

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

RAJU MEGANATHAN, *et al.*

v.

SIGNAL INTERNATIONAL L.L.C., *et al.*

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1:13-CV-497

**MEMORANDUM AND ORDER ON THE PARTIES’
MOTIONS TO EXCLUDE EXPERT TESTIMONY**

This case is assigned to the Honorable Marcia Crone, United States District Judge, and is referred to the undersigned United States Magistrate Judge for pretrial proceedings pursuant to a referral order entered on August 8, 2013. (Doc. No. 2.) Pending before the undersigned are eight motions to exclude and/or limit expert testimony. The Plaintiffs moved to exclude the following experts: Ron McAlear, Ronald L. Signorino, Enrique Gonzalez, Dr. Louise Shelley, and Dr. Kevin Fox Gotham. (Doc. Nos. 70, 71, 72, 73, 77.) Defendants Signal International, L.L.C., Signal International, Inc., Signal International Texas, G.P., Signal International Texas, L.P. (collectively, “Signal”) moved to exclude the Plaintiffs’ experts Clyde Payne, Florence Burke, and Amy Mowl. (Doc. Nos. 68, 69, 76.) Because the motions all relate to the same operative facts, apply the same law, and at times relate to one another, the undersigned will address all the pending motions in one order.

I. BACKGROUND

In the aftermath of Hurricane Katrina, approximately 590 men, including the four Plaintiffs in this case, were allegedly trafficked into the United States to provide labor for Signal’s operations. (Doc. No. 1, pp. 1–4.) The Plaintiffs claim that the Defendants “conspired and schemed to target Plaintiffs as Indian laborers, knowing that they would be enticed by good pay and false promises of permanent residency, to lure them in to the United States.” (*Id.* at p.

4.) They also claim that they were forced to live in “overcrowded, unhygienic, and disease-ridden work camps resembling prisons” and felt compelled to continue working for Signal due to fears of “deportation after learning that their temporary visas had expired” and the significant debts they incurred in their homeland. (*Id.* at pp. 3–4.)

A putative class action was filed in the Eastern District of Louisiana on behalf of all the workers who had allegedly been trafficked to the United States to work at Signal’s facilities in Texas, Louisiana, and Mississippi. (See Doc. 1, *David v. Signal Int’l, L.L.C.*, 2:08-cv-1220 (March 7, 2008)). The court in *David* denied class certification, which caused the individual class members to file suit where their alleged injuries occurred. See *David v. Signal Int’l, L.L.C.*, No 08-1220, 2012 WL 10759668, at *37 (E.D. La. Jan. 4, 2012). The Plaintiffs in this case worked at Signal’s facility in Orange, Texas, which is within this judicial district.

The Plaintiffs allege that some or all of the Defendants violated the Trafficking Victims Protection Reauthorization Act of 2003 and the Racketeer Influenced and Corrupt Organizations. (Doc. No. 1, pp. 39–54.) In addition, the Plaintiffs assert causes of action for state law fraud, negligent misrepresentation, and breach of contract against all of the Defendants. (*Id.* at pp. 49–52.)

II. LEGAL STANDARD

The admission or exclusion of expert testimony is a matter within the discretion of the district court. *Kuhmo Tire Co. v. Carmichael*, 526 U.S. 137, 152 (1999); *Huss v. Gayden*, 571 F.3d 442, 452 (5th Cir. 2009). Federal Rule of Evidence 702 provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and

methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

FED. R. EVID. 702; accord Kuhmo Tire Co., 526 U.S. at 152; Daubert v. Merrel Dow Pharms., Inc., 509 U.S. 579, 588 (1993). The proponent of the proffered expert testimony “has the burden of establishing, by a preponderance of the evidence, that the pertinent admissibility requirements are met.” United States v. Fullwood, 342 F.3d 409, 412 (5th Cir. 2003) (citing FED. R. EVID. 104(a)).

The district court is to consider several criteria in determining whether an expert’s opinion is admissible. First, whether the proffered expert is qualified to testify because of his knowledge, skill, experience, training, or education. United States v. Cooks, 589 F.3d 173, 179 (5th Cir. 2009) (citing FED. R. EVID. 702); Wilson v. Woods, 163 F.3d 935, 937 (5th Cir. 1999). “[T]o qualify as an expert, ‘the witness must have such knowledge or experience in [his] field or calling as to make it appear that his opinion or inference will probably aid the trier in his search for truth.’” United States v. Hicks, 389 F.3d 514, 524 (5th Cir. 2004) (quoting United States v. Bourgeois, 950 F.2d 980, 987 (5th Cir. 1992)) (internal quotations omitted).

Second, whether the proffered expert’s testimony is reliable. See Kuhmo Tire Co., 526 U.S. at 152. The court possesses considerable flexibility in assessing the reliability of expert testimony. Id. at 141; Stolt Achievement, Ltd. v. Dredge B. E. Lindholm, 447 F.3d 360, 366 (5th Cir. 2006). While the *Daubert* factors are the most common benchmark, the court should consider all relevant factors, and is not required to analyze the *Daubert* factors in every case. Stolt Achievement, Ltd., 447 F.3d at 366 (citing Kuhmo Tire Co., 526 U.S. at 149). The overarching goal “is to make certain that an expert . . . employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.” Kuhmo Tire Co., 526 U.S. at 152. “The [c]ourt’s role is that of a gatekeeper only, limited to determining

admissibility, not credibility of the evidence.” Knox v. Ferrer, No. 5:07-CV-6, 2008 WL 4411326, at *2 (S.D. Miss. Sept. 22, 2008) (citing Pipitone v. Biomatrix, Inc., 288 F.3d 239, 244 (5th Cir. 2002)). This role requires a court to make “a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.” Daubert, 509 U.S. at 592–93. The court should approach this task “with proper deference to the jury’s role as the arbiter of disputes between conflicting opinions.” United States v. 14.38 Acres of Land, 80 F.3d 1074, 1077 (5th Cir. 1996) (quoting Viterbo v. Dow Chem Co., 826 F.2d 420, 422 (5th Cir. 1987)) (internal quotations omitted).

The court’s assessment of admissibility is not intended to replace the adversarial system, which should highlight weak evidence. Primrose Operating Co. v. Nat’l Am. Ins. Co., 382 F.3d 546, 562 (5th Cir. 2004). “Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.” Daubert, 509 U.S. at 596. “The *Daubert* analysis should not supplant trial on the merits.” Mathis v. Exxon Corp., 302 F.3d 448, 461 (5th Cir. 2002) (citing Pipitone, 288 F.3d at 250).

Finally, the court must determine that the proffered expert testimony is relevant. See FED. R. EVID. 702 (stating that expert testimony is admissible only if it “will assist the trier of fact to understand the evidence or to determine a fact in issue”). Evidence is relevant if it “has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” FED. R. EVID. 401.

III. ANALYSIS

A. Plaintiffs’ “Motion to Exclude the Testimony and Strike the Expert Report of Ron McAlear” (Doc. No. 70)

Signal retained Ronald J. McAlear (“McAlear”) “for the purpose of providing information and guidance on Shipyard normal and customary practices” (Doc. No. 70, Ex. 4, p. 1.)¹ McAlear is an engineer, holds a master’s degree from the Massachusetts Institute of Technology, and has spent his career working in all facets of the shipbuilding industry, including at the management level. (*Id.* at pp. 9–11.) Though difficult to discern precisely what McAlear’s opinions are, it appears that he concludes that Signal “applies the normal and customary industry practices” in several areas, including: safety, quality, the environment, the use of I.D. badges, and the issuance of personal protective equipment. (*Id.* at p. 7.)

