IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA MIAMI DIVISION

CARLOS EDUARDO MARRÓN, et al.,

Plaintiffs,

v. Case No.: 1:21-CV-23190-FAM

NICOLAS MADURO MOROS, et al.,

Defendants.

ATTORNEY GENERAL'S RESPONSE IN OPPOSITION TO PINECREST LLC AND MIAMI BEACH LLC'S MOTION TO FIND SB 1442 UNCONSTITUTIONAL

Attorney General Ashley Moody hereby files this Response in Opposition to Pinecrest LLC and Miami Beach LLC's ("Potential Claimants") Motion to Declare SB 1442 Unconstitutional and in support states:

INTRODUCTION

On June 20, 2023, Senate Bill 1442 ("SB 1442") titled "Terrorism" was signed into law. SB 1442 amended section 772.13, Florida Statutes which provides a civil remedy for persons injured by acts of terrorism. SB 1442 specifically amended the statute to add subsection (6)(a) which addresses post judgment proceedings. The Legislature, through this amendment, expanded the fugitive disentitlement doctrine to post judgment execution proceedings to enforce a judgment entered under section 772.13, Florida Statutes, 18 U.S.C. s. 2333, or a substantially similar law. *See* Chapter 2023-267, Laws of Florida; Fla. Stat. § 772.13(6)(a)(2). SB 1442 specifically provides that in such post judgment proceedings, the

"defendant or a person may not use the resources of the courts of this state in furtherance of a defense or objection to postjudgment collection proceedings if the defendant or person purposely leaves the jurisdiction of this state or the United States, declines to enter or reenter this state or the United States to submit to its jurisdiction, or otherwise evades the jurisdiction of the court in which a criminal case is pending against the defendant or person." Fla. Stat. § 772.13(6)(a)(2). This provision also applies to the any entity owned by the fugitive. *Id*.

On July 11, 2023, Potential Claimants filed a motion seeking to declare SB 1442 unconstitutional (Motion). DE 94. The Motion alleges that SB 1442: (1) violates the due process clause and the First Amendment; (2) violates the Seventh Amendment's right to a jury trial; (3) is an unconstitutional bill of attainder; and (4) violates the Supremacy Clause. The Motion further urges application of the constitutional-avoidance canon.

On August 8, 2023, Plaintiffs filed a response in opposition to the Motion. DE 101. On September 29, 2023, the Court entered an Order requiring Potential Claimants to provide the Attorney General with notice of the constitutional question and further stated that the Attorney General will be allowed to file a response to the Motion. DE 108 at 4. The Attorney General was provided a Notice of Constitutional Question on October 4, 2023. DE 111. Pursuant to this Notice and the Court's Order, the Attorney General files this response in opposition to Potential Claimants' motion to declare SB 1442 unconstitutional.

MEMORANDUM OF LAW

ARGUMENT

I. SB 1442 does not violate the Due Process Clause or the First Amendment

a. Due Process Clause

"The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Mathews v. Eldridge*, 424 U.S. 319, 333, (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). "(D)ue process is flexible and calls for such procedural protections as the particular situation demands." *Id.*, (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). For instance, courts often impose procedural requirements that govern when and how a party may be heard. *See United States v. Batato*, 833 F.3d 413, 427 (4th Cir. 2016) (discussing how default judgments can be entered after a defendant fails to appear after notice). "The guarantees of due process do not mean that 'the defendant in every civil case [must] actually have a hearing on the merits.'" *Id.* at 427 (quoting *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971)). "What the Constitution does require is an opportunity." *Id* (quoting *Boddie*, 401 U.S. at 378). "A party's failure to take advantage of that opportunity waives the right it secures." *Id.*

The Terrorism Risk Insurance Act (TRIA) provides that "the blocked assets of [a] terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)" are subject to execution to satisfy certain terrorism judgments. Terrorism Risk Insurance Act of 2002, PL 107–297, § 201(a), 116 Stat 2322. Under TRIA, the court must determine: (1) whether the asset is blocked; and (2) whether the owner of the asset is an agent or instrumentality of the judgment debtor. *Stansell v. Revolutionary Armed Forces of Colombia*, 771 F.3d 713, 726 (11th Cir. 2014). The Eleventh Circuit has held that "parties whose assets are under threat of execution pursuant to TRIA § 201 are entitled to notice and an opportunity to be heard in order to rebut the allegations and preserve their possessory interest in blocked assets." *Id.* (citing *Dusenbery v. United States*, 534 U.S. 161,167 (2002)).

