli, a conscript stationed at the Almirante Zar Naval base the night of the killings; (v) Defendant Bravo; (vi) each of the Plaintiffs; (vii) Professor James Brennan, Plaintiffs' expert on Argentine history since 1945, (ECF No. 132 at 54:8–11); (viii) Dr. Rodolfo Guillermo Pregliasco, Plaintiffs' expert in forensic reconstruction of crime scenes and accident scenes, (ECF No. 145 at 44:20–24); and (ix) Professor Maximo Langer, Plaintiffs' expert on the availability of legal remedies to Plaintiffs in Argentina, (ECF No. 145 at 106:6–16). Various exhibits were admitted into evidence. *See* (ECF No. 155).

On June 28, 2022, Defendant moved via written motion for a directed verdict on the unavailability of equitable tolling to Plaintiffs. (ECF No. 138). The motion was denied in open court on Day 5 of the trial. (ECF No. 148 at 95). The motion was later renewed and the ruling was the same. (ECF No. 148 at 116). The Jury was instructed on equitable tolling, (ECF No. 148 at 191–93), and the question of whether extraordinary circumstances tolled the statute of limitations was submitted to the Jury, (ECF No. 153 at 1). The Jury answered the question in the affirmative, returning a verdict in favor of Plaintiffs and against Defendant on Plaintiffs' claims. (ECF No. 153). The Court entered judgment in accordance with the Jury's verdict. (ECF No. 158).

C. Post-Trial Motion Practice

In post-trial briefing, Defendant renewed his argument that the Court and not the Jury should have decided whether extraordinary circumstances tolled the statute of limitations in this case. Upon consideration of Defendant's post-trial motions, the Court determined that it had erred in submitting the question of equitable tolling to the Jury and granted Defendant's motion, in part. (ECF No. 177). Thus, pursuant to Federal Rule of Civil Procedure 59(e) and finding that Seventh Amendment concerns were not implicated, the Court determined that appellate review would be frustrated absent correction of the error via the entry of the Court's finding of facts and conclusions of law.

Thus, these Findings of Fact and Conclusions of Law follow.

II. FINDINGS OF FACT

1. From August 15, 1972 to August 22, 1972, nineteen prisoners were held captive at the Almirante Zar Naval Base in Trelew, Argentina after escaping from the Rawson prison and surrendering to the Argentine military. (Pretrial Stip. at 4, (ECF No. 91)); (ECF No. 132 at 15:21–23). The incident that formed the basis of Plaintiff's claims, referred to as the Trelew Massacre, occurred during the early morning hours of August 22, 1972. The nineteen prisoners who surrendered to the Argentine military were shot at; sixteen died, including relatives of Plaintiffs Krueger, Cappello, and Santucho. Plaintiff Camps's father survived the shooting but was killed in August of 1977. (ECF No. 145 at 153:14–18). I note that, based on the evidence presented at the trial, the Jury found Defendant liable under the TVPA for the extrajudicial killing of the relatives of Plaintiffs Cappello, Krueger, and Santucho, and for the torture and attempted extrajudicial killing of Plaintiff Camps's father. (ECF No. 153).

2. On October 20, 2020, approximately 48 years after the killings at the Almirante Zar Naval Base, Plaintiffs filed their Complaint in this Court. (ECF No. 148 at 100:21–24); (ECF No. 1).

3. I credit the unrebutted testimony and opinions of Professor James Brennan, Plaintiffs' expert on Argentine history since 1945, regarding the social and historical context, or "country conditions," in Argentina during the 1970s onward as they relate to this case. Summarized, there were widespread human rights abuses and retaliation by military governments in Argentina in the 1970s and 1980s. After the election of a democratic government in Argentina in 1983, the government was precarious and the former military regime was able to exert influence to avoid accountability until 2003.

4. Professor Brennan testified that from 1973 to 1976 Argentina went through a period of intense "state-directed violence" in which civil rights were being systemically abused and basic freedoms were lost. (ECF No. 132 at 62–64). Professor Brennan testified to the existence of death squads that targeted opponents of the military regime, including human rights lawyers. The expert further opined that anyone seeking justice on behalf of their family members would have been targeted by the Argentine government.

5. In 1976, a military junta government came into power in Argentina under Jorge Videla. (ECF No. 132 at 64). Professor Brennan testified that the military government took action against "subversives" on a scale not seen before through a systematic campaign of extermination. (ECF No. 132 at 64–65). The expert opined that seeking justice for the death of a family member at the hands of the military at that time would cause a person to be identified as a "subversive." (ECF No. 132 at 65). Professor Brennan also noted that, during that time, subversives were subject to secretive and clandestine campaigns of abduction, interrogation, torture, and disappearances at the hands of military intelligence. The expert further noted that the military operated death camps, buried disappeared persons in mass graves or in public cemeteries with no grave markers, and sometimes sedated disappeared persons before throwing their bodies from airplanes. (ECF No. 132 at 67).

6. Professor Brennan opined that the military disappeared individuals secretively or clandestinely to avoid domestic and international fallout for human rights abuses and also to instill fear, which caused those living in Argentina to self-censor. (ECF No. 132 at 67–68).

