UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID MURILLO and SILVIA MENCIAS on behalf of themselves and as Personal Representatives of their deceased son, ISIS OBED MURILLO, and his next of kin, including his SIBLINGS.

v.

ROBERTO MICHELETTI BAIN

Case No. 4:11-CV-2373

PLAINTIFFS' AMENDED MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUES

RULES

INTERNATIONAL CASES

FOREIGN AUTHORITIES

INTERNATIONAL AUTHORITIES

OTHER AUTHORITIES

PRELIMINARY STATEMENT

Plaintiffs David Murillo and Silvia Mencias respectfully submit this memorandum and annexed documents in opposition to the motion to dismiss of Defendant Roberto Micheletti Bain, dated September 28, 2011.

INTRODUCTION

This Court has personal jurisdiction over Defendant and subject matter jurisdiction over the claims brought by Plaintiffs, requiring denial of Defendant's motion to dismiss under Fed. R. Civ. Proc. 12(b)(1), 12(b)(2), 12(b)(5) and 12(b)(6). As set forth below, plaintiffs have made a prima facie showing of jurisdiction and have properly served the Defendant in this case.[1] Subject matter jurisdiction exists in this case based on the Alien Tort Statute (ATS), 28 U.S.C. §1350, the Torture Victims Protection Act (TVPA), 28 U.S.C. §1350 (note) and associated state tort law claims pursuant to the court's supplemental jurisdiction under 28 U.S.C. §1367.

In suggesting to the Court that the claims are not adequately pled, Defendant glosses over numerous detailed factual allegations that provide ample basis for the plausible legal claims in the Complaint. In particular, Defendant ignores the factual allegations supporting Micheletti's liability for the claims under the doctrine of command responsibility, which holds a superior responsible for the violations of subordinates. Plaintiffs are not required to prove the case at this stage and need only provide well-pled allegations. Even so, the factual and legal allegations contained in the Complaint leave no room for an 'obvious, alternative explanation.'[2]

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[1] Plaintiffs also respectfully request reconsideration of the Court's denial of plaintiffs' request for jurisdictional discovery in a motion filed separately in order to more fully address disputed questions of fact identified herein.

[2] If the Court determines that all or some of the claims are not adequately pled, Plaintiffs request they be allowed to amend the pleadings. *See Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.,* 313 F.3d 305, 329 (5th Cir. 2002) ("[D]istrict courts often afford plaintiffs at least one opportunity to cure pleading deficiencies before dismissing a case, unless it is clear that the

STATEMENT OF FACTS

The Coup d'Etat

Plaintiffs are the parents and next-of-kin of Isis Obed Murillo, a young man killed by the Honduran military during a peaceful public demonstration on July 5, 2009 at the Toncontin Airport in Tegucigalpa, Honduras. Compl. ¶¶ 16, 36-46. About one week before, the Honduran military kidnapped and forcibly expatriated the country's democratically elected sitting president Manuel Zelaya in a coup d'etat. *Id*. ¶¶ 19-35. The same day, then-Secretary of the Honduran National Congress Jose Saavedra Paz, who is now an affiant in this case on behalf of defendant, read a purported "resignation" letter allegedly written by President Zelaya, and the Congress "appointed" Defendant Roberto Micheletti Bain as de facto President. *Id*. ¶¶ 30-33; Def. Ex. D [Doc. 20-4]; *see also* Honduras: Human Rights and the Coup D'etat, Inter-Am. C.H.R., OEA/Ser.L/V/II, Dec. 30, 2009, ¶ 77 (cited to in Compl. at n.2). Later that day, President Zelaya announced from his location in Costa Rica that he had not signed any resignation letter. Compl. ¶ 34. Thereafter, Defendant Micheletti and other members of the de facto government dropped their claim that President Zelaya had voluntarily stepped down from office and instead began arguing that he had been properly deposed from office under Honduran law. *Id*. ¶ 35.

Micheletti Takes Control and Assumes Command Responsibility

Upon Micheletti's assumption of power, he immediately instituted a series of measures limiting Hondurans' movement and access to information and aimed at repressing the political opposition to the coup. *Id*. ¶¶ 56-80. On the day of the coup d'etat, electricity was cut in places throughout the country, creating an information blackout. *Id*. ¶¶ 27-29. Television and radio

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defects are incurable or the plaintiffs advise the court that they are unwilling or unable to amend in a manner that will avoid dismissal").

broadcasters were not permitted to go on the air and, in some instances, Honduran security forces stormed the offices of news outlets to force them to go off-line. *Id.* Severely repressive tactics were used to crack down on protests and the Defendant oversaw a stark increase in the militarization of Honduran territory that resulted in the arbitrary detention and "cruel, inhuman and degrading treatment" of thousands of people. *Id*. ¶¶ 56-62.

In the days after the coup, Defendant Micheletti issued a number of executive decrees that restricted the rights to freedom of expression and assembly, and suspended the constitutional guarantees of personal liberty and not to be held incommunicado. *Id.* ¶¶ 63-66. In addition, the de facto regime under Micheletti began targeting other public officials opposed to the coup, including ministers, governors, members of Congress and mayors, and used the military to raid and occupy their offices. *Id.* ¶¶ 68-69. Defendant Micheletti also authorized the military to raid the offices of media outlets that were considered critical of the coup government and to confiscate broadcasting and transmission equipment. *Id*. ¶¶ 69-77. Through his words and conduct, Defendant Micheletti clearly acknowledged and asserted his authority over the military post-coup. *Id.* ¶ 82.

The Killing of Isis Murillo

On July 5, 2009, the exiled President Zelaya attempted to return to Honduras after being kidnapped and forced into exile by airplane. *Id*. ¶ 36. Isis Murillo, along with family members and thousands of others, gathered at Toncontin Airport to show their support for the ousted President and restoration of democracy. *Id*. ¶¶ 37-38. The Honduran military sent armed troops and vehicles to the airport, and blocked the runway to prevent Zelaya from landing. *Id*. ¶¶ 39-40. As the public demonstrators gathered at the airport, the military opened fire into the crowd, shooting and killing Isis Obed Murillo and injuring others. *Id*. ¶¶ 41-42. To date, no one has

been held accountable for Murillo's killing. Prosecutors in the Human Rights Unit of the Honduran Attorney General's office have said that the military simply refused to cooperate in theirinvestigations. *Id*. ¶ 46.Under Defendant Micheletti's leadership, they found the lack of cooperation of military and police personel to be 'absolute' and 'a common practice.' Compl. ¶¶ 43-46.