The requirement to provide notice and an opportunity to be heard equally applies to a third party who is alleged to be an agent or instrumentality of the judgment debtor. This is because "[w]ithout notice and a fair hearing where both sides are permitted to present evidence, the third party never has an opportunity to dispute its classification as an agency or instrumentality." *Id*.

SB 1442 does not deprive a person of their opportunity to be heard. It merely requires the person who would like to exercise this right to submit to the jurisdiction of the court where their criminal case is pending. Here, any choice by Samark Jose López Bello ("López Bello") to remain a fugitive, amounts to his choice to waive his opportunity to be heard. "In other words, [López Bello] [would be] denied a hearing on [his] terms, but a hearing [would] certainly [be] available to [him] on the terms established by [the Florida Legislature]." *Collazos v. U.S.*, 368 F.3d 190, 203 (2d Cir. 2004).

López Bello's argument that SB 1442 is unconstitutional because it lacks a "relatedness" requirement with the criminal charge is equally unavailing. DE 94-1 at 6. López Bello argues that the Supreme Court and the Eleventh Circuit have found that "the fugitive disentitlement doctrine cannot be employed when there [is] no connection between the case in which the doctrine is applied and the case in which the individual is a fugitive. DE 94-1 at 6. However, the cases cited in support of this contention are inapposite.

At issue in *Ortega–Rodriguez v. United States,* 507 U.S. 234 (1993), and *United States v. Barnette,* 129 F.3d 1179, 1183 (11th Cir. 1997), was the judicial doctrine of fugitive disentitlement which allowed appellate courts to dismiss appeals of criminal fugitives. This doctrine is rooted in the Court's "inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities." *Degen v. United States*, 517 U.S.

820, 823 (1996). Use of this inherent authority must be "delimited with care" in order to avoid overreaching to the other branches of government. *Id.* at 824. Some of the recognized reasons for application of the doctrine include the difficulty of enforcing a judgment against a fugitive, the inequity that results from allowing the fugitive to utilize the resources of the court only if it aids him, the need to avoid prejudice to the nonfugitive party, and to discourage flights from justice. *Barnette*, 129 F.3d at 1183.

Because the doctrine was an appellate sanction, there needed to be some connection between the appellant's fugitive status and the appeal. *Ortega-Rodriguez*, 507 U.S. at 244. The circumstances in this case are entirely different. At issue here is not the judicial doctrine premised on the court's inherent authority but a duly enacted statute by the Legislature. The concerns regarding overreach that were present with application of the judicial doctrine are not applicable here. As acknowledged by the Supreme Court, the Court's inherent powers can be "controlled over overridden by statutes or rule." *Degen*, 517 U.S. at 824.

López Bello argues that the Civil Asset Forfeiture Reform Act (CAFRA) was found to be constitutional because it "allowed disentitlement in forfeiture proceedings arising out of a related criminal case in which the defendant was a fugitive." DE 94-1 at 5. CAFRA by its terms only disallows a fugitive from using the resources of the court in furtherance of a "related civil forfeiture action" or in a "third party proceeding in any related criminal forfeiture action." 28 U.S.C. § 2466. However, the cases analyzing the constitutionality of CAFRA did not turn on whether the proceedings were related. In *Batato*, the court noted that "the claimant's argument fails primarily because § 2466 does not eliminate the opportunity to be heard." 833 F.3d at 427. Similarly, in *Collazos v. U.S.*, the due process analysis did not turn on whether the proceedings were related but rather on the fact that "Ms. Collazos was denied a hearing on *her*

terms, but a hearing was certainly available to her on the terms established by Congress." 368 F.3d at 203.

Notably, the case law cited by Potential Claimants either considers the application of the judicial doctrine or CAFRA. Through CAFRA "Congress intended to "reinstate" the common law fugitive disentitlement doctrine in civil forfeiture cases." *United States v. $343,726.60 in U.S. Currency*, 2007 WL 9747867 at *4 (S.D. Fla. 2007). "The common law doctrine also included a nexus requirement. Therefore, case law applying the common law doctrine provides additional background on the scope and contours of the required nexus codified in §2466." *Id.* This is not so in the instant case. The Florida Legislature made the conscious decision to not codify such a nexus requirement in SB 1442. The case law considering the significance of a nexus requirement, whether on CAFRA or the common law judicial doctrine, is inapplicable here as "[i]n many instances the inherent powers of the courts may be controlled or overridden by statute or rule." *Degen*, 517 U.S. at 823.