The Plaintiffs seek to exclude McAlear as an expert on the grounds that: (1) he is not qualified to testify as an expert on safety; (2) his opinions are irrelevant; (3) his opinions are not based on sufficient or reliable facts or data; and (4) his methodology is flawed. (Doc. No. 70-1, pp. 11–14.)

a. *Scope of McAlear’s opinions*

Before discussing the Plaintiffs’ specific arguments, it necessary to clarify the scope McAlear’s opinions. The Plaintiffs argue that McAlear is not qualified to offer any opinions “on any subject that might be relevant,” and specifically point to the fact that McAlear admitted he was not an expert on safety. (Doc. No. 70-1, p. 16.) Signal counters that McAlear will opine “that Signal’s conduct as a marine fabricator and employer was customary, ordinary and within industry standards in its day to day employment of the Plaintiffs in this case.” (Doc. No. 79, p.

1. The Plaintiffs attach two versions of McAlear’s report. One dated July 29, 2014 (Exhibit 4) and one dated August 27, 2014 (Exhibit 1). While both reports appear to be similar, the August Report is longer and more robust. The Plaintiffs acknowledge that this report was timely served in this case. (Doc. No. 70-1, p. 2, n. 2.) Accordingly, this will be considered the operative report for this case.

1.) Signal, however, clarifies that McAlear is not being offered “as a safety expert.” (*Id.*) In fact, Signal concedes that he is not an expert on safety. However, at times, McAlear opines that Signal’s facilities were in fact safe. For example, he states, “Signal has operated one of the safest shipyards in the Industry” and that Signal’s “safety record is evident when you compare the historical safety performance ratings from 2003 to 2013.” (Doc. No. 70, Ex. 1, p. 25.) McAlear goes so far as to call Signal’s safety record “exemplary.” (*Id.*) Such opinions go beyond merely discussing what is customary in the industry.

As a preliminary matter, the undersigned finds that McAlear’s opinions on safety are inadmissible for two reasons. First, McAlear admits that he is “not an expert in safety.” (Doc. No. 70, Ex. 3, 131:12.) Therefore, he is not qualified to render such opinions. Second, he has not examined sufficient information nor applied a reliable or meaningful principle to reach these particular conclusions. Rendering an opinion that Signal’s safety record is “exemplary” would require considering and balancing Signal’s safety record against that of other companies or against identifiable industry standards. McAlear undertook no such analysis. Conversely, to opine generally that Signal’s practices are consistent with industry customs only requires being familiar with the industry and being familiar with Signal’s practices.

Accordingly, McAlear’s opinions are limited to those relating to customary practices within the marine fabrication industry, and he may not opine as to whether Signal’s facilities were in fact safe.

b. McAlear is qualified to testify about industry customs

The Plaintiffs argue that McAlear’s report should be excluded because he admitted that he is not an expert on safety, and therefore, not qualified to testify as an expert. (Doc. No. 70-1, p. 12.) However, as discussed above, the Plaintiffs’ characterization of McAlear’s opinions is

too narrow. He is not just opining on whether Signal is a safe company or about its safety record. Rather, he discusses general industry customs and Signal's practices measured against those customs. Given McAlear's "[o]ver 40 years of experience in all aspects of the Marine Industry," including experience in managing and running shipyards, his practical work experience qualifies him as an expert about general practices in the industry. (Doc. No. 70, Ex. 1, App. A); see also Martin v. Wal-Mart Stores, Inc., No. 2:10-cv-268, 2011 WL 6399690, at *1 (S.D. Miss. Dec. 20, 2011) (finding that an expert's twenty-four years of work experience qualified him to testify as an expert); Satcher v. Honda Motor Co., 52 F.3d 1311, 1317–18 (5th Cir. 1995) (holding that the district court did not err in finding an expert qualified to testify based on his experience).

c. McAlear's opinions are relevant

The Plaintiffs claim that McAlear's report should be struck because "[g]eneral standards and practices in the industry and Signal's shipyard safety practices are not relevant to" any of their claims. (Doc. No. 70-1, p. 12.) In response, Signal asserts that due to the Plaintiffs' factual allegations about the use of I.D. badges and unsafe working conditions, McAlear's opinions about general industry practices are relevant. (Doc. No. 79, pp. 2–4.) Signal is correct—the Plaintiffs' complaint makes numerous references to the conditions of employment imposed by Signal. For example, the Plaintiffs' complaint discusses the testing and re-testing by Signal, the fact that Signal charged the Plaintiffs for job-related tool kits, the use of I.D. badges, and general working conditions. (See Doc. No. 1, pp. 25–30.)

Expert testimony is admissible if it will "help the trier of fact to understand the evidence" See FED. R. CIV. 702. To the extent that the Plaintiffs criticize certain conditions of their employment and complain that they were working in substandard conditions,

expert testimony claiming that these are customary practices is relevant. Moreover, a potential juror is unlikely to be familiar with customary shipyard practices, and as such, expert testimony will assist the jury on this topic. In other words, it would be unfairly prejudicial to Signal to allow the Plaintiffs to discuss the working conditions they faced at Signal and attempt to cast these conditions in a negative light, without allowing Signal the ability to at least offer testimony that shows some of these conditions are standard within in the industry. Accordingly, McAlear's testimony meets the helpfulness requirement of Rule 702. See U.S. v. Tucker, 345 F.3d 320, 327 (5th Cir. 2003) (noting that the relevance inquiry centers on "whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute") (quoting Daubert, 509 U.S. at 591).²

d. McAlear's opinions are based on sufficient facts and data

Next, the Plaintiffs contend that McAlear's report should be struck because he based his opinions on documents found on Signal's website. (Doc. No. 70-1, p. 13); (Doc. No. 91, p. 3) ("McAlear's blind reliance on internet sources is alarming and discredits Signal's opposition that Mr. McAlear's sources were sufficient."). Stated another way, McAlear did not consider a sufficient amount of information from a reliable source. This type of challenge goes to the weight of his testimony, not its admissibility. See 14.38 Acres of Land, 80 F.3d at 1077 ("As a general rule, questions relating to the bases and sources of an expert's opinion affect the weight to be assigned that opinion rather than its admissibility and should be left for the jury's consideration."). Moreover, a review of Appendix B to McAlear's report illustrates that McAlear reviewed materials beyond just those available on Signal's website. (Doc. No. 70, Ex. 1, App. B.) He reviewed ISO certifications, deposition excerpts, and even conducted an

2. The Plaintiffs also argue that McAlear's opinions about industry customs are not relevant to their § 1981 claim. (Doc. No. 91, pp. 2-3.) The Plaintiffs, however, have not asserted such a claim in this case. (Doc. No. 1.)

“informal survey” on tools and protective gear. (Doc. No. 70, Ex. 1, pp. 12–13.) Accordingly, the undersigned finds that McAlear has reviewed enough information to opine on whether Signal’s practices meet industry norms. To the extent that the Plaintiffs wish to challenge the bases for McAlear’s opinions, they can do so on cross-examination.

e. *McAlear’s opinions are the product of reliable principles and/or methods*

The Plaintiffs state that McAlear has met none of the *Daubert* factors. (Doc. No. 70, pp. 14–15.) The relevant inquiry, however, is not whether any or all of the *Daubert* factors are met, but rather, whether there is any reasonable criteria on which the expert based his opinion. See Stolt Achievement, Ltd., 447 F.3d at 366; see also Huck v. City of Beaumont, 147 F. Supp. 2d 565, 568 (E.D. Tex. 2001) (Cobb, J.) (“[T]he *Daubert* inquiry is always fact-specific, and . . . the *Daubert* factors may not all apply.”). Here, McAlear balanced his expertise about industry customs against sufficient information about Signal’s practices to reach the conclusion that Signal’s practices as to quality, the environment, the use of I.D. badges, and the issuance of personal protective equipment are “normal and customary” within the industry. (Doc. No. 70, Ex. 1, p. 28.) This type of analysis is sufficient to support McAlear’s opinions.

f. *Conclusion*

For the reasons stated above, the undersigned **GRANTS IN PART** the Plaintiffs’ “Motion to Exclude the Testimony and Strike the Expert Report of Ron McAlear” (Doc. No. 70). McAlear may testify about general industry practices and opine on whether Signal’s practices are consistent with these customs. McAlear, however, may not opine that Signal is a safe company or has an “exemplary safety record.”