7. In 1983, Argentina established a democratically elected government. (ECF No. 132 at 75:23–76:1). The democratic government after 1983 formed a truth commission and began to criminally prosecute military leaders for human rights abuses from the 1970s and 1980s. (ECF

No. 132 at 78). Professor Brennan opined that these criminal prosecutions in the 1980s were assigned to the military courts, but later reassigned to the civil courts because the military was stonewalling criminal prosecution efforts; the trials resulted in convictions and prison sentences. (ECF No. 132 at 76–77). I credit the expert's testimony that, in response, the military engaged in a series of rebellions, a bombing campaign, and planned to overthrow the democratically elected government through military uprisings, ultimately leading to the passage, for the benefit of the military, of a statute of limitations and a law permitting the defense of carrying out of orders.[1] (ECF No. 132 at 77–78).

8. Professor Brennan opined that the democratic government of Argentina had in the 1980s determined that it was at that time too politically fragile to prosecute lower-ranked members of the military. (ECF No. 132 at 78). But the expert testified that, starting in 2003, the Argentine government began to prosecute lower-ranked members of the military, as well as civilian collaborators of the dictatorships, for human rights abuses. (ECF No. 132 at 78–79).

9. I credit Plaintiffs' testimony that they and their families experienced oppression by the military regime. Plaintiff Krueger testified that the lawyer who had defended her late-husband Rubén Bonet was murdered in Buenos Aires in 1974. Krueger testified at deposition that this led her and her family to go into hiding from 1974 to 1977, to change their last names, and to move around before fleeing Argentina in July 1977; they ultimately became political refugees in France in January 1978. (ECF No. 164-2 at 31–33, 35–36).

10. Plaintiff Cappello was born in 1975. (ECF No. 140 at 82). He testified that the passage of the two amnesty laws prevented the Argentine government from investigating and prosecuting the military and thus caused him to experience fear. (ECF No. 140 at 40–41). He further testified

[1] These laws have been referred to informally in the record as "amnesty laws."

that his family had in the 1970s filed a lawsuit related to his uncle's death, but fear of reprisal kept them from pursuing the case. (ECF No. 140 at 43–45). Plaintiff Cappello's parents, brother, and the lawyers representing his grandparents in that lawsuit were also among those who were disappeared. (ECF No. 140 at 46, 48, 61). He did not feel safe after a democratic government was elected in Argentina in 1983 because of the amnesty laws. (ECF No. 140 at 50–51).

11. Plaintiff Santucho testified that her aunt, who was a lawyer, attempted to file a lawsuit on behalf of Santucho's mother, but was disappeared in 1976. (ECF No. 164-1 at 20–21). As a child, Plaintiff Santucho was also kidnapped by the military in 1975 and detained for a week before being released. (ECF No. 164-1 at 22, 25–26). She later left Argentina and went into exile before returning to Argentina permanently in 2008. (ECF No. 164-1 at 26–27).

12. Plaintiff Camps testified that her father, who was held at the Almirante Zar Naval Base, was killed in 1977 and that her mother was disappeared. (ECF No. 145 at 154). Camps testified that fear led her grandparents who raised her not to speak of the circumstances of her father's death and to impress upon her that she too should not speak about her father's death. (ECF No. 145 at 155, 165). The Argentine government offered Plaintiff Camps protection through a witness protection program in connection with her efforts participating in the criminal prosecution in 2006. (ECF No. 145 at 165–66).

13. Professor Maximo Langer, Plaintiffs' expert on the availability of legal remedies to Plaintiffs in Argentina, testified that the families of three of the Plaintiffs in this case (Plaintiff Krueger and the families of Santucho and Cappello) filed civil lawsuits in Argentina between 1972 and 1974 following the killings at the Almirante Zar Naval Base. He explained that by 1977, those lawsuits had all been dismissed because the families or their lawyers had been persecuted. (ECF No. 145 at 106–07)

14. Defendant testified that he became a naturalized United States citizen in 1987, and that he bought and sold property and opened businesses in Florida under his own name. (ECF No. 140 at 216); *see also* (DX054, DX055, DX062) (ECF Nos. 155-48 to 155-50). However, Defendant also testified that he was sent to the United States in 1972, approximately four-to-six months after the Trelew Massacre. (ECF No. 140 at 186:1–5). He has only returned to Argentina twice since then, first in 1995 and later in 1997. (ECF No. 140 at 186:15–25). It was Bravo's understanding that he and his family were sent to the United States to make it harder for him to be found so that no one could take revenge on his family.[2] (ECF No. 140 at 188:5–11; 189:3–6).

15. In 2005, the Argentine government initiated a criminal investigation into the Trelew Massacre. (ECF No. 145 at 139).

16. Plaintiff Camps became a complainant in the Argentine criminal prosecution (ECF No. 145 at 165). In that capacity, she helped the attorneys start the investigation, attended hearings, and requested documents. (ECF No. 145 at 170–71). Plaintiff Krueger likewise collected and presented some evidence at the trial. (ECF No. 164-2 at 45–46, 48–49). Plaintiff Santucho also took part in the trial in 2008, as well as Defendant's extradition request; she testified that she was a plaintiff in the criminal case. (ECF No. 164-1 at 28, 35). Plaintiff Cappello testified that he did not participate directly in the criminal trials but that he attended the proceedings with his grandmother, who was a complainant; Cappello testified that after his grandmother died in 2016 he took her place in her efforts to facilitate Defendant's extradition to Argentina. (ECF No. 140 at 54–55, 80–81).

