UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 20-cv-22471-DPG

NORTH AMERICAN SUGAR INDUSTRIES INC.,

Plaintiff,

v.

XINJIANG GOLDWIND SCIENCE & TECHNOLOGY CO., LTD., GOLDWIND INTERNATIONAL HOLDINGS (HK) LTD., DSV AIR & SEA INC., BBC CHARTERING USA, LLC, and BBC CHARTERING SINGAPORE PTE LTD.,

Defendants.

PLAINTIFF NORTH AMERICAN SUGAR INDUSTRIES INC.'S OBJECTIONS TO MAGISTRATE JUDGE OTAZO-REYES'S REPORT AND RECOMMENDATION ON DEFENDANTS' MOTIONS TO DISMISS FOR LACK OF PERSONAL JURISDICTION

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On August 30, 2022, Magistrate Judge Otazo-Reyes issued a report and recommendation, Dkt. 277 ("R&R"), on the motions to dismiss Plaintiff's First Amended Complaint ("FAC") for lack of personal jurisdiction filed by defendants Xinjiang Goldwind Science & Technology Co., Ltd. ("Goldwind Science"), Goldwind International Holdings (HK) Ltd. ("Goldwind International"), DSV Air & Sea Inc. ("DSV"), BBC Chartering USA, LLC ("BBC USA"), and BBC Chartering Singapore Pte Ltd. ("BBC Singapore") (collectively, "Defendants"), *see* Dkt. 197, 198, 201, 202. The R&R recommended that the motions be granted. Plaintiff North American Sugar Industries, Inc. respectfully submits the following objections to the R&R.

PRELIMINARY STATEMENT

This Court should reject the R&R because the Magistrate Judge committed fundamental legal errors that tainted the entirety of the R&R's analysis. *First*, although the "tortious act" prong of Florida's long-arm statute is central to the case, the R&R never grappled with what the tort ***at issue in this case is***. The R&R briefly quoted the statutory definition at page 6, but it never even attempted to analyze the various ways in which the tort can be committed (*see* 22 U.S.C. § 6023(13)(A)(i)-(iii)) much less to determine where Defendants' conduct essential to each of these alternative means of committing the tort occurred. Without correctly analyzing *how* the tort could be committed, the R&R necessarily failed to correctly analyze *where* the substantial aspects of the tort were committed. The assumption that pervades the R&R is that the tort can *only* be committed "in Cuba" when confiscated property is actually "used" there, and that whatever may have occurred elsewhere—including a wealth of activity in Florida and targeting Florida—was not "'essential to the success' of the alleged trafficking *in Cuba*." R&R 14 (emphasis added). But "using" the property "in Cuba" is only *one* possible means of violating Helms-Burton. 22 U.S.C. § 6023(13)(A)(i). Defendants are also broadly and equally liable if they (1) ***"engag[ed] in a commercial activity" that "benefit[s] from"*** the Confiscated

Port, ***or*** (2) ***"caus[ed]"*** others' use of or benefiting from the Confiscated Port, ***or*** (3) ***"direct[ed]"*** others' use of or benefiting from the Confiscated Port, ***or*** (4) ***"participat[ed] in"*** others' use of or benefiting from the Confiscated Port, ***or*** (5) ***"profit[ed] from"*** others' use of or benefiting from the Confiscated Port. *Id.* § 6023(13)(A)(ii)-(iii). None of those things—each sufficient to commit the tort—need happen in Cuba, and the Defendants here did them in spades throughout the globe, including Florida, where each of the two ships stopped en route to Cuba. *See Havana Docks Corp. v. Carnival Corp.*, 2022 WL 831160, at *46 (S.D. Fla. Mar. 21, 2022) ("[T]here is no threshold level or type of trafficking activity that must occur for liability to attach.").

Second, because the R&R wholly misapprehended the scope of actionable conduct under Helms-Burton—mistakenly believing a tort occurs only when stolen property is used "in Cuba"—it completely ignored a trove of documentary and testimonial evidence detailing how Defendants explicitly and intentionally planned the stops ***in Miami*** as an essential and indispensable component of transporting the wind farm equipment at issue from China to the Confiscated Port. That evidence established that while Goldwind[1] contracted to deliver the equipment to Cuban entities at the Confiscated Port, they ultimately obtained the wind turbine blades from a foreign subsidiary of an American company. Because of that American affiliation, the blades were deemed an American product and, as Defendants and the Blade Manufacturer (LM) analyzed the issue, ***under trade laws other than Helms-Burton those blades could not be delivered to the Confiscated Port unless each ship first stopped in a U.S. port to obtain a U.S. government clearance for that "export."*** Miami was chosen early on as the port where each ship would stop on its way to the Confiscated Port in order to fulfill this essential condition.

[1] Goldwind has conceded the fact that Goldwind International acted as Goldwind Science's agent. *See, e.g.*, Dkt. 218 ("Opp.") 9. Both entities are referred to together as "Goldwind."

Each Defendant therefore understood that, pursuant to their own scheme, the Miami stops were *indispensable* to delivering the wind turbine blades to Plaintiff's Confiscated Port, in violation of the Helms-Burton Act. And each Defendant accordingly engaged in pervasive conduct ***in, directed into, or otherwise targeting Florida***, and, as to foreign Defendants, the U.S. more broadly, in furtherance of those Florida stops. The R&R, however, erroneously discounted all such conduct, having failed to apply well-established law that, for purposes of the Florida long-arm statute's "tortious act" prong, activity "direct[ed]" into Florida or "otherwise target[ing]" Florida suffices.

But with the legal significance of Defendants' conduct fully accounted for, there is no question that their purposeful exploitation of Florida lands them properly before this Court. Defendants are commercial entities; they did not do these things for their health. In the words of Helms-Burton, they "engag[ed] in commercial activity" "benefiting from" the Confiscated Port or at the very least "caus[ed]," "direct[ed]," "profi[ted] from," or "participat[ed] in" others' use of or benefiting from the Confiscated Port. Any of this conduct is sufficient for liability under Helms-Burton, and because at least a substantial aspect of the "causing," "directing," "participating," "profiting," or "engaging in commercial activity" occurred in or was directed at Florida, Defendants are properly called to answer for their acts in this Court.

Third, the R&R failed to construe every reasonable inference in favor of Plaintiff, as required by law, instead summarily accepting Defendants' characterization of the facts even in the face of contradictory evidence. The parties conducted extensive jurisdictional discovery, which despite Defendants' obstructive tactics produced reams of contemporaneous emails and documents that established that Defendants themselves conceived of, planned, and participated in the Miami stops as an essential precondition to reaching the Confiscated Port. Defendants'

own depositions produced admissions that belied their arguments against jurisdiction. But Defendants submitted purported "errata" attempting to change the testimony, along with lengthy, self-serving ***post-discovery*** declarations that either asserted new facts after the close of discovery or proffered implausible explanations for the damning email trails and documentary evidence. *See* Dkt. 220, 236. Even if it were appropriate for the Court to ***consider*** these belated efforts to change the record, the Magistrate Judge was required to resolve any conflict they attempted to create in that record ***in favor of Plaintiff***. But the R&R did not do so. It simply accepted as fact Defendants' proffered claims, no matter how implausible or contrary to the discovery record.

