

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
(Miami Division)
Civ. No. 07-22459 (COHN/SELTZER)**

ELOY ROJAS MAMANI, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	
)	
GONZALO SÁNCHEZ DE LOZADA)	
SÁNCHEZ BUSTAMANTE,)	
)	
Defendant,)	
)	
JOSÉ CARLOS SÁNCHEZ BERZAÍN,)	
)	
Defendant.)	
)	

**MINISTER SÁNCHEZ BERZAÍN’S ANSWER TO SECOND AMENDED
CONSOLIDATED COMPLAINT AND AFFIRMATIVE DEFENSES**

Defendant José Carlos Sánchez Berzaín (“Minister Sánchez Berzaín”) hereby files his Answer and Affirmative Defenses to Plaintiffs’ Second Amended Consolidated Complaint (“Complaint”):

ANSWER

Minister Sánchez Berzaín answers the Complaint as follows. All allegations not specifically admitted herein are denied. Minister Sánchez Berzaín reserves the right to seek to amend and/or supplement his Answer as may be necessary.

1. Admitted that a civil action has been filed; denied that Minister Sánchez Berzaín is liable in the civil action.
2. Admitted that Minister Sánchez Berzaín and Defendant Gonzalo Daniel Sánchez de Lozada Sánchez Bustamante (“President Sánchez de Lozada”) (collectively, “Defendants”)

took office in August 2002 and knew that, in the past, violent uprisings had sometimes, but not always, pressured previous governments to change their policies. Denied as to the remainder of the allegations in Paragraph 2. Minister Sánchez Berzaín further states that he took office at that time as Minister of the Presidency, not Minister of Defense.

3. Denied.

4. Denied.

5. Denied.

6. Admitted that individuals died and were injured during violent uprisings in September and October 2003. Denied as to the remainder of the allegations in Paragraph 6.

7. Denied.

8. Admitted that the Complaint purports to be filed on behalf of eight people. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the threat Decedents posed, and on that basis denies that allegation. Denied as to the remainder of the allegations in Paragraph 8.

9. Paragraph 9 states a legal conclusion to which no response is required. To the extent a response is required, Minister Sánchez Berzaín denies the allegations of Paragraph 9.

10. Paragraph 10 states a legal conclusion to which no response is required. To the extent a response is required, Minister Sánchez Berzaín denies the allegations of Paragraph 10.

11. Paragraph 11 states a legal conclusion to which no response is required. To the extent a response is required, Minister Sánchez Berzaín admits that he lives in this District.

12. Paragraph 12 states a legal conclusion to which no response is required. To the extent a response is required, Minister Sánchez Berzaín denies the allegations of Paragraph 12.

13. Paragraph 13 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, admitted that President Sánchez de Lozada served as President of the Republic of Bolivia from August 1993 to August 1997 and from August 2002 to October 2003. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the remaining allegations in Paragraph 13, and on that basis denies those allegations..

14. Paragraph 14 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the remaining allegations in Paragraph 14, and on that basis denies those allegations..

15. Admitted that Minister Sánchez Berzaín has lived in the United States since October 2003, when he was forced out of Bolivia, and that he currently lives in Florida. Admitted that Minister Sánchez Berzaín was granted asylum on or before May 1, 2007, and that some of his family members also live in the United States.

16. Admitted that on June 19, 2008, the Bolivian Minister of Justice purported to waive any immunity to which each Defendant is entitled. Minister Sánchez Berzaín denies any implication that the Minister of Justice had the authority to waive such immunity, as the purported waiver was a unilateral political decision, issued without legal basis and with impermissible retroactive effect, that violates Minister Sánchez Berzaín's human rights and right to due process. Admitted that the U.S. State Department "accepted" the unlawful waiver of immunity, but stated that its "accept[ance of] the waiver of immunity should not be construed as an expression that the United States approves of the litigation proceeding in the courts of this

country or that the United States take a position on the merits of dispositive legal issues raised by the parties....”

17. Denied.

18. Paragraph 18 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 18, and on that basis denies those allegations.

19. Paragraph 19 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 19, and on that basis denies those allegations.

20. Paragraph 20 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 20, and on that basis denies those allegations.

21. Paragraph 21 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 21, and on that basis denies those allegations.

22. Paragraph 22 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín

is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 22, and on that basis denies those allegations.

23. Paragraph 23 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 23, and on that basis denies those allegations.

24. Paragraph 24 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 24, and on that basis denies those allegations.

25. Paragraph 25 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 25, and on that basis denies those allegations.

26. Denied, except admitted that Minister Sánchez Berzaín has not been able to return to Bolivia.

27. Admitted that Minister Sánchez Berzaín knew that, in the past, violent uprisings in Bolivia had sometimes, but not always, pressured previous governments to change their policies. Denied as to the remainder of the allegations in Paragraph 27.