However, *Collazos* remains informative of the due process considerations still applicable to SB 1442 through the court's examination of *Hovey v. Elliott*, 167 U.S. 409 (1897), and *McVeigh v. United States*, 78 U.S. (11 Wall.) 259 (1870). In finding CAFRA constitutional, the *Collazos* court differentiated the punitive measures condemned in *Hovey* and *McVeigh* from statutory disentitlement through concentration on the nature of the respective activity that militated the judicial actions in each of the three cases. *Collazos*, 368 F.3d at 203. The court stated, "Mr. McVeigh could not undo his past support for the Confederacy in order to obtain a hearing… [n]either was Ms. Collazos's disentitlement a punishment for a discrete past act of contempt as in *Hovey*." *Id.* In *Hovey*, defendants disregarded a court order directing the deposit of money paid to them by the receiver into the

court registry, the district court held those defendants in contempt, struck their answer, and entered final judgment against them. *Hovey*, 167 U.S. at 412. In *McVeigh*, a former Confederate official challenged the confiscation of his property by the United States. The district court struck his claims, finding him to be an enemy alien with no right to be heard. *McVeigh*, 78 U.S. at 266. As *Collazos* explains, these improper applications of disentitlement differ from the proper application to Ms. Collazos because the action triggering Ms. Collazos' disentitlement, unlike the unchangeable prior incidents in *McVeigh* and *Hovey*, was an ongoing act and she "knew she could secure a forfeiture hearing and avoid disentitlement by complying with the statutory requirement that she enter the United States." *Collazos*, 368 F.3d at 203. So too here, López Bello's disentitlement is contingent on his continuing choice to evade the jurisdiction of the United States. He, like Ms. Collazos, is free to fully participate in the present case at any time by simply complying with SB 1442's requirements.

Additionally, López Bello suggests that SB 1442 is "unconstitutional as applied," DE 94-1 at 20, however, as applied to López Bello, SB 1442 would satisfy any relatedness requirement, were it necessary to do so. The central issue of the civil case, whether López Bello would qualify as an agent or instrumentality of Tarek El Aissami and the Cartel of the Suns, is directly related to the criminal case motivating López Bello's evasion of the jurisdiction of the United States. The indictment alleges that López Bello is a co-conspirator of El Aissami, specifically alleging that "El AISSAMI MADDAH, LOPEZ BELLO… used U.S. based companies to charter private flights… for EL AISSAMI MADDAH and LOPEZ BELLO." DE 47-5 at ¶ 3. "[T]he definition [of agency or instrumentality] includes any party that provides material support to a terrorist party, whether financial technological, or the provision of goods and services." DE 108 at 26. As a result, the application of SB 1442 as

applied to López Bello could be viewed in much the same way as CAFRA in *Collazos*. In the instant case SB 1442 creates a valid presumption of the agency or instrumentality status of López Bello based on his evasion of the criminal indictment directly related to and supportive of that conclusion.

López Bello has not lost any right to be heard, rather he has made the conscious choice to remain silent so as to facilitate his continued avoidance of the jurisdiction of the United States. An immediate and simple cure to his complaint of deprivations exists constantly and conveniently at his own discretion. As such, SB 1442 raises no legitimate due process concerns.

b. First Amendment

Potential Claimants generally allege that SB 1442 violates the First Amendment because it "infringes upon a nonjudgment debtor's right to be heard in his own defense of this civil suit" and that it infringes upon Potential Claimants "right of access to courts." DE 94-1 at 3-4. No authority is cited in support of this contention and no specific arguments are made. On this basis alone, the court should reject this argument. It should also be rejected because the First Amendment's protection of the right of access to courts provides that the public must have access to criminal trials. *See Globe Newspaper Co. v. Superior Ct. for Norfolk Cnty.*, 457 U.S. 596, 604 (1982). It does not guarantee a right to a jury trial or a right to defend.