B. The Plaintiffs’ “Motion to Exclude the Testimony and Strike the Expert Report of Kevin Fox Gotham” (Doc. 77)

Signal designated Kevin Fox Gotham, Ph.D. (“Dr. Gotham”), a professor of sociology at Tulane University, to “evaluate the availability of housing in the Gulf Coast region in . . . Orange County[,] Texas in the aftermath of hurricanes Katrina and Rita.” (Doc. 84, p. 2.) He offers six opinions that touch on the lack of available housing in the aftermath of hurricanes Katrina and Rita, the impacts that this had on businesses to recruit workers, and why Signal built the “man camps.” (Doc. 77, Ex. A.)

The Plaintiffs claim that Dr. Gotham’s report should be struck because it is (1) irrelevant and (2) based on insufficient facts and data. The Plaintiffs also argue that Dr. Gotham’s report should be limited to the four opinions that were contained in the report that was served in this case, as opposed to the six opinions served in *David* (a parallel case decided in the Eastern District of Louisiana).

a. *Dr. Gotham’s last two opinions should not be struck for failing to serve them*³

Exhibit A to the Plaintiffs’ motion contains three reports by Dr. Gotham. The first report was signed (and presumably served) on July 29, 2014 and contains four opinions. The second report, which contains the case style for *David v. Signal Int’l*, is dated August 28, 2014 and contains six opinions. The third report is dated December 5, 2014 and contains the case style *Equal Employment Opportunity Commission et al. v. Signal Int’l*. This report also contains six opinions. The Plaintiffs seek to limit any opinions given by Dr. Gotham to those contained in

3. The decision whether to allow a late filed expert report—which is essentially why the Plaintiffs seek to limit Dr. Gotham’s opinions—involves determining whether to amend the scheduling order. This inquiry involves a four-factor test. See Geiserman, 893 F.2d at 790–91. In contrast, determining whether Dr. Gotham’s opinions are admissible, is a different inquiry. Therefore, the undersigned finds it necessary to first consider whether these opinions are properly part of this case, before determining whether they are admissible. As will be discussed below, opinions E and F are struck from this case.

the July 29 report.⁴ Signal does not address which report it contends is the operative report for this case.

Starting with the latest drafted report—the *EEOC* Report—it is dated after the deadline for designating experts. (See Doc. No. 30) (requiring Defendants to designate experts witnesses by November 28, 2014). Signal has not moved to extend the deadline or untimely serve this report. Moreover, Dr. Gotham was deposed on October 6, 2014. Therefore, the Plaintiffs would not have had the ability to question Dr. Gotham about the particulars of the *EEOC* Report. Therefore, if Signal intends on claiming that this is the operative report, it must seek leave to file an untimely expert report.

As to the *David* Report, even if not formally served, it is evident that the Plaintiffs had the opportunity to depose Dr. Gotham regarding all six opinions contained in the *David* Report. It also appears that the Plaintiffs had this report in advance of his deposition, and there is nothing in the record demonstrating that the Plaintiffs' deposition preparation as to all six opinions was hindered. Moreover, while Dr. Gotham testified that he does not plan to amend his report, his deposition testimony is clear that he plans to offer six opinions in this case. (Doc. No. 77, Ex. B, 156:6–159:4.) Therefore, there is no unfair surprise. Lastly, the deadline for serving expert reports was November 28, 2014. (Doc. No. 30.) Assuming that the *David* Report was served in this case on August 28, 2014—the date it was signed—it would be timely.

Accordingly, because the Plaintiffs have failed to demonstrate how they were prejudiced by this report, the undersigned will consider the *David* Report as the operative report in this case. Reliance Ins. Co., 110 F.3d at 257–58 (applying the four factor test articulated in *Geiserman*).

4. Specifically, the Plaintiffs seek to exclude two opinions that were added to the *David* Report, but the Plaintiffs make no mention of the *EEOC* Report, which appears to be somewhat different.

b. *Dr. Gotham's opinions are relevant*⁵

The Plaintiffs argue that Dr. Gotham's first three opinions regarding the impacts of Hurricanes Rita and Katrina on the Gulf South are "so pedestrian that courts have taken judicial notice of it." (Doc. No. 77-1, p. 8) (citing two cases taking judicial notice of the damage caused by Hurricane Katrina). Therefore, according to the Plaintiffs, Gotham's opinions fail to meet the helpfulness standard of Federal Rule of Evidence 702(a). (*Id.* at pp. 8–9.) Signal responds by arguing that Dr. Gotham's report is helpful because it provides context that "will assist the Court and the jury in determining the nexus between Signal's logic, intentions, and actions." (Doc. No. 84, p. 6.)

To meet the first prong of Rule 702, "the expert's scientific, technical, or other specialized knowledge [must] help the trier of fact understand the evidence or to determine a fact in issue." FED. R. CIV. P. 702(a). The Plaintiffs claim that there is no need for expert testimony on the fact that hurricanes Rita and Katrina destroyed housing on the Gulf Coast. Dr. Gotham's opinions, however, go beyond this one basic idea. For example, he also opines on the "problems that . . . businesses faced in attracting skilled labor in the context of widespread housing damage in the months and years after Hurricane Katrina and Hurricane Rita." (Doc. 84, p. 5); (*see also* Doc. 77, Ex. A, pp. 23–27) (discussing the correlation between the lack of available housing and the difficulty in attracting workers). Moreover, the extent of the housing shortage may be beyond the knowledge of a layperson. While some jurors may still remember what life was like after the hurricanes, it is plausible that a juror may have only recently moved to the area and lacks such familiarity. In addition, these hurricanes occurred nearly ten years ago—it is possible

5. The Plaintiffs moved to exclude Dr. Gotham's report in its entirety, but did not move in the alternative to strike opinion B, which addresses the impacts that Hurricane Katrina had on Mississippi. Moreover, interspersed with Dr. Gotham's other opinions is a discussion of the Mississippi area, which was the location of another Signal facility. The undersigned questions whether a discussion of the Mississippi region is relevant to this case.

that memories have faded. Accordingly, information regarding the housing market and the impact that it had on attracting workers to the area is helpful, and as such, meets Rule 702(a).

Furthermore, contested factual issues include why Signal allegedly forced the Plaintiffs to live in the “man camps” and why Signal needed to use an immigrant labor force. The state of the housing market is arguably relevant to these issues. Therefore, by offering a big picture perspective on what the housing market was like during the relevant period, Dr. Gotham’s testimony is helpful. In short, if the Plaintiffs are going to claim that there was no need for Signal to build the “man camps,” then testimony on the state of the housing market is relevant.

c. Sufficient facts and data

Dr. Gotham’s opinions can be broken into two general categories: (1) general opinions about the impacts of the hurricanes (opinions A through D) and (2) opinions about Signal’s actions (opinions E and F). The Plaintiffs seek to exclude Dr. Gotham’s opinion “related to the availability of adequate housing for Signal workers, apparently in the Orange, Texas, area.” (Doc. No. 77-1, p. 9.)

As to Dr. Gotham’s general testimony, he relies on sufficient facts and data to reach general conclusions about the state of the housing market and the difficulty in attracting workers to disaster areas. While the utility of such testimony is questionable, as discussed above, it meets the admissibility requirements of the Federal Rules of Evidence. In addition, while the Plaintiffs fault him for not considering the data on a granular enough level (i.e. examining specific vacancy rates), he considered sufficient data to conclude that the housing markets were negatively impacted by the hurricanes.