28. Admitted that in December 1996, deaths and injuries resulted from a violent and armed occupation of two mines by violent protestors that killed a police officer and that the government was required to respond to, and that the government voluntarily provided funds for

certain individuals and families. Denied as to the remainder of the allegations in Paragraph 28. Minister Sánchez Berzaín further states that he was not a member of the Bolivian government during the incident referenced in Paragraph 28.

29. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 29, and on that basis denies those allegations.

30. Denied.

31. Denied as to the allegations in the first two sentences of Paragraph 31. Minister Sánchez Berzaín is without knowledge as to what “close associates” are referred to in the third sentence of Paragraph 31 or whether these “close associates” purportedly “confirmed” anything, and on that basis denies those allegations. Minister Sánchez Berzaín further denies the underlying allegations of the third sentence of Paragraph 31.

32. Admitted.

33. Admitted that one prong of President Sánchez de Lozada’s policies during his 2002-2003 term involved pursuing a plan to export natural gas to the United States and Mexico through Chile, and that the succeeding Bolivian government set in motion, but did not complete, an agreement with foreign corporations to export liquefied natural gas from Bolivia to California. Denied as to the remainder of the allegations in Paragraph 33.

34. Denied.

35. Denied.

36. Denied as to the allegations in the first and third sentences of Paragraph 36. The remaining allegations do not specify to which version of the Bolivian Constitution or Organic Law of the Armed Forces Plaintiffs refer, and on that basis they are denied. Minister Sánchez

Berzaín further states that whatever version Plaintiffs refer to, denied that Paragraph 36 provides an accurate recitation of the entire document or the laws and Constitution of Bolivia. Denied as to the remainder of the allegations of Paragraph 36.

37. Admitted that in August 2002, the Army Commander issued a Manual for the Use of Force (“Manual”); Minister Sánchez Berzaín denies that the Manual was a secret. Denied that Paragraph 37 provides an accurate recitation of the entire document. Denied as to the remainder of the allegations of Paragraph 37.

38. Denied.

39. Denied.

40. The allegations do not specify to which version of the Bolivian military dictionary Plaintiffs refer, and on that basis they are denied. Minister Sánchez Berzaín further states that whatever version Plaintiffs refer to, denied that Paragraph 40 provides an accurate recitation of the entire document or that the referenced document provides the relevant definition of “subversion” under Bolivian law. Denied as to the remaining allegations of Paragraph 40.

41. Denied.

42. Admitted that in January 2003 individuals died and were wounded—including police—during violent armed blockades. Denied as to the remainder of the allegations in Paragraph 42. Minister Sánchez Berzaín further states that during the time period referenced in Paragraph 42, he was serving as the Bolivian Minister of the Presidency, not the Minister of Defense.

43. Admitted that on February 9, 2003, President Sánchez de Lozada proposed a budget to Congress which would raise income taxes on the wealthiest 5% of taxpayers. Denied as to the remainder of the allegations in Paragraph 43.

44. Admitted that on February 12, the Armed Forces acted to defend the government against an attack on the Presidential palace and the President, and that the confrontation ended when the police reached an agreement with the government in the early hours of February 13, but looting and a few other demonstrations continued. Denied as to the remainder of the allegations in Paragraph 44.

45. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 45, and on that basis denies those allegations.

46. Admitted to the extent the allegations in Paragraph 46 are consistent with the findings reported in the Report from the Organization of American States on the Events of February 2003 in Bolivia, May 2003. Denied as to the remainder of the allegations in Paragraph 46.

47. Admitted that Minister Sánchez Berzaín and several other cabinet ministers resigned from the cabinet. Denied as to the remainder of the allegations in Paragraph 47 as Minister Sánchez Berzaín's resignation was voluntary and unrelated to the allegations in Paragraph 47.

48. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 48, and on that basis denies those allegations..

49. Denied.

50. Denied.

51. Denied.

52. Admitted that in April 2003, on the anniversary of the 1952 revolution, President Sánchez de Lozada stated that the Revolutionary Nationalist Movement Party was willing to defend democracy with the instruments of democracy. Denied as to the remainder of the allegations in Paragraph 52.

53. Denied.

a. Admitted that some individuals in Bolivia created a National Coordinator for the Recovery and Defense of Gas to oppose the plan to export gas.

b. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 53(b), and on that basis denies those allegations.

54. Admitted as to the allegations in the first sentence of Paragraph 54. Denied as to the allegations in the second sentence of Paragraph 54, except admitted that Congress elected a new Ombudsman.

55. Admitted that in early August Minister Sánchez Berzaín was named as the Minister of Defense. Denied that Minister Sánchez Berzaín had direct control over the military.