[2] Bravo testified that both Luis Sosa and Carlos Marandino were also sent to the United States from Argentina. (ECF No. 140 at 187:16–18). Sosa and Marandino, respectively, were an officer and a corporal in the Argentine Navy also named in the 1972 Report of the General Auditor investigating the killings at the Almirante Zar Naval Base.

17. It is undisputed that on October 15, 2012, a court in Argentina adjudicated Defendant's alleged co-perpetrators—former Argentine Navy Officers Luis Emilio Sosa and Emilio Jorge Del Real—guilty of homicide committed with malice for the killing of sixteen prisoners and attempted homicide with malice of three other prisoners during the Trelew Massacre. (ECF No. 68 ¶ 6); (ECF No. 82 ¶ 6); (ECF No. 132 at 15:5–18).

18. I find that Defendant's whereabouts were unknown to Plaintiffs until March of 2008.

19. On March 3, 2008, pursuant to a request for assistance, the Argentine government received confirmation from Interpol regarding Bravo's whereabouts in Florida. *See* (PX0079, PX0079T) (ECF Nos. 155-27, 155-28). Argentina first submitted an extradition request to the United States in 2009, which was denied on November 1, 2010. (ECF No. 148 at 100:21–24); *see also In re Extradition of Roberto Guillermo Bravo to Argentina*, No. 1:10-mc-20559-RLD (S.D. Fla. Nov. 1, 2010), ECF No. 62.

20. I credit Plaintiffs' testimony that they did not know Bravo's first name or where he was located until 2008. (ECF No. 140 at 40, 55) (Cappello); (ECF No. 145 at 173) (Camps); (ECF No. 164-1 at 34) (Santucho); (ECF No. 165-2 at 56) (Krueger).

21. Evidence did not become available to Plaintiffs until the Argentine criminal prosecution. The court in Argentina ordered a reconstruction of the Almirante Zar Naval Base as it was in 1972. (ECF No. 145 at 43–44). Plaintiffs' forensic crime scene reconstruction expert, Dr. Rodolfo Guillermo Pregliasco, first visited the base in 2008; he was permitted access to the base pursuant to a court order. (ECF No. 145 at 50). He created a reconstruction of the cell block as it existed in 1972. (ECF No. 145 at 48); (PX0091, PX0097) (ECF Nos. 155-32, 155-34).

22. Miguel Marileo, a funeral home worker who handled the remains of the victims from the Almirante Zar Naval Base in the immediate aftermath of the killings, testified that he was threatened to remain quiet about what he had seen. (ECF No. 164-3 at 47–48).

23. Professor Brennan testified to press censorship during the military regime and that the military regime criminalized renderings of the events at Trelew alternative to the official version of events published by the military. (ECF No. 132 at 61).

24. Death certificates for the individuals killed at the Almirante Zar Naval Base listed only "violent death" as the cause of death. (PX0038, PX0038T) (ECF Nos. 155-13, 155-14). Julio Ulla, whose brother was killed at the Almirante Zar Naval Base, testified that his father attempted to have an autopsy performed on Ulla's brother's body, but that no doctors were willing to perform the autopsy out of fear for their safety. (ECF No. 164-4 at 46–47).

25. The Argentine military's investigation was not made public until the criminal prosecution began. On March 17, 2006, an Argentine court requested a copy of the December 5, 1972 Report of the General Auditor, which was the military investigation into the Trelew Massacre. (DX002) (ECF No. 155-47 at 1). The report, which identifies Defendant's full name, was labeled "Top Secret." It was made available to the Argentine Minister of Defense in February of 2008.

26. I find that Plaintiffs have taken some steps to vindicate their claims.

27. Plaintiffs Camps, Krueger, and Santucho applied for and received compensation from the government of Argentina in the 1990s and 2000s. (ECF No. 145 at 155–56) (Camps received reparations in 1998); (ECF No. 164-2 at 81) (Krueger received compensation in 2000 and 2011); (ECF No. 164-1 at 83) (Santucho began applying for compensation in or around 2006, and received compensation in 2012). While Cappello's grandmother had received compensation from the

Argentine government in 1998 or 1999, it is not clear whether Cappello also received compensation in 1998 or only began to explore seeking civil remedies in the mid-1990s. (ECF No. 140 at 78).

28. Plaintiff Krueger filed a lawsuit in 1972 but the case did not progress because it was banned. She attempted to resume her lawsuit after 1983 but was advised that the court file had been lost. (ECF No. 164-2 at 37–38). She also sent letters to the President of Argentina calling for justice. (PX0128, PX0128T, PX0129, PX0129T) (ECF Nos. 155-41 to 155-44).