Dr. Gotham’s more specific opinions, however, should be excluded. As for opinion E, Dr. Gotham has not reviewed enough specific information about housing availability in close

proximity to Signal's facility in Orange, Texas to reach the conclusion that "Signal built on-site facilities to address an acute housing shortage for workers." (Doc. 77, Ex. A, p. 34); (see also id. at p. 37) ("[I]t is my opinion that the dearth of housing availability in Orange County, Texas . . . created major obstacles for businesses in these areas to attract and keep the labor necessary for business and community recovery efforts."). To reach such a specific opinion he would need to look at the housing market in an area in close proximity to Signal's facility in Orange, Texas. Dr. Gotham has undertaken no such analysis. He did not consider specific data in a narrowly defined region, and even classifies his report as considering "the state of the housing market in general during the years after the disaster." (Id., Ex. B, 68:12–14.) Dr. Gotham's opinions that housing was impacted by the hurricanes, without something specific to the area in question or without facts showing what housing was actually available near Signal's facility, will not support this opinion. Moreover, the specific data upon which Dr. Gotham relies focuses on the Mississippi region, not on Texas. (Id., Ex. A, pp. 37–38.)

As for Opinion F, this opinion is improper because it is not helpful and usurps the role of the jury. Dr. Gotham is attempting to pass judgment on the propriety of Signal's actions as they relate to the "man camp." For example, he states that "Signal did not force or coerce the workers to stay in the on-site facility" (Id. at p. 42); that "no plaintiff was ever required to live in the on-site housing facilities" (Id. at p. 41); and that the housing facility benefited the Plaintiffs. (Id. at p. 41–42.) The jury, informed about the state of housing market generally and other testimony, can determine whether Signal actually had no other choice but to build the "man camps" or that the Plaintiffs benefited from them.

d. *Conclusion*

For the reasons stated above, the Plaintiffs’ “Motion to Exclude the Testimony and Strike the Expert Report of Kevin Fox Gotham” (Doc. 77) is **GRANTED IN PART**. Dr. Gotham may opine about the state of housing in the areas impacted by the hurricanes and the correlation between available housing and attracting skilled workers. However, opinions E and F are struck, and he may not opine as to whether there was “an acute” housing shortage in Orange, Texas, why Signal built the “man camp,” whether the Plaintiffs were required or coerced into living at the “man camp,” or whether the “man camp” actually benefited the Plaintiffs.

C. Signal’s “Motion to Exclude the Opinion Testimony of Clyde Payne” (Doc. No. 68)

The Plaintiffs retained Clyde P. Payne (“Payne”) to “evaluate the applicability of, and Signal’s compliance or non-compliance with, the Occupational Safety and Health Administration’s [“OSHA”] standards and regulations for temporary labor camps.” (Doc. No. 68, Ex. A, p. 1.) Payne holds a master’s degree in Environmental Science and has been a Certified Industrial Hygienist since 1983. *Id.* In addition, Payne was OSHA’s Area Director of the Jackson, Mississippi office for over twenty-two years. *Id.*

Signal moves to exclude Payne on two grounds: (1) his opinions about OSHA are irrelevant and (2) they consist of impermissible legal conclusions.

a. *Payne’s opinions are irrelevant*

Signal argues that the “Plaintiffs never alleged an OSHA violation in their original complaint against Defendants,” and, as such, Payne’s opinions are “irrelevant to the instant matter.” (Doc. No. 98, p. 2); (see also Doc. No. 2132, David v. Signal In’t, L.L.C., 2:08-cv-1220 (E.D. La. Jan. 11, 2015) (striking both parties’ OSHA experts partly because whether OSHA was violated had “no bearing whatsoever on any of the remaining claims or defenses”)). Plaintiffs

respond and argue that Payne’s testimony is relevant because it supports their claims of discrimination under 42 U.S.C. § 1981 and fraud.⁶ (Doc. No. 87, p. 4.) They also argue that Payne’s opinions are relevant because they highlight the substandard conditions in the “man camps.” (*Id.* at 4–9.)

To be admissible, an expert’s opinions must “help the trier of fact [] understand the evidence or [] determine a fact in issue.” FED. R. EVID. 702. Payne’s opinions, however, do neither. No cause of action is dependent on Signal’s non-compliance with OSHA, and the Plaintiffs fail to explain how alleged violations of OSHA support their fraud claim. Ultimately, it is the Plaintiffs’ burden to demonstrate why their expert’s opinion is admissible.

Moreover, whether certain OSHA regulations were violated will not assist the jury in understanding the evidence. Here, the Plaintiffs’ own testimony (if believed) regarding the conditions at the “man camps” is more than sufficient for them to prove their trafficking, RICO, and other state-law claims. For example, Payne opines that 29 C.F.R. § 1910.142(d)(9) was violated because Signal failed to provide adequate toilet paper. (Doc. No. 68, Ex. A, p. 20.) A lay juror knows what constitutes adequate toilet facilities and, because no cause of action hinges on a violation of this statute, jurors can easily ascertain from their own experiences whether the facilities provided by Signal were adequate. In short, expert testimony is not needed to assist the jurors in evaluating the evidence regarding the living conditions at the “man camps.”

Lastly, the undersigned recognizes that, at first blush, this ruling is in conflict with the undersigned’s allowance of Payne’s testimony in *Joseph* and *Samuel*. In those cases, however, Signal did not move to strike Payne. (*See* Doc. No. 222, pp. 12–14, *Joseph v. Signal Int’l, L.L.C.*, 1:13-cv-324 (E.D. Tex. Feb. 12, 2015)). Accordingly, the undersigned found that the opinion of Virginia Miles, Signal’s OSHA expert, as to whether certain OSHA regulations may

6. The Plaintiffs have not asserted a § 1981 claim.

or may not apply met the helpfulness prong of Rule 702. In evaluating whether Miles's opinions were helpful, it had to be assumed that Payne's opinions on the various ways in which Signal violated OSHA would be offered. As the undersigned noted: "If the Plaintiffs are going to elicit testimony from an expert that Signal failed to comply with certain OSHA regulations, then Miles's opinion, which merely offers a conflicting view on whether these regulations applied, is relevant." (*Id.*) Here, the analysis and result is different because Signal moved to strike the Plaintiffs' OSHA expert.

b. Payne's opinions consist of legal conclusions

Not only are Payne's opinions unhelpful, they largely consist of impermissible legal conclusions. In fact, Payne offers two layers of legal conclusions. First, he finds that OSHA's regulations on Temporary Labor Camps apply to the "man camps." (Doc. No. 68, Ex. A, p. 7) ("My opinion is that OSHA's Temporary Labor Camp standards apply to Signal's housing camp at Orange, Texas."). Second, he opines that certain regulations were violated. For example, he opines: "[T]he requirements of 29 C.F.R. 1910.142(a)(2) and 29 C.F.R. 1910.142(b)(2) for providing adequate size of housing and sleeping areas for the H-2B Workers were not followed and a violation existed." (Doc. No. 68, Ex. B, p. 19); (*see also id.* at p. 18) ("[I]t is my opinion that Signal's Man Camp violated at least seven different Subsections of 29 C.F.R. § 1910 and the general duty clause of the Act."). The undersigned agrees with Signal and finds that whether OSHA applies and whether certain sections were violated are legal conclusions.

The Plaintiffs argue that these are not legal conclusions because "Payne's use of OSHA standards is not to convince the jury that Signal violated OSHA, rather it is to show the jury that Signal's housing was substandard." (Doc. No. 87, pp. 4–5.) Payne, however, is opining that Signal's conduct was a violation of the law—this is the very essence of a legal conclusion.

While no cause of action hinges on whether Signal complied with OSHA (which is why Payne's testimony is irrelevant) that does not mean his opinions that certain laws were violated are not legal conclusions. In contrast, in *Joseph and Samuel*, Signal's OSHA expert merely opined that there was nothing definitive that these regulations applied. Thus, she stopped short of reaching an actual legal conclusion. Payne, however, goes much further and instructs the jury on what law applied and whether it was violated.

c. *Conclusion*

For the reasons stated above, Signal's "Motion to Exclude the Opinion Testimony of Clyde Payne" (Doc. No. 68) is **GRANTED**.