Like the R&R's failure to grapple with the three alternative means of committing the tort, this error pervades the entire R&R. It is particularly glaring with respect to the R&R's treatment of DSV under the "business activity" prong of the long-arm statute. It is *conceded* that DSV conducts business in Florida on an ongoing basis through offices in Miami and Orlando. And the discovery record established, among other things, that Carol Scheid, a DSV customs specialist based ***in Miami*** was included on ***eight months*** of emails relating to the planning of the Miami stops, that customs filings for one of the stops and correspondence to the Cuban purchaser were prepared ***bearing the address of DSV's Miami office*** (and according to deposition testimony never changed), and that DSV's compliance director instructed that personnel should have copies of the necessary forms "handy" "when the vessel arrive[d]"—obviously ***in Miami***. It defies both the record and credulity to contend in light of all this that DSV's Florida offices were not involved in DSV's "causing," "directing," "participating in," or "engaging in a commercial activity" "benefitting" from the use of the Confiscated Port. But that was precisely what DSV asserted, and in the Magistrate Judge's view, DSV's "averments" denying that its Florida operations were involved at all in the Florida stops were sufficient to defeat jurisdiction

notwithstanding this record and the requirement to draw inferences in Plaintiff's favor.

Fourth, the R&R further concluded that it would be ***unconstitutional*** for Defendants to be called to account here. That cannot possibly be correct under the governing law. For example, as to the foreign defendants (Goldwind and BBC Singapore), Goldwind set the trafficking scheme in motion and specifically approved and planned for the delivery of goods to the Confiscated Port to include an essential stop in Miami. Indeed, Goldwind *specifically considered* the possibility that a ship might be detained by U.S. authorities and thus that Goldwind might face legal process in Miami. BBC Singapore helped analyze the legality of the stop, provided logistical support for the voyages, and took active steps to conceal its actions by having the ship's location tracking turned off—defrauding an American client with cargo on the same voyage and worrying about deceiving the U.S. Coast Guard by doing so. Given this conduct, no one would have been surprised if the U.S. government had proceeded against these Defendants civilly or criminally, and no court would have entertained (much less granted) a motion to dismiss such an action because of insufficient contacts with the United States as a whole. There is equally no basis for dismissing Defendants from a private action here.

These and other errors, evincing an overall failure to meaningfully grapple with the record and the law, pervade and infect the R&R. This Court should reject the R&R and deny Defendants' motions. Failure to do so would result in a gross miscarriage of justice—all of these Defendants purposefully conducted activities in, directed activities into, or otherwise targeted Florida to exploit Florida's ports for their own (and their affiliates') gain, and to hold that they now cannot be subject to Florida's jurisdiction for these acts is preposterous.

FACTUAL BACKGROUND

The notion that this case has little to do with Florida has always been facially implausible given that the Jade and the Moonstone—the ships that unquestionably "used" the Confiscated

Port by landing the goods there—made planned, necessary stops ***in Miami***, where they made filings and representations to the U.S. government that were necessary for the cargo to continue to its end-user in Cuba. Stated differently, the Cuban deliveries could not have happened without the Miami stops. Yet Goldwind Science moved to dismiss by claiming that the ships had stopped in Florida merely for "refueling," Dkt. 107 at 1, 12, 13, while Goldwind International represented that it "was not involved in the Herradura Windfarm Project ***at all***," Dkt. 53 at 10. DSV claimed its involvement was "limited" to a "limited compliance issue." Dkt. 52-1 ¶ 16. The BBC Defendants claimed to have played "***no role*** . . . in connection with the charters of the BBC Moonstone or the BBC Jade" and denied providing "support ***of any kind***" for those voyages (BBC USA), Dkt. 49-1 ¶¶ 8-9, while claiming that the Miami stops were merely "incidental" (BBC Singapore), Dkt. 48 at 6 (all emphases added).

Jurisdictional discovery, which Defendants fought tooth and nail, revealed that Defendants' representations to this Court were untrue.[2] It is now clear (and indeed conceded) that Goldwind International acted throughout as agent for Goldwind Science. And emails that Goldwind finally turned over only after discovery was completed leave no doubt that Goldwind agreed early in 2018 to the necessity of a U.S. stop—and to Miami in particular—not for "refueling," but to comply with trade laws other than Helms-Burton in shipping the goods from China to the Confiscated Port. DSV and the BBC Defendants each separately vetted the legal reasoning that underlay the need to stop in Miami before further participating in transporting the equipment to the Confiscated Port. Each of them then lent their active support to the Miami stop

[2] Given space constraints, a comprehensive recounting of the discovery record is not possible. While this brief corrects the R&R's incomplete and superficial summary of the record, Plaintiff respectfully refers this Court to the prior briefing and exhibits filed on these motions, the June 21, 2022 hearing transcript, and the FAC for additional detail. Dkt. 189, 218, 257, 260. Exhibit citations herein are to the exhibits filed in support of Plaintiff's Opposition brief. *See* Dkt. 218.

as an indispensable component of that voyage. And in targeting and directing their conduct at Florida, each at minimum "engag[ed] in commercial activity" "benefiting from" the Confiscated Port and at the very least "caus[ed]," "direct[ed]," "profit[ed] from," or "participat[ed] in" others' use of or benefiting from the Confiscated Port in violation of Helms-Burton, 22 U.S.C. § 6023(13)(A)(ii)-(iii), as more fully explained below:

Goldwind set the trafficking scheme in motion when it entered into the Wind Farm Agreement to supply wind farm equipment to Energoimport ***at the Confiscated Port***. To obtain wind blades necessary to fulfill that contract, Goldwind engaged LM, a foreign subsidiary of an American company. Because of the perceived American provenance of LM's blades, a U.S. license would be required to deliver them to Cuba. The parties believed that such a license could be obtained either from the Treasury Department's Office of Foreign Asset Control (OFAC) or from the Department of Commerce. Ex. 26 at DSVUS_PJ_632, 633. LM believed (and Defendants ultimately concurred) that an OFAC license might take years and was therefore not feasible, leaving a Commerce Department Export License as the only option. *Id.*; *see also* Ex. 12. But there was a catch: in order to characterize the shipments from China to Cuba as an "export" from the U.S. for purposes of the Export License, each ship would have to come into a U.S. port and present itself to U.S. port authorities. Miami was chosen early on (and long before either voyage) and the most logical port to fulfill this precondition to the Puerto Carupano deliveries. Thus, as contemporaneous emails produced in discovery explained, ***the ships would have to "pass[] through Miami so that the Department of Commerce has jurisdiction over the transaction."*** Ex. 26 at DSVUS_PJ_632.

Goldwind knew about the Export License plan and need for the Miami stops at least as early as January 2018. *See* Ex. 8A at GWSPJ-899-900 (LM writing to Goldwind, [redacted]

[redacted]). Goldwind also explicitly approved the Miami stop and its associated costs as a *precondition* to executing the Blade Supply Agreement with LM. *See id.* at 898-99 (March 2018 email from LM to Goldwind stating: [redacted] (emphasis added)). Without Goldwind's affirmative approval of the Miami stops, there would have been no shipments to the Confiscated Port. *See also* Ex. 38A at GWIPJ-1611-14 (final confirmation of the Miami stop between Goldwind and LM, reiterating that ***"the goods to Cuba have to anchor at an American port" per "requirements of the United States"***); Opp. 23-26.[3]

Numerous parties, including the remaining Defendants and their respective European affiliates, subsequently participated in executing the shipments. Each Defendant actively participated in the trafficking scheme, independently vetting the regulatory analysis that dictated the necessity of the Miami stops, approving that analysis, and working to facilitate the stops.