56. Admitted as to the allegations in the first, second, and fourth sentences of Paragraph 56, except that Minister Sánchez Berzaín denies that the organizations' demands were solely economic. Denied as to the allegations in the third and fifth sentences of Paragraph 56, except to state that Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the allegation regarding Vice-Minister Harb's statement, and on that basis denies that allegation.

57. Denied.

58. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the allegations in the first sentence of Paragraph 58 and on that basis denies those allegations. Denied as to the remaining allegations of Paragraph 58.

59. Admitted that on September 13, 2003, President Sánchez de Lozada met with the head of Semptra in Mexico. Denied as to the remaining allegations in Paragraph 59.

60. Denied.

61. Admitted that Marlene Nancy Rojas Ramos died on September 20, 2003. Denied as to the remainder of the allegations in Paragraph 61.

62. Admitted that in mid-September, among taking other actions, protestors dug trenches and placed rocks on the road between La Paz and Sorata. Admitted that a festival had attracted many people to Sorata, including foreign tourists, and that they were unable to leave because violent, armed protestors held them hostage and blocked the roads leading out of Sorata. Denied as to the remainder of the allegations in Paragraph 62.

63. Denied, except admitted that on September 20, President Sánchez de Lozada signed a written order instructing the Commander in Chief of the Armed Forces “to mobilize and use the necessary force to restore public order and respect for the rule of law in the region.”

64. The allegations in the first sentence of Paragraph 64 are denied. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 64, and on that basis denies those allegations.

65. Denied.

66. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 66, and on that basis denies those allegations.

67. Denied as to the allegations in the first, second, and third sentences of Paragraph 67, except that Minister Sánchez Berzaín admits that he flew by helicopter from La Paz to Achacachi to Sorata and that he returned by helicopter to La Paz. Denied as to the allegations in the fourth sentence of Paragraph 67, except that Minister Sánchez Berzaín admits that a combined police and military convoy rescued the tourists and others.

68. Admitted that Minister Sánchez Berzaín landed at the Achacachi military base, but denied as to the remainder of the allegations in paragraph 68.

69. Denied.

70. Denied as to all allegations in Paragraph 70, except that Minister Sánchez Berzaín admits that two policemen were injured.

71. Denied.

72. Admitted that President Sánchez de Lozada signed an order on September 20; denied that Paragraph 72 provides an accurate recitation of the entire document. Denied as to the remainder of the allegations of Paragraph 72.

73. Minister Sánchez Berzaín is without sufficient knowledge as to the unnamed soldier's statements in the second sentence, and on that basis denies those allegations. Denied as to the remainder of the allegations in Paragraph 73.

74. Denied.

75. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 75, and on that basis denies those allegations.

a. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 75(a), and on that basis denies those allegations.

b. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 75(b), and on that basis denies those allegations.

c. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 75(c), and on that basis denies those allegations.

d. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 75(d), and on that basis denies those allegations.

76. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 76, and on that basis denies those allegations.

77. Denied.

78. Denied as to the first sentence. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 78, and on that basis denies those allegations.

79. Denied.

80. Admitted that on the evening of September 20, there was a meeting between President Sánchez de Lozada, the Cabinet, and Vice President Carlos Mesa in order to determine whether to declare a state of emergency. Admitted that Minister Sánchez Berzaín and the Minister of Government gave a report on the political situation. Denied as to the remaining allegations of Paragraph 80.

81. Denied.

82. Admitted that on and after September 20, 2003, the Bolivian media provided coverage of the events in Warisata, but denied as to Plaintiffs' characterization of that coverage.

83. Denied, except that Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to whether he met with the military high command on September 21, and on that basis denies those allegations.

84. Denied.

85. Denied as to the fourth sentence. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 85, and on that basis denies those allegations.

86. Denied.

87. Denied.

88. Denied.

89. Admitted that in early October, villagers, among other things, blocked roads in protest. Admitted that a number of violent protest marches occurred in different areas of the country, with the apparent goal of converging on La Paz and El Alto in order to destabilize the government. Denied as to the remainder of the allegations in Paragraph 89.

90. Admitted that people within and outside the government, including Defendants and the Catholic Church, desired a peaceful solution to the violent protests. Denied as to the remainder of the allegations in Paragraph 90.

a. Admitted that in October, Yerko Kukoc and other ministers met with President Sánchez de Lozada. Denied as to the remainder of the allegations in Paragraph 90(a).

b. Admitted that Defendants asked the Catholic Church to call for a dialogue before the violent protests escalated further and led to more deaths.

c. Admitted that in October, the mayor of La Paz called for a referendum on the export of natural gas.

d. Denied.

91. Admitted as to the first sentence. Denied as to the second sentence. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in the third sentence, and on that basis denies those allegations.

92. Denied, except admitted that on October 9, the military prevented a group of miners armed with dynamite and other weapons from marching into El Alto.

