UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

**ANGEL COLON, NORMAN E. CASIANO-MOJICA, FRANCHESSKA MERCADO, JEANETTE MCCOY, CESAR RODRIGUEZ, COREY RIVERA, ROSAMARIA FEBO, DAVID JOURDENAIS, EMILY ANN PORTALATIN, RODNEY SUMTER, ADRIAN LOPEZ, JAVIER NAVA, LEONEL MELENDEZ, JOAQUIN ROJAS, KALIESHA ANDINO, CARLOS MUNIZ, JUAN J. CUFINO-RODRIGUEZ, IVAN DOMINGUEZ, CASSANDRA MARQUEZ, GEOFFREY RODRIGUEZ, DONALD BROWN, JOSE DIAZ, JAMMY VALENTIN FERNANDEZ, CARLOS J. PEREZ ANGLERO, DEMETRIUS POLANCO, MIGUEL VEGA, CARMEN N CAPO-QUINONES, CORY RICHARDS, JONATHAN L. GARCIA, OLGA MARIA DISLA, NATHAN OROZCO, BETTIE LINDSEY, NEREDIA RIBOT, YVENS CARRENARD, SONIA N CEDENO, KADIM RAMOS, MERCEDES GARCIA, SANDY ROBERTS, MERCEDES A. MCQUERY, JAVIER ANTONETTI, KEINON CARTER, MARISSA DELGADO, MAVELYN MERCED, JUAN ANTONETTI, ROLANDO J RODRIGUEZ, CHRISTIAN ORIZ-CARDONA, YORVIS JOSE CAMARGO-ROMERO, JOSEPH NEGRON, CHRISTOPHER HANSEN, NELSON RODRIGUEZ, ROBERTO TEXIDOR-CARRASQUILLO, CHRISS MICHAEL WEST, JACOBI CEBALLO, MICHAEL GONZALEZ, MARITZA GOMEZ, MOHAMMED S ISLAM, FRANCISCO G. PABON GARCIA, BERNICE DEJESUS VALAZQUEZ, ISMAIL MEDINA MORALES, EDWIN RIVERA ALVAREZ, JOSE PACHECO and LIZMARYEE FINOL VILORIA,**

**Plaintiffs,**

**v.** **Case No: 6:18-cv-515-Orl-41GJK**

**TWITTER, INC., GOOGLE, LLC and FACEBOOK, INC.,**

**Defendants.**
_____/

**ORDER**

THIS CAUSE is before the Court on Defendants' Joint Motion to Dismiss the Third Amended Complaint ("Motion," Doc. 84). Plaintiffs filed a Response in Opposition ("Response," Doc. 111), and Defendants filed a Reply in Support (Doc. 119). For the reasons set forth herein, the Motion will be granted.

## I. BACKGROUND

This putative class action arises from a mass shooting carried out on June 12, 2016, at the Pulse nightclub in Orlando, Florida ("Pulse Shooting"). (Third Am. Compl. ("TAC"), Doc. 81, at 77). A man named Omar Mateen entered the nightclub with an assault-style rifle and a semi-automatic pistol and thereafter began shooting into the crowd, killing forty-nine people and injuring an additional fifty-three people, prior to Mateen being killed by police officers. (*Id.* at 77, 85–86, 88).

Plaintiffs, all persons either injured in the Pulse Shooting or representatives of decedents killed in the shooting, initiated this lawsuit against Defendants Twitter, Inc. ("Twitter"), Google, LLC ("Google"), and Facebook, Inc. ("Facebook"), each of which run social media platforms. (*Id.* at 3–16). Plaintiffs allege that Mateen was "self-radicalized on the Internet," (*id.* at 79), by a Foreign Terrorist Organization ("FTO") called The Islamic State of Iraq and Syria ("ISIS"), (*id.* at 4, 40). Plaintiffs also assert that ISIS uses social media platforms—here, Defendants' platforms—for the purpose of recruiting and radicalizing people in the United States to join their FTO. (*Id.* at

43–77). And, Plaintiffs allege that Mateen was self-radicalized through use of Defendants' platforms. (*Id.* at 59, 80, 91, 140).