In the wake of Isis' killing, his parents and family began receiving threatening and harassing calls and text messages, and were subject to surveillance, harassment, and intimidation by the police. *Id*. ¶¶ 47-55. A police helicopter even flew over the Plaintiffs' home several times, circling low and close, in a menacing manner and with weapons drawn by those onboard. *Id*. On one occasion, fliers were dropped from the helicopter stating that what happened to Isis would also happen to them. *Id*. Plaintiffs were forced to relocate to another community in an effort to escape the constant threats, surveillance and harassment. *Id.*

Political Persecution and Widespread and Systematic Human Rights Abuses Under Micheletti

The killing of Isis Murillo and the persecution of his family took place in the context of widespread and systematic human rights abuses committed under the authority of Defendant Micheletti's de facto government. *Id*. ¶¶ 56-57. As noted above, during the post-coup period, Hondurans witnessed numerous grave human rights violations perpetrated against those opposed to the coup and coup government. The de facto regime under Micheletti was responsible for crackdowns on media and news outlets that questioned the coup, including military raids of their offices and confiscation of equipment, severely repressive tactics and use of the military to police resulting in thousands of arbitrary detentions, persons being held incommunicado and thousands who were subjected to inhuman, cruel and degrading treatment, and attacks on political opponents who held official government positions. *Id*. ¶¶ 58-79.

ARGUMENT

I. PLAINTIFFS STATE A PRIMA FACIE CASE FOR ADEQUATE SERVICE OF PROCESS UNDER RULE 4 OF THE FED. R. CIV. PROC.

A. Plaintiffs meet the requirements for service of process in Honduras under Rule 4(f)(2)(C)(ii).

Plaintiffs agree with Defendant that Rule 4(f)(2) governs service of process in Honduras because Honduras is not party to an internationally agreed upon means of service or party to any such agreement with the United States. Def's Br. at 6-7. Rule 4(f)(2) lists several ways for effecting service of process outside the jurisdiction of the United States. Plaintiffs complied with the procedures set forth in Rule 4(f)(2)(C)(ii):

> (f) Serving an Individual in a Foreign Country.
> Unless federal law provides otherwise, an individual - other than a minor, an incompetent person, or a person whose waiver has been filed - may be served at a place not within any judicial district of the United States:
> …
> (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
> …
> (C) unless prohibited by the foreign country's law, by:
> …
> (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt ….

Fed. R. Civ. P. 4(f)(2)(C)(ii).

Defendant's contention that these forms of service are inadequate because "Honduran law provides that an individual must be served with process by a person authorized by the Clerk of the Courts" is based on a misstatement of Rule 4(f)(2)(C)(ii). The express language of the Rule and majority interpretation of it is that the method of service is valid so long as the law of

the foreign jurisdiction does not proscribe its use. *See* Section I.A.1. *infra*. Defendant's alternate argument – that service was improper because Plaintiffs mailed the documents in question – is based on a misstatement of fact. The documents were dispatched by a process server who was accompanied by a Deputy Clerk of the District Court of the Southern District of Texas at the time of the mailing, consistent with the Rule and the practices of the Clerk of Court. *See* Section I.A.2. *infra*.

1. Rule 4(f)(2)(C) states, and the majority of courts interpreting it have held, that service abroad may be effected through any form of mail that the Clerk addresses and dispatches, so long as the foreign jurisdiction does not expressly prohibit that method and a signed receipt is obtained.

Rule 4(f)(2)(C) uses the phrase "unless prohibited by the foreign country's law" to describe permissible forms of service; no other limiting principle is set forth in the Rule. By its plain language, then, the Rule permits the use of any method except one that is "prohibited" by the foreign jurisdiction. In other cases where parties have offered the interpretation that Defendant suggests here, courts have rejected it as a matter of statutory interpretation. Defendant's reading of 4(2)(f)(C) is essentially a restatement of Rule 4(f)(2)(A), which provides that, in the absence of any internationally agreed methods, service may be effected "as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction." Thus, accepting Defendant's interpretation of Rule 4(f)(2)(C) would render it redundant. "A construction of 'prohibit' that leads to this result should be avoided for it is well established that courts should be reluctant to interpret statutory provisions so as to render superfluous other provisions within the same enactment." *Dee-K Enterprises, Inc. v. Heveafil Sdn. Bhd.*, 174 F.R.D. 376, 380 (E.D. Va. 1997); *see also Res. Ventures, Inc. v. Res. Mgmt. Intel, Inc*., 42 F.Supp.2d 423, 429-30 (D. Del. 1999). Of the courts to address the issue, the majority have rejected the interpretation proposed by Defendant as a matter of statutory interpretation.

E.g., Fujitsu Ltd. v. Belkin Int'l, Inc., Case No. 10-CV-3972-HK, 2011 U.S. Dist. LEXIS 99922, at *8-9 (N.D. Cal. Sept. 6, 2011); *Nabulsi v. Zayed Al Nahyan*, Civil Action No. H-06-2683, 2008 U.S. Dist. LEXIS 35131, at *11 (S.D. Tex. Apr. 29, 2008); *Headstrong Corp. v. Jha*, No. 3:05CV813-HEH, 2007 U.S. Dist. LEXIS 31135, at *5-6 (E.D. Va. Apr. 27, 2007); *Trueposition, Inc. v. Sunon, Inc*., NO. 05-3023, 2006 U.S. Dist. LEXIS 39681, at *12-14 (E.D. Pa. June 14, 2006); *Power Integrations, Inc. v. Sys. Gen. Corp*., No. C 04-02581 JSW, 2004 U.S. Dist. LEXIS 25414, at *7-9 (N.D. Cal. Dec. 7, 2004); *Emery v. Wood Indus., Inc*., Civil No. 98-480-M, 2001 U.S. Dist. LEXIS 12914, at *2 (D.N.H. Aug. 20, 2001); *Caringal v. Karteria Shipping, Ltd*., Civil Action No. 99-3159, 2000 U.S. Dist. LEXIS 10890, at *2 (E.D. La. July 25, 2000); *Banco Latino S.A.C.A. v. Gomez Lopez*, 53 F.Supp.2d 1273, 1277 (S.D. Fla. 1999).

Honduran law does not prohibit the use of mail to serve or notify an individual of legal process. Attached as Exhibit C is an English translation of the Chapter of the Honduran Civil Code that governs notification procedures. No provision of the Chapter bans the use of mail, public or private, as a means of notification. Additionally, Defendant does not contend that any such prohibition exists. *See* Def. Ex. D, Saavedra Decl. [Doc. 20-4].

Defendant's proposed interpretation of Rule 4(f)(2)(C) should be rejected because it is inaccurate and against the weight of legal authority.

2. In accordance with Rule 4(f)(2)(C)(ii) and the Court Clerk's practices, the mailing of the Summons and Complaint was overseen by the Clerk and sent using a method requiring a signed receipt.