93. Denied.

94. Admitted.

95. Denied, except admitted that Minister Sánchez Berzaín met with gas distributors on or about October 10.

96. Denied.

97. Denied, except that Minister Sánchez Berzaín admits that on October 10, additional troops arrived in La Paz.

98. Denied.

99. Admitted that on or about the evening of October 11, a military contingent escorted a convoy of gas tanker trucks from the Senkata gas plant in El Alto towards La Paz. Denied as to the remainder of the allegations in Paragraph 99.

100. Admitted that on October 11, the Cabinet adopted Decree 27209. Denied that Paragraph 100 provides an accurate recitation of the entire document. Denied as to the remainder of the allegations in Paragraph 100.

101. Admitted that on October 11, President Sánchez de Lozada sent a letter. Denied that Paragraph 101 provides an accurate recitation of the entire document. Denied as to the remainder of the allegations in Paragraph 101.

102. Paragraph 102 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 102, and on that basis denies those allegations.

103. Denied.

104. Denied.

105. Denied.

106. Admitted.

107. Denied.

108. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in the first sentence, and on that basis denies those allegations. Denied as to the remainder of the allegations in Paragraph 108.

a. Denied.

b. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 108(b), and on that basis denies those allegations.

c. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the military dictionary's definition of "combat," but Minister Sánchez Berzaín states that in September and October 2003, the Bolivian Armed Forces were required to comply with their constitutional and legal functions in response to violent uprisings of armed protestors.

d. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in the first sentence, and on that basis denies those allegations. Denied as to the remainder of the allegations in Paragraph 108(d).

e. Denied.

109. Minister Sánchez Berzaín admits that civilian and military deaths occurred along Avenida Juan Pablo II, but Minister Sánchez Berzaín denies any implication that the military killed innocent civilians who were not near areas where the conflict between the military and the violent, armed protests occurred. Denied as to the second sentence. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in the third sentence, and on that basis denies those allegations.

110. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 110, and on that basis denies those allegations.

111. Denied.

112. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 112, and on that basis denies those allegations.

113. Denied that soldiers attacked demonstrators at the bridge and then returned to shoot civilians in the road and at apartment buildings lining the road. Minister Sánchez Berzaín

is without sufficient knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 113, and on that basis denies those allegations.

114. Denied that the military injured civilians in El Alto by using the tactic of shooting at people who sought the safety of their homes. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 114, and on that basis denies those allegations.

115. Denied that military forces turned off the Avenida Juan Pablo II and swept through adjacent neighborhoods shooting at unarmed civilians. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 115, and on that basis denies those allegations.

116. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 116, and on that basis denies those allegations.

117. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 117, and on that basis denies those allegations.

118. Admitted that gas tankers left the Senkata plant accompanied by military troops. Denied as to the remainder of the allegations in Paragraph 118.

119. Denied.

120. Denied that the kind of weapon which allegedly caused Lucio Santos Gandarillas Ayala's wound was only available to the military. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 120, and on that basis denies those allegations.

121. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 121, and on that basis denies those allegations.

122. Denied.

123. Denied.

124. Denied.

125. Admitted that President Sánchez de Lozada met with Vice President Mesa at lunch on or about October 12. Denied as to the remainder of the allegations in Paragraph 125.

126. Denied, except admitted that Minister Sánchez Berzaín saw General Claros and other military leaders on the evening of October 12.

127. Admitted that the Armed Forces published a comminué. Denied that Paragraph 127 provides an accurate recitation of the entire document.

128. Denied.

129. Denied.

130. Denied.

131. Admitted that, at the time of the events in question, there were no gas plants along the road and that the road was not used to transport gas. Minister Sánchez Berzaín states that the road was used to transport food and other critical supplies, and that the violent, armed protestors had attempted to prevent such critical supplies from reaching La Paz. Denied as to the remainder of the allegations in Paragraph 131.

132. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 132, and on that basis denies those allegations.

133. Admitted that on the morning of October 13, a group of violent, armed protestors set up a blockade on the Ánimas Valley road. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to where the protestors came from or what motivated them, and on that basis denies those allegations.

134. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 134, and on that basis denies those allegations.

135. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 135, and on that basis denies those allegations.

136. Denied as to the second sentence. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 136, and on that basis denies those allegations.

137. Denied.

138. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 138, and on that basis denies those allegations.

139. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 139, and on that basis denies those allegations.

140. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 140, and on that basis denies those allegations.

141. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 141, and on that basis denies those allegations.

142. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 142, and on that basis denies those allegations.

143. Denied that soldiers were under orders to shoot at civilians or at anyone they saw in a window. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the remaining allegations in Paragraph 143, and on that basis denies those allegations.

144. Denied that the soldiers shot at unarmed civilians. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 144, and on that basis denies those allegations.

145. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 145, and on that basis denies those allegations.

146. Admitted that on October 13, Vice President Mesa made a formal announcement with the political motive of replacing President Sánchez de Lozada. Denied that Paragraph 146 provides an accurate recitation of the entire announcement. Denied that there was a policy of killing civilians.

147. Admitted that Jorge Torres Obleas resigned and submitted a letter of resignation. Denied that Paragraph 147 provides an accurate recitation of the entire document.

148. Admitted that President Sánchez de Lozada appeared on television and stated, among other things, that he would not resign. Denied as to the remainder of the allegations in Paragraph 148.

149. Denied.

a. Admitted as to the first sentence. Denied as to the second sentence.

b. Denied.

c. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 149(c), and on that basis denies those allegations.

d. Denied.

150. Denied as to the first sentence. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in the second sentence, and on that basis denies those allegations.

151. Admitted that on October 15, soldiers prevented a group of miners armed with dynamite and other deadly weapons from proceeding to La Paz. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in third sentence, and on that basis denies those allegations. Denied as to the remainder of the allegations in Paragraph 151.

152. Admitted that Ana Maria Romero de Campero led a hunger strike. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to participants in that strike, and on that basis denies those allegations. Denied as to the remainder of the allegations in Paragraph 152.

153. Admitted that on October 15, Mauricio Antezana appeared on television and made an announcement. Denied that Paragraph 153 provides an accurate recitation of the entire announcement.

154. Admitted that on October 15, Antezana and Vincent Gómez García Palao resigned. Minister Sánchez Berzaín denies the characterization of the reasons for the resignations.

155. Admitted that on October 15, the Armed Forces published a communiqué. Denied that Paragraph 155 provides an accurate recitation of the entire document.

156. Admitted as to the allegations in the first sentence of Paragraph 156. Denied as to the allegations in the fourth and fifth sentences of Paragraph 156. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the remainder of the allegations in Paragraph 156, and on that basis denies those allegations.

157. Admitted that Minister Sánchez Berzaín and members of the coalition government met with the Army Staff, and that at that meeting leaders of the political parties expressed support for the efforts of the Armed Forces to defend democracy and maintain constitutional order. Denied as to the remainder of the allegations in Paragraph 157.

158. Admitted that the general in charge of the Supreme Council of National Defense asked President Sánchez de Lozada for a meeting of the Council via a letter that did not arrive at the Presidential Residence until the day that President Sánchez de Lozada resigned. Denied that a meeting was held or that the general or the Council made any recommendation to President Sánchez de Lozada.

159. Admitted that Mesa gave a radio interview and later issued a statement. Denied that Paragraph 159 provides an accurate recitation of the entire interview or statement.

160. Admitted that on October 16, President Sánchez de Lozada spoke on the radio. Minister Sánchez Berzaín denies the characterization of President Sánchez de Lozada's comments.

161. Admitted that Minister Sánchez Berzaín gave a radio interview; denied that Paragraph 161 provides an accurate recitation of the entire interview. Denied as to the second sentence.

162. Admitted that on October 17, President Sánchez de Lozada, Minister Sánchez Berzaín, and the Minister of the Presidency met with members of the military high command. Denied as to the remainder of the allegations in Paragraph 162.

163. Admitted that President Sánchez de Lozada gave a radio interview. Denied that Paragraph 163 provides an accurate recitation of the entire interview.

164. Minister Sánchez Berzaín is unaware of any statement by the U.S. Embassy on October 17, and on that basis denies that allegation. Admitted that President Sánchez de Lozada tendered his resignation to Congress and that he and Minister Sánchez Berzaín were forced out of Bolivia and travelled to the United States on October 17th. Admitted that Mesa succeeded to the presidency, and that he subsequently resigned as the result of various violent uprisings.

165. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 165, and on that basis denies those allegations.

166. Admitted except Minister Sánchez Berzaín denies the characterization that he “fled” Bolivia and the characterization that the Juicio de Responsibilidades was initiated by Congress in October 2004. Rather, it was first suggested as a part of the October Agenda issued by political opponents of President Sánchez de Lozada within days of forcing his resignation.

167. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 167, and on that basis denies those allegations.

168. Minister Sánchez Berzaín denies any implication that these were authorized and proper legal actions.

169. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 169, and on that basis denies those allegations.

170. Paragraph 170 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín denies that there was any legitimate trial or judgment. Minister Sánchez Berzaín further states that the trial was politically motivated and lacked the most basic procedural safeguards, and that the verdicts do not carry any weight as to whether any laws were violated in September and October 2003. Denied as to the remainder of the allegations in Paragraph 170.

171. Admitted that Defendants live in the United States and that Bolivian law does not permit trials in absentia. Denied that Defendants are or have been under any legal obligation to return to Bolivia or that their personal safety would not be jeopardized by returning to Bolivia. Denied as to the remainder of the allegations in Paragraph 171.