DSV. Although the R&R accepted at face value DSV's "averments" that it "did not plan or partake in the ships' routes, including their stops in Miami"; "was not hired for any activity relating to either shipment"; "did not communicate with . . . Energoimport"; and that its Florida employees were not "present when the ships docks in Miami" (R&R 11), these "averments" are contradicted by the discovery record and the Magistrate Judge could not lawfully credit them as

[3] Notwithstanding the Blade Supply Agreement, it remained *Goldwind's* obligation per the Wind Farm Agreement [redacted]. Ex. 1 at GWSPJ-605-06, 609.

the basis for dismissal. *At the very least*, they are disputed facts for which, as a matter of law, every reasonable inference must be made in favor of Plaintiff.[4]

Far from having nothing to do with the "plan or part[aking] in the ships' routes," or not being hired for "any activity relating to either shipment," DSV was engaged by its affiliate, DSV Denmark, *specifically* to conduct a regulatory analysis of the planned Miami stops. *See* Ex. 20 at DSVUS_PJ_1997-98. That inquiry was initially forwarded *only* to DSV's *Miami-based* customs specialist, Carol Scheid. *Id.* Eleven minutes later, copying Scheid and presumably per her input, the identical inquiry was also sent to DSV's compliance director Ken Witkowski in New Jersey. Witkowski would spend the next ***eight months*** **skeptically analyzing the issue**.[5] Scheid was copied on *twenty emails* over this eight-month period. *See* Ex. 24. Witkowski ultimately got comfortable that the Miami stop was essential to the licensing requirement, *see* Ex. 26 at DSVUS_PJ_633, and his final signoff enabled DSV Denmark to conclude that "from a DSV point of view[] we are OK compliance-wise," *see id.* at 631; Opp. 15-19.

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[4] As noted, Defendants submitted lengthy post-discovery "declarations" and purported "errata" in an attempt to remake the damaging record developed in discovery. *Supra* 4. Plaintiff moved to strike these filings as, *inter alia*, evasions of this Court's jurisdictional discovery orders and contrary to the "sham declaration" rule. The Magistrate Judge denied that motion "to allow the evidence to come in as presented by each side," and to preserve a full record "for the reviewing district judge." She reserved "a decision on how to evaluate those, and whether to give . . . the errata sheet and the declarations any weight." Dkt. 257 at 6:17-7:7. But the R&R nowhere discusses the contradictions between the late-filed declarations and "errata" and the discovery record, or the weight that should be accorded them. The R&R simply accepted Defendants' assertions, failing to grapple with conflicting evidence, and failing to draw inferences in Plaintiff's favor as required by law. *Morris v. SSE, Inc.*, 843 F.2d 489, 492 (11th Cir. 1988).

[5] *See* Ex. 19 at DSVUS_PJ_1636-49; Ex. 26 at DSVUS_PJ_631-33; Ex. 19 at DSVUS_PJ_1648 (indicating he would conduct a thorough review of the U.S. export control regime to assess avenues for compliance); *id.* at 1637-41 (expressing skepticism of the plan, noting that he will contact the Commerce Department); Ex. 25 at DSVUS_PJ_1845-46 (conferring with DSV's manager of export compliance, who similarly expresses skepticism); Ex. 24 at DSVUS_PJ_1587 (noting "scenario is an unorthodox shipment"); Ex. 26 at DSVUS_PJ_633 (asking "why the ship has to call Miami? . . . Was this a stipulation in the discussion with the Commerce Department? I would suspect that we can save time and the cost of calling Miami if it sailed direct to Cuba.").

DSV also prepared and submitted the critical customs forms required for the ships' actual stops in Miami. Moreover, contrary to the R&R's acceptance of DSV's position that it never communicated with Energoimport, the customs forms for the Jade included a cover letter ***addressed to Energoimport***. Exs. 40, 41. ***These documents—the customs forms and the correspondence—also list on their face DSV's Miami office as the point of contact.*** *Id.* The R&R accepted DSV's claim that these Miami addresses were "removed on subsequent forms," R&R 11, but the record makes clear that these forms were considered sufficiently important to be circulated for comment in advance of filing, and the depositions are clear that *no one ever changed the address on these documents.* Indeed, the final versions bearing the Miami address were circulated on the same day that the filing occurred. *See* Ex. 21 at 127:1-134:12; Opp. 26-28. DSV's bare assertion that the final, submitted forms and correspondence somehow miraculously eliminated all references to Miami at the last possible moment—without anyone being told or ***without DSV ever producing any as-filed document***—defies belief. On this record, and with reasonable inferences drawn in Plaintiff's favor, the R&R could not have concluded that the Miami addresses were "removed" on "subsequent forms."

Further, the R&R's parroting of DSV's "averments" that no DSV employee was present at the Miami port unreasonably discounted one key fact: Witkowski specifically instructed DSV to have the forms "handy" for when "the vessel arrives" *in Miami*. Ex. 43 at DSV_US_PJ_640-41. The legally required inference is that someone in DSV's *Miami* office had those forms "handy" and was prepared to deal with any issues involving the shipments, whether or not a DSV representative was actually physically standing on the pier when the ships arrived.

BBC Singapore. BBC Singapore, an agent of BBC Carriers, was responsible for executing the shipments from China to Cuba, including their Miami stops. The R&R ignored

BBC Singapore's extensive efforts analyzing the shipping plan and facilitating the shipments, instead erroneously relegating BBC Singapore to having had a "few communications with Port of Miami agents about the Jade's stop in Miami." R&R 14. But BBC Singapore's role (both in Florida and the U.S. more generally) was far more extensive than a "few" communications with port agents in Florida. For example, BBC Singapore's Randall Sullivan was *specifically* charged with analyzing the legality of the Miami stops/Export License plan. Ex. 27 at BBC SING 3073-74, 3031-32. Sullivan insisted that his company's participation in the Cuba venture be kept "sub[ject] to legal approval" until he got clearance, *id.* at 3032, and consulted with BBC USA's U.S.-based counsel, Ed Anderson, and a U.S.-based shipping company, Dan-Gulf Shipping, about the licensing theory underlying the Miami stop, acknowledging that a wrong call could land them "in trouble with uncle sam," Ex. 28.

As for BBC Singapore's interactions with the Florida port agents, *who were located in Florida at the time BBC Singapore reached out to them*, those are plenty in themselves. Indeed, the port agents' activities *in Miami* were undertaken *on behalf of* BBC Singapore—a fact never once mentioned in the R&R. *See* Ex. 47 at BBC SING 7575; Opp. 30. Moreover, BBC Singapore directed one of those port agents to summarize the activities it undertook for the Jade's Miami stop so that the "lessons learned" from that stop *could be applied to the Moonstone's subsequent stopover in Miami*. Ex. 47 at 7573-75. In other words, *BBC Singapore specifically reached into Florida in order to direct activities in Florida so that another ship it was responsible for could better exploit Florida on its way to the Confiscated Port*.[6]

[6] Additionally, BBC Singapore *defrauded a U.S. customer* regarding the Moonstone's Cuban destination. BBC Singapore sought to turn off the Moonstone's tracking system from the Panama Canal to Port Arthur to "avoid" attention. Ex. 16 at 171:6-172:19. But because it feared scrutiny from the U.S. Coast Guard, BBC Singapore instructed the Moonstone to disable the

BBC USA. The R&R sweeps under the rug BBC USA's substantial participation in the shipments, including the Miami stop, by summarily concluding that BBC USA did not "engage in any Florida-based activities with respect to the alleged trafficking violation." R&R 14. But the record is clear that BBC USA directed activities into and targeted Florida by facilitating the Miami stops, which is all that is required for jurisdiction under the long-arm statute.[7] BBC USA, another agent of BBC Carriers, learned of the planned U.S.-stopover in March 2018. Ex. 27 at BBC SING 3073-74. BBC claimed that it never deals with Cuban business as a matter of "policy," Dkt. 197 at 4—but no such policy was ever produced (and the record contradicts this purported policy). Indeed, BBC USA was copied on *months* of emails pertaining to the Cuba shipments. *See* Ex. 27. BBC USA's general counsel, Ed Anderson, also advised on the propriety of the "Miami stop" strategy that underlay the voyages to the Confiscated Port. Ex. 28.