Rule 4(f)(2)(C)(ii) further requires that the Clerk of the Court send the documents through a method of mail that requires a signed receipt. Defendant claims, without citing any evidence, that this condition was not met. As explained below and in the supporting documents

cited herein, Plaintiffs complied with Rule 4(f)(2)(C)(ii) for serving complaint and summons with and in the presence of an individual from the office of the Clerk of Court.[3]

As detailed in the attached declaration of Elizabeth Bradley (Exh. D), on June 27, 2011, counsel for Plaintiffs contacted the office of the Clerk of Court for the Houston Division of the District Court of the Southern District of Texas to arrange for serving documents pursuant to Rule 4(f)(2)(C)(ii). (Exh. D at ¶ 1.) An individual at the Clerk's office informed Ms. Bradley that if someone came to their office with the relevant documents ready for mailing, someone from the Clerk's office would accompany the person and witness the dispatch of the documents, then retain a copy of the receipt of the mailing and tracking number for verification. (*Id*. at ¶ 7.)

Thereafter, Plaintiffs retained a process server, Robert Horton, who on two separate occasions, went to the Clerk's office for the Houston Division of the District Court of the Southern District of Texas and was accompanied by a Deputy Clerk who witnessed Mr. Horton dispatch packages containing the Summons, Complaint, Judge's Order for Conference, Spanish translations thereof, and the Civil Cover Sheet (collectively, "service documents") for delivery to Honduras. On July 7, 2011, Deputy Clerk Ketta Christen accompanied Mr. Horton when he sent via International Registered Mail one set of service documents to each of the following addresses: (1) Barrio Las Delicias, 3 Avenida y 4 Calle, El Progresso, Yoro Honduras (Exh. E) and (2) Colonia Satelite Casa No. 911, Comayaguela, Honduras (Exh. F). Through the U.S. Postal Service's online mail tracking system, counsel thereafter confirmed that both packages had been received by the post office's sorting facility for delivery to Honduras and electronically filed these confirmations with the proof of service forms. (Exh. E, F.)

[3] Plaintiffs note that although the Federal Rules of Civil Procedure create a 120-day period from the filing of the complaint in which to serve defendants, this Court's rules required service within 60-days.

Because the U.S. Postal Service does not provide confirmation of receipt (only of mailing) for mail sent to Honduras and Rule 4(f)(C)(ii) requires "a signed receipt," on August 12, 2011, Mr. Horton together with Deputy Clerk Steve Murdock re-served Defendant at the aforementioned addresses by depositing the service documents at a Federal Express drop-box located at the Houston Division federal District Court. (Exh. G, H.) Federal Express confirmed that on August 16, 2011 one package was delivered to and signed for at the El Progreso address (Exh. G) and on August 17, 2011 one package was delivered to and signed for at the Comayaguela address (Exh. H). The affidavits, proofs of service, and confirmation referenced above establish that Plaintiffs adequately served Defendant in Honduras in accordance with federal law, and Defendant's unsupported contention to the contrary cannot overcome this showing.

B. Additionally, Plaintiffs meet the requirements for service of process in Texas under Rule 4(e).

In addition to completing service in Honduras, Plaintiffs effected service upon Defendant pursuant to Rule 4(e), which authorizes service upon an individual "other than a minor, an incompetent person, or a person whose waiver has been filed" by "delivery a copy of [the summons and complaint] to an agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(e). Based on a publicly recorded power of attorney identifying Defendant and his wife as owners of 32125 Joseph Road in Hockley, Texas and appointing Jenny Vivas as their agent (Exh. I), Plaintiffs retained a process server who delivered to Ms. Vivas at the aforementioned address an original stamped copy of the Summons and Complaint on June 28, 2011 to effect service on Defendant pursuant to Rule 4(e). (Exh. J, K.)

It is believed that Defendant and his wife, Siomara Giron De Micheletti, executed a statutory durable power of attorney on November 4, 2010 in which their address is identified

"32125 Joseph Road Hockley, Texas 77447" and in which they appoint Jenny Vivas as their "agent (attorney-in-fact)." (Exh. I.) The document is acknowledged (i.e., signed) by the individuals granting the power on the second page, with the names of the grantors typed below. The overall language and format of the document mirrors the sample statutory durable power of attorney form provided in Section 490(a) of the Texas Probate Code. (Exh. L.) By the express terms of that document and operation of Texas law, Ms. Vivas was granted the power to act on their behalf in a number of areas, including as agent for service of process. The form required the grantors to "cross out" powers enumerated in a list if they did not wish to grant them to Ms. Vivas. Defendants did not make any such limiting notations and instead, initialed the line stating the power of attorney extended to "ALL OF THE POWERS LISTED IN (A) THROUGH (M)." Specifically enumerated in that list of powers not withheld are those related to "claims and litigation." (Exh. I.) Section 500 of the Texas Probate Code confirms that "In a statutory durable power of attorney, the language conferring general authority with respect to claims and litigation empowers the attorney in fact or agent to: … (6) waive the issuance and service of process on the principal, *accept service of process*, …" TEX. STAT. PROB. CODE §500 (emphasis added).

The power of attorney appears to have operated as valid instrument, despite the facial irregularity in placement of the signatures; at the time of filing of this suit, it was (and still is) a publicly available record on file with the County Clerk for Montgomery County, Texas in connection with the purchase of 15 acres of real estate by Defendant and his wife. Other state records also indicate that the transfer of title and accompanying power of attorney functioned as an effective instrument. The Montgomery Central Appraisal District which sets county property values for tax purposes identifies Siomara Giron De Micheletti as linked with "32125 Joseph

Road" on a Property Detail Sheet for another separate parcel of land in the County. (Exh. M.) Similarly, the current tax statement for this separate parcel (Exh. N) and the tax history record for this parcel (Exh. O) also link Siomara Giron De Micheletti with the 32124 Joseph Road address.

Plaintiffs provided counsel for Defendant with a copy of the power of attorney on August 19, 2011. The pending motion to dismiss was filed more than five weeks later and includes a sworn declaration by Defendant in which he notably does not deny that he signed the power of attorney. During the Court conference held on September 29, 2011, counsel for Defendant for the first time suggested that the power of attorney was signed by someone other than Defendant. Counsel for Defendant did not provide any evidence in support of this contention. Moreover, even if the Defendant were to submit some evidence at this time in the form of an affidavit or otherwise, in the absence of an opportunity for discovery to examine such submissions, the procedural posture of this dispute requires that all factual disputes be resolved in favor of Plaintiff. *See discussion at* Section II.A. With the exception of counsel's unsubstantiated statement, the power of attorney has been treated and recorded as a valid, legally binding instrument through the present time.

* * *

Because service of process was validly effected under either Rule 4(f)(2)(C)(ii) and Rule 4(e), the Court must deny Defendant's motion to dismiss pursuant to Rule 12(b)(5).

II. PLAINTIFFS STATE A PRIMA FACIE CASE OF PERSONAL JURISDICTION.

A. In the absence of an evidentiary hearing, a plaintiff must establish personal jurisdiction through less than a preponderance of the evidence to overcome a Rule 12(b)(2) motion to dismiss.