D. Plaintiffs' "Motion to Exclude the Testimony and Strike the Report of Ronald L. Signorino" (Doc. No. 71)

The Plaintiffs move to strike Signal's OSHA expert Ronald L. Signorino ("Signorino"). (Doc. No. 71.) Having struck the Plaintiffs' OSHA expert Clyde Payne, Signorino's opinions, which were merely offered as a rebuttal, are now irrelevant. In fact, Signal even concedes that it only retained Signorino out of an abundance of caution to oppose any potential testimony by Payne. (Doc. No. 81, p. 14) ("Signorino was retained needlessly, as was Mr. Payne."). Accordingly, the Plaintiffs' motion is **GRANTED**.

E. Signal's "Motion in Limine to Exclude/Limit Testimony of Florence Burke" (Doc. No. 69)⁷

Florence Burke ("Burke") is the Plaintiffs' expert on human trafficking. She offers opinions on the "common features" of known human trafficking cases, and concludes that these

7. The Plaintiffs claim that Signal did not comply with the District's meet and confer requirement prior to filing any of its motions. (See Doc. No. 85, p. 5 n. 1.); see also Local Rule 7(h). The Plaintiffs acknowledge that the parties conferred regarding expert motions, but claim that all that was discussed were the Plaintiffs' motions, and Signal did not indicate that it was intending on filing any motions. Signal's counsel responded with a sworn affidavit stating that parties conferred as to Signal's motions as well. (Doc. No. 97, Ex. A.) The undersigned takes meet and confer requirement seriously. In many instances, it can avoid disputes altogether or at least greatly narrow the issues. Here, because Signal's counsel has sworn under oath that Signal's motions to exclude expert testimony were discussed, the undersigned will assume that to be true.

Plaintiffs were in fact victims of human trafficking. (See Doc. No. 69, Ex. B.) Signal argues that Burke’s report should be struck for four reasons: (1) her report contains legal conclusions; (2) her opinions are unreliable; (3) she is not qualified to render an opinion regarding the Plaintiffs’ mental state; and (4) she misrepresents her qualifications. (Id.)

a. *Permissible scope of expert testimony on human trafficking*

Courts have reached varied conclusions on whether expert testimony on human trafficking is admissible. Compare Elat v. Ngoubene, 993 F. Supp. 2d 497, 514 (D. Md. 2014) (allowing some testimony about human trafficking) with (Doc. No. 2038, David v. Signal Int’l, L.L.C., No. 2:08-cv-1220 (E.D. La. Dec. 30, 2014) (striking all expert testimony on human trafficking)). The issue is that in this context, it is difficult to delineate between an opinion that is merely a legal conclusion (i.e., that 18 U.S.C. § 1590 was violated) and testimony that educates the jury and may be helpful. While Federal Rule of Evidence 704 “abolish[ed] the per se rule against testimony regarding ultimate issues of fact . . . [it] does not open the door to all opinions.” See Owen v. Kerr-McGee Corp., 698 F.2d 236, 241–42 (5th Cir. 1983). “The Advisory Committee notes make it clear that questions which would merely allow the witness to tell the jury what result to reach are not permitted. Nor is the rule intended to allow a witness to give *legal* conclusions.” Id. “The line between a permissible opinion on an ultimate issue and an impermissible legal conclusion is not always easy to discern.” United States v. McIver, 470 F.3d 550, 562 (4th Cir. 2006).

In delineating the proper of scope of expert testimony on human trafficking, the undersigned must guard against two things. First, an expert must not be allowed to instruct the jury on what the legal elements of human trafficking are (i.e., what is needed to prove a violation of 18 U.S.C. § 1590)—that is the court’s job. Second, an expert must be prevented from telling

the jury what conclusion to reach as to whether the Plaintiffs were victims of human trafficking—that is for the jury to decide. Therefore, the issue is how to delineate between a general discussion of human trafficking, which may help the jury better understand the complexities of human trafficking and is therefore admissible, and reaching a conclusion as to whether these Plaintiffs were victims of human trafficking, which would usurp the role of the jury. This difficulty is further compounded by the fact that the term “human trafficking” has both a legal and a colloquial meaning, further blurring the line between permissible and impermissible testimony.

The undersigned finds the appropriate balance to be as follows: Burke may testify about “human trafficking in general,” which includes discussing the general features of human trafficking schemes, but she may not offer an opinion on whether these Plaintiffs were victims of human trafficking. This will allow Burke to educate and inform the jury on the subtleties of human trafficking, which meets the helpfulness requirement of Rule 702, without directly offering a legal conclusion. FED. R. CIV. P. 702(a) (requiring that an expert’s specialized knowledge “help the trier of fact to understand the evidence”). Moreover, allowing Burke to apply the facts of this case to her general standards would be tantamount to her telling the jury what conclusion to reach. See also Elat, 993 F. Supp. 2d at 514 (striking portions of Burke’s testimony, but allowing her to testify generally about “the patterns of coercion and threats that are typically present in situations involving the exploitation of foreign workers” and other general topics relating to human trafficking).

Two examples of the scope of permissible and impermissible testimony may be helpful. First, the portion of Burke’s report where she offers background on human trafficking and discusses “common features of trafficking situations” is permissible because it is purely

informative. (Doc. No. 69, Ex. B, p. 11.) However, Burke cannot take the next logical step and conclude that there was trafficking in this case or opine on how the Plaintiffs were affected. For example, she states:

Having considered Plaintiffs' accounts of their trafficking experiences, it is my opinion that many of the trafficking factors identified above were present in Defendants' conduct towards them and operated to create a psychologically coercive environment in which a reasonable worker in the Plaintiffs' situation would have felt compelled to continue working for Signal.

(Id. at p. 13.) This is nothing more than her evaluating the facts and reaching a conclusion that there was trafficking—such an analysis is within the province of the jury.

Second, Burke discusses in general terms how victims of human trafficking are often made a set promises about what their working conditions will be like, but in reality, the conditions tend to be significantly worse. (Id. at p. 19.) This is within the scope of permissible testimony. Burke, however, crosses the line by stating: “the Plaintiffs in this case believe they were deceived and betrayed in terms of their employment conditions, living conditions, net wages, opportunity to work, overtime hours, and immigration status.” (Id. at p. 20.) The jury, after hearing the facts, can evaluate whether the Plaintiffs were deceived.

The above examples are not the only places where Burke's opinions go too far. However, because her report is so intertwined with permissible and impermissible opinions, the undersigned will not attempt to state on a paragraph-by-paragraph (or sentence-by-sentence basis) what is excluded from Burke's report. The limitation that she may only opine about the characteristics of human trafficking in general, and not whether there was trafficking in this case, should suffice.

b. *Signal's other arguments*

Signal also raises several other arguments as to why Burke's testimony should be excluded or limited. First, Signal argues that Burke misrepresented two of her qualifications, and therefore should be struck. (Doc. No. 69, pp. 2–3.) The undersigned disagrees. A review of her experience and training shows Burke has extensive experience working with victims of human trafficking and is qualified to testify as an expert on human trafficking. (See *id.*, Ex. B, pp. 1–5.) Whether the school where she obtained her Ph.D. in clinical psychology is accredited by the American Psychological Association, or whether her license to be a family counselor in California is still valid, does not impact whether she is qualified as an expert on trafficking. To the extent that Signal believes that these alleged misstatements affect the weight the jury should ascribe to her testimony, it can raise such issues on cross-examination.

Next, Signal argues that Burke's report is unreliable because her interview process is flawed and that opinions based on Plaintiffs' statements are inadmissible. (Doc. No. 69, pp. 6–9.) Because Burke is precluded from reaching an opinion on the issue of whether the Plaintiffs were victims of human trafficking, or evaluating the facts of this case as they relate to human trafficking, Signal's argument is now moot. (*Id.* at p. 9.) Likewise, Signal's argument that Burke is not competent to “reach a final diagnosis” is no longer at issue, since she will not be testifying as to how these Plaintiffs were impacted. Lastly, Signal argues that Burke “lacks a familiarity with her materials cited.” (*Id.* at pp. 3–4.) Signal claims that in previous versions of Burke's report, drafted for use in *David*, she cited a work that was subsequently removed. Burke's deposition is clear, however, that she did not find it helpful. This, however, is not a reason to strike Burke's report. If Signal believes that this change casts doubt Burke's credibility, Signal may raise this issue on cross-examination.

c. *Conclusion*

Signal's "Motion in Limine to Exclude/Limit Testimony of Florence Burke" (Doc. No. 69) is **GRANTED IN PART**. Burke's opinions shall be limited to those related to general characteristics of human trafficking schemes, and Burke is precluded from testifying whether these Plaintiffs were victims of human trafficking or in what ways the facts of this case are similar to other known cases of human trafficking.

