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

Case No. 01-3399-CIV-MORENO / TORRES

ANGEL ENRIQUE VILLEDA ALDANA, *et al.,*

Plaintiffs,

v.

FRESH DEL MONTE PRODUCE, INC., *et al.,*

Defendants.
_____/

PLAINTIFFS' REPLY MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR JUDICIAL NOTICE

In support of their Motion for Judicial Notice [DE-245] of the continual anti-union violence in Guatemala, Plaintiffs Angel Enrique Villeda Aldana, *et al.* ("Plaintiffs"), who are former union leaders, simply ask the Court to recognize the on-going danger in Guatemala to union leaders and their advocates. Whether this case could proceed in Guatemala has been in dispute since 2002, when Defendants first sought to dismiss the case on the grounds of *forum non conveniens* ("FNC"). Defs.' Mot. to Dismiss [DE-32]. In light of arguments that Defendants raised in opposing the reinstatement of the case before this Court suggesting that Plaintiffs still have potential remedies in Guatemala, Guatemala's availability remains in dispute. As set forth below, Plaintiffs' reliance on multiple reports of anti-union violence and numerous homicides, in both newspaper articles and reports of reliable non-profit organizations, is timely, relevant, and should be judicially noticed.

I. Plaintiffs' Motion is Timely at this Pre-Trial Stage of Litigation

Plaintiffs' request for judicial notice at this pre-trial stage of litigation is timely. As clearly stated in the Federal Rules of Evidence ("FRE"), "[j]udicial notice may be taken at any stage of the proceeding." FRE 201(f). Contrary to Defendants' unsupported characterization of Plaintiffs' motion as "belated," Defs.' Mot. for Judicial Notice ("MJN") Resp. [DE-246] at 1, courts may take judicial notice of facts long before a case reaches trial. *See, e.g., In re NAHC, Inc.,* 306 F.3d 1314, 1331 (3d Cir. 2002) (noting that under FRE 201(d), "a district court must take judicial notice 'if requested by a party and supplied with the necessary information'" without suggestion that such notice is in any way limited by the type of proceeding before the court); *Ganino v. Citizens Utilities Co.,* 228 F.3d 154, 167 n.8 (2d Cir. 2000) (affirming the lower court's taking of judicial notice in deciding a motion to dismiss). The reports and newspaper accounts on which Plaintiffs rely, ranging in date from May 26, 2011 to June 3, 2011, are both prompt, having been filed on June 13, 2011, and timely, having been filed in support of a pre-trial motion presently before the Court. *See* [DE-245].

II. Newspaper Articles and Organizational Reports are Valid Sources from which this Court may take Judicial Notice

Defendants have provided no support for their broad assertion that this Court cannot take judicial notice of newspaper articles and non-profit organization reports, which relate to on-going anti-union violence in Guatemala. Indeed, Defendants arguments focus exclusively on the newspaper articles without reference to the non-profit reports Plaintiffs also present. Regardless, courts have traditionally taken judicial notice of relevant current events in newspapers – often relying on the report of only one newspaper – as publicly available information. *See, e.g., Valley Broadcasting Co. v. U.S. Dist. Court for Dist. of Nevada,* 798 F.2d 1289, 1290 n.1 (9th Cir. 1986) (taking judicial notice of two deaths as reported in the *Los Angeles Times* in addressing a petition for writ of

mandamus); *Agee v. Muskie,* 629 F.2d 80, 90 (D.C. Cir. 1980) (taking judicial notice of facts generally known regarding CIA involvement in events abroad as reported in newspaper articles in the course of a summary judgment decision), *rev'd on other grounds subnom, Haig v. Agee,* 453 U.S. 280 (1981); *U.S. v. Foster,* 580 F.2d 388, 390 (10th Cir. 1978) (relying on a *Wall Street Journal* article regarding electronic devices in a post-conviction appeal). While Defendants dismissively describe it as "the rankest of hearsay," a newspaper is actually a well-known source that satisfies the ascertainability requirement of FRE 201(b) in reporting political facts such as the status of anti-union violence in Guatemala. *See, e.g., U.S. v. Esperdy,* 234 F. Supp. 611, 616-17 (S.D.N.Y. 1964) (relying in a habeas proceeding on newspaper articles, all from *The New York Times*, regarding the danger of physical persecution that Haitian plaintiff would face in Haiti during the Duvalier regime).

Courts also frequently rely upon reports authored by non-profit organizations in judicially noticing facts. *See, e.g., Bull v. San Francisco*, 595 F.3d 964, 999 n.5 (9th Cir. 2010)(citing Amnesty International ("AI") report regarding connection between strip searches and sexual abuse of prisoners in § 1983 action)(Thomas, Circ. J, dissenting); *In re Bridgestone/Firestone Inc.*, 190 F. Supp. 2d 1125, 1143 (S.D. Ind. 2002)(including both newspaper articles and an AI report in sources from which court would take judicial notice of armed guerillas in Colombia in deciding a motion to dismiss for FNC). Furthermore, circuit courts regularly take judicial notice of facts in reports from non-profit organizations when reviewing U.S. immigration decisions. *See, e.g., Berishaj v. Ashcroft*, 378 F.3d 314, 320-21 (3d Cir. 2004)(using AI reports from the administrative record as corroborating evidence of violations against Albanians); *Zubeda v. Ashcroft*, 333 F.3d 463, 466 (3d Cir. 2003)(including reports from AI and Human Rights Watch as credible evidence of violence in the Democratic Republic of the Congo in remanding an alien's asylum petition for further review).