172. Denied that Minister Sánchez Berzaín fled the jurisdiction of the Bolivian courts. Admitted that the United States has refused to extradite Minister Sánchez Berzaín.

173. Admitted that in November 2003, the Bolivian government enacted a Humanitarian Assistance Agreement. Denied that Paragraph 173 provides an accurate recitation of the entire agreement.

174. Paragraph 174 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín admits the allegations in Paragraph 174.

175. Admitted that in November 2008, the Bolivian government enacted legislation entitled “Law for the Victims of the Events of February, September, and October of 2003,” known as Law No. 3955. Denied that Paragraph 175 provides an accurate recitation of the entire law.

176. Paragraph 176 is not an allegation directed at Minister Sánchez Berzaín and therefore no response is required. To the extent a response is required, Minister Sánchez Berzaín admits the allegations in Paragraph 176.

177. Minister Sánchez Berzaín admits that Law No. 3955 was enacted by the Bolivian government. Denied that Paragraph 177 provides an accurate recitation of the entire law. Minister Sánchez Berzaín further denies any implication that Bolivian law can affect the exhaustion requirement of the TVPA.

178. Minister Sánchez Berzaín denies the implication that he has caused harm to Plaintiffs. Minister Sánchez Berzaín admits that there is no judgment against him in any court of law and that he has not paid any money to Plaintiffs nor had any legal obligation to do so.

179. Denied.

180. Denied.

181. Denied.

182. Denied, except that Minister Sánchez Berzaín admits that he was in regular communication with President Sánchez de Lozada.

183. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 65, 67-68, 71-72, 80, 83, 126, 162-163.

184. Denied.

185. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 5, 38, 42, 45, 48-50, 56-57, 61, 77, 81-82, 88, 90, 96, 102-103, 105, 125, 149, 124, 137.

186. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 61-145, 156, 165.

187. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 77, 124, 156, 165.

188. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 75, 112-120, 140-142, 145.

189. Denied.

190. Denied, except that Minister Sánchez Berzaín admits that he was in regular communication with President Sánchez de Lozada.

191. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 30-31, 37-41, 51-52, 58, 61-145.

192. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 42, 45, 48-50, 56-57, 61-145, 156, 162-163, 165.

193. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 77, 82, 103, 124, 128, 156, 165.

194. Denied. Minister Sánchez Berzaín incorporates his response to paragraph 55.

195. Denied, except admitted that President Sánchez de Lozada had the authority to remove Minister Sánchez Berzaín from his position and did not do so. Minister Sánchez Berzaín further incorporates his responses to paragraphs 61-165.

196. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 75, 112-120, 140-142, 145.

197. Denied.

198. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 31-40, 60.

199. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 156, 165.

200. Denied. Minister Sánchez Berzaín incorporates his responses to paragraphs 75, 112-120, 140-142, 145.

201. On May 20, 2014, the Court entered an Order granting in part Defendants' Motion to Dismiss Plaintiffs' Complaint. In that Order, the Court dismissed the extrajudicial killing claim relating to this allegation and, accordingly, no response to Paragraph 201 is required. To the extent a response is required, Minister Sánchez Berzaín incorporates his responses to paragraphs 1 through 200.

202. On May 20, 2014, the Court entered an Order granting in part Defendants' Motion to Dismiss Plaintiffs' Complaint. In that Order, the Court dismissed the extrajudicial killing claim relating to this allegation and, accordingly, no response to Paragraph 202 is required. To the extent a response is required, Minister Sánchez Berzaín denies the allegations of Paragraph 202.

203. On May 20, 2014, the Court entered an Order granting in part Defendants' Motion to Dismiss Plaintiffs' Complaint. In that Order, the Court dismissed the extrajudicial killing claim relating to this allegation and, accordingly, no response to Paragraph 203 is required. To the extent a response is required, Minister Sánchez Berzaín denies the allegations of Paragraph 203.

204. On May 20, 2014, the Court entered an Order granting in part Defendants' Motion to Dismiss Plaintiffs' Complaint. In that Order, the Court dismissed the extrajudicial killing claim relating to this allegation and, accordingly, no response to Paragraph 204 is required. To the extent a response is required, Minister Sánchez Berzaín denies the allegations of Paragraph 204.

205. On May 20, 2014, the Court entered an Order granting in part Defendants' Motion to Dismiss Plaintiffs' Complaint. In that Order, the Court dismissed the extrajudicial killing claim relating to this allegation and, accordingly, no response to Paragraph 205 is required. To the extent a response is required, Minister Sánchez Berzaín denies the allegations of Paragraph 205.