Plaintiffs seek to hold Defendants liable for the actions of Mateen in carrying out the Pulse Shooting. Plaintiffs assert eight separate claims:

(1) Aiding and abetting acts of international terrorism pursuant to 18 U.S.C. § 2333(a) and (d), (*id.* at 140–42);

(2) Conspiring in furtherance of acts of international terrorism pursuant to 18 U.S.C. § 2333(a) and (d), (*id.* at 142–43);

(3) Provision of material support to terrorists in violation of 18 U.S.C. § 2339A and 18 U.S.C. § 2333, (*id.* at 143–44);

(4) Provision of material support and resources to a designated FTO in violation of 18 U.S.C. § 2339B(a)(1) and 18 U.S.C. § 2333(a), (*id.* at 144–45);

(5) Negligent infliction of emotion distress, (*id.* at 145);

(6) Concealment of material support and resources to a designated FTO in violation of 18 U.S.C. § 2339C(c) and 18 U.S.C. § 2333(a), (*id.* at 145–46);

(7) Provision of funds, goods, or services to or for the benefit of specially designated global terrorists in violation of Executive Order No. 13224, 31 C.F.R. Part 594, 50 U.S.C. § 1705, and 18 U.S.C. § 2333(a), (*id.* at 146–47); and

(8) Wrongful death, (*id.* at 147–49).

Defendants move to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted.

## II. LEGAL STANDARD

"A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Pursuant to Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a

claim upon which relief can be granted." In determining whether to dismiss under Rule 12(b)(6), a court accepts the factual allegations in the complaint as true and construes them in a light most favorable to the non-moving party. *See United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1269 (11th Cir. 2009). Nonetheless, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Furthermore, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* Generally, in deciding a motion to dismiss, "[t]he scope of the review must be limited to the four corners of the complaint." *St. George v. Pinellas Cty.*, 285 F.3d 1334, 1337 (11th Cir. 2002).

## III. ANALYSIS

The Court begins by discussing the posture upon which the claims in the TAC arrived before this Court. In December 2016, counsel for Plaintiffs brought suit on behalf of a group of victims of the Pulse Shooting against the same named Defendants in this case in the United States District Court for the Eastern District of Michigan. *See generally* Compl. (Dec. 19, 2016), *Crosby v. Twitter*, No. 2:16-cv-14406-DML-DRG ("Michigan Case"). Plaintiffs then filed an Amended Complaint in that case. *Id.* Am. Compl. (Mar. 31, 2017). Defendants filed a Motion to Dismiss, *id.* Motion to Dismiss (Apr. 28, 2017), which was granted by the Michigan Court, dismissing the case with prejudice, *Crosby v. Twitter, Inc.*, 303 F. Supp. 3d 564, 580 (E.D. Mich. 2018). The Sixth Circuit affirmed the Michigan Court's decision. *Crosby v. Twitter, Inc.*, 921 F.3d 617, 628 (6th Cir. 2019) ("Sixth Circuit Case").

The Complaint in this case was filed just five days after the Michigan Court's decision. *Compare Crosby*, 303 F. Supp. 3d 564 (Corrected Opinion and Order issued on March 30, 2018) *with* (Doc. 1 (Complaint filed on April 4, 2018)). Since filing the Complaint, Plaintiffs have now had three opportunities in this Court to amend their Complaint, with the TAC now being the operative Complaint. (*See generally* First Am. Compl., Doc. 50; Second Am. Compl., Doc. 63; Doc. 65). Six of the eight claims in the TAC are nearly identical to the claims asserted in the Michigan case, with the TAC asserting only two new, but related, claims not previously raised in the Michigan case, Counts 6 and 7 here. *Compare* Michigan Case Am. Compl. *with* (Doc. 65). Indeed, many of the allegations in the TAC have been lifted verbatim from the Michigan Amended Complaint. And those paragraphs that differ do not add substance.[1] In essence, Plaintiffs' counsel is now on his sixth complaint—two in the Michigan Case and four here.