III. CONCLUSIONS OF LAW

Whether equitable tolling is available to the Plaintiffs until the filing of the Complaint is an exceptionally close question in a case that presents tragic facts. Having considered the facts and the law, the Court concludes that Plaintiffs Camps, Krueger, and Santucho were diligently pursuing their rights and that fear of reprisal, the inability to identify and locate Defendant, and the inability to discover evidence in support of their claims, tolled the statute of limitations as set forth below.[3] While the same circumstances impeded Plaintiff Cappello's ability to bring his claims, the Court concludes that the evidence does not preponderate in favor of a finding that Cappello diligently pursued his rights and thus declines to exercise its discretion to equitably toll the statute of limitations as to Plaintiff Cappello's claims. The Court begins by reviewing principles of equitable tolling under the TVPA.

[3] Plaintiffs argued at trial and in post-trial briefing that their reliance on domestic accountability processes to afford them a means of obtaining justice (*i.e.*, the extradition request coming out of the criminal prosecution in Argentina) tolled the statute of limitations. Plaintiffs analogized the criminal prosecution in Argentina to a Truth and Reconciliation Commission and asserted that the criminal prosecution was the only domestic accountability process that occurred specific to the Trelew Massacre. Based on that analogy, Plaintiffs took the position that the denial of that first extradition request on November 1, 2010 was the triggering event that lifted the impediment to them pursuing their TVPA claims and thus started the limitations clock. Because the Court concludes that Plaintiffs' inability to discover evidence in support of their claims tolled the statute of limitations, the Court does not address Plaintiffs' assertion that a foreign criminal prosecution is akin to a Truth and Reconciliation Commission process.

1. Equitable Tolling Under the TVPA

On March 12, 1992, the United States Congress enacted the TVPA to "carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights[.]" *Arce v. Garcia*, 434 F.3d 1254, 1261 (11th Cir. 2006) (quoting TVPA, Pub. L. No. 102-256, 106 Stat. 73) (internal quotation marks omitted). The TVPA creates liability for an individual who commits extrajudicial killing or torture under actual or apparent authority, or color of law of any foreign nation.[4] 28 U.S.C. § 1350 note; *see also In re Chiquita Brands Int'l, Inc. Alien Tort Statute & S'holder Derivative Litig.*, 190 F. Supp. 3d 1100, 1116 (S.D. Fla. 2016).

Claims brought under the TVPA are subject to a 10-year statute of limitations, which the court can equitably toll in appropriate circumstances. *See* Pub. L. No. 102-256, § 2(c), 106 Stat. 73, 73; 28 U.S.C. § 1350 note; *Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1154 (11th Cir. 2005) ("Our precedent has established that the TVPA's . . . statute of limitations can be equitably tolled."). As the Eleventh Circuit has explained, "[t]he doctrine of equitable tolling allows a court to toll the statute of limitations until such a time that the court determines would have been fair for the statute of limitations to begin running on the plaintiff's claims." *Arce*, 434 F.3d at 1261 (citing *Justice v. United States*, 6 F.3d 1474, 1475 (11th Cir. 1993)). That is, when a court equitably tolls the statute of limitations, the statutory clock is "stopped" and the statutory period "does not begin

[4] The TVPA defines an "extrajudicial killing" as a "deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples." Pub. L. No. 102-256, § 3(a), 106 Stat. 73, 73; *see also* 28 U.S.C. § 1350 note. The TVPA defines "torture" as "any act, directed against an individual in the offender's custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind[.]" Pub. L. No. 102-256, § 3(b)(1), 106 Stat. 73, 73; *see also* 28 U.S.C. § 1350 note.

to run until the impediment to filing a cause of action is removed." *Cabello*, 402 F.3d at 1156. Plaintiffs bear the burden of establishing that equitable tolling is warranted. *Justice*, 6 F.3d at 1479.

The Eleventh Circuit has explained that equitable tolling is an "extraordinary remedy which should be extended only sparingly." *Id.* (citing *Irwin v. Dep't of Veterans Affs.*, 498 U.S. 89, 96 (1990)). Generally, "[e]quitable tolling is appropriate when a movant untimely files because of extraordinary circumstances that are both beyond his control and unavoidable even with diligence." *Jean v. Dorelien*, 431 F.3d 776, 779 (11th Cir. 2005) (quoting *Sandvik v. United States*, 177 F.3d 1269, 1271 (11th Cir. 1999)). The appropriateness of equitable tolling is a "fact-specific determination because a finding of 'extraordinary circumstances necessary for equitable tolling is reserved for extraordinary facts.'" *Cabello*, 402 F.3d at 1154–55 (quoting *Arce v. Garcia*, 400 F.3d 1340, 1351 (11th Cir. 2005), *vacated and superseded by* 434 F.3d 1254 (11th Cir. 2006)) (alterations incorporated).