II. SB 1442 does not violate the Seventh Amendment

The Seventh Amendment preserves the right to a jury trial "[i]n Suits at common law where the value in controversy exceeds twenty dollars." U.S. Const. amend. VII. The right to a jury trial applies to suits where legal rights are involved, regardless of whether the suit arises

from common law or statutory claims. *Waldrop v. S. Co. Servs.*, 24 F.3d 152, 156 (11th Cir. 1994). This right does not extend to suits where only equitable relief is sought. *Id.*

To determine whether the right to a jury trial is available in a particular suit, the court examines the nature of the issues and the remedy sought. First, the court compares the nature of the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, the court examines the remedy sought and determines whether it is equitable in nature. *Chauffeurs, Teamsters & Helpers, Loc. No. 391 v. Terry*, 494 U.S. 558, 565 (1990). The purpose of the test is to see if the plaintiff seeks "legal" relief available in English common law courts (e.g., money damages) rather than the unique remedies available in 1791 courts of equity (e.g., injunctions) or admiralty (e.g., in rem judgments). *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 42 (1989). To that end, the second stage of the analysis is more important than the first. *Id.*

"The Seventh Amendment question depends on the nature of the issue to be tried rather than the character of the overall action." *Chauffeurs*, 494 U.S. at 569 (quoting *Ross v. Bernhard*, 396 U.S. 531, 538 (1970)). The issue presented here is whether López Bello is an agent or instrumentality of Tarek El Aissami and the Cartel of the Suns. As a money judgement has already been entered, a favorable ruling in this case would lead to orders directing the clerk to issue writs of garnishment and execution on López Bello's blocked assets.

As to the first consideration, there is no precise common law action from the 18th century analogous to TRIA. TRIA allows a person who obtained a judgment against a terrorist party to satisfy that judgment from the blocked assets of the terrorist party or agents or instrumentalities of the terrorist party. TERRORISM RISK INSURANCE ACT OF 2002, PL 107–297, November 26, 2002, 116 Stat 2322. TRIA, more than two centuries removed from

the period, is not reflected in any historical action existing in 1791 common law, let alone any action ensuring the right to a jury. TRIA creates what would have been in the 18th century an unheard of legal avenue to the recovery of victims of terrorism. TRIA is not at all analogous to traditional tort claims, not involving any of the traditional issues tried in a tort case, "duty, breach, and damages." *Havana Docks Corp. v. Norwegian Cruise Line Holdings, Ltd.*, 2022 WL 499710, at *4 (S.D. Fla. Feb. 18, 2022). The only issue relevant to the instant case is López Bello's status as an agent or instrumentality of Tarek El Aissami and the Cartel of the Suns. Bearing no apt analogy to any common law action of the 18th century, the TRIA would have been subject to a court of equity. As a result, the first consideration weighs against TRIA establishing a right to a jury.

As to the second and more important consideration, Plaintiffs sought remedies in the present action are wholly equitable in nature. Plaintiffs have already achieved their money judgement. The only remedy Plaintiffs now seek is a finding that López Bello is an agency and instrumentality of El Aissami and the Cartel of the Suns. Prevailing on their TRIA claim against López Bello would result only in a declaration of his status as agent and instrumentality and writs of garnishment and execution. These writs would operate to require the U.S. Marshal to sell blocked property and banks to turn over blocked assets to Plaintiffs, essentially having the character of a mandatory injunction where "the injunction would force a party to act, and not simply maintain the status quo." *FHR TB, LLC v. TB Isle Resort, LP*, 865 F.Supp.2d 1172, 1192 (S.D. Fla. 2011). "It is settled law that the Seventh Amendment does not apply in these contexts." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 719 (1999)(discussing the inapplicability of the Seventh Amendment to "suits seeking only

injunctive relief"). As a result, the second consideration additionally weighs against a conclusion that TRIA entitles López Bello to a jury.

Potential Claimants inaccurately allege that the Second Circuit "indicated that TRIA actions trigger a right to a jury trial." DE 94-1. The read this indication from a single line of dicta that "the more important remedy factor points in favor of a jury trial." *Havlish v. 650 Fifth Avenue Company*, 934 F.3d 174, 184 (2nd Cir. 2019). This offering is insufficient to establish that TRIA actions trigger a right to a jury trial or even to portend the second circuit's conclusion in some alternative, hypothetical case. That a single factor may weigh one way or the other does not account for how the totality of all the factors might otherwise be balanced in light of the relative weight of each factor. Regardless, no balancing is necessary in the instant case where both factors weigh heavily against Potential Claimants.