"Filing identical lawsuits in multiple district courts is abusive and wasteful of judicial resources." *Daker v. Bryson*, No. 5:15-cv-00088-TES-CHW, 2019 U.S. Dist. LEXIS 27392, at *9 (M.D. Ga. Feb. 21, 2019). While Plaintiffs' counsel may have selected different named Plaintiffs with which to do so, this is essentially what he has done. Despite the outcome of dismissal in the Michigan Case, Plaintiffs' counsel filed the same lawsuit—with different Plaintiffs—here in the Middle District of Florida.

The Court recognizes that Plaintiffs here are "seeking damages for their senseless losses." *Crosby*, 921 F.3d 617, 619 (6th Cir. 2019). "But they did not sue Mateen, the lone terrorist responsible for the shooting. Nor did they sue ISIS, the international terrorist organization that

[1] For what Plaintiffs' TAC lacks in substance it makes up for in volume. The TAC is 730 paragraphs and 150 pages long. (*See generally* Doc. 81). The length of the TAC itself is likely a violation of Federal Rule of Civil Procedure 8, which requires that "[a] pleading that states a claim for relief must contain . . . a *short and plain* statement of the claim showing that the pleader is entitled to relief." (emphasis added). For example, the Court finds Plaintiffs' thirteen-page, seventy-one paragraph dissertation on the history of ISIS—complete with inflammatory graphics—(Doc. 81 at 30–42), to be almost entirely unnecessary to the substance of the claims. Surely, the TAC is neither short nor plain.

allegedly motivated Mateen through social media. Instead, Plaintiffs filed claims against social media giants Twitter, Facebook, and Google." *Id.* The Pulse Shooting occurred mere miles from the Federal Courthouse in which this Court sits, so as the Sixth Circuit did—and maybe even more so—this Court expresses great sympathy for Plaintiffs. "'But not everything is redressable in a court.' And terrorist attacks present unique difficulties for those injured because the terrorists 'directly responsible may be beyond the reach of the court.' This is one such case." *Id.* (quoting *Kemper v. Deutsche Bank AG*, 911 F.3d 383, 386 (7th Cir. 2018)). Therefore, to the extent applicable, this Court adopts and incorporates by reference the well-reasoned opinion of the Sixth Circuit in *Crosby*. 921 F.3d 617. To the extent the TAC brings claims not raised in the Michigan case and to the extent the TAC attempts to correct failed claims from the Michigan case, the Court will address those here.

**A. Antiterrorism Act Claims—Counts 1, 2, 3, 4, and 6**

Plaintiffs' claims in Counts 1, 2, 3, 4, and 6 are rooted in the civil remedies provision of the Antiterrorism Act ("ATA"), 18 U.S.C. § 2331 *et seq.* Counts 1, 2, 3, and 4 are duplicative of claims asserted in the Michigan Case in which the claims were dismissed. Count 6, a claim not included in the Michigan Case, will also be addressed by the Court as part of this analysis because it too relies on the civil remedies provision of the ATA.

The civil remedies provision permits "[a]ny national of the United States" injured by "an act of international terrorism" to bring a civil suit for damages resulting therefrom. *Id.* § 2333(a). On its face, this provision consists of three elements: (1) an act of international terrorism, (2) injury to a national of the United States,[2] and (3) causation linking the act in the first element and the injury in the second element. *Shatsky v. PLO*, 2017 U.S. Dist. LEXIS 94946, *13 (M.D. Fla. June 20, 2017); *Owens v. BNP Paribas, S.A.*, 897 F.3d 266, 270 (D.C. Cir. 2018). The provision in

[2] This element could be construed as two separate elements—(1) a United States' national and (2) injury. However, for the purposes of the instant Motion, the distinction is immaterial.

§ 2333(a) may also be applied "to any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed such an act of international terrorism." 18 U.S.C. § 2331(d)(2).

The TAC sufficiently alleges that Plaintiffs were either United States' citizens or nationals at the time of the Pulse Shooting and that Plaintiffs are all persons either injured in the Pulse Shooting or representatives of decedents killed in the shooting. (Doc. 81 at 9–16). Thus, the instant Motion turns on whether the act of Mateen was "an act of international terrorism," 18 U.S.C. § 2333(a), (d), and whether Plaintiffs have made out a prima facie case of causation.