When a defendant moves to dismiss an action for both lack of jurisdiction and failure to state a claim, the court should consider the jurisdictional issue first. *United States ex rel. Foulds* v. *Texas Tech Univ.*, 171 F.3d 279, 286-87 & n. 9-11 (5th Cir. 1999) ("To rule on a merits question before, or in addition to, answering the omnipresent jurisdictional question would contravene the well-established principle that the federal courts may not issue advisory opinions."). Once a defendant challenges the existence of personal jurisdiction, the plaintiff bears the burden of establishing its validity. *Allred v. Moore & Peterson*, 117 F.3d 278, 281 (5th Cir. 1997).

The court may make a determination about jurisdiction with or without holding an evidentiary hearing. If an evidentiary hearing is not held, the plaintiff need only make a prima facie showing. *See Walk Haydel & Assocs. v. Coastal Power Prod. Co*., 517 F.3d 235, 241 (5th Cir. 2008). This relatively low burden is met by less than that which is required for a preponderance of the evidence standard. *See id.* The court must accept as true all well-pled allegations and any uncontroverted assertions in the complaint. Additionally, any conflicts over jurisdictional facts in the parties' briefs or supporting documentation must be resolved in favor of the plaintiff. *See Allred*, 117 F.3d at 281; *Alpine View Co. v. Atlas Copco AB*, 205 F.3d 208, 215 (5th Cir. 2000).

However, if a court "'makes factual determinations decisive of a motion to dismiss for lack of jurisdiction, it must give plaintiffs an opportunity for discovery and a hearing that is appropriate to the nature of the motion to dismiss.'" *McAllister v. FDIC*, 87 F.3d 762, 766 (5th Cir. 1996) (quoting *Williamson v. Tucker*, 645 F.2d 404, 414 (5th Cir.), *cert. denied*, 454 U.S. 897 (1981)). Because a "pretrial evidentiary hearing is intended to serve as a substitute for the resolution of factual and legal disputes relevant to jurisdiction at trial[,] both parties must be

allowed to submit affidavits and to employ all forms of discovery, subject to the district court's discretion and as long as the discovery pertains to the personal-jurisdiction issue." *Walk Haydel*, 517 F.3d at 242.

Under this framework, Plaintiffs have met the minimum threshold of establishing a prima face case of jurisdiction based on the totality of the evidence.

B. Personal jurisdiction over the Defendant exists if he has sufficient "minimum contacts" with the state of Texas and assertion of jurisdiction comports with notions of "fair play" and "substantial justice."

A federal court may assert personal jurisdiction over a non-resident defendant only if both the forum state's long-arm statute and the federal due process is satisfied. *Johnston v. Multidata Sys. Int'l Corp*., 523 F.3d 602, 609 (5th Cir. 2008). Because jurisdiction under the Texas long-arm statute extends as far as it does under the federal Constitution, the Court must ask one question, namely, whether the requirements of due process are met. The due process inquiry involves a two-part analysis that considers whether the defendant purposely availed himself of the benefits and protections of the forum state by establishing "minimum contacts" and whether jurisdiction does not offend traditional notions of fair play and substantial justice." *Id.* (quotations and citation omitted).

Where the lawsuit is not based on a defendant's contacts in the forum state, the minimum contacts inquiry requires determining whether general jurisdiction exists. Under this principle, if the non-resident defendant's contacts with the forum state are "substantial, continuous, and systematic" and not just "[r]andom, fortuitous, or attenuated," assertion of personal jurisdiction is proper. *Id.* at 610 (quotations and citations omitted).

"The general jurisdiction analysis is fact-specific and is determined not on a mechanical and quantitative test, but rather under the particular facts upon the quality and nature of the

activity with relation to the forum state." *TracFone Wireless, Inc. v. Carson*, Civil Action No. 3:07-CV-1761-G, 2008 U.S. Dist. LEXIS 68673, at *15 (N.D. Tex. Aug. 28, 2008) (quotations and citation omitted). "General jurisdiction can be assessed by evaluating contacts of the defendant with the forum over a reasonable number of years, up to the date the suit was filed." *Access Telecomm., Inc. v. MCI Telcomms. Corp.*, 197 F.3d 694, 717 (5th Cir. 1999) (citation omitted). Dismissal is proper only if the facts, viewed collectively, fail to establish jurisdiction. *See Alpine View*, 205 F.3d at 215.

1. The quality and quantity of Defendant's contacts with Texas constitute a prima facie case of "purposeful availment" and "minimum contacts" under the first prong of the due process inquiry.

When the evidence of Defendant's contacts in the state of Texas is considered *in toto*, Plaintiffs have established a prima face case of jurisdiction over Defendant. Defendant currently owns land in Texas and in the past has purchased other parcels of land; has leased real estate on his property to others; has had bank accounts in Texas that were used (at minimum) to engage in the purchase of real estate; and has visited Texas. Plaintiffs do not argue that any of these contacts are *individually* sufficient to support general jurisdiction. However, when considered collectively, these contacts show that Defendant has "purposefully availed" himself of the benefits and protections of Texas's laws as required for the assertion of personal jurisdiction.

Contrary to Defendant's suggestion that he has an ownership interest in only one Texas property, official documents indicate that his interests extend to up to three pieces of real estate, starting in 2008 and continuing through the present time.

a. The Remington Property

One property consists of two lots located at 27220 Remington Forest East ("Remington Property") in Hockley, Texas (Waller County). Records maintained by the Waller County

Clerk's office indicate that "Roberto Micheletti & Siomara Giron de Micheletti" purchased the property in December 2008 and retain title to it today. (Exh. P.) In 2011, Waller County officials appraised that property to be worth $115,790 (Exh. Q.) Defendant acknowledges that he possesses an interest in the Remington Property and further admits that he has had rented a dwelling on that property "for the last several years." (Def. Ex. A [Doc. 20-1].) According to Defendant, that dwelling burned down in a wildfire in September 2012. However, Defendant still retains title to the land on which it stood.

b. The Amarillo Property

Defendant and his wife also own a much larger, 15-acre parcel of land located at 29814 Amarillo Street ("Amarillo Property") in Magnolia, Texas (Montgomery County), which they purchased in December 2010. (Exh. R.) The Montgomery Central Appraisal District lists the 2012 assessed value of the Amarillo Property as $79,330. (Exh. S.) Appended to the warranty deed for the Amarillo Property recorded with the Montgomery County Clerk's Office is a power of attorney bearing what appears to be the signature of Defendant and his wife. The power is notarized by a witness who wrote that the power was "acknowledged" by "Roberto Micheletti Bain" and "Siomara Micheletti De Giron." (Exh. I.) Additionally, a handwriting expert retained by Plaintiffs reviewed the signature on the power of attorney with other publicly available samples of Defendant's signature and concluded that the signatures were all made by the same individual. (Exh. T.)[4]