Potential Claimants further seek to analogize the instant TRIA issues to the corporate veil piercing considered in the case cited by the *Havlish* court when making the referenced comment. Potential Claimants point to the corporate veil piercing issue in *Wm. Passalacqua Builders, Inc. v. Resnick Developers South, Inc.*, 933 F.2d 131 (2nd Cir. 1991) as a comparator to the TRIA claim in this case. However, the surface level comparison falters because the two actions are "fundamentally different." *Chauffeurs*, 494 U.S. at 568 (declining an attorney malpractice analogy to a union's breach of its fiduciary duty).

"The nature of an action is in large part controlled by the nature of the underlying relationship between the parties." *Id.* The relationships that underly a claim to pierce the corporate veil are vastly different from those in the TRIA context. In the corporate veil context, "control, whether of the subsidiaries by the parent or the corporation by its stockholders, is the key; the control must be used to commit a fraud or other wrong that causes plaintiff's loss."

Passalacqua, 933 F.2d at 138. The TRIA issue in the instant case only requires López Bello to have ever provided material support to El Aissami or the Cartel of the Suns, lacking any of the elements of control or direct relation to the harm to plaintiff that are key to the corporate veil claim.

Because both relevant factors weigh heavily in favor of Plaintiffs' TRIA claims being equitable actions for injunctive relief not subject to the Seventh Amendment, the TRIA does not establish a right to a jury trial.

III. SB 1442 is not an unconstitutional bill of attainder

Potential Claimants' attempt to cast SB 1442 as an unconstitutional bill of attainder falls far short at the outset. A bill of attainder "legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." *Nixon v. Administrator Gen. Servs.*, 433 U.S. 425, 468 (1977). Potential Claimants must show that SB 1442 (1) specifies an identifiable individual or group; and (2) inflicts a punishment without a judicial trial. *Id.* With respect to the identifiability of an individual or group, a description "operates only as a designation of particular persons," where the conduct is described in terms of "past conduct." *Communist Party of U.S. v. Subversive Activities Control Board*, 367 U.S. 1, 86 (1961). When assessing whether a statute inflicts forbidden punishment, the court inquires whether: (1) the challenged statute falls within the historical meaning of legislative punishment; (2) the statute can reasonably be said to further nonpunitive legislative purposes; and (3) the legislative record establishes a congressional intent to punish. *See Selective Serv. Sys. v. Minnesota Pub. Int. Rsch. Grp.*, 468 U.S. 841, 852 (1984).

Potential Claimants' support the proposition that SB 1442 specifically identifies López Bello by reference to a citation to *Stansell v. FARC* appearing in the bill analysis and that SB 1442 "closes two windows previously found by federal courts to be open to López Bello." DE 94-1 at 10-11. However, the simple fact that SB 1442 applies to López Bello or that the bill analysis considers legal precedent that López Bello was a party to is not itself sufficient to determine that SB 1442 "operates only as a designation of particular persons," because the description of conduct in SB 1442 does not turn on "past conduct." *Communist Party of U.S.*, 367 U.S. at 86(1961).

SB 1442 is a law "made to turn upon [the] continuingly contemporaneous fact," *id.* at 87, that the "defendant or person purposely leaves the jurisdiction of this state or the United States, declines to enter or reenter this state or the United States… or otherwise evades the jurisdiction of the court in which a criminal case is pending against the defendant or person." Fla. Stat. § 772.13(6)(a)(2). "Present activity constitutes an operative element to which the statute attaches legal consequences, not merely a point of reference for the ascertainment of particular persons ineluctably designated by the legislature" *Communist Party of U.S.*, 367 U.S. at 87. An individual to whom SB 1442 applies need only cease their ongoing activity of evasion of the jurisdiction of Florida or the United States to render the law inapplicable to them at any time. This reality distinguishes the current issue from those in *Foretich v. United States*, 351 F.3d 1198 (D.C. Cir. 2003) and *Neelley v. Walker*, 322 F. Supp. 3d 1238 (M.D. Ala. 2018), both of which considered laws targeting individuals based exclusively on prior, unalterable conduct. "So long as the incidence of legislation is such that the persons who engage in the regulated conduct, be they many or few, can escape regulation merely by altering the course of their own present activities, there can be no complaint of an attainder." *Communist Party of*

U.S., 367 U.S. at 88. Because the consequences of SB 1442 are predicated solely on ongoing, alterable conduct, Potential Claimants' suggestion that it constitutes an unconstitutional bill of attainder fails at that initial consideration.