F. Plaintiffs' "Motion to Exclude Testimony and Strike the Expert Report of Dr. Louise Shelley" (Doc. No. 73)

Signal designated Louise Shelley, Ph.D. ("Dr. Shelley") to testify as an expert on "human trafficking and related organized crime." (Doc. No. 88, p. 1.) Dr. Shelley received her Ph.D. in Sociology from the University of Pennsylvania and is currently a professor at the School of Public Policy at George Mason University. Her forty-five page report leads to one ultimate conclusion: "Signal was not engaged in human trafficking at any stage of the process with the H2B workers, either at recruitment, on their arrival in the United States or in their employ." (Doc. No. 73, Ex. C, p. 44.)⁸ The Plaintiffs seek to exclude Dr. Shelley's report, arguing that: (1) her report contains numerous legal conclusions; (2) her methodology is not valid; (3) her testimony is not helpful; and (4) she impermissibly assesses the witnesses' credibility. (Doc. No. 73-1.)

a. *Dr. Shelley's report contains impermissible legal conclusions*

The Plaintiffs argue that Dr. Shelley's report should be struck because it is "replete with legal conclusions" and "[t]hese conclusions fall far outside the scope of permissible expert

8. The Plaintiffs note that two reports were served on them and attach both reports. It is not clear from the face of either report which one was meant to be the operative report in this case. Moreover, the Plaintiffs make no argument as to why one report is the operative report for this case over the other. It appears that the more robust report is the one attached at Exhibit C to the Plaintiffs' briefing. Accordingly, for clarity, this will be considered the operative report.

testimony” (Doc. No. 73-1, p. 7.) The Plaintiffs first argue that Dr. Shelley offers numerous legal conclusions about human trafficking. For the same reasons that the Plaintiffs’ human trafficking expert report was limited, Dr. Shelley’s report must also be limited. Therefore, Dr. Shelley’s opinions are subject to the same limitation discussed above: Dr. Shelley may only discuss the general characteristics of human trafficking, but may not opine as to whether these Plaintiffs were in fact victims of human trafficking.

In addition, the Plaintiffs move to exclude five other alleged legal conclusions reached by Dr. Shelley. At the outset, because Dr. Shelley’s testimony is limited to only a discussion about human trafficking generally, much of this part of the Plaintiffs’ motion is now moot. However, for clarity, the undersigned will address the Plaintiffs’ arguments. First, the Plaintiffs’ argue that Dr. Shelley applies a more restrictive definition of human trafficking and forced labor, and therefore, her conclusion that the “Plaintiffs are not victims of human trafficking” is invalid and should be struck. Because Dr. Shelley cannot reach this opinion, the Plaintiffs’ argument is moot.⁹ Next, the Plaintiffs claim that Dr. Shelley offers an opinion on a “non-existent” debt bondage claim. A part of her report does address debt bondage. (Doc. 73, Ex. C, pp. 11–12) (“[T]here was no debt bondage in this case under either the American or UN definition.”). Debt bondage has a specific legal definition, and differs from the Plaintiffs’ claim that the financial debts they incurred forced them to continue working for Signal. See 22 U.S.C. §7102(5) (defining debt bondage as “the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or those of a person under his control as a security for debt”). The

9. The undersigned, however, reserves judgment on whether Dr. Shelley’s references to forms of trafficking that are not at issue would cause jury confusion. The Plaintiffs’ did not raise this argument. They only argued that it would be improper for Dr. Shelley to reach a conclusion that these Plaintiffs were in fact victims of human trafficking. On this point, the undersigned agrees. However, to the extent that Dr. Shelley seeks to discuss trafficking in general, and applies other standards, such as the United Nations definition, this may in fact be confusing the jury, but the Plaintiffs did not raise this argument.

Plaintiffs have not made a claim of debt bondage. Accordingly, because Dr. Shelley's opinion regarding debt bondage does not relate to any cause of action or issue in this case, it is inadmissible. See Roman, 691 F.3d at 694.

Third, Dr. Shelley claims that "Signal was exempt from OSHA standards for the housing of its H2-B workers" (Doc. No. 73, Ex. C, p. 28.) Dr. Shelley is not qualified to offer an opinion on the applicability of OSHA, therefore, this opinion is struck. Fourth, the Plaintiffs seek to strike an opinion reached based on a letter issued by the United States Department of Justice Special Counsel for Immigration Related Unfair Labor Practices. She opines that because the government found that Signal had not engaged in any unfair immigration related employment practices, and this necessarily includes coercion, there could be no trafficking. The Plaintiffs argue that this letter did not address Signal's actions and does not support a conclusion that the Plaintiffs were not trafficked. Because Dr. Shelley may only testify about human trafficking generally, and may not opine as to whether there was trafficking in this case, there is no need for her to discuss this letter. Therefore, her opinions based on this letter are struck. Lastly, the Plaintiffs argue that Dr. Shelley offers opinions on the law of agency. According to the Plaintiffs, the numerous references that she makes regarding Signal's role in the allegedly false promises made to the Plaintiffs is tantamount to an opinion on agency. The undersigned disagrees—Dr. Shelley does not offer any opinions on agency law. However, as will be discussed below, such comments on the evidence are not helpful, and therefore, are struck from her report.

b. Helpful to the jury

The Plaintiffs raise two reasons for why Dr. Shelley's opinions are not helpful, and therefore, inadmissible. First, they argue that Dr. Shelley's opinions "largely parrot Signal's

theory of the case” (Doc. No. 73-1 p. 14.) This is a fair characterization of much of Dr. Shelley’s report. Large portions of her report read more like an opening statement than an expert report. For example, she “opines” that: “Signal did not obtain workers for its facilities in Texas and Mississippi through the use of force, fraud, or coercion” (Doc. No. 73, Ex. C, p. 9); “Burnett might have engaged in deceptive promises, but as the chronology presented by the plaintiffs in the third amended complaint [demonstrates], Signal was not a part of any deceptive promises” (*Id.* at p. 18); “Signal did not promise the workers green cards, nor did they learn that this promise had been made by the recruiters until after the workers arrived at Signal[’s] facilities” (*Id.* at p. 19); “The Indian H2B workers did not have their passports or visas confiscated” (*Id.* at p. 38); and “[i]n reviewing the thousands of Signal emails, I saw nothing in them reflecting any effort to economize on the workers or to shortchange them.” (*Id.* at p. 41.) These are just a few examples of many.

Because Dr. Shelley’s opinions are limited to those related to the general characteristics of trafficking, such commentary on what the evidence establishes will not be allowed. To the extent that Dr. Shelley is going to opine that the facts of *Chellen v. John Pickle Co.*, No. 02-cv-85 (N.D. Okla. 2002) is consistent with other known or recognized cases of human trafficking, this is permissible. The fact that *Chellen* is not referred to in the pleadings or was a case brought prior to the passage of 18 U.S.C. § 1595 does not mean that Dr. Shelley cannot use this case in discussing the general characteristics of human trafficking.

c. *Reliability and methodology*

The Plaintiffs next argue, “[f]or many of her opinions, Dr. Shelley asks this Court to make ‘scientifically unsupported leaps of faith in the causal chain’” (Doc. No. 73-1, p. 11) (quoting *Rider v. Sandoz Pharm. Corp.*, 295 F.3d 1194, 1202 (11th Cir. 2012)). The Plaintiffs

identify two particular instances. First, they claim that Dr. Shelley supports her opinion that there was no trafficking in this case by erroneously drawing a conclusion from a report done by the Texas Task Force on Human Trafficking. (Doc. No. 73-1, p. 11.) Again, because Dr. Shelley will only be allowed to opine about the general characteristics of human trafficking, and not whether there was trafficking in this case, she will be precluded from drawing this conclusion.