Under Eleventh Circuit precedent, generally, a court may equitably toll the statute of limitations where the defendant "misleads [the plaintiff] into allowing the statutory period to lapse, when [the plaintiff] has no reasonable way of discovering the wrong perpetrated against her, or when [the plaintiff] timely files a technically defective pleading and in all other respects acts with 'the proper diligence . . . which . . . statutes of limitation were intended to insure[.]'" *Justice*, 6 F.3d at 1479 (internal citations omitted) (omissions in original). However, all principles of equitable tolling are to be applied in TVPA cases. The legislative history of the TVPA provides explicit guidance in that respect, identifying a non-exhaustive list of circumstances in which tolling is appropriate:

> The legislation provides for a 10-year statute of limitations, but explicitly calls for consideration of all equitable tolling principles in calculating this period with a

> view toward giving justice to plaintiff's rights. Illustrative, but not exhaustive, of the types of tolling principles which may be applicable include the following. The statute of limitation should be tolled during the time the defendant was absent from the United States or from any jurisdiction in which the same or a similar action arising from the same facts may be maintained by the plaintiff, provided that the remedy in that jurisdiction is adequate and available. Excluded also from calculation of the statute of limitations would be the period when a defendant has immunity from suit. The statute of limitations should also be tolled for the period of time in which the plaintiff is imprisoned or otherwise incapacitated. It should also be tolled where the defendant has concealed his or her whereabouts or the plaintiff has been unable to discover the identity of the offender.

S. REP. No. 102-249, at 10–11 (1991) (footnotes omitted); *Arce*, 434 F.3d at 1262 (relying on TVPA legislative history to determine Congress's intent with respect to equitably tolling the TVPA's statute of limitations).

In light of the Congress's guidance, courts in TVPA cases have "almost universally" held that equitable tolling is appropriately applied where "civil war and repressive authoritarian regimes significantly impeded a plaintiff's access to a judicial remedy for claims of torture and related human rights abuses." *Warfaa v. Ali*, 1 F.4th 289, 294 (4th Cir. 2021) (collecting cases).

Indeed, the Eleventh Circuit has affirmed the application of equitable tolling in TVPA cases "where both the plaintiff and the defendant reside in the United States but where the situation in the home state nonetheless remains such that the fair administration of justice would be impossible, even in United States courts," absent regime change in the country where the TVPA violations were committed. *Arce*, 434 F.3d at 1262. In *Arce v. Garcia* for example, the Eleventh Circuit found that the application of equitable tolling was proper where the plaintiffs:

> legitimately feared reprisals from the Salvadoran military, despite the fact that the defendants resided in the United States. The military regime, in which both Garcia and Casanova had held positions of great influence, remained in power. State-sponsored acts of violence and oppression continued to ravage El Salvador. The very regime against whom the plaintiffs leveled their accusations remained intent on maintaining its power at any cost and acted with impunity to do so.

Id. at 1265; *see also Jean*, 431 F.3d at 780–81 (finding that the plaintiff pled sufficient facts to toll the statute of limitations until a repressive and authoritarian regime left power in Haiti and until the defendant entered the United States and personal jurisdiction could be obtained over him); *Hilao v. Est. of Marcos*, 103 F.3d 767, 773 (9th Cir. 1996) (tolling statute of limitations until the president of a repressive regime in the Philippines left office).

In *Cabello*, the Eleventh Circuit affirmed the application of equitable tolling where the political climate and cover-up of the events surrounding the decedent's death "made it nearly impossible for the [plaintiff] to discover the wrongs perpetrated." *Cabello*, 402 F.3d at 1155. The Eleventh Circuit held that it was proper to toll the statute of limitations until the circumstances and manner of the decedent's death was discoverable or knowable and information surrounding the decedent's death became available. *Id.*

As the Fourth Circuit has explained, "[t]he focus for whether tolling is warranted has appropriately been on the state of civil unrest and general lack of access to a legal remedy." *Warfaa*, 1 F.4th at 295–96 (affirming application of equitable tolling where the dictatorship in Somalia disregarded laws and due process, the country fell into chaos, the government collapsed, the government was unable to "provide security and maintain a functioning court system in all regions," and the plaintiffs risked retaliation by former officials of the dictatorship even after the dictator was no longer in power).

Nonetheless, and within the context of the TVPA's statute of limitations, the Eleventh Circuit cautions that "[m]ere ambient conflict in another country does not, by itself, justify tolling for suits filed in the United States," because "[a] lenient approach to equitable tolling would revive claims dating back decades, if not centuries, when most or all of the eye witnesses would no longer be alive to provide their accounts of the events in question." *Arce*, 434 F.3d at 1265.

2. Application

First, I find that extraordinary circumstances existed that tolled the statute of limitations. Specifically, Plaintiffs have established by a preponderance of the evidence that fear of reprisal, Plaintiffs' inability to identify and locate Bravo, and Plaintiffs' inability to discover evidence in support of their claims tolled the statute of limitations until the conclusion of the criminal prosecution against the other perpetrators of the Trelew Massacre in October 2012. A quantum of discoverable evidence sufficient to support criminal convictions in Argentina was by that time discoverable and available to Plaintiffs. I assess each of the foregoing factors independently, but I note that the factors are interrelated, build upon one another, and should be viewed in light of one another.

Fear of Reprisal by the Military Regime

Notwithstanding that the TVPA was not enacted until 1992, the evidence preponderates in favor of finding that fear of reprisal by the military regime prevented Plaintiffs from bringing their claims even after the military regimes had, nominally, left power, until 2003 when accountability efforts against the military restarted.