[4] To the extent there is any dispute that Defendant signed the power of attorney, at this juncture, any factual disputes, including those created by an affidavit, are to be resolved in favor of Plaintiffs, as explained above. Moreover, Texas law contains a presumption that property owned by either spouse during a marriage is community property, such that Defendant is presumed to have an equal ownership interest in any real property purchased by his spouse during their marriage. TEX. STAT. FAM. CODE § 3.003

The Texas Property Code does not require that Defendant execute a power of attorney in order to purchase real estate. He entered into this contract, governed by Texas law, of his own volition in order to reap certain privileges and benefits available through a statutory durable power of attorney. In the power of attorney, Defendant and his wife assign to Jenny Vivas, a Texas resident, a broad range of powers that relate to and extend beyond the purchase of the Amarillo Property. Ms. Vivas has submitted a declaration to the Court indicating that, since February 2011, she has managed the Amarillo Property, collecting rental income generated from the property, depositing those funds into her own account, and paying taxes, insurance, and expenses from those proceeds. (Def. Exh. B [Doc. 20-2].) In light of the power of attorney and Ms. Vivas's sworn statements about her responsibilities with respect to the Amarillo Property, it is reasonable to conclude that she is carrying out these acts pursuant to the authority granted to her in the power.

c. The Joseph Road Property

Defendant and his wife are also associated with a third property in Texas located at 32125 Joseph Road ("Joseph Road Property") in Hockley, Texas (Montgomery County). In December 2010, Defendant and his wife identified this address as their contact location in the power of attorney discussed above. (Exh. I.) Additionally, this same address is listed for Roberto Micheletti and Siomara Giron De Micheletti on the 2011 Property Appraisal form on file with the Waller County Appraisal District for the Remington Property described above. (Exh. Q.) Finally, current Montgomery County records list Siomara Giron De Micheletti as the Owner of the Joseph Road Property – in particular, she is identified as such by the Montgomery County Appraisal District on its 2012 Property Detail Sheet for a parcel of land described as "Lake Creek Ranchettes." That property has an appraised value of $11,250. (Exh. M.)

d. Bank Accounts in Texas

Defendant states in his Declaration that he had bank accounts in Texas from 2007 through 2011. More specifically, he had a checking account and a savings account opened in 2007 in Houston, Texas. He further states that he deposited funds in the checking account for the purpose of purchasing property, without stating how much was deposited or the scope or frequency of transactions after the account was first opened. Similarly, Defendant is silent about the activity involving the savings account until the time it is closed in December 2008 and its contents are consolidated with the checking account. (As noted above, in December 2008, Defendant purchased the Remington Property in Hockley, Texas.) Defendant admits that he maintained the checking account until February 2011. Although he says that he "did not personally deposit or withdraw funds from that account," he does not say that the account in his name was inactive until its closure. Nor does he specify the amount that was in the account or describe the nature or frequency of transactions during that period. Yet, based on Defendant's declaration it is clear that the account remained his property for the duration. Thus, whatever transactions did take place, did so with respect to an account for which he was responsible and from which he benefited.

Notably, the closure of this account coincides with the time when Ms. Vivas began managing finances related to the Amarillo Property. Until this time, however, he had full or partial ownership of, at least, the Remington Property and the Amarillo Property. In order for Defendant to have maintained ownership during this time, he would have been responsible for paying taxes and other expenses. Even if he "personally" did not handle such transactions, he either affirmatively authorized someone to manage such matters or ratified their actions because, if he had not, he would have lost title to the properties. Given that his Texas bank account was

closed in February 2011, the same month in which Ms. Vivas assumed management of the Amarillo Property, one can infer that the two were related.

* * *

While ownership of a single secondary residence or single piece of real estate or the singular act of appointing an agent through power of attorney or the maintenance of bank accounts do not by themselves support a finding of general jurisdiction, when viewed collectively over time, they can. Such contacts are not "random, fortuitous or attenuated" nor are they the result of unilateral activity of another party. Defendant's actions display deliberate efforts by Defendant to engage in a series of related financial transactions and real estate transfers and to identify and authorize, through a formal vehicle created by state law, a Texas resident to act as his agent in order to maintain ownership of these properties. Despite Defendant's attempt to minimize Defendant's contacts, the fact that Defendant may not have personally been present for every check deposit, every property tax payment, or every insurance premium does not discount the reality that he "purposefully availed" himself of local law, has invoked its protections, and benefited from the privileges conferred upon him continuously for a period of years prior to the filing of this litigation.

The cases cited by Defendant do not contradict this conclusion. With respect to whether Defendant's bank accounts and financial transactions militate toward a finding of jurisdiction, the cases relied upon by Defendant are either consistent with the argument set forth above or factually distinguishable. Plaintiffs agree that, "[t]he purpose of the account, the number of account transactions, and the duration are factors to be considered, but are not by themselves determinative…." *De Elizondo v. Elizondo*, No. 04-08-00384, 2009 Tex. App. LEXIS 4101, at *11 (Tex. App. June 10, 2009). However, the outcome of *Elizondo* is not instructive here

because that case involved only one "contact" (a set of bank accounts), whereas here Defendant also holds property, has collected rent, has appointed an agent pursuant to Texas law, and has displayed an overall intention to benefit from Texas law. The denial of jurisdiction in *Primera Vista S.P.R. de R.L. v. Banca Serfin S.A.*, *Institucion de Banca Multiple Grupo Financiero Serfin*, 974 S.W.2d 918, 1998 Tex. App. LEXIS 4811 (Tex. App. Aug. 6, 1998), is similarly inapposite to the facts of this case. In *Primera Vista*, the defendant's connection to Texas was "pass-through" accounts that were "a by-product of [foreign defendant's] business in Mexico with Mexican importer customers rather than an indication of any substantial, purposeful business activity conducted by [defendant] on its own behalf in Texas." *Id.* at *21. Here, however, Defendant admits he created bank accounts for the express purpose of engaging in transactions within the state of Texas and not incidental to exchanges taking place outside the state.[5]

C. Assertion of jurisdiction over Defendant comports with notions of "fair play" and "substantial justice."

The 'minimum contacts' inquiry is fact-intensive and no one element is decisive; rather the touchstone is whether the defendant's conduct shows that it reasonably anticipates being haled into court, *i.e*,. the defendant must not be haled into a jurisdiction solely as a result of random, fortuitous, or attenuated contacts, or of the unilateral activity of another party or third person. *McFadin v. Gerber*, 587 F.3d 753, 759 (5th Cir. 2009). In determining whether or not exercise of jurisdiction is fair and reasonable, defendants bear the burden of proof and "it is rare to say the assertion [of jurisdiction] is unfair after minimum contacts have been shown." *Id.* at 759-760. In light of the factors identified by the Defendant as applicable to the instant case, any burden on the Defendant in responding to litigation in this forum, any burden is far outweighed

[5] *Waterman Steamship Corp. v. Ruiz,* NO. 01-10-00516-CV, 2011 Tex. App. LEXIS 6881 (Tex. App. Aug. 25, 2011), is similarly distinguishable because the court notes that the bank accounts there were "pass-through accounts", *id.* at *14, that failed to establish "purposeful availment."

by the profound interests of the Plaintiffs in seeking relief before this Court. While Defendant may be a nonresident, he is not being summoned on the bases of merely "random, fortuitous or attenuated contacts" nor on the basis of unilateral activity of another party or third person. He admits his ownership interest in at least one property in Texas and acknowledges having held bank accounts in Texas. He appears to be associated with at least two other properties, one of which is a subdivision with a number of homes or dwellings which generates rental or lease income. The Complaint alleges, and the evidence thus far shows, that his contacts are not random or fortuitous. They are sustained and systematic.