Moreover, at BBC Singapore's request, BBC USA's customs specialist, Beverly Scott, reviewed and approved customs documentation for the Jade's Miami stop and acknowledged responsibility for issuance of "the usual port documents, sof, nor etc."—i.e., the statement of facts detailing the vessel's activities *while in the Miami port* and the notice of its readiness to load or discharge. Ex. 37 at BBC SING 3658-59; Ex. 18 at BBC SING 3757. BBC USA has tried to pass these actions off as an irrelevant "courtesy," Dkt. 238 at 4, but Scott was not just being polite. "Courtesy" does not accurately describe reviewing and taking responsibility for documents for which one might incur legal liability. And it is not the correct explanation here,

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tracker after departing from Miami and before arriving in Port Arthur—noting that they would have to "lie" if the U.S. entity being defrauded "says something." Ex. 55 at BBC SING 6651-53. BBC Singapore also falsified stow plans by replacing references to Puerto Carupano with "Rio Haina," in the Dominican Republic. *See* Ex. 52 at BBC SING 6316; Ex. 53 at BBC SING 6183; Ex. 54 at BBC SING 9383; Ex. 56 at BBC SING 6746; Opp. 31-33.

[7] The record of BBC USA's involvement is likely incomplete in light of BBC Singapore's instruction to communicate with BBC USA by "PHONE ONLY." Ex. 56 at BBC SING 6746.

because ensuring that BBC's vessels properly enter and clear U.S. ports is *precisely* what BBC USA's agency agreement with BBC Carriers *obligates* it to do. Ex. 33 at BBC USA 17.

Goldwind. The R&R incorrectly and conclusorily announced that Goldwind did not "engage in any Florida-based activities with respect to the alleged trafficking violation." R&R 14. But Goldwind indisputably directed activities into and targeted Florida, approving and causing the ships to be directed into Miami in the first place. Moreover, Goldwind facilitated the shipments and understood that it would be subject to U.S. law and potential litigation *in Florida*. Goldwind provided Export Control Declarations to "DSV" in which it acknowledged U.S. sanctions against Cuba, warranted that the shipments did not contain sanctioned goods, and provided indemnification for losses as a result of the shipments (including those from sanctions the U.S. might impose). Exs. 76, 78. Goldwind also *specifically contemplated the possibility that the Jade could be detained in Miami by U.S. authorities*. In December 2018, Goldwind International asked LM, "In view of the current international situation, is it possible for the ship vessel to be detained in the United States[?]" Ex. 39A at GWIPJ-951. LM said that question "cannot be answered," *id.*, yet Goldwind proceeded anyway, accepting the risk of liability and litigation should the Miami plan go awry. Additionally, Goldwind Science provided "necessary information" to a *U.S.-based* company to secure insurance for the shipments, and was the Certificate Holder of that insurance. Ex. 3 at 151:5-9; Ex. 13 (insurance certificate naming the "producer" as Marsh USA, Inc., based in New York). The record is clear that Goldwind sought to, and did, exploit Miami and the U.S. to execute the shipments, in violation of Helms-Burton.

Defendants' activities—directed into, targeting, or taking place within Florida (and as to the foreign Defendants, the United States)—were part of a coordinated effort to ensure that the shipments would stop in Miami en route to the Confiscated Port and are more than sufficient to

confer jurisdiction in this forum. The R&R failed to address relevant facts and evidence, failed to apply correct inferences, and failed to correctly apply the law regarding the statute at issue and this Court's jurisdiction. This Court should reject the R&R and deny Defendants' motions.

STANDARD OF REVIEW AND GOVERNING LAW

This Court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made" and "may accept, reject, or modify . . . the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3) (same); S.D. Fla. Magistrate Judge R. 4(b) (same).

The R&R purported to quote some of the relevant legal standards, but failed to apply them and failed to even mention others. To re-emphasize several of the salient points of law: the court "must construe all reasonable inferences in the light most favorable to the plaintiff when dealing with conflicting evidence." *Tavakoli v. Doronin*, 2019 WL 1242669, at *4 (S.D. Fla. Mar. 18, 2019); *Morris*, 843 F.2d at 492 ("[W]here the evidence presented [on a 12(b)(2) motion] by the parties' affidavits and deposition testimony conflicts, the court must construe all reasonable inferences in favor of the non-movant plaintiff."). The R&R failed to do so.[8]

With respect to the tortious act prong of Florida's long-arm statute, Fla. Stat. § 48.193(1)(a)(2), activity "committed in or *directed into* Florida," *Guarino v. Mandel*, 327 So.3d 853, 861 (Fla. Ct. App. 2021) (emphasis added), or "otherwise *target[ing]* Florida," *Internet Sols. Corp. v. Marshall*, 39 So.3d 1201, 1213 (Fla. 2010), is sufficient for jurisdiction. A defendant need only commit a "substantial aspect" of the alleged tort in Florida. *Williams*

[8] Although the R&R noted that the long-arm statute is to be "strictly construed," R&R 6, the Court must still draw factual inferences in Plaintiff's favor. *Canadian Steel, Inc. v. HFP Cap. Markets, LLC*, 2012 WL 2326119, at *3 (S.D. Fla. June 19, 2012) (noting that the statute is to be strictly construed *and* that conflicting evidence must be viewed in plaintiff's favor).

Elec. Co. v. Honeywell, Inc., 854 F.2d 389, 394 (11th Cir. 1988). The "substantial aspect" requirement is met where the activities in, directed at, or otherwise targeting Florida were "essential to the success of the tort." *Id.* The R&R's analysis entirely failed to consider Defendants' numerous activities "directed into" or "targeting" Florida, as well as that all Defendants understood the Florida stops to be essential to the shipments' success.

The relevant tort in this case is "trafficking" in the Confiscated Port, which occurs when a person, *inter alia*: "(i) . . . *uses* . . . [the] confiscated property, (ii) engages in a *commercial activity using* or otherwise *benefiting from* [the] confiscated property, *or* (iii) *causes, directs, participates in, or profits from*, trafficking (as described in clause (i) or (ii)) by another person, or otherwise engages in trafficking (as described in clause (i) or (ii)) through another person." 22 U.S.C. § 6023(13)(A) (emphasis added). In other words, a Defendant need not have *itself* "used" the Confiscated Port in Cuba to have violated the statute; rather, simply ***"engag[ing] in a commercial activity" that "benefit[s] from"*** the Confiscated Port, ***or "caus[ing], direct[ing], participat[ing] in, or profit[ing] from"*** others' use of or benefiting from the Confiscated Port is sufficient to commit the entirety of the tort. That is, each time a Defendant directed, caused, or participated in others' use of or benefiting from the Confiscated Port—for example by acting to facilitate the Miami stops as a prerequisite to reaching the Confiscated Port—that Defendant committed the tort. This conduct can occur anywhere, not only in Cuba. Here, it occurred in and was directed into Florida in spades. By failing to properly analyze the elements comprising the tort, the R&R failed to consider the overwhelming evidence establishing that a substantial aspect of Defendants' numerous Helms-Burton violations occurred in Florida.