The Plaintiffs next argue that Dr. Shelley opines that the food at the “man camp” was “adequate in quantity and was nutritional,” and she reached this opinion by “eating at a commercial restaurant run by the caterers in New Orleans more than six years after the last Indian H-2B worker ate at the ‘man camp.’” (Doc. No. 73-1, p. 12.) This is not the type of rigorous analysis that is required of an expert. Moreover, the quality of food at a restaurant in New Orleans, years later, is in no way indicative of the quality of food at the “man camps.” Therefore, such an “opinion” is improper. These are just two examples; Dr. Shelley offers numerous “opinions” that are reached through a less than rigorous analysis.¹⁰ Because her testimony is limited to discussing the general features of human trafficking schemes, these portions of her report are no longer in the case. However, because her report is replete with these types of remarks, the undersigned reiterates that any testimony given by Dr. Shelley at trial must meet the requirements of Rule 702.

10. Dr. Shelley also opined, “[e]xamining Slides 1, 2, and 3 of Signal’s safety performance reveals that is has an extremely low rate of accidents.” (Doc. No. 73, Ex. C, p. 35.) As discussed above, reaching such a conclusion requires balancing Signal’s safety record against identifiable standards. See infra III.A.b. Dr. Shelley has not done this. Likewise, she opines that: “I saw a photo of Khuttan’s welding test as compared to those of others and he was clearly an individual with inadequate or an absence of welding experience previously.” (Doc. No. 73, Ex. C, pp. 22–23.) Dr. Shelley is no way qualified to discuss the contents of a welding test, nor does she discuss how she reached the opinion that this Plaintiff had inadequate skills.

d. *Dr. Shelley improperly assesses the witnesses' credibility*

The Plaintiffs also seek to strike portions of Dr. Shelley's report where she assesses the credibility of the witnesses. (Doc. No. 73-1, pp. 15–16.) Signal responds that Dr. Shelley is not passing on the witnesses' credibility, but rather, merely elucidating the bases for her opinions. The undersigned is not persuaded. (Doc. No. 88, p. 16.) Dr. Shelley spends several pages of her report evaluating the Plaintiffs' testimony. For example, she states that "Kurian David's T-visa application is full of incorrect statements" (Doc. No. 73, Ex. C, p. 21); "Hemant Khuttan's declaration raises many questions as to its veracity and the validity of his complaints" (*Id.* at 22); and she notes an alleged contradiction in Sony Vadusevan-Sulekha's statement by stating that "the problem with his statement is that Signal never had any pictures of housing or residential facilities on its website. This is a fantasy not reality." (*Id.* at p. 23.) The jury, without the assistance of Dr. Shelley, can evaluate whether the Plaintiffs are being truthful. Accordingly, such opinions are improper.

e. *Conclusion*

Much of Dr. Shelley's report consists of impermissible legal conclusions, advocacy, assessment of the witnesses' credibility, and unreliable and unfounded opinions. However, Dr. Shelley does devote a few paragraphs of her report to discussing the elements of human trafficking generally, and she even opines that the Plaintiffs' expert does not identify all elements that are "central to labor trafficking." (Doc. No. 73, Ex. C, p. 35.) This portion of Dr. Shelley's report is acceptable; the remainder of Dr. Shelley's report is not.

Therefore, for the reasons stated above, the Plaintiffs' "Motion to Exclude the Testimony and Strike the Expert Report of Dr. Louise Shelley" (Doc. No. 73) is **GRANTED IN PART**. Dr. Shelley's testimony is limited to a discussion of the general elements and characteristics of

human trafficking. She, however, may not opine on whether these Plaintiffs were victims of human trafficking, the credibility of the Plaintiffs, or offer her assessment of the facts of this case.

G. The Plaintiffs’ “Motion to Limit the Testimony of Enrique Gonzalez, III” (Doc. No. 72)

Signal’s expert, Enrique Gonzalez (“Gonzalez”), an immigration lawyer, prepared a report addressing “various immigration issues.” (Doc. No. 80, Ex. A, p. 1.)¹¹ The Plaintiffs moved to strike Gonzalez’s opinion II and six other “stray remarks.” (Doc. No. 72-1, pp. 4–7.) Signal responded by arguing that Gonzalez was not “retained to provide an opinion on plaintiffs’ conduct in this case and concedes that he will not testify at trial to any individual plaintiffs’ conduct, nor that of any plaintiffs collectively.” (Doc. No. 80, p. 1.) Signal, however, claims that Gonzalez’s opinion II is “essential for the development of [his] subsequent opinions regarding Burnett.” (*Id.* at pp. 1–2.)

a. *Due to the severance and transfer of Signal’s cross-claims, Gonzalez’s Opinion II is no longer relevant*

The Plaintiffs move to strike Gonzalez’s Opinion II, which is: “Foreign nationals [seeking an H-2B visa] are considered to have committed immigration fraud if they deliberately conceal their intent to remain permanently in the United States from a U.S. consular or immigration officer.” (*Id.* at p. 20.) There is no cause of action in this case that centers on whether the Plaintiffs committed immigration fraud. While Signal may argue that the Plaintiffs in fact concealed their true intent, there is no need for expert testimony opining as to whether this amounts to immigration fraud. Moreover, the undersigned is persuaded that such testimony from

11. The Plaintiffs attached three versions of Gonzalez’s report, but do not argue that one version is the operative report for this case. (Doc. No. 72, Ex. A.) In turn, Signal attaches the report that appears to be drafted specifically for this case. (Doc. No. 80, Ex. A.) Accordingly, unless otherwise stated, any citations to Gonzalez’s report are to this version.

an expert could easily be construed by a jury that *these* Plaintiffs in fact committed immigration fraud, and therefore, has significant potential to confuse the jury.

Signal's primary argument that Opinion II should not be struck is that it is "essential for the development of Gonzalez's subsequent opinions regarding Burnett." (Doc. No. 80, pp. 1–2.) These subsequent opinions relate to Signal's cross-claims against Burnett that have been transferred to the Eastern District of Louisiana and, as such, are no longer a part of this case.¹² Accordingly, the undersigned strikes Opinion II because it is irrelevant.

b. *Other "stray remarks" are inadmissible*

The Plaintiffs also move to exclude six other "stray remarks" that they claim are aimed at them and are impermissible. Two examples are illustrative. First, Gonzalez states: "The intent by the foreign nationals and other companies was for the workers to remain in the U.S. permanently." (Doc. No. 80, Ex. A, p. 12.) Second, by "counseling foreign nationals to lie to immigration officers about their intent to remain in the U.S., Mr. Burnett, as well as the foreign nationals, knowingly committed immigration fraud." (*Id.* at p. 13.)

It appears that Gonzalez is inferring that the Plaintiffs committed these acts, even though Gonzalez unequivocally testified that he is not offering any opinions on the Plaintiffs' conduct. (Doc. No. 72, Ex. B, 191:6–13.) There is simply no other way to interpret his assertion that "the foreign nationals" (i.e., the Plaintiffs) "knowingly committed immigration fraud" by allegedly lying about their intent. Therefore, to prevent any unnecessary confusion that Gonzalez is opining about the Plaintiffs' conduct, these remarks are struck.

12. No party moved to exclude Gonzalez's Opinions III–V. Therefore, the undersigned expresses no opinion on whether these opinions meet Rule 702's "helpfulness" requirement.

c. *Conclusion*

The Plaintiffs’ “Motion to Limit the Testimony of Enrique Gonzalez, III” (Doc. No. 72) is **GRANTED**. Gonzalez’s Opinion II and the six “stray remarks” identified by the Plaintiffs are struck.