*1. Causation*

As the Sixth Circuit explains, the ATA is a tort statute. *Crosby*, 921 F.3d at 622 (citing *Kemper*, 911 F.3d at 390). "That means that causation must be proven before liability is established." *Id.* (quoting *Kemper*, 911 F.3d at 390). However, what type of causation is required under the ATA is a question that the Eleventh Circuit has not yet answered. The Sixth Circuit read the text of the ATA to require a showing of proximate cause, a conclusion which is joined by the Second, Seventh, Ninth, and D.C. Circuits. *Id.* at 623; *Weiss v. Nat'l Westminster Bank PLC*, 768 F.3d 202, 204 (2d Cir. 2014); *Kemper*, 911 F.3d at 392; *Fields v. Twitter, Inc.*, 881 F.3d 739, 747 (9th Cir. 2018); *Owens*, 897 F.3d at 273.

Plaintiffs argue that something less than proximate cause is required by the plain language of the ATA. Plaintiffs then hypothesize on what that standard might be and conclude that "whichever ATA causation standard this Court adopts, the TAC plausibly establishes that Defendants' furnishing of their platforms to ISIS caused Plaintiffs' injuries." (Doc. 111 at 15).

"[T]he Supreme Court has repeatedly and explicitly held that when Congress uses the phrase 'by reason of' in a statute, it intends to require a showing of proximate cause." *Kemper*, 911 F.3d at 391; *Moore v. Tolbert*, 490 F. App'x 200, 206 (11th Cir. 2012) (interpreting the Racketeer Influenced and Corrupt Organizations Act and holding that "[a] plaintiff meets the 'by

reason of' requirement if he shows a 'sufficiently direct injury' . . . and 'proximate cause'" (quoting *Williams v. Mohawk Indus.*, 465 F.3d 1277, 1287 (11th Cir. 2006))). Similarly, the only district court in the Eleventh Circuit to address the issue concluded the same.[3] *In re Chiquita Brands Int'l, Inc.*, 284 F. Supp. 3d 1284, 1309 (S.D. Fla. 2018). This Court finds no reason not to apply this standard to the ATA, and Plaintiffs' arguments to the contrary are unavailing.

The facts asserted in the TAC parallel the facts asserted in the Michigan case, as affirmed by the Sixth Circuit. Plaintiffs admit that Mateen was self-radicalized. (Doc. 81 at 79, 89). The Oxford English Dictionary dates the term "self-radicalized" back to 1969 and defines it as meaning one who "has become radical in outlook . . . *without active influence from or connection with* established radical groups or their members."[4] Thus by definition, Plaintiffs' characterization of Mateen's conduct is without causation or connection to ISIS. Moreover, ISIS only connected itself to Mateen *after* the Pulse Shooting. (*Id.* at 88–91). As the Sixth Circuit concluded, "Plaintiffs allege no facts connecting Defendants to Mateen or the Pulse . . . [S]hooting." *Crosby*, 921 F.3d at 625. "[I]t was Mateen—and not ISIS—who committed the Pulse . . . [S]hooting," and "Mateen—and not ISIS—caused Plaintiffs' injuries." *Id.* at 625–26. Thus, the Sixth Circuit's reasoning for affirming the dismissal of Plaintiffs claims for both direct and secondary liability under the ATA applies in equal force here. *Id.* at 626–27 (holding that "Defendants did not

[3] The Ninth and D.C. Circuits appear to potentially disagree as to whether the standard of proximate cause under the ATA requires a plaintiff to demonstrate "a direct relationship," *Fields*, 881 F.3d at 744, or a lesser showing of "a substantial factor," *Owens*, 897 F.3d at 273 n.8. The only district court in the Eleventh Circuit to have addressed the issue held that the more "flexible 'substantial factor' yardstick" was the appropriate inquiry into proximate cause. *In re Chiquita*, 284 F. Supp. 3d at 1314. The Court here does not decide which interpretation is correct because Plaintiffs have failed to allege facts sufficient to meet either standard of proximate cause. *Crosby*, 921 F.3d at 626 ("Call it what you want, but it was not foreseeable that Defendants' conduct would lead to the Pulse . . . [S]hooting. Nor did Defendants' conduct play a substantial factor in, or have any direct link to, Mateen's appalling act.").