ARGUMENT

I. This Court Has Jurisdiction Over All Defendants Under The Florida Long-Arm Statute's "Tortious Act" Prong

The R&R correctly recognized that, under the "tortious act" prong of the long-arm statute a Plaintiff need not be injured in Florida, because jurisdiction is nevertheless proper where Defendants committed a "substantial aspect" of the alleged tort in Florida, "meaning that those activities were essential to the success of the tort." R&R 14 (quoting *Williams*, 854 F.2d at 394). Indeed, activity "committed in or *directed into* Florida," *Guarino*, 327 So.3d at 861 (emphasis added), or "otherwise *target[ing]* Florida," *Internet Sols. Corp.*, 39 So.3d at 1213, is sufficient for jurisdiction. The R&R failed, however, to apply these standards to the facts because (1) it failed to appreciate the breadth of the federal tort at issue, and the several alternative ways of committing it and, in light of this misapprehension (2) ignored the vast discovery record establishing that Defendants themselves understood the Miami stop was indispensable to their scheme to deliver the equipment to the Confiscated Port without getting into trouble "with uncle sam." *See Robertson v. All Am. Quality Goods, Inc.*, 246 F. Supp. 3d 1365, 1373-75 (N.D. Ga. 2017) (rejecting recommendation where magistrate "did not include certain material facts" or "consider record evidence"); *Rivera v. Equifax Services, LLC*, 341 F.R.D. 328, 346 (N.D. Ga. 2022) (rejecting recommendation where magistrate "did not give sufficient weight to Plaintiff's evidence" and failed to "evaluate the whole picture, based on all evidence").

At the outset, the R&R erred in failing to recognize the broad scope of what Congress considered illegal "trafficking," mistakenly framing Plaintiff's claim as only trafficking "that occurred in Cuba." R&R 16. While of course the actual *use* of the Confiscated Port occurred in Cuba, Defendants also indisputably "engage[d] in a commercial activity . . . benefiting from" the Confiscated Port, or at minimum "cause[d]," "direct[ed]," "profit[ed] from," or "participate[d]

in," others' use or benefiting from the Confiscated Port. 22 U.S.C. § 6023(13)(A)(ii)-(iii). Each Defendant either sold equipment to be discharged there or helped get the equipment there by sea—in each case as a commercial, not a charitable, endeavor. This is all that is necessary for liability under the independent and extremely broad definitions of illegal trafficking under 22 U.S.C. § 6023(13)(A)(ii)-(iii). *See also Havana Docks*, 2022 WL 831160, at *46 ("[T]here is no threshold level or type of trafficking activity that must occur for liability to attach.").

As to the record, the R&R was fundamentally incorrect in concluding Florida was not a "focal point [of] the story." R&R at 16. Quite simply, Defendants themselves concluded that the ships could not lawfully travel from China to the Confiscated Port with the contracted-for equipment without a U.S. stop. They agreed to Miami as that essential stop, without which the two voyages (and thus the exploitation of the Confiscated Port) could not have occurred. And then they devoted their efforts and mutual assistance to the planning and success of those Miami stops, and the presentation of required documentation to U.S. authorities there. By these efforts they certainly engaged in commercial activity that benefitted from the trafficking of Plaintiff's property, and at the very least "caused," "directed," "profited from," or "participated in" others' use or benefiting from that property. By their own reckoning, their activities in Florida and directed at Florida "were essential to the success of the tort." R&R 14 (quoting *Williams*, 854 F.2d at 394). The Magistrate Judge committed legal error in concluding otherwise.

Goldwind and BBC USA. In a one-sentence conclusion—which constitutes the *entirety* of the R&R's discussion of Goldwind's and BBC USA's conduct under the long-arm statute—the R&R declared that "neither the Goldwind Defendants nor BBC USA engaged in any Florida-based activities with respect to the alleged trafficking violation, much less any that were 'essential to the success of the tort.'" R&R 14. That is wrong (and applies the wrong standard)

because the record demonstrates Goldwind's and BBC USA's exploitation of Florida in furtherance of the trafficking scheme.

Goldwind provided the threshold approval of the Miami stops and Export License plan in the first place, thus "targeting" Florida as a lynchpin prerequisite to delivering the blades to Cuba and "direct[ing]" the ships to Miami. Goldwind also took extensive steps to facilitate and ensure the success of those shipments, including by executing the Export Control Declarations and helping to secure insurance for the shipments. *Supra* 8, 13. These activities—none of which were even *mentioned* in the R&R's discussion of the tortious act prong—were in furtherance of directing the ships to Miami and exploiting Miami to further the trafficking scheme.

BBC USA also took actions—unacknowledged by the R&R—to approve and facilitate the Miami stops, thus "directing" activities "into" and "targeting" Florida. As noted, BBC Singapore consulted BBC USA's U.S.-based general counsel, Ed Anderson, specifically to advise on the legality of the shipping plan and Miami stop, and sought approval of the Jade's customs filings from BBC USA's customs documentation specialist, Beverly Scott. *Supra* 12. In response, Scott stated, "Everything looks good and correct to me." Ex. 37 at BBC SING 3658. It is inconceivable that, as BBC USA contends and the R&R apparently believed, Scott's approval of the customs filings was somehow inconsequential to the scheme. *Supra* 12-13. Had Scott not approved of the submissions, surely BBC Singapore and BBC Carriers (who were responsible for the ships reaching their destinations), and DSV (who submitted the forms so the ships could dock in Miami), would have done something about it. At minimum, Scott's response evinces BBC USA's review and ratification of the decision to stop in Miami.

Further correspondence with Scott demonstrates that BBC USA, in addition to approving the customs forms submitted by DSV, was also responsible for the *Miami port documents*. Two

weeks after Scott's approval of the customs filings, Mikael Johansen of another BBC affiliate wrote to Scott, "Good morning Beverly[.] Below fyi. We need to issue the usual port documents, sof, nor etc." Ex. 18 at BBC SING 3757-58. The "We" refers to BBC and specifically BBC USA, hence the email specifically addressing "Beverly." Scott responded "Ok Mikael," *id.*, signaling hers and BBC USA's acknowledgement of responsibility over those port documents, i.e., the statement of facts detailing the vessel's activities while in the Miami port and the notice of its readiness to load or discharge. *See* Dkt. 257 at 76:6-77:8.[9]

As with Goldwind, the R&R's one line analysis and conclusion failed entirely to address BBC USA's extensive activities in analyzing and facilitating the shipments, and specifically the Miami stops. These activities were all aimed at ensuring that the ships would successfully carry out their stopovers in Miami, as required for the success of the voyages to the Confiscated Port. BBC USA was thus directing its activities into Florida and quite explicitly targeting Florida in furtherance of the trafficking scheme.

The R&R is thus fundamentally incorrect in stating that Goldwind's and BBC USA's activities were not "essential to the success of the tort." Goldwind's and BBC USA's actions approving and facilitating the Miami stops made those stops possible, without which there would be no trafficking tort. *Supra* 7, 17. Goldwind's and BBC USA's actions directed at and targeting Florida at the very least constituted commercial activities benefiting from the use of, or participation in others' use of or benefiting from, the Confiscated Port. 22 U.S.C. § 6023(13)(A)(ii)-(iii). As such, those actions constitute at least a "substantial aspect" of, if not the entirety of, the Helms-Burton violation and subject Goldwind and BBC USA to this Court's jurisdiction.

[9] Scott's response included a second line, "Great, they are filing everything for customs." Ex. 18 at 3757. This was in reference to DSV ("they") filing the *customs* submissions, distinct from the *port documents* for which BBC USA would be responsible. Dkt. 257 at 31:22-32:4, 76:6-77:8.

BBC Singapore. As to BBC Singapore, the R&R likewise failed to consider evidence of BBC Singapore's actions directed into or otherwise targeting Florida and how those actions violated the alternative prongs of Helms-Burton.