As described in greater detail above, the record contains ample evidence of oppression at the hand of the military regime while it was in power. I conclude that fear of reprisal prevented Plaintiffs from bringing their claims while the military regime remained in power. Indeed, as noted above, Plaintiffs themselves experienced oppression at the hands the military regime during the 1970s; two of Plaintiffs fled Argentina as a result with one (Santucho) not returning until 2008. *See Arce*, 434 F.3d at 1265; *Jean*, 431 F.3d at 780; *Hilao*, 103 F.3d at 773. However, that oppression is not ongoing and there has been no competent evidence of widespread fear of reprisal through October 2010—a democratic government came to power in Argentina in 1983.

While there was regime change, *cf. Arce*, 434 F.3d at 1262, I note that Plaintiffs' expert on Argentine history testified credibly that that democratic government was precarious and the military regime left power, nominally. In opposition to efforts to hold the military accountable, there was military rebellion and a bombing campaign (presumably in the mid-to-late-1980s, although the timeframe is somewhat unclear). As Plaintiffs' expert noted, these efforts to impede accountability succeeded even though the military was no longer in power, resulting in the enactment of two amnesty laws. I find this to be persuasive evidence of the military regime's power despite formal regime change.

Thus, when the military regime's post-1983 power and influence, including its ability to protect itself from accountability, is viewed in context of the precarious government that succeeded it and in light of the severe human rights abuses and "state-directed violence" that the regime perpetrated in the 1970s and 1980s, the Court concludes by a preponderance of the evidence that fear of reprisal prevented Plaintiffs from bringing their claims even after the regime left power. *See Warfaa*, 1 F.4th at 295–96 (affirming application of equitable tolling, in part, because the plaintiffs risked retaliation by former officials of the dictatorship even after the dictator was no longer in power). I can readily infer that this fear lasted into the late-1980s, more likely than not lingering into the early years of the 1990s given the enactment of the amnesty laws.

However, I note that efforts to hold the former military regime accountable had restarted by 2003. Even assuming the evidence preponderated in favor of finding that fear of the former regime continued into the 2000s, by 2005 the military regime had been out of power for over 20 years and the democratic government of Argentina had begun to investigate and prosecute the alleged perpetrators of the Trelew Massacre. Any finding of widespread fear of reprisal at the hands of the former military regime by that point would not be supported by a preponderance of the evidence, and so this Court does not make such a finding as to post-2005 fear. Indeed, the only evidence of fear from after 2005 was the hearsay testimony of Plaintiffs' expert that he had generally overheard accusations or complaints of witness intimidation (*e.g.*, threatening phone calls) outside the courthouse where the La Perla trials were held in Argentina from 2012 to 2016, and that he had read press accounts documenting rumors of threatening phone calls during the Videla trials in Spain.

No doubt, reports of witness intimidation are serious. But putting aside whether that evidence is competent, those reports arose in the context of criminal prosecutions brought decades after the alleged offenses, the regime responsible has been out of power for decades in favor of a democratic government, and there is no evidence to counter the reasonable inference drawn from the passage of those decades that the former regime's power and influence had by then waned. Thus, reports of witness intimidation as evidence of post-2005 fear resemble the "[m]ere ambient conflict in another country [that] does not, by itself, justify tolling for suits filed in the United States" that the Eleventh Circuit cautions against. *Arce*, 434 F.3d at 1265; *cf. Warfaa*, 1 F.4th at 295–96 (tolling the statute of limitations where there was evidence of "the government's inability to provide security and maintain a functioning court system in all regions" in addition to evidence of "the risk of retaliation to [the plaintiff] and his family, given the specific problems with bringing a claim involving human-rights abuses perpetrated by former officials of the dictatorship, even though [the dictator] was no longer in power").

Accordingly, viewing the evidence of fear with an open mind in the wider context of the regime's earlier human rights abuses, the Court concludes by a preponderance of the evidence that fear of reprisal prevented Plaintiffs from bringing their claims until 2003 when efforts to hold the military accountable restarted.

Inability to Identify and Locate Bravo until 2008

Nonetheless, I conclude that Plaintiffs were unable to locate Defendant Bravo until 2008 and that their inability to locate Defendant, in conjunction with fear of reprisal, appropriately tolled the statute of limitations until March 3, 2008.

In enacting the TVPA, Congress intended for courts to assess all applicable principles of tolling, including whether a defendant has concealed his whereabouts or the plaintiff has been unable to discovery the identity of the defendant. S. REP. No. 102-249, at 10–11 (1991). Indeed, as one court in the Middle District of Florida has noted, "[a]lthough the Eleventh Circuit often requires deliberate concealment or affirmative misconduct to toll the [statute of limitations], *see, e.g.*, *Cabello*, 402 F.3d at 1155, the TVPA legislation also provides that the [statute of limitations] should be tolled 'where the plaintiff has been unable to discover the identity of the offender[.]'" *Jara v. Nunez*, No. 613CV1426ORL37GJK, 2016 WL 2348658, at *4 (M.D. Fla. May 4, 2016) (quoting S. REP. No. 102-249, at 10).