Additionally, Potential Claimants' attempt to cast SB 1442 as an imposition of punishment is similarly unconvincing. Again, Potential Claimants point to the bill analysis of SB 1442 as establishing an exclusive legislative goal of punishment due to the analysis' focus on the fugitive disentitlement doctrine. However, the reality of the language of SB 1442 shows a focus on "the resources of the courts of this state," preserving the efficiency of which is a goal wholly independent of punishing those who choose to remain subject to SB 1442. Further

SB 1442 cannot "fall within the historical meaning of forbidden legislative punishment" when the "statute [] leaves open perpetually the possibility of" anyone subject to its strictures escaping those same impediments by ceasing to evade the jurisdiction of Florida or the United States. *Selective Serv. Sys.*, 468 U.S. at 853 (declining to find a legislative punishment where the challenged law deprived appellees of Title IV benefits only so long as they failed to register with the Selective Service). While López Bello and any other individuals covered by SB 1442 "carry the keys of their prison in their own pockets," *Shillitani v. United States*, 384 U.S. 364, 368 (1966), SB 1442 cannot be considered a legislative punishment.

Potential Claimants have failed to establish both required elements of an unconstitutional bill of attainder. SB 1442 neither specifies and identifiable individual or group nor constitutes impermissible legislative punishment, as such SB 1442 cannot be an unconstitutional bill of attainder.

IV. SB 1442 does not violate the Supremacy Clause

Potential Claimants' proposal that SB 1442 violates the Supremacy Clause misconstrues the operation of the Clause and offers no avenue to determine SB 1442 unconstitutional.

Potential Claimants fail to raise any statutory collision between SB 1442 and an act of Congress. "[T]he question of supremacy cannot arise, except in the case of actual and practical collision." *Gibbons v. Ogden*, 22 U.S. 1, 41 (1824). Potential Claimants offering of the apparent difference between SB 1442 and the federal common law manifestation of the fugitive-disentitlement doctrine cannot establish such a collision for purposes of a Supremacy Clause argument because "such collision must be direct and positive, and the State law must operate to limit, restrict, or defeat, the effect of a statute of Congress." *Id.* at 42.

Potential Claimants have offered no legitimate source of conflict between SB 1442 and TRIA §201 nor any other federal statute as would sustain a Supremacy Clause challenge. "Conflict preemption applies where (1) compliance with both federal and state [statutes] is a physical impossibility, or (2) the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Guarino v. Wyeth, LLC*, 719 F.3d 1245, 1248 (11th Cir. 2013). In such a conflict analysis the Court "should assume that the historic police powers of the States are not superseded unless that was the clear and manifest purpose of Congress." *Fresenius Medical Care Holdings, Inc. v. Tucker*, 704 F.3d 935, 939-940 (11th Cir. 2013) (quoting *Arizona v. U.S.*, 567 U.S. 387, 400 (2012)). The threshold established by that assumption creates a high bar for the party alleging conflict preemption to clear. *Id.* at 940.

Potential Claimants do not allege that compliance with both TRIA §201 and SB 1442 would be a physical impossibility. Neither can Potential Claimants convincingly suggest that

SB 1442 conflicts with the purposes or objectives of Congress in TRIA §201 as the plain purpose of the act was to facilitate the enforcement of judgments against blocked assets by terrorist victims. At best Potential Claimants suggest a conflict with an invented right under TRIA §201 of agencies and instrumentalities to offer a defense. However, no language in TRIA §201 makes any suggestion of an unalterable right to a defense by an agency or instrumentality, let alone any that would begin to clear the threshold assumption that the state's police powers were not superseded. In reality SB 1442 can only be said to facilitate the goals of TRIA §201 in facilitating terrorist victims' enforcement of judgments against blocked assets.

Compliance with both TRIA §201 and SB 1442 is possible. Further, SB 1442 does not stand as an obstacle to the execution of TRIA §201. As a result, SB 1442 does not violate the Supremacy Clause.