[4] "Self-radicalized," Oxford English Dictionary, https://www.oed.com/view/Entry/54300285?rskey=QtPSvJ&result=2&isAdvanced=false#eid. Indeed, Plaintiffs paradoxically appear to admit that "Mateen [may have] never been directly in contact with ISIS." (Doc. 81 at 91).

proximately cause the Pulse . . . [S]hooting or Plaintiffs' injuries," ISIS did not commit the attack, and "Mateen 'committed' the terrorist act."). Plaintiffs' claims in Counts 1, 2, 3, and 4 will be dismissed on these grounds.

*2. International Terrorism*

"International terrorism," as defined by the ATA, consist of "activities" that:

> (A) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State;
>
> (B) appear to be intended—
>
> (i) to intimidate or coerce a civilian population;
>
> (ii) to influence the policy of a government by intimidation or coercion; or
>
> (iii) to affect the conduct of a government by mass destruction, assassination or kidnapping; and
>
> (C) occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum;

*Id.* § 2331(1).

These "activities" are read in the conjunctive, meaning that Plaintiffs must allege all three. *Id.* Failing to allege a prima facie case on any single element necessarily means Plaintiffs' claims pursuant to the statute fail. Thus, the Court will take the elements out of order and first address whether the Pulse shooting "occur[ed] primarily outside the territorial jurisdiction of the United States, or transcend[ed] national boundaries," *id.* § 2331(1)(C), a question which was not reached by the Sixth Circuit. *Crosby*, 921 F.3d at 622, 622 n.2 (noting that the Sixth Circuit was "making a big assumption" by assuming *arguendo* that Mateen's actions in the Pulse Shooting were an act of international terrorism). The Court addresses this point of law as an alternative ground for

dismissal of Counts 1, 2, 3, and 4, and as an independent basis for dismissal of Count 6, a claim not included in the Michigan Case.

It is undisputed by Plaintiffs that the Pulse Shooting physically occurred in Orlando, Florida, fully within the boundaries of the territorial jurisdiction of the United States. (*E.g.*, Doc. 81 at 3, 77, 85, 140 ("Mateen . . . carried out the deadly attack in Orlando.")). Rather, Plaintiffs argue that the Pulse Shooting was an act of internationalism terrorism because Mateen's acts transcend national boundaries. Plaintiffs dedicate just nine paragraphs of their 150-page TAC to this issue and seem to rely on two scant arguments. First, Plaintiffs argue summarily that because ISIS used Defendants' platforms and because ISIS has been designated as a FTO, then the actions of Mateen must have been an act of international terrorism. Second, Plaintiffs summarily conclude that the actions of Mateen "transcend[] national boundaries because of the international usage of Defendants' platforms." (Doc. 81 at 140).

Both of Plaintiffs' arguments fail as summarily as they were raised. First, Plaintiffs statements in the TAC on this issue are mere legal conclusions, and the Court need not accept these as true. *Iqbal*, 556 U.S. at 678. Second, Plaintiffs' statements ignore a very important assumption—a causal link between Mateen and ISIS. ISIS has been designated as a FTO. And ISIS committing an act such as the Pulse Shooting on United States' soil might indeed transcend national boundaries under certain circumstances. But crucially, as discussed above, ISIS did not commit the acts set forth in the Complaint. Mateen did. And the TAC readily admits that Mateen was "self-radicalized" while living here in Florida. (Doc. 81 at 79, 89). Thus, even if Plaintiffs' TAC was brought against ISIS itself, it would still fail to demonstrate an act of international terrorism because there are no allegations in the TAC showing the necessary connection between Mateen—who alone carried out the Pulse Shooting—in the United States and ISIS. Absent this critical connection, the facts set forth in the Complaint do not allege an act of international

terrorism, as that term is defined by the ATA. Thus, alternatively, Plaintiffs claims in Counts 1, 2, 3, and 4 will also be dismissed on this basis. Claim 6 also fails and will be dismissed on this basis.