I have credited Plaintiffs' testimony that they did not know Bravo's first name or where he was located until 2008 when his name became public as part of the criminal prosecution. (ECF No. 140 at 40, 55) (Cappello); (ECF No. 145 at 173) (Camps); (ECF No. 164-1 at 34) (Santucho); (ECF No. 165-2 at 56) (Krueger: although Krueger knew Bravo's name, she in the 1970s believed him to be in South Africa before she went into hiding and fled Argentina). Plaintiffs could not have located Bravo if they did not know his name. Indeed, the 1972 Report of the General Auditor, labeled top secret and containing Defendant's full name, was not provided to the Argentine Court until in or around 2006. There was no evidence that Plaintiffs could have obtained access to this document before then. Moreover, Defendant's whereabouts seem to have been unknown to even the Argentine government prosecuting him until March 3, 2008, when the Argentine government received confirmation from Interpol that Bravo was in Florida. *See* (PX0079, PX0079T) (ECF Nos. 155-27, 155-28).

Bravo's presence in Florida was not coincidental. He testified that he was sent to the United States in 1972, approximately four-to-six months after the Trelew Massacre and that it was his understanding that he and his family were sent to the United States to make it harder for him to be found. (ECF No. 140 at 186, 188–89). While Bravo also testified that he became a naturalized United States citizen in 1987, and that he bought and sold property and opened businesses in Florida under his own name, (ECF No. 140 at 216); (DX054, DX055, DX062), I find particularly persuasive the evidence that his full name and his location were not known until 2008 when Interpol informed the government of Argentina.

Accordingly, I find that Plaintiffs have established by a preponderance of the evidence that their lack of knowledge of Defendant's full name, inability to obtain that information (because it was within a top-secret military report), and the lack of information regarding Defendant's whereabouts, all tolled the statute of limitation until March 3, 2008 when his name and location became public.

<u>Inability to Discover Evidence in Support of Plaintiffs' Claims</u>

Finally, and in light of their fear and inability to identify and locate Defendant, the Court concludes that Plaintiffs' inability to discover evidence in support of their claims appropriately tolls the statute of limitations.

As noted above, the Eleventh Circuit has previously held that it was proper to toll the statute of limitations until the circumstances and manner of the decedent's death was discoverable or knowable and information surrounding the decedent's death became available. *Cabello*, 402 F.3d at 1155.

In this case, crucial evidence in support of Plaintiffs' claims became available only through the criminal prosecution in Argentina and only after 2008. Specifically, the court in Argentina ordered a reconstruction of the Almirante Zar Naval Base as it was in 1972. (ECF No. 145 at 43–44). Plaintiffs' forensic crime scene reconstruction expert, Dr. Rodolfo Guillermo Pregliasco, first visited the base in 2008; he was permitted access to the base because the court had ordered the forensic reconstruction. (ECF No. 145 at 50). He accordingly was able to create a reconstruction of the cell block as it existed in 1972. (ECF No. 145 at 48); (PX0091, PX0097) (ECF Nos. 155-32, 155-34). This evidence, which only became available to Plaintiffs through the criminal prosecution and could not have been discovered despite Plaintiffs' diligence, would have been crucial alongside Alberto Camps's statements, (PX0034, PX0034T, PX0041, PX0041T) (ECF Nos. 155-12, 155-16), to rebut the position of the Argentine military as set out in the December 5, 1972 Report of the General Auditor. That report generally described the incident as self-defense. (DX002) (ECF No. 155-47). That report, too, was not made available until the Argentine criminal prosecution.

Indeed, apart from Alberto Camps's statements, the evidence available to Plaintiffs prior to the criminal prosecution was relatively limited. Death certificates for the individuals killed at the Almirante Zar Naval Base listed only "violent death" as the cause of death. (PX0038, PX0038T) (ECF Nos. 155-13, 155-14). Marileo, the funeral home worker who handled the remains of the victims from the Almirante Zar Naval Base, was threatened to remain quiet about what he had seen. (ECF No. 164-3 at 47–48). There was press censorship and the military regime criminalized accounts of the events that occurred at Trelew that differed from the official military account. (ECF No. 132 at 61). Immediately following the Trelew Massacre, doctors were unwilling to perform autopsies on the victims' bodies out of fear for their own safety. (ECF No.

164-4 at 46) (Ulla). Plaintiff Krueger was able to obtain an autopsy of her husband in 1972 only after bringing a lawsuit, but that autopsy was lost after she fled Argentina when the records for her lawsuit were lost. (ECF No. 164-2 at 26, 39).

And as to the criminal prosecution, it is undisputed that on October 15, 2012, a court in Argentina adjudicated Defendant's alleged co-perpetrators—former Argentine Navy Officers Luis Emilio Sosa and Emilio Jorge Del Real—guilty of homicide committed with malice for the killing of sixteen prisoners and attempted homicide with malice of three other prisoners during the Trelew Massacre. (ECF No. 68 ¶ 6); (ECF No. 82 ¶ 6); (ECF No. 132 at 15:5–18). Thus, by that time, Plaintiffs had available to them the opportunity to discover evidence in support of their claims and were on notice that that quantum of evidence was sufficient to support criminal convictions in Argentina and therefore their civil claims in the United States.