206. Minister Sánchez Berzaín incorporates his responses to paragraphs 1 through 200.

207. Denied.

208. Minister Sánchez Berzaín is without sufficient knowledge to form a belief as to the truth of the allegations in Paragraph 208, and on that basis denies those allegations.

209. Denied.

210. On May 20, 2014, the Court entered an Order granting in part Defendants' Motion to Dismiss Plaintiffs' Complaint. In that Order, the Court dismissed the crimes against humanity claim relating to this allegation and, accordingly, no response to Paragraph 210 is required. To the extent a response is required, Minister Sánchez Berzaín incorporates his responses to paragraphs 1 through 200.

211. On May 20, 2014, the Court entered an Order granting in part Defendants' Motion to Dismiss Plaintiffs' Complaint. In that Order, the Court dismissed the crimes against humanity claim relating to this allegation and, accordingly, no response to Paragraph 211 is required. To the extent a response is required, Minister Sánchez Berzaín denies the allegations of Paragraph 211.

212. On May 20, 2014, the Court entered an Order granting in part Defendants' Motion to Dismiss Plaintiffs' Complaint. In that Order, the Court dismissed the crimes against humanity claim relating to this allegation and, accordingly, no response to Paragraph 212 is required. To the extent a response is required, Minister Sánchez Berzaín denies the allegations of Paragraph 212.

213. On May 20, 2014, the Court entered an Order granting in part Defendants' Motion to Dismiss Plaintiffs' Complaint. In that Order, the Court dismissed the crimes against humanity claim relating to this allegation and, accordingly, no response to Paragraph 213 is required. To the extent a response is required, Minister Sánchez Berzaín denies the allegations of Paragraph 213.

214. On May 20, 2014, the Court entered an Order granting in part Defendants' Motion to Dismiss Plaintiffs' Complaint. In that Order, the Court dismissed the crimes against humanity claim relating to this allegation and, accordingly, no response to Paragraph 214 is required. To the extent a response is required, Minister Sánchez Berzaín denies the allegations of Paragraph 214.

215. Minister Sánchez Berzaín incorporates his responses to paragraphs 1 through 200.

- 216. Denied.
- 217. Denied.
- 218. Denied.
- 219. Denied.
- 220. Denied.
- 221. Denied.
- 222. Denied.
- 223. Denied.
- 224. Denied.

* * *

Minister Sánchez Berzaín denies the allegations set forth in Plaintiffs' Prayer for Relief and denies that Plaintiffs are entitled to any of the relief requested therein, or to any relief whatsoever from him.

* * *

AFFIRMATIVE DEFENSES

Minister Sánchez Berzaín sets forth the following defenses. Minister Sánchez Berzaín does not intend hereby to assume the burden of proof with respect to those matters as to which, pursuant to law, the Plaintiffs bear the burden. Minister Sánchez Berzaín reserves the right to amend or add additional affirmative defenses upon further investigation and discovery.

First Affirmative Defense

Plaintiffs fail to state a claim for which relief can be granted.

Second Affirmative Defense

This Court lacks subject matter jurisdiction over Plaintiffs' TVPA and wrongful death claims because the allegations contained in the Complaint do not constitute extrajudicial killings as defined by United States courts, the Law of Nations, or any treaty of the United States.

Third Affirmative Defense

This Court lacks subject matter jurisdiction over Plaintiffs' TVPA claim because Plaintiffs have already received adequate compensation for their injuries pursuant to at least two Bolivian governmental schemes, the 2003 Humanitarian Assistance Agreement and the 2008 Law for the Victims of the Events of February, September, and October of 2003.

Fourth Affirmative Defense

This Court lacks subject matter jurisdiction over Plaintiffs' TVPA claim because Plaintiffs have failed to exhaust available remedies in Bolivia, including civil claims in the Bolivian court system.

Fifth Affirmative Defense

This Court lacks subject matter jurisdiction over Plaintiffs' claim for wrongful death, whether pled under Bolivia or Florida law, because it raises novel and complex issues of foreign law.

Sixth Affirmative Defense

This Court lacks subject matter over Plaintiffs' claim, and Plaintiffs could not state a claim for wrongful death under Florida law because the alleged conduct was not intended to have

a substantial effect within the state of Florida, nor is Plaintiffs' state-law claim for wrongful death a matter of universal concern recognized by the community of nations.

Seventh Affirmative Defense

This Court lacks subject matter jurisdiction over Plaintiffs' claim for wrongful death under Florida law because it raises novel and complex issues of state law, including whether state tort law should adjudicate liability as between citizens of a foreign state and a former official of a foreign government.

Eighth Affirmative Defense

Plaintiffs' claim for wrongful death is barred by Bolivia's statute of limitations because it is a civil tort claim, which has a three-year statute of limitations.

Ninth Affirmative Defense

Plaintiffs' claims are barred by the political question doctrine because the claims pose non-justiciable political questions that this Court does not have the jurisdiction to decide.