*3. Concealment of Material Support and Resources—Count 6*

Plaintiffs allege a violation of 18 U.S.C. § 2339C(c) in connection with Defendants' alleged violation of 18 U.S.C. § 2339B. The Court addresses this claim separately and in addition to the other bases for dismissal discussed above because it was not asserted by Plaintiffs in the Michigan Case. The applicable portion of 18 U.S.C. § 2339C(c) states that an entity may not:

> . . . knowingly conceal[] or disguise[] the nature, location, source, ownership, or control of any material support or resources, or any funds or proceeds of such funds— . . . knowing or intending that the support or resources are to be provided, or knowing that the support or resources were provided, in violation of [§] 2339B . . . .

This provision of § 2339C(c) "requires a predicate violation of [§] 2339B." *Force v. Facebook, Inc.*, 304 F. Supp. 3d 315, 331 (E.D.N.Y. 2018) (citing 18 U.S.C. § 2339C(c)(2)(A)); *United States v. Greer*, 872 F.3d 790, 795 n.4 (6th Cir. 2017) (discussing a violation of § 2339B as the "underlying offense" supporting a violation of § 2339C(c)(2)(A)). As discussed above, Plaintiffs have not set forth facts in the TAC alleging such a violation. Therefore, absent the necessary predicate violation, Count 6 of Plaintiffs' TAC fails and is due to be dismissed for this reason as well as the reasons explained above.

**B. International Emergency Economic Powers Act Claim—Count 7**

Plaintiffs allege that Defendants provided funds, goods, or services to or for the benefit of specially designated global terrorists in violation of Executive Order No. 13224, 31 C.F.R. Part 594, and the International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. § 1705. This claim was not alleged in the Michigan case. The IEEPA grants power to the President to "deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat." 50 U.S.C. § 1701(a). Pursuant

to § 1705 of the IEEPA, it is unlawful "to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition" issued pursuant to the IEEPA. Executive Order 13224, as amended, was issued pursuant to the authority granted by the IEEPA. 66 Fed. Reg. 49079, 49079. The Executive Order blocks "financial, material, or technological support" for a designated list of terrorist organizations. *Id.* at 49080. The regulations contained in 31 C.F.R. Part 594 were enacted pursuant, in part, to both the IEEPA and Executive Order 13224. 31 C.F.R. § 594.101. The prohibitions contained in these regulations generally relate to material support of designated terrorist organizations. *See, e.g.*, §§ 594.204, 594.205. Essentially, Plaintiffs are asserting a violation of the IEEPA through an alleged violation of the regulations contained in 31 C.F.R. Part 594.

Defendants argue that "a criminal violation of IEEPA is 'the same or similar' to claims under Section 2339B, in that 'both prohibit support for designated terrorist organizations.'" (Doc. 84 at 16 (quoting *United States v. El-Mezain*, 664 F.3d 467, 548 (5th Cir. 2011)). Thus, Defendants argue, Count 7 must fail for the same reasons as the § 2339B claim fails. Further, Defendants argue that the IEEPA requires allegations of a "willful" violation, and the TAC contains no such allegations. (*Id.*). Plaintiffs fail to respond to these arguments. In fact, Plaintiffs do not address Executive Order 13224, the IEEPA, or the regulations anywhere in their Response beyond the introduction on the first page. (Doc. 111 at 5).

As a threshold matter, when a party fails to respond to an argument, that is an indication that the argument is unopposed. *Foster v. The Coca-Cola Co.*, No. 6:14-cv-2102-Orl-40TBS, 2015 WL 3486008, at *1 (M.D. Fla. June 2, 2015); *Jones v. Bank of Am., N.A.*, 564 Fed. App'x 432, 434 (11th Cir. 2014) (quoting *Kramer v. Gwinnett Cty.*, 306 F. Supp. 2d 1219, 1221 (N.D. Ga. 2004)); *Daisy, Inc. v. Polio Operations, Inc.*, No. 2:14-cv-564-FtM-38CM, 2015 WL 2342951, at *1 (M.D. Fla. May 14, 2015); *Brown v. Platinum Wrench Auto Repair, Inc.*, No. 8:10-cv-2168-T-33TGW, 2012 WL 333803, at *1 (M.D. Fla. Feb. 1, 2012). "A plaintiff that fails to address a claim

challenged by a defendant does so at its peril, both because the Court may not detect defects in the defendant's position . . . and because . . . the Court will not on its own raise arguments to counter the defendant's case." *Gailes v. Marengo Cty. Sheriff's Dep't*, 916 F. Supp. 2d 1238, 1244 n.12 (S.D. Ala. 2013). Thus, the Court proceeds on the basis that that Defendants' arguments on this claim are unopposed.