With regard to the second factor, while the forum state's interest in this litigation may not be obvious, the Supreme Court has affirmed federal court jurisdiction over cases involving non-citizens and grave violations of customary international law. As the Court explained in *Sosa v. Alvarez-Machain*, 542 U.S. 692, 730 (2004), "It would take some explaining to say now that federal courts must avert their gaze entirely from any international norm intending to protect individuals." The Supreme Court's long-standing recognition of these types of claims underscores the importance of the availability of the Alien Tort Statute as a remedy for such serious violations, the appropriate nature of federal courts as a forum, and the stake of the courts in ensuring the just application and enforcement of these international norms.

Moreover, as noted above, Plaintiffs have a significant and profound interest in seeking relief through this cause of action, in this forum. Despite Defendant's assertions to the contrary, there is no genuine hope of relief for the Plaintiffs in Honduras. As detailed in the declaration of Tamara Taraciuk Broner, a climate of impunity has prevailed in Honduras since the coup and that climate of impunity has directly benefitted the Defendant. (Exh. A.) In fact, Defendant helped create the climate of impunity that now prevails. Broner's declaration tracks and

documents the attempts to investigate and prosecution violations such as the killing of Isis Murillo and documents the significant obstacles to doing so, including lack of cooperation and obstruction of investigations by military and police, threats to prosecutors by military and police, lack of witness protection and a severely compromised judiciary. (Exh. A.)

Defendant relies on an affidavit submitted to this Court by his successor in Congress, Mr. Jose Saavedra, to suggest that there are procedural and legal avenues through which Plaintiffs may seek redress. This is disingenuous and misleading given the situation in Honduras, the documented obstacles to justice, and the specific experiences of the Plaintiffs who have suffered threats, harassment, and intimidation by police and security forces. Compl. ¶¶ 47-55.

For the same reason, the Defendant's invocation of the consideration of the "procedural and substantive policies of [Honduras] whose interest [would be] affected by the assertion of jurisdiction" by this Court is equally baseless and ironic, given the lack of actual, genuine recourse for the Plaintiffs and repeated failed attempts by a handful of dedicated prosecutors to try to do their jobs and investigate and prosecute offenses like that committed against Isis Murillo and his family. The Defendant has sufficient contacts with the forum state; he should not be allowed to benefit further from the laws of this jurisdiction without submitting to its authority to account for his actions, particularly given his involvement in creating an environment in Honduras that leaves Plaintiffs without hope of justice or redress through its judicial system.

III. PLAINTIFFS' COMPLAINT PROPERLY STATES AND SUFFICIENTLY PLEADS VALID AND PLAUSIBLE CLAIMS UPON WHICH RELIEF CAN BE GRANTED.

A. Plaintiffs have sufficiently and properly pled valid claims.

The complaint clearly states valid claims based upon the ATS, TVPA and state law claims upon which relief can be granted. The factual allegations in the complaint are non-

conclusory and state a more than plausible claim for the defendant's liability based on his command responsibility. Defendant's motion to dismiss claims 2-9 on this basis under Fed. R. CIV. P. 12(b)(6) should be denied.[6]

When considering a Rule 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, a court must "accept the complaint's well-pleaded facts as true and view them in the light most favorable to the plaintiff." *Johnson v. Johnson*, 385 F.3d 503, 529 (5th Cir. 2004). "To survive a Rule 12(b)(6) motion to dismiss, a complaint 'does not need detailed factual allegations,' but must provide the plaintiff's grounds for entitlement to relief--including factual allegations that when assumed to be true 'raise a right to relief above the speculative level.'" *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). "[A] complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. , 129 S.Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570). A claim is plausible when the plaintiff pleads factual content that "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556); *accord*, *Matrixx Initiatives, Inc. v. Siracusano*, 131 S. Ct. 1309, 1312 (2011) (denying Rule 12(b)(6) motion because complaint alleged facts suffice to 'raise a reasonable expectation that discovery will reveal [relevant] evidence' … and to allow 'the court to draw the reasonable inference that the defendant is liable,'" (quoting *Twombly*, 550 U.S. at 556, and *Iqbal*, 129 S. Ct. at 1949). The plausibility standard is not a "probability requirement," but does ask for more than a sheer possibility that a defendant has acted unlawfully. *Id.*

[6]Defendant's motion repeatedly asserts that *ATS* claims must be asserted with specificity and non-conclusory allegations without citing any legal authority for this proposition. Plaintiffs note that ATS claims are subject to the same *Iqbal/Twombly* pleading standards applicable to other claims.

Under *Iqbal* and *Twombly*, a claim can be dismissed as implausible at the pleading stage only if the plaintiff fails to allege facts to support a reasonable inference that the defendant is liable and there is an "obvious alternative explanation" for the alleged misconduct, not simply a plausible one. *Iqbal*, 129 S.Ct. at 1951; *Twombly*, 550 U.S. at 567. As noted above, claims 1-6 are brought under the ATS; claim 1 is also brought under the TVPA; and claims 7-9 are brought under Texas tort law.

The ATS grants federal courts jurisdiction over "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. Interpreting this statute in *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), the Supreme Court emphasized that, "[f]or two centuries we have affirmed that the domestic law of the United States recognizes the law of nations." *Id*. at 729.[7] As for the ATS, the Court held that the statute authorizes federal courts to use their common law powers to recognize causes of action for international law violations, other than those arising under a treaty of the United States, that have no less "definite content" and "acceptance among civilized nations" than the claims familiar to Congress at the time the statute was enacted. *Id*. at 724-25, 732.

The TVPA provides that an "individual who, under actual or apparent authority, or color of law, of any foreign nation… subjects an individual to extrajudicial killing shall, in a civil

[7] The Court cited to a number of cases recognizing that "international law is part of our law." *E.g., Banco Nacional De Cuba v. Sabbatino*, 376 U.S. 398, 423 (1964) ("[I]t is, of course, true that United States courts apply international law as a part of our own in appropriate circumstances"); *The Paquete Habana,* 175 U.S 677, 700 (1990) ("International law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction, as often as questions of right depending upon it are duly presented for their determination"); *The Nereide,* 9 Cranch 388, 423 (1815) (Marshall, C. J.) ("[T]he Court is bound by the law of nations which is a part of the law of the land"); *see also Texas Industries, Inc.* v. *Radcliff Materials, Inc.,* 451 U.S. 630, 641 (1981) (recognizing that "international disputes implicating … our relations with foreign nations" are one of the "narrow areas" in which "federal common law" continues to exist).

action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death." 28 U.S.C. 1350 (note).