Diligence and the Date the Statute of Limitations Began to Run

Having found that equitable tolling is appropriate in this case, the next step is for the Court to determine when the statute of limitations began to run. *See Cabello*, 402 F.3d at 1155.

The Court first concludes that Plaintiffs Camps, Krueger, and Santucho diligently pursued their rights. For the Court to exercise its discretion and equitably toll the statute of limitations, extraordinary circumstances must have existed that were beyond Plaintiffs' control and unavoidable even with diligence. *Arce*, 434 F.3d at 1267 (quoting *Sandvik*, 177 F.3d at 1271). As the Eleventh Circuit has noted, the level of diligence required is "due diligence." *Cabello*, 402 F.3d at 1156 ("As we stated in *Justice*, the plaintiff should act with due diligence and file his or her action in a timely fashion in order for equitable tolling to apply. 6 F.3d at 1479. The information regarding the circumstances and manner of Cabello's death was not discoverable or knowable until 1990; therefore, the 1999 filing of this claim was timely.").

The Court must take care to consider the conduct of the individual Plaintiffs in this case. Much of the evidence and argument regarding Plaintiffs' diligence in this case attributed the actions of Plaintiffs' families and other family members to the current Plaintiffs who have brought this case. For example, while the Santucho and Cappello *families* brought lawsuits in the 1970s to vindicate the decedents, there is no evidence before the Court that individual *Plaintiff* Santucho and individual *Plaintiff* Cappello from this case were parties to those lawsuits. Plaintiff Krueger did bring a lawsuit in the 1970s but the case did not progress because it was banned. She went into hiding and fled Argentina after her lawyer was murdered; Plaintiff Krueger later was informed that the case file for the suit was lost in the 1980s. Plaintiff Krueger also sent letters to the President of Argentina advocating for justice.

Nonetheless, Plaintiffs Camps, Krueger, and Santucho all pursued at least some civil remedies in Argentina, having sought and received compensation or reparations from the Argentine government. Plaintiffs Camps, Krueger, and Santucho all also became involved as either claimants or direct participants in the criminal prosecution against the other perpetrators of the Trelew Massacre—that criminal investigation and prosecution led to crucial evidence later becoming discoverable. For example, Camps and Santucho were claimants. Camps and Krueger helped collect evidence. And Krueger testified at the trial. Based on these efforts the Court finds that Plaintiffs Camps, Krueger, and Santucho diligently pursued their claims leading up to when crucial evidence in support of their claims became discoverable after 2008 in connection with the criminal prosecution, as discussed above.

Plaintiff Cappello, however, did not begin to diligently pursue his claims until 2016, years after crucial evidence became discoverable. Unlike Plaintiffs Camps, Krueger, and Santucho, there is no evidence that Cappello directly participated in the criminal prosecution. Rather, his participation was limited only to attending the proceedings with his grandmother. Cappello testified only in general terms in the instant case that in 2016 he took the place of his grandmother upon her death in the efforts to facilitate Defendant's extradition. And while Cappello testified that his grandmother sought and received compensation from the Argentine government, it is not clear based on his testimony at the trial that *he* pursued any remedies or what his efforts, as opposed to those of his grandmother, were.

Based on this evidence, while the evidence preponderates in favor of finding that Plaintiffs Camps, Krueger, and Santucho diligently pursued their claims, the evidence does not support a finding of Cappello's diligence.

Having found that Plaintiffs Camps, Krueger, and Santucho were diligent, the Court further finds that fear of reprisal, inability to locate Bravo, and inability to discover crucial evidence in support of their claims tolled the statute of limitations until October 15, 2012 upon the conviction of Defendant's alleged co-perpetrators Sosa and Del Real. By that time, and as set forth above, Plaintiffs Camps, Krueger, and Santucho had available to them the opportunity to discover a quantum of evidence in support of their claims sufficient to support criminal convictions in Argentina.[5]

IV. CONCLUSION

Based on the foregoing, and having carefully considered the facts and the record and upon application of the relevant principles of equitable tolling, I find that Plaintiffs Camps, Krueger, and Santucho have established by a preponderance of the evidence that extraordinary circumstances existed that tolled the statute of limitations that could not have been overcome

[5] During the trial and in briefing on the issue of equitable tolling, Defendant raised the prejudice to him of Plaintiffs' shifting theory of equitable tolling that differed from that disclosed in the Parties' Joint Pretrial Stipulation. The prejudice is difficult to assess where, prior to the appearance of new defense counsel shortly before the rescheduled trial date, Defendant took minimal discovery and litigated no pretrial dispositive motions or evidentiary motions.

despite their diligence, until **October 15, 2012**. I further find for lack of diligence that the statute of limitations was not tolled as to Plaintiff Cappello's claims.

Further orders shall follow.

DONE AND ORDERED in Chambers at Miami, Florida, on this 30th day of June, 2023.

LAUREN F. LOUIS
UNITED STATES MAGISTRATE JUDGE

Copies to:
All counsel of record