V. The Court should not apply the constitutional avoidance canon

Potential Claimants' final offering of the constitutional avoidance canon to avoid the consequences of López Bello's fugitive status is also unsuccessful. "[T]he canon of constitutional avoidance has no application in the absence of statutory ambiguity." *U.S. v. Oakland Cannabis Buyers' Co-op*, 532 U.S. 483, 494, 121 S.Ct. 1711 (2001). "[The canon of constitutional avoidance] is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts." *Clark v. Martinez,* 543 U.S. 371, 381, 125 S.Ct. 716 (2005). A prerequisite to the application of the canon is the identification of

"serious constitutional problems" with one a statutory interpretation that are avoidable through the use of a plausible alternative interpretation.

Potential Claimants have failed to offer any serious constitutional problems with SB 1442. Beyond that, Potential Claimants suggested alternative interpretation of SB 1442 is implausible and would have the Court impermissibly rewrite SB 1442 rather than interpret it. *Jennings v. Rodriquez*, 583 U.S. 281, 286 (2018). Potential Claimants contend that the phrase "courts of this state" should be read to render SB 1442 exclusively applicable in Florida's state courts rather than the plainly intended meaning of the Legislature to encompass both state and federal courts in Florida. SB 1422 explicitly states that "[p]aragraph (a) applies to *any* judgment collectable under state law and to *any* civil action pending or filed on or after the effective date of this act." Fla. Stat. § 772.13(6)(b) (emphasis added). There is no plausible ambiguity to the Legislature's intent that could allow this Court to manifest Potential Claimants' desired alternative statute.

Further, Potential Claimants' additional suggestion regarding the definition of "defendant or person" is similarly implausible. Florida Statutes make the meaning of "person" wholly unambiguous. *See* Fla. Stat. § 1.01(3) ("the word 'person' includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations."). Again, to deny this explicit definition and replace it with that offered by Potential Claimants would serve as, rather than an alternative interpretation, a complete rewriting of SB 1442 with total disregard for SB 1442's obvious meaning. Rule 69(a)(1), as already recognized by this Court, "provides that Florida law governs the procedure on this post-judgment execution action." DE 76 at 4. Florida law is clear in the instant case and this Court must apply it.

Potential Claimants' offer of *Caballero* as a separate justification for avoidance is also unconvincing. *Caballero's* conclusion regarding the applicability of SB 1442 turns on two key mistakes. The first mistake is a misreading of the text of SB 1442. The court erroneously concludes "[t]he relevant inquiry where, as here, Plaintiff is attempting to collect from the Interested Parties, is whether this is a postjudgment proceeding as to the Interested Parties." *Caballero v. FARC*, 2023 WL 4363886 at *5 (S.D. Fla. June 28, 2023). This conclusion is wholly unsupported by the text of SB 1442 stating its application to be "[i]n any postjudgment execution proceedings to enforce a judgment entered under this section or under 18 U.S.C. s. 2333 or a substantially similar law of the United States." Fla. Stat. § 772.13(6)(a). This language makes clear that, in the instant case, the relevant judgment with respect to the term "postjudgment" is the original judgment entered by this Court on January 20, 2023. DE 44 at 7 ("Plaintiffs establish a violation of the Federal Anti-Terrorism Act.").

Caballero's incorrect reading that "postjudgment" does not relate to the original judgment under the Federal Anti-Terrorism Act is supported exclusively by reference to *Stansell v. FARC*, 771 F.3d 713, 727 (11th Cir. 2014). The court derives from *Stansell* that "the Interested Parties [] have an opportunity to be heard on the matter of agency and instrumentality determination." *Caballero*, 2023 WL 4363886 at *5. However, as previously discussed above and in *Collazos*, this citation is wholly irrelevant because SB 1442 does not deny López Bello the opportunity to be heard. *Caballero* should not militate this court in favor of avoidance. The instant case is at the postjudgment collection stage within the meaning of SB 1442 and SB 1442 is fully applicable to López Bello with respect to the agency or instrumentality determination without impediment to his opportunity to be heard regardless of the mistaken conclusion of *Caballero*.

Because there are no serious constitutional problems with SB 1442 and because there are no plausible alternative interpretations offered by Potential Claimants, this Court should decline to apply the constitutional avoidance canon.

CONCLUSION

Based on the above, Pinecrest LLC and Miami Beach LLC's motion to declare SB 1442 unconstitutional should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of December, 2023 a copy of this document was filed electronically through the CM/ECF system and furnished by email to all counsel of record.

/s/ *Noah T. Sjostrom*
Noah T. Sjostrom