The R&R addressed *only* BBC Singapore's communications with the Miami port agents. But BBC Singapore did far more: it vetted the legal theory for the Miami stops and agreed to it, and its contacts with Florida-based port agents were far from trivial. BBC Singapore's Randall Sullivan was specifically provided the U.S. Export License "for legal review" and asked to "pls confirm ok." Ex. 27 at BBC SING 3032. He responded, "I've sent the info to legal. . . . Please just keep a 'sub legal approval' for the time being," i.e., the transaction should be held up pending legal approval. *Id.* at 3031-32. That same day, Sullivan consulted with BBC USA's general counsel and a U.S.-based shipping company for advice about the Miami stop and how to "move cargo into Cuba—without getting in trouble with uncle sam." Ex. 28. These activities, and of course the ultimate approval of the ships to go to Miami (which must have occurred) evidence at the very least BBC Singapore's purposeful targeting of Florida.

Even with respect to the only BBC Singapore conduct that it *did* mention, the R&R failed to recognize the port agents' critical role as *BBC Singapore's agent in Florida*, and the integral role those communications played in executing the Moonstone's Miami stopover.

On January 1, 2019, after the Jade cleared Miami, Sullivan emailed the port agent, USA Maritime, cc'ing BBC Singapore's Nicole Faubel, directing USA Maritime to provide the "lessons learned" from the Jade's stopover. Ex. 47 at BBC SING 7575. Sullivan's email makes clear that USA Maritime was acting as *BBC Singapore's agent* (as well as BBC Carriers'), stating: "no complaints from *our* side," "everything went fine for *us*," "*we're* happy with the service . . . provided," "give *us* a brief rundown." Ex. 47 at BBC SING 7575 (emphases added).

USA Maritime responded with an extensive list of tasks undertaken ***in Florida*** on behalf of BBC Carriers and BBC Singapore to facilitate the Jade's Miami stopover. *Id.* at 7573. Faubel then forwarded that "lessons learned" email to BBC Carriers, after adding to the subject line "BBC Moonstone" and writing "below FYI for upcoming call in Miami." *Id.* In other words, BBC Singapore directed the Florida port agent to provide information to facilitate the Moonstone stopover so that the Moonstone could more efficiently exploit Miami on its way to Cuba.

The R&R omitted *any* discussion of the importance of these directives to USA Maritime, discounting the interactions as just a "few communications," as if BBC Singapore were merely exchanging pleasantries. Moreover, the R&R never mentioned the fact that USA Maritime was acting *in Florida* on behalf of BBC Singapore—that fact alone is sufficient to confer jurisdiction. *See* Fla. Stat. § 48.193(1)(a) (long-arm statute includes acts done "through an agent").

As with other Defendants, the R&R again failed to recognize the *essential* nature of the Miami stops and the full breadth of the trafficking tort. BBC Singapore's activities made the Miami stops possible, without which there would have been no deliveries at the Confiscated Port in Cuba. These actions, in fact, constitute trafficking in and of themselves as commercial activities "benefitting from" the Confiscated Port, and/or "caus[ing], direct[ing], [or] participat[ing] in" others' "use[]" of the Confiscated Port. 22 U.S.C. § 6023(13)(A)(ii)-(iii). They were thus at least a "substantial aspect" of a trafficking violation, sufficient to confer jurisdiction. *Williams*, 854 F.2d at 394; Opp. 56-57.

DSV. The same failures to consider key evidence and how that evidence violates the full scope of Helms-Burton infected the R&R's one-sentence conclusion that DSV's activities "do not amount to a 'substantial aspect' of the alleged trafficking violation or constitute 'activities that were essential to' its success." R&R 14.

The R&R failed to consider DSV's actions directed into or otherwise targeting Florida, instead erroneously focusing *only* on Carol Scheid's "sparse email activity from her office in Miami" and DSV's "instruction to furnish certain customs form in Miami." *Id.* Absent from the R&R's discussion is any mention of DSV's eight-month-long analysis of, and ultimate approval of, the Miami stops. *Supra* 9. Crucially, DSV Denmark, among others, were relying on Witkowski's regulatory OK. *See* Ex. 26 at DSVUS_PJ_631 (DSV Denmark asking Witkowski, "So from a DSV point of view, we are OK compliance-wise??"); Ex. 19 at DSVUS_PJ_1640 (Witkowski expressing frustration that third parties were "relying on DSV"). Without DSV's authorization, the ships would not have gone to Miami—yet this clear directing of conduct into Florida and targeting of Florida was never mentioned by the R&R.

Similarly, the R&R failed to discuss in the context of DSV's Florida-directed activities its preparation and filing of critical customs forms that facilitated the shipments' Miami stops.[10] These filings were "the foundation of the entire project," Ex. 44 at DSVUS_PJ_70, without which the Miami stops would not have been possible. These filings were made for the specific purpose of directing the ships to Miami, yet the R&R did not even register their existence in its discussion. The R&R also failed to mention in this context DSV's representation on the Jade filings that its *Miami office* would be the point of contact for customs-related issues. DSV's open invitation to contact its Miami-based personnel is an obvious "targeting" of Florida under the tortious act prong, but is nowhere to be seen in the R&R's discussion. The R&R's legally improper finding that the Miami address was "removed on subsequent forms" is, as discussed above, contrary to factual record and fails to provide Plaintiff the requisite inference. *Supra* 10.

[10] Although the R&R briefly mentioned DSV's "preparation and furnishment of customs forms in Miami," this was *solely* in the context of concluding that Plaintiff was not injured in Florida—a point that Plaintiff has never disputed. *See* R&R 13.

As to the R&R's dismissive reference to "Scheid's sparse email activity," the R&R erroneously discounted Scheid's involvement with the Miami stops. R&R 16. Scheid was not some random employee, but DSV's *Miami-based customs specialist*—it would be wholly unreasonable to assume, as the R&R does, that the involvement of someone in her position would be limited to being passively copied on emails when the precise matter at hand was the regulatory propriety of the Miami stops. Indeed, the fact that the initial request for a regulatory analysis of the shipping plan was forwarded *only* to Scheid, followed eleven minutes later by the same email being forward to Witkowski, implies that Scheid consulted on the issue over the phone and recommended Witkowski be included in these discussions. *See* Ex. 20 at DSVUS_PJ _1997-98; Ex. 19 at DSVUS_PJ_1636-49; Ex. 26 at DSVUS_PJ_631-33. Her presence on *20* emails reflects her continued involvement, likely including continued engagement over the phone. That is, at the very least, a reasonable inference to which Plaintiff is legally entitled.

As with the other Defendants, the R&R failed to understand that the Miami stops were essential to the trafficking scheme, and thus that DSV's actions making those stops possible were essential to the success of the trafficking tort. These actions, in fact, constitute trafficking in and of themselves as commercial activities "benefiting from" the Confiscated Port, and/or "caus[ing], direct[ing], [or] participat[ing] in" others' trafficking in the Confiscated Port. 22 U.S.C. § 6023(13)(A)(ii)-(iii). They were thus at least a "substantial aspect" of, if not the entirety of, a tort sufficient to confer jurisdiction. *Williams*, 854 F.2d at 394; Opp. 47-49.

II. This Court Has Jurisdiction Over DSV Under The Florida Long-Arm Statute's "Business Activity" Prong

The R&R correctly recognized that DSV in fact conducts business activities in Florida, but erred in concluding that "none of them were utilized in the alleged trafficking." R&R 11.