Further, Defendants do not dispute the truth of the fact to be noticed – i.e., that union leaders and their advocates continue to be violently targeted in Guatemala. Instead, Defendants argue that newspapers, as a general rule, are not proper sources of judicial notice. But this contention is belied by the plethora of cases that Plaintiffs present in which courts have relied on newspaper articles, and often from a single newspaper. *See, e.g., Valley Broadcasting Co.,* 798 F.2d at 1290 n.1 (taking judicial notice of deaths reported in one newspaper article). Indeed, all the cases Defendants cite are distinguishable from the circumstances of this case because anti-union violence has been documented in multiple newspaper and non-profit organizational reports, among other sources. *Compare Shahar v. Bowers,* 120 F.3d 211, 214 (11th Cir. 1997) (declining to rely on newspaper articles to notice the private, unofficial and unverifiable conduct (an extramarital affair) of a public official); *Thompson v. The Florida Bar,* 2007 WL 4380067, *1-2 (S.D. Fla. Nov. 20, 2007) (providing little discussion of its reasoning in disposing of multiple pending motions, including motions for judicial notice); and *In re Empresa de Transportes Aero del Peru,* 263 B.R. 367, 378 (S.D. Fla. 2001) (noting that the bankruptcy court could not use FRE 201(b) to take notice of the general state of Latin American affairs) (all cited by Defendants [DE-246] at 3). The Court may take judicial notice from the five news and non-profits sources to which Plaintiffs have cited.

III. Plaintiffs' Offered Facts are Relevant to Whether their Case Addressing Anti-Union Violence Should Ever Return to Guatemala

The danger facing union leaders in Guatemala is relevant to the issue of whether an adequate alternative forum exists in Guatemala for former union leaders from Guatemala. Although a Guatemalan court recently found that it does not have jurisdiction over the case, Plaintiffs' prior arguments regarding this lack of jurisdiction did not stop Defendants from arguing that the case should be transferred there. *See, e.g.,* Defs.' Mot. to Dismiss [DE-87]. And, as set forth below, in the

context of Plaintiffs' motion for reinstatement, it appears that Defendants continue to argue that Plaintiffs should seek further remedies in Guatemala.

In light of the baseless aspersions that Defendants carelessly cast regarding the recent proceedings in Guatemala[1] – their forum of choice – Plaintiffs have no guarantee that Defendants will not argue, yet again, that the case should be returned to Guatemala for further adjudication. In fact, Defendants have suggested as much in arguing that Plaintiffs failed to exercise a (non-existent) right to appeal in Guatemala. Defs.' Mot. for Reinstatement ("MFR") Resp. [DE-234] at 12. Yet Defendants try to have their cake and eat it too by, on one hand, insinuating without explanation that the Guatemalan decision is somehow invalid, while, on the other hand, relying on that same decision to conclude that any argument regarding the unavailability of a Guatemalan forum is now "completely irrelevant." Defs.' MJN Resp. [DE-246] at 2. Though Plaintiffs maintain that no recourse remains in Guatemala, *see* Pls.' MFR Reply [DE-241] at 8-9, in light of Defendants' renewed argument, Plaintiffs now ask that the Court take note of the recent events demonstrating the consistently high levels of violence against union leaders and their supporters; as has been the case throughout the pendency of this entire litigation, Guatemala remains a dangerous place for proponents of labor and union rights. Plaintiffs simply ask the Court to take judicial notice of this fact at this time as it is relevant to Defendants' recent arguments and may be relevant at subsequent points in the litigation should the case proceed.

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[1] For example, Defendants assert that the Guatemalan decision was "ostensibly based" on the Guatemalan Defense Law, despite the Guatemalan court's clear citations to that exact law, and suggest without an ounce of elaboration that Plaintiffs' efforts to follow the procedural rules in Guatemala amounted to "questionable litigation behavior." [DE-246] at 4. Plaintiffs have already addressed these invectives, as well as the misguided argument that the Guatemalan order amounts to "newly discovered evidence," [DE-246] 3, n.2 and 5, n.4, in prior briefing before this Court. *See* Pls.' MFR Reply [DE-241].

Dated: June 29, 2011

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that that on June 29, 2011 a true and correct copy of the foregoing Plaintiffs' Reply in Support of their Motion for Judicial Notice was electronically filed with the Clerk of Court by using the CM/EMF system which will send a notice of electronic filing to the service list below:

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