Defendant's Rule 12(b)(6) motion should be denied because the Complaint presents factual allegations which when taken as true, (a) establish violations of the ATS, TVPA and associated state law claims for wrongful death, intentional infliction of emotional distress and negligence, and (b) are pled with sufficient specificity to allow the court to draw the reasonable inference that the defendant is liable, thus easily meeting the *Iqbal/Twombly* plausibility standard and, in fact, leaving no room for an 'obvious alternative explanation.'

1. Plaintiffs have sufficiently and properly pled facts supporting the Defendant's liability under a theory of command responsibility.

Defendant's challenges to the sufficiency of the allegations under *Twombly* and *Iqbal* completely disregard and/or misapprehend the principle of command responsibility upon which the defendant's liability is primarily based.[8] The doctrine of "command" or "superior responsibility" is well-established in customary international law. (Exh. B ¶¶ 65-78.) As such, U.S. courts have long acknowledged command responsibility as a cognizable theory of liability in ATS and TVPA cases, pursuant to which a superior, either civilian or military, is held responsible for the actions of subordinates in connection with acts committed in wartime or in peacetime. *See In re Yamashita,* 327 U.S. at 14-16 ; *Chavez v. Carranza,* 559 F.3d 486 (6th Cir. 2009); *Ford v. Garcia*, 289 F.3d 1283 (11th Cir. 2002); *Hilao v. Estate of Marcos*, 103 F.3d 767, 777 (9th Cir. 1996); *Doe v. Liu Qi*, 349 F.Supp.2d 1258, 1333 (N.D. Cal. 2004) (doctrine "encompass[es] political leaders and other civilian superiors in positions of authority" and

[8] Defendant's reliance on *Shan v. China Construction Bank Corp.,* 421 F. App'x 89, 2011 WL 1681995 (2d Cir. May 2011) is misplaced. In Shan, the plaintiff attempted to allege the bank's direct responsibility for the torture he suffered at the hands of the police on the theory that both the bank and the police department were governmental entities, without pleading facts sufficient to infer they conspired together or joined in a joint criminal enterprise.

further that the "crucial question [is] not the civilian status of the accused, but of the degree of authority he exercised over his subordinates" and quoting *Prosecutor v. Kayishema & Ruzindana*, Case No. ICTR-95-1-T, paras. 209, 213-16 (May 21, 1999)); *Xuncax,* 886 F. Supp. at 171-73, 174-75; *Paul v. Avril,* 901 F. Supp. 330, 335 (S.D. Fla. 1994); *Siderman de Blake v. Republic of Argentina,* 965 F.2d 699, 714-717 (9th Cir. 1992).[9]

More specifically, U.S. courts have identified the following as the essential elements for proving command responsibility: (1) a superior-subordinate relationship between the defendant/military commander and the person or persons who committed human rights abuses; (2) the defendant/military commander knew, or should have known, in light of the circumstances at the time, that subordinates had committed, were committing, or were about to commit human rights abuses; and (3) the defendant/military commander failed to take all necessary and reasonable measures to prevent human rights abuses and punish human rights abusers. *See, e.g., Ford v. Garcia*, 289 F.3d at 1288 (11th Cir. 2002); *Hilao*, 103 F.3d at 774; *Chavez v. Carranza,* 559 F.3d 486 (6th Cir. 2009).[10]

When the definition of command responsibility is properly considered, it is clear that Plaintiffs have pled facts establishing each element, along with additional facts that further

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[9] Defendant cites to one case for the proposition that "international law simply does not 'embrace a concept of strict liability akin to respondent superior for national leaders at the top of the long chain of command.'" *Mamani v. Sanchez - Berzain*, 2011 WL 3795468, at *5. The *Mamani* court's ruling obviously conflicts with the weight of authority on this point in both U.S. and international law. (Exh. B.) The *Mamani* decision also conflicts with other 11th Circuit cases on the issue. *See Ford,* 289 F.3d at 1290. Petitions for rehearing and rehearing en banc have been filed.

[10] U.S. courts often refer to and follow the jurisprudence of international criminal tribunals to interpret the doctrine of command responsibility in ATS and TVPA cases. *See Ford,* 289 F.3d at 1290 ("The recently constituted international tribunals of Rwanda and the former Yugoslavia have applied the doctrine of command responsibility since *In re Yamashita*, and therefore their cases provide insight into how the doctrine should be applied in TVPA cases.").

support the allegations. In particular, the complaint alleges facts describing a superior-subordinate relationship between Micheletti and the person or persons who committed the human rights abuses at the heart of this complaint, along with facts which further support the fact of that relationship: Paragraphs 18, 32, 33, 35, 79, 80, 81, 82 describe Micheletti's role in the coup, his assumption of power as leader of the de facto government and his assertion of authority over military and police. Paragraphs 56, 59-68, 72-75, and 86-88 describe instances of the defendant's actual exercise of authority over the military and police, who were tasked with carrying out his decrees, including the use of military to target "ministers, governors, members of Congress and mayors" opposed to the coup through "military occupation of their offices" (Compl. ¶ 69), use of the military to close radio stations and confiscation of broadcasting equipment (Compl. ¶¶ 67-75).

The complaint additionally alleges facts which support the reasonable inference that Micheletti, acting with command/superior responsibility, knew, or should have known, in light of the circumstances at the time, that subordinates had committed, were committing, or were about to commit human rights abuses. Paragraphs 36-42 describe the events of July 5, 2009, and the deployment of Honduran military at the airport on the day of Zelaya's planned return and the killing of Murillo. Paragraphs 45 and 46 describe human rights prosecutors' efforts to investigate the killing and the lack of cooperation of military and police personnel under Micheletti. Moreover, paragraph 4 describes the widespread condemnation by other governments and human rights organizations of the killing of Isis Murillo and paragraph 7 describes the efforts of the Inter-American Commission on Human Rights to conduct hearings and on-site visits in the aftermath of the coup and statements about the human rights situation in Honduras at that time.

The complaint pleads facts which show that Micheletti, while acting with command/superior responsibility, failed to take all necessary and reasonable measures to prevent human rights abuses and punish human rights abusers: Paragraphs 44 - 46 describe the lack of any punishment for the death of Isis, and, further, the 'absolute' lack of cooperation of military and police personnel under Micheletti, which not only supports the allegation that he failed to take all necessary and reasonable measures to punish the direct violator/s, it further suggests that he pursued policies and practices that ensured such measures would not be taken.