As noted above, the R&R blindly accepted DSV's "averments," even where contradicted

by the record, and in violation of the requirement that conflicting evidence be construed "in favor of the non-movant plaintiff." *Morris*, 843 F.2d at 492; *supra* 8-10, In reality, and with reasonable inferences drawn in Plaintiff's favor, DSV's *Miami* office was clearly involved in the shipments' *Miami* stops. First, the customs forms for the Jade and the cover letters to Energoimport enclosing those forms held out DSV's Miami office as the point of contact for customs-related issues. Second, DSV personnel were specifically instructed by Witkowski to have these customs forms "handy" should they be "requested by Customs when the vessel arrives," obviously *in Miami*. Ex. 43 at DSVUS_PJ_640-41. The R&R's crediting the "averment" that no DSV employee was "present when the ships docked in Miami or boarded the ships," R&R 11, does not erase the reasonable inference that DSV's *Miami* office was responsible for the customs forms *in Miami* for when the ships arrived *in Miami*. Even if no DSV employee was physically on the pier, to believe that DSV has a Miami office only for that office to do *nothing* when ships are directed to and arrive in Miami is utterly implausible.

Similarly, the only reasonable (and required) inference to be drawn from Carol Scheid's presence on *20 emails* over the eight-months in which Witkowski was analyzing the regulatory propriety of the shipping plan, coupled with her position as DSV's Miami-based customs specialist, is that Scheid was actively engaged in discussions about the Miami stops. *See* Ex. 24.

With those Miami-based activities properly understood, as well as the *essential* nature of the Miami stops, it is clear that Plaintiff's trafficking claim "aris[es] from" DSV's business activities in Florida. Fla. Sta. § 48.193(1)(a)(1). Those activities facilitated the Miami stops, without which the Cuba deliveries could not have been made. Indeed, these activities constitute "trafficking" in and of themselves, because they at minimum evidence DSV's "engag[ing] in a commercial activity" "benefitting from" the Confiscated Port, or "caus[ing]" or "participat[ing]

in" others' trafficking in the Confiscated Port. 22 U.S.C. § 6023(13)(A)(ii)-(iii). The R&R thus erred in concluding that there is no "direct affiliation, nexus, or substantial connection" between DSV's Florida-based business activities and Plaintiff's trafficking claim. R&R 11.

III. The Exercise Of Jurisdiction Comports With Due Process

The R&R concluded that none of the Defendants have sufficient minimum contacts to satisfy due process, but this conclusion is rife with legal and factual error.

Goldwind. Without elaboration, the R&R stated that Goldwind "have not purposefully availed themselves of the privilege of conducting any activities in Florida" because "neither of them has an office or any employees in Florida or the United States." R&R 15-16. But this is not the law. "Physical presence by the nonresident defendant is not necessary for personal jurisdiction in the forum state." *Cable/Home Comm'n Corp. v. Network Prods., Inc.*, 902 F.2d 829, 858 (11th Cir. 1990) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476 (1985)). Rather, "an action of the defendant purposefully directed toward the forum State" is all that is required. *Asahi Metal Indus. Co., Ltd. v. Sup. Ct. of Calif., Solano Cnty.*, 480 U.S. 102, 112 (1987); *see also Burger King*, 471 U.S. at 476. "[E]ven a single act can support jurisdiction." *Licciardello v. Lovelady*, 544 F.3d 1280, 1285 (11th Cir. 2008). The critical inquiry is whether "the defendant's conduct and connection with the forum State are such that he should reasonably anticipate being haled into court there." *Burger King*, 471 U.S. at 474.

With this correct legal standard in mind—rather than the R&R's invented standard requiring a defendant to have offices or employees in the forum state—it is clear that Goldwind purposefully availed itself of the forum by causing, approving and facilitating the Miami stops. Courts across jurisdictions have recognized that, as here, when a defendant plans, contracts for, or facilitates the shipment of goods over a specific route, the defendant will "purposefully avail" itself of the privilege of conducting activities in the forums through which those shipments will

knowingly and necessarily pass through.[11] The R&R did not acknowledge any of this case law.

Moreover, when due process is analyzed pursuant to Rule 4(k)(2), where the relevant forum is the United States, Goldwind's purposeful availment of the privileges of conducting activities in the U.S. is even more inescapable. Goldwind Science provided "necessary information" to a *U.S.-based* insurance carrier in order to secure insurance for the shipments, and ultimately became the named Certificate Holder for that insurance. *Supra* 13. Goldwind International testified that it has [redacted] *so that* it could [redacted] Ex. 77 at 48:17-23. One of those subsidiaries is Goldwind USA, with and through whom Goldwind International has owned, sold, and maintained wind farm projects in the United States, as admitted in Goldwind International's own press release. *See* Ex. 79; Opp. 38-39.[12] Both Goldwind Science and Goldwind International were also parties to a contract to supply windfarm equipment to a windfarm located in the U.S., ultimately leading

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[11] *See, e.g.*, *Dixon v. Stone Truck Line, Inc.*, 2020 WL 7079047, at *7 (D.N.M. Dec. 3, 2020) (Kansas defendant subject to jurisdiction in New Mexico because it "knew, or at least, should have been aware" that the shipment it brokered would necessarily have to travel through New Mexico, thus "purposefully avail[ing] itself of the benefits and privileges of New Mexico for this shipment"); *Vogel v. Morpas*, 2017 WL 5187766, at *6 (D. Md. Nov. 9, 2017) (Michigan defendant purposefully availed itself of conducting business in Maryland because the agreement it brokered obligated the shipment to make two intermediate stops in Maryland, and thus the broker "purposefully targeted Maryland as a state through which [to] transport"); *Brandi v. Belger Cartage Serv., Inc.*, 842 F. Supp. 1337, 1342 (D. Kan. 1994) (defendant "must have been aware that goods being transported . . . would travel through Kansas en route," and thus should have foreseen being haled into court in Kansas).

[12] The R&R discounted Plaintiff's arguments with respect to Goldwind's "ownership of U.S.-based entities" for purposes of Rule 4(k)(2), citing *Herederos De Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, 535 F. Supp. 3d 1299, 1306 (S.D. Fla. 2021), *aff'd*, 43 F.4th 1303 (11th Cir. 2022). But *Herederos* is inapposite. There, the plaintiff alleged only that the defendant "directly or indirectly" owns or controls U.S. subsidiaries, without explaining the "connection" between the defendant and the subsidiaries. *Id.* Here, Goldwind International has admitted that it has U.S. subsidiaries like Goldwind USA in order to conduct business in the U.S., and its own press release admits that it sold and still provides services for a U.S.-based wind farm with/through Goldwind USA. *Lewis v. Mercedes-Benz USA, LLC*, 530 F. Supp. 3d 1183, 1239 (S.D. Fla. 2021) (parent acting "through its" subsidiary may satisfy purposeful availment).

to a years-long arbitration in Chicago, demonstrating that *both conduct their wind turbine business in the U.S.* *See* Exs. 80, 81; Ex. 3 at 45:8-11, 47:11-48:24, 52:4-14; Opp. 39-40. Goldwind has thus thoroughly availed itself of the privileges of doing business in the U.S.