H. Signal’s “Motion in Limine to Exclude/Limit Testimony of Amy Mowl” (Doc. No. 76)

Signal moves to exclude or limit the testimony of the Plaintiffs’ expert, Amy Mowl. (Doc. No. 76.) Mowl is an economist, and is currently on the faculty of the Institute for Financial Management and Research Business School in Chennai, India. The Plaintiffs designated Mowl to provide “a culturally specific, socio-economic context to assist the jury in understanding the nature of the debts incurred by Plaintiffs in India to pay hefty recruitment fees charged by Defendants.” (Doc. No. 86, p. 1.) Signal seeks to exclude or limit Mowl’s testimony on three grounds: (1) she makes impermissible credibility determinations; (2) her testimony regarding suicide must be limited; and (3) “Mowl uses insufficient information and unreliable principles or methods in forming her opinions.” (Doc. No. 76.)

a. *Credibility Determination*

Signal argues that Mowl passes on the credibility of the Plaintiffs’ statements, and that her “opinions impermissibly regurgitate[] the Plaintiffs’ testimony stamped with the *imprimatur* of her expertise.” (Doc. No. 76, p. 5.) The undersigned disagrees with Signal’s characterization of Mowl’s approach. Mowl testified that she received sworn statements made by the Plaintiffs, and because they were sworn, assumed they were true. (*Id.*, Ex. B, 46:19–47:16.) In addition, when questioned about whether she examined the truthfulness of the Plaintiffs’ statements, she said she did not because they were consistent with what she knows about Indian finance products. (*Id.*) This is not the same as opining that the statements are in fact true.

Signal attempts to argue that Mowl's opinions are similar to ones that were struck in *Elat v. Ngoubene*. (Doc. No. 76, p. 5.) In *Elat*, the expert weighed two competing sets of facts, and concluded that the plaintiff's version of the facts was more credible than the defendants'. *Elat*, 993 F. Supp. 2d at 513–14 (noting that the expert's "evaluation of the truthfulness of Plaintiff's version of the underlying events as compared to Defendants' is little different from the way that juries themselves determine credibility from conflicting testimony"). The expert then used the plaintiff's version of the facts as the basis for her opinion. *Id.* Mowl did not undertake such an analysis. She merely took the plaintiffs' statements at face value and felt she could because they were consistent with what she expected based on her experience. This is the same as forming an opinion based on documents produced in discovery.

b. *Testimony regarding suicide*¹³

To illustrate the effect that debts can have on people in India, Mowl discusses a recent wave of suicides by Indian farm workers. (Doc. No. 76, Ex. A, pp. 15–18.) Signal seeks to exclude this part of Mowl's report on two grounds. First, Signal argues that her sources are faulty. Mowl's sources were Indian newspapers. Signal has pointed to no reason why the reliability or truthfulness of these sources should be doubted. Moreover, this type of challenge goes to the weight that the fact finder should ascribe to the opinions, not their admissibility. See 14.38 Acres of Land, 80 F.3d at 1077 ("As a general rule, questions relating to the bases and sources of an expert's opinion affect the weight to be assigned that opinion rather than its admissibility and should be left for the jury's consideration.").

Second, Signal claims that Mowl has not offered any form of "peer-reviewed or other authoritative source" showing that suicide rates amongst the farming community are relevant or

13. Signal did not argue that such testimony may be unfairly prejudicial. See FED. R. EVID. 403.

similar to those amongst the non-farming community. (Doc. No. 76, p. 6); see also Daubert, 509 U.S. at 592–93 (noting that one of the indicia of reliability is whether the expert’s theory or technique has been subject to peer review). While courts have struck expert testimony when there is too large of an analytic gap, the undersigned does not find that such a gap exists here. See also Pipitone, 288 F.3d at 244 (discussing that “the factors identified in *Daubert* may or may not be pertinent in assessing reliability”). Mowl does not need to show a direct correlation between farm worker and non-farm worker suicide rates to draw an analogy. Furthermore, Signal has pointed to no studies that Mowl has ignored, and the undersigned finds it unlikely that such studies have ever been conducted.

c. *Sufficiency of information and reliability of principles*

Signal next argues that Mowl has not reviewed sufficient information. Signal faults her for “not consider[ing] the pay data produced by Signal as part of its ESI productions,” “failing to request any banking records,” and not reviewing the deposition of Sachin Dewan. (Doc. No. 76, pp. 6–7.) The undersigned’s role, however, is to ensure that expert testimony is “based on *sufficient* facts or data”—not to ensure that an expert left no stone unturned. FED. R. EVID. 702. Here, after reviewing her report, the undersigned finds that Mowl has met this threshold. Mowl lists over forty sources that she considered in drafting her report. Also, a review of her deposition shows that she had cogent reasons for choosing not to review certain sources. Furthermore, an argument that an expert “did not review sufficient facts and data goes to the weight of [its] opinion, to be brought out in cross-examination and resolved by the jury, not to admissibility.” Suzion Wind Energy Corp. v. Shippers Stevedoring Co., 662 F. Supp. 2d 623, 667 (S.D. Tex. 2009).

d. *Conclusion*

Accordingly, Signal's "Motion in Limine to Exclude/Limit Testimony of Amy Mowl"

(Doc. No. 76) is **DENIED**.

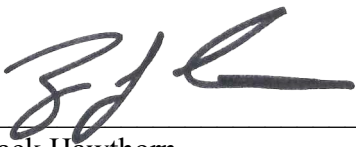
IV. Conclusion

The undersigned finds as follows:

- The Plaintiffs' "Motion to Exclude the Testimony and Strike the Expert Report of Ronald J. McAlear" (Doc. No. 70) is **GRANTED IN PART**. McAlear may testify about general industry practices and opine as to whether Signal's practices are consistent with these customs. However, McAlear may not opine that Signal is a safe company or has an "exemplary safety record";
- The Plaintiffs' "Motion to Exclude the Testimony and Strike the Expert Report of Kevin Fox Gotham" (Doc. 77) is **GRANTED IN PART**. Dr. Gotham may opine about the state of housing in the Gulf Coast region in general and the correlation between available housing and attracting skilled workers (opinions A through D). However, opinions E and F are struck, and he may not opine as to whether there was "an acute" housing shortage in Orange, Texas, why Signal built the "man camp," whether the Plaintiffs were required or coerced into living at the "man camp," or whether the "man camp" actually benefited the Plaintiffs;
- Signal's "Motion to Exclude the Opinion Testimony of Clyde Payne" (Doc. No. 68) is **GRANTED**;
- The Plaintiffs' "Motion to Exclude the Testimony and Strike the Report of Ronald L. Signorino" (Doc. No. 71) is **GRANTED**;
- Signal's "Motion in Limine to Exclude/Limit Testimony of Florence Burke" (Doc. No. 69) is **GRANTED IN PART**. Burke's opinions shall be limited to those related to general characteristics of human trafficking schemes, and Burke is precluded from testifying as to whether these Plaintiffs were victims of human trafficking or in what ways the facts of this case are similar to other known cases of human trafficking;
- The Plaintiffs' "Motion to Exclude the Testimony and Strike the Expert Report of Dr. Louise Shelley" (Doc. No. 73) is **GRANTED IN PART**. Dr. Shelley's testimony is limited to a discussion of the general elements and characteristics of human trafficking, and she may not opine on whether these Plaintiffs were victims of human trafficking, the credibility of the Plaintiffs, or offer her assessment of the facts of this case;

- The Plaintiffs’ “Motion to Limit the Testimony of Enrique Gonzalez, III” (Doc. No. 72) is **GRANTED**. Opinion II and the six other identified “stray remarks” identified by the Plaintiffs are struck;
- Signal’s “Motion in Limine to Exclude/Limit Testimony of Amy Mowl” (Doc. No. 76) is **DENIED**.

SIGNED this 26th day of June, 2015.



Zack Hawthorn
United States Magistrate Judge