The jurisprudence of U.S. courts as well as that of international tribunals highlights two significant fallacies of Defendant's understanding of command responsibility liability. First, U.S. courts have noted that for purposes of finding liability under this doctrine, a commander need not have known of the crime at issue. *Doe v. Liu Qi*, 349 F. Supp. 2d 1258; *Ford*, 289 F.3d 1283; *see also Delalic*, para. 389, p. 60 (absence of knowledge is not a defense if the commander "knew, or should have known, by use of reasonable diligence of the commission of atrocities by his subordinates" quoting *United States v. Soemu Toyoda*, p. 5006, The Complete Transcripts of the Proceedings of the International Military Tribunal for the Far East, *reprinted in* R. John Pritchard and Sonia Magbanua Zaide (eds.), The Tokyo War Crimes Trial, Vol. 20 (Garland Publishing: New York & London, 1981) (internal quotations omitted)). *See also* Exh. B ¶ 71.

As explained in the legislative history of the TVPA, under a theory of command responsibility,

> a higher official need not have personally performed or ordered the abuses in order to be held liable. Under international law, responsibility for torture, summary execution, or disappearances extends beyond the person or persons who actually committed those acts - anyone with higher authority who authorized, tolerated or knowingly ignored those acts is liable for them.

S. Rep. No. 102249, 102d Cong., 1st Sess. at 9 (1991) (footnote omitted) (citing *Forti v. Suarez-Mason*, 672 F. Supp. 1531 (N.D. Cal. 1987) and *In re Yamashita,* 327 U.S. 1 (1946)).[11]

Second, courts have held that proximate cause is *not* an element of command responsibility. *See Ford*, 289 F.3d 1283; *Hilao*, 103 F.3d at 776-79 (proximate cause is not an element of command responsibility); *Chavez v. Carranza,* 559 F.3d 486 (6th Cir. 2009) (holding that the law of command responsibility does not require proof that a commander's behavior proximately caused the victim's injuries: "[a]ny question as to whether an injury was caused by a commander's act or omission can be resolved by a finding of liability under the elements of command responsibility. Accordingly, plaintiffs were not required to submit proof of proximate cause in order to succeed on their claims under the law of command responsibility, and the district court was not required to instruct the jury on this issue."). If *proof* of proximate cause is not an element of the claim under the law of command responsibility, then neither is *pleading* of proximate cause required in the complaint.

2. The Complaint sufficiently states plausible and valid claims for the crimes against humanity of murder, persecution and inhumane acts.

The defendant does not suggest that the crimes against humanity of murder and persecution are not valid claims under the ATS but instead challenges the sufficiency of the pleadings in support of these claims. However, defendant's argument is in part based on a misstatement of the elements of the claims in question. When viewed under the proper legal framework, it is clear that the allegations in the Complaint sufficiently state plausible claims for the crimes against humanity of murder and persecution.

[11] Courts have recognized the Senate Report as signaling an intent to incorporate the doctrine of command responsibility into the TVPA. *See Ford*, 289 F.3d at 1288*; Doe v. Liu Qi*, 349 F. Supp. 2d at 1333; *Hilao*, 103 F.3d at 777.

a. Crimes Against Humanity: Plaintiffs' Allegations Are Sufficient to Show a Widespread or Systematic Attack Against a Civilian Population.

A crime against humanity under international law is any one of a list of violent acts "when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Statute of the International Criminal Court, art. 7(1)(a); *see also* Exh. B ¶¶ 22-35. As discussed more fully below, murder, persecution and inhumane acts are among the acts considered crimes against humanity when committed as part of a widespread or systematic attack against a civilian population. Even a single one of these acts by an individual, when taken within the context of a widespread or sysemtatic attack against a civilian population, can constitute a crime against humanity. *Doe v. Saravia,* 348 F. Supp. 2d 1112, 1156 (E.D. Cal. 2004).

A plaintiff need only show that a specified violent act was committed as part of an attack against a civilian population that was *either* widespread *or* systematic -- the attack need not be both. *Aldana*, 416 F.3d at 1247; *see also Prosecutor v. Kordic/Cerkez*, Case No. IT-95-14-2-T, Judgment, ¶ 178 (Feb. 26, 2001), *available at* 2001 WL 34712270 ("The requirement that the occurrence of crimes be widespread or systematic is a disjunctive one"). An aggregation of a few crimes can suffice to constitute a widespread attack; indeed, a single act may qualify as a widespread attack if it is linked to other widespread attacks. *See Almog*, 471 F. Supp. 2d at 275; *Prosecutor v. Tadic,* Case No.IT-94-1-T, Judgment, ¶ 248 n.311 (May 7, 1997), *available at* 1997 WL 33774656. An attack is widespread if it reflects the "cumulative effect of a series of inhumane acts." *Kordic/Cerkez*, at ¶ 179. Additionally, the systematic quality of the attack may be established by circumstantial facts revealing that it was of an organized nature unlikely to

have occurred randomly. *Kordic/Cerkez*, ¶ 94; *see also Bowoto v. Chevron Corp.*, No. 99-02506, 2007 WL 2349343, at *3 (N.D. Cal. Aug. 14, 2007) (citing *Prosecutor v. Limaj,* No. ICTY-03-66-T, Judgment, ¶ 183 (Nov. 30, 2005) [*available at* 2005 WL 3746053] (a systematic attack reflects "a high degree of orchestration and methodical planning")).

The Complaint in this case contains factual allegations which, if found to be true, would show that the offenses giving rise to plaintiffs' claims occurred in the context of a widespread and/or systematic attack against a civilian population. Paragraphs 19-35 of the complaint describe the defendant's role in the June 28, 2009 coup, and his assumption of power immediately thereafter. Paragraphs 56-78 describe the widespread *and* systematic nature of the attack against the political opposition after the coup carried out under Micheletti's authority including: the use of the military and police to conduct thousands of unlawful and arbitrary detentions; the excessive use of force against public demonstrations and the criminalization of public protest; subjecting thousands to "inhuman, cruel and degrading treatment and even torture;" violations of freedom of expression and assembly through issuance of executive decrees resulting in the gagging of political opposition as well as media and the use of the military to enforce such decrees, to raid offices and confiscate equipment, and to even raid and occupy offices of politically opposed government officials.

Because the complaint describes in detail how the de facto government, under the command of Defendant, was engaged in a widespread and systematic attack against the civilian population when the killing of Isis Murillo took place and when his family faced threats and harassment, Plaintiffs have sufficiently stated claims for the crimes against humanity of murder and persecution.

b. Murder as a Crime Against Humanity: Plaintiffs' Allegations Are Sufficient to Show the Murder of Isis

Murillo and Defendant's Liability Under the Doctrine of Command Responsibility.

Murder, when committed in the context of a widespread or systematic attack against a civilian population, has long been at the center of the acts that constitute crimes against humanity. (Exh. B ¶¶ 22-35.