The R&R asserts that these contacts are not "related to" Plaintiff's trafficking claim, R&R 17-18, but that conclusion misunderstands the law. Under the "related to" prong, as long as the plaintiff's claim is related to the defendant's "overall practice" or "services that they provide" in the forum, the "related to" requirement is met. *See Clarke v. Dutton Harris & Co.*, 2021 WL 1225881, at *5 (D. Nev. Mar. 31, 2021) (citing *Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.*, 141 S. Ct. 1017 (2021)). Here, Goldwind International, with and through Goldwind USA, has operated and continues to provide services for at least one wind farm in the United States. *See* Opp. 39. Goldwind International and Goldwind Science have also supplied wind turbines to at least one wind farm project in the U.S. (resulting in arbitration proceedings in Chicago). *Id.* These activities in and directed at the U.S. are "related to" Plaintiff's claim here, which is predicated on, *inter alia*, Goldwind's involvement with the shipping of wind farm equipment to Cuba through the United States. Plaintiff's claim thus "directly relate[s] to the . . . services that [Goldwind] provide[s] in the forum." *Clarke*, 2021 WL 1225881, at *5.

Further, the R&R erred by ignoring evidence demonstrating that Goldwind recognized the possibility of being haled into court in the U.S. *for these very shipments.* Goldwind agreed to indemnify "DSV" for potential violation of U.S. sanctions laws in the two Export Control Declarations it executed, and explicitly contemplated liability and litigation in the U.S. when it acknowledged with LM the possibility that the Jade could be detained in Miami by U.S. authorities. *Supra* 13. Goldwind clearly anticipated being haled into court here.

BBC Defendants. The R&R likewise summarily found that "the BBC Defendants have

not purposefully availed themselves of the privilege of conducting any activities in Florida" because neither "are registered to do business in Florida; have any offices, employees, bank accounts, telephone numbers, mailing address, or registered agents in Florida; own or operate any ships; or, as noted above, have engaged in any Florida-based activities relating to Plaintiff's claim for trafficking." R&R 15-16. This, again, is incorrect as a matter of law insofar as the R&R required some sort of physical presence in Florida. *Supra* 25.

The R&R also erred in concluding that neither BBC USA nor BBC Singapore "have engaged in any Florida-based activities relating to Plaintiff's claim." BBC USA's general counsel, Ed Anderson, was specifically asked to advise on the legality of the shipments and their stops in Miami; BBC USA's customs documentation specialist, Beverly Scott, reviewed and approved customs filings for the Jade's Miami stops and acknowledged responsibility for the Miami port documents. BBC USA thus purposefully availed itself of the benefits of the forum. *Supra* n.11; *Burger King*, 471 U.S. at 475; *Miranda v. C.H. Robinson Co.*, 2019 WL 6038539, at *4 (E.D. Pa. Nov. 13, 2019) (actions with "conscious objective that [goods] arrive" in forum and "deliberate steps to ensure the cargo arrived" in forum establish purposeful availment).

As to BBC Singapore, its forum contacts in furtherance of the trafficking scheme are pervasive: it analyzed and agreed to the Miami stops; reached out into Florida and directed *Florida-based* port agents; and those port agents carried out their activities in Florida *on behalf of* BBC Singapore. *Supra* 10-11. BBC Singapore's contacts are even more legion when analyzed under Rule 4(k)(2), where the applicable forum is the United States. BBC Singapore reached out directly to BBC USA's *U.S.-based* general counsel and a *U.S.-based shipping company* for advice on *U.S. law*. Ex. 28; *supra* 11. BBC Singapore was aware that its activities could land it in court here, specifically seeking advice on how to carry out the shipments and

Miami stops without "getting in trouble with uncle sam." *Id*. BBC Singapore also defrauded a *U.S.* customer, and sought to avoid entanglement with the *U.S. Coast Guard*. *Supra* n.6.[13] There can be no doubt of BBC Singapore's purposeful availment of the United States. *Supra* n.11; *Burger King*, 471 U.S. at 475; *Miranda*, 2019 WL 6038539, at *4.

DSV. The R&R erred on multiple fronts in concluding that exercising jurisdiction over DSV would violate due process because DSV's "only Florida-based activity—that is, Scheid's sporadic email correspondence and [its] instruction to keep certain forms on hand in Miami—did not arise out of or relate to Plaintiff's ultimate claim of trafficking the Property." R&R 16. As noted above, Scheid's emails and the instruction to keep customs forms "handy" in Miami are *not* DSV's "only Florida-based activity." DSV also analyzed and gave the regulatory green light to the Miami stops, prepared and filed the required customs forms for the Miami stops, and held out its Miami office as the point of contact for customs-related issues. *Supra* 9-10. Even if these steps to implement the Miami stops took place elsewhere, the end goal and result of DSV's actions was to *direct the ships into Miami* in furtherance of the trafficking scheme—that is all that is needed to demonstrate DSV's purposeful availment of the forum. *See supra* n.11; *Burger King*, 471 U.S. at 475; *Miranda*, 2019 WL 6038539, at *4.

Furthermore, the R&R erred in holding that these contacts "do not arise out of or relate to" Plaintiff's Helms-Burton claim. R&R 16. The Miami stops were *essential* to the trafficking claim and indeed a but-for cause for the exploitation of the Confiscated Port in Cuba. *Supra* 7,

[13] BBC Singapore's efforts in this regarded also resulted in false information being presented to U.S. authorities *in Miami*. The false information on the Moonstone's stow plans—replacing Puerto Carupano with "Rio Haina," *supra* n.6—ended up on the vessel clearance form for the Moonstone that was presented to U.S. Customs *in Miami*. *See* Dkt. 50-6 at 2 (Box 15 listing "Rio Haina" as a port of call subsequent to Miami). It defies credulity to conclude that BBC Singapore lacked minimum contacts with the U.S. when it actively sought to defraud a U.S. customer and instigated the presentation of falsehoods to the U.S. government.

17. That is a far stronger connection between the forum contacts and Plaintiff's claim than is necessary to satisfy due process. As the Supreme Court has recently explained, due process does not require a "strict causal relationship" between the defendants' contacts and the plaintiff's suit. *See Ford*, 141 S. Ct. at 1026. Instead, all that is required is that contacts "relate to" the claim, that is, that there be a "strong relationship among the defendant, the forum, and the litigation." *Id.* at 1028. That requirement is easily satisfied here: DSV's activities were all directed toward ensuring that the ships would successfully enter and clear Miami, a *necessary* step on their way to the Confiscated Port, the exploitation of which forms the basis of Plaintiff's claim.

IV. This Court Has Jurisdiction Based On Plaintiff's Conspiracy Claim

The R&R accepted that Plaintiff's conspiracy claim was sufficiently pled, but rejected jurisdiction on that basis because, for the reasons stated "under the tortious act prong of Florida's long-arm statute," Plaintiff has not established that "any Defendant committed a tortious act in Florida in furtherance of the alleged conspiracy" to traffic in the Confiscated Port. R&R 19.

But for the reasons explained above, that conclusion is wrong. Each of the Defendants directed activities into, otherwise targeted, and/or committed acts within Florida by analyzing, approving, and facilitating the Miami stops, without which there would be no Helms-Burton claim. All Defendants clearly "kn[e]w of the [trafficking] scheme and assist[ed] it in some way," and are thus subject to jurisdiction based on Plaintiff's conspiracy claim. *Donofrio v. Matassini*, 503 So.2d 1278, 1281 (Fla. Ct. App. 1987); *see* Opp. 74-80.

CONCLUSION

For the foregoing reasons, and the reasons stated in Plaintiff's Opposition, at the June 21, 2022 hearing, and in Plaintiff's Post-Hearing Brief, the Court should reject the R&R and deny Defendants' Rule 12(b)(2) motions to dismiss.

REQUEST FOR HEARING

Plaintiff respectfully requests oral argument in connection with its objections to the R&R. The case presents an array of complex legal and factual issues with respect to which counsel may be able to assist the Court. We estimate the time required to be ninety minutes.

Dated: September 20, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on September 20, 2022, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel or parties of record.

/s/ Davis S. Mandel
David S. Mandel