Tenth Affirmative Defense

Plaintiffs' claims are barred by the act-of-state doctrine because they concern an official act of a foreign sovereign performed within its own territory.

Eleventh Affirmative Defense

Minister Sánchez Berzaín is immune from Plaintiffs' claims.

Twelfth Affirmative Defense

Plaintiffs' claims are un-triable due to the unavailability of critical witnesses and evidence. The passage of time and distance from Bolivia deny them due process of law and the right to produce competent evidence in their defense.

Thirteenth Affirmative Defense

Plaintiffs' TVPA and wrongful death claims are barred by due process principles, because Minister Sánchez Berzaín lacked fair notice that the theories of liability relied on by Plaintiffs—including the theory of command responsibility—imposed liability for the alleged conduct at issue.

Fourteenth Affirmative Defense

Plaintiffs' claims are barred under Rule 19 of the Federal Rules of Civil Procedure for failure to join all necessary and indispensable parties, including (a) Evo Morales and Felipe Quispe, who incited and exploited the violent civil unrest in September and October 2003 to promote their agenda, resulting in the deaths of Plaintiffs' decedents, by, among other things, leading an insurgency to overthrow the democratically-elected government of Bolivia and directing their followers to block roads and critically needed supplies from reaching civilian populations, hold tourists hostage, fire upon government personnel, and attack municipal buildings with Molotov cocktails and dynamite; and (b) the soldiers who allegedly perpetrated the acts of which Plaintiffs complain.

Fifteenth Affirmative Defense

Plaintiffs' claims are barred under Rule 19 of the Federal Rules of Civil Procedure for failure to join all other persons who may be entitled by applicable law to damages by reason of the decedents' deaths.

Sixteenth Affirmative Defense

Plaintiffs' claims are barred to the extent that any Plaintiffs or anyone else has brought any other action for damages related to the alleged decedents' deaths.

Seventeenth Affirmative Defense

Assuming for the purpose of asserting this defense only that the individuals alleged to have killed Plaintiffs' decedents were agents of Minister Sánchez Berzaín, such persons were acting outside the scope of their supposed agency.

Eithteenth Affirmative Defense

Minister Sánchez Berzaín did not hire, select, retain, or employ the individuals who are alleged to have killed Plaintiffs' decedents.

Nineteenth Affirmative Defense

Any damages allegedly suffered by Plaintiffs were directly and proximately caused by the superseding, intervening acts, or omissions of other persons over whom Minister Sánchez Berzaín had no control and for whose acts or omissions Minister Sánchez Berzaín is neither responsible nor liable.

Twentieth Affirmative Defense

Plaintiffs' claims are barred because any alleged acts or omissions of Minister Sánchez Berzaín were taken as a necessary and proportional response to violent protests—a response that the United States Government has stated was commensurate to the threat posed by protestors.

Twenty-First Affirmative Defense

Plaintiffs' claims are barred because any alleged acts or omissions of Minister Sánchez Berzaín were taken out of necessity or under duress.

Twenty-Second Affirmative Defense

Plaintiffs' claims are barred because Minister Sánchez Berzaín cannot be held vicariously liable for the acts of the soldiers who allegedly perpetrated the acts of which Plaintiffs complain.

Twenty- Third Affirmative Defense

Plaintiffs' claims are barred by equitable estoppel. Plaintiffs have already received adequate compensation for their injuries pursuant to at least two Bolivian governmental schemes, the 2003 Humanitarian Assistance Agreement and the 2008 Law for the Victims of the Events of February, September, and October of 2003, and are seeking additional compensation in Bolivia.

Twenty-Fourth Affirmative Defense

Plaintiffs' claims for punitive and exemplary damages are barred insofar as Plaintiffs seek to hold Minister Sánchez Berzaín vicariously liable for any act or decision of another person.

Twenty-Fifth Affirmative Defense

An award of punitive damages against Minister Sánchez Berzaín would be unconstitutional and in violation of the Due Process Clause of the Fifth and Fourteenth Amendments of the U.S. Constitution.

Twenty-Sixth Affirmative Defense

Minister Sánchez Berzaín reserves the right to assert further defenses as they become known or apparent in the course of these proceedings.

* * *

WHEREFORE, Minister Sánchez Berzaín requests judgment against Plaintiffs on the Complaint and an award of attorneys' fees and costs expended herein to the extent permitted by law, along with such other relief as the Court deems just and proper.

Respectfully submitted,

/s/ Ana C. Reyes

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October 17, 2016

Counsel for Minister Sánchez Berzain

Civ. No. 07-22459 (COHN/SELTZER)
Answer and Affirmative Defenses

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on October 17, 2016, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on the counsel listed on the attached Service List by electronic mail (in PDF format).

/s/ Ian Ross
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