Plaintiffs summarily assert that "Defendants knowingly and willfully engaged in transactions with, and provided funds, goods, or services to or for the benefit of [designated terrorists] including ISIS, its leaders, and members," resulting in a violation of the IEEPA. (Doc. 81 at 147). This is a mere legal conclusion, unsupported by facts in the TAC demonstrating knowledge or willfulness on the part of Defendants,[5] a requirement under the IEEPA. *United States v. Al-Arian*, 308 F. Supp. 2d 1322, 1331 (M.D. Fla. 2004) (citing § 1705). Thus, the Court need not accept this statement as true. *Iqbal*, 556 U.S. at 678. Absent this statement, Plaintiffs claim under the IEEPA fails. *See id.*

**C. State Law Claims—Counts 5 and 8**

Plaintiffs' state law claims for negligent infliction of emotional distress ("NIED") and wrongful death each require a showing of proximate cause. *Alderwoods Grp., Inc. v. Garcia*, 119 So. 3d 497, 506 (Fla. 3d DCA 2013) ("[A] cause of action for emotional distress . . . requires not only actual injury . . . , but also a showing of proximate causation."); *Anders v. United States*, 307 F. Supp. 3d 1298, 1316–17 (M.D. Fla. 2018) (citing *Jenkins v. W.L. Roberts, Inc.*, 851 So. 2d 781, 783 (Fla. 1st DCA 2003) ("To establish a negligence claim in a wrongful death case, a plaintiff must allege and prove . . . proximate cause . . . ." (internal quotations omitted))). Plaintiffs acknowledge this. (Doc. 81 at 145 (alleging "proximate cause" as an element of the NIED claim),

[5] As noted, Plaintiffs have failed to respond to Defendants' argument on this point. The Court waded through the 681 paragraphs of the TAC incorporated by reference into Count 6 and did not independently identify allegations supporting the asserted legal conclusion.

147–48 (alleging "proximate cause" as an element of the wrongful death claim)). As discussed above and as elaborated upon by the Sixth Circuit, Plaintiffs have failed to sufficiently allege proximate cause. Therefore, Plaintiffs' state law claims, Counts 5 and 8, are due to be dismissed.

**D. Leave to Amend**

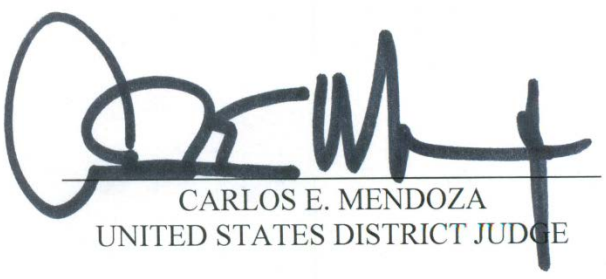
Defendants move for dismissal of the TAC with prejudice. Plaintiffs request leave to amend. As discussed above, Plaintiffs' counsel has essentially had six opportunities to assert the allegations in the TAC—two complaints in the Michigan Case and four here. In light of this, the Court would like to better understand from Plaintiffs why leave to amend should be granted after Plaintiffs' counsel has been, as of yet, unable to cure the deficiencies in the TAC. Therefore, the Court will defer ruling on Plaintiffs' request for leave to amend and will set this issue for a brief telephonic status conference.

## IV. CONCLUSION

In accordance with the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendants' Joint Motion to Dismiss the Third Amended Complaint (Doc. 84) is **GRANTED in part**.
2. The Third Amended Complaint (Doc. 81) is **DISMISSED**. The Court defers ruling on whether this dismissal is with or without prejudice.
3. Plaintiffs' request for leave to amend is set for a telephonic status conference on **April 2, 2020 at 2 PM**, which will be noticed separately on the docket.

**DONE** and **ORDERED** in Orlando, Florida on March 24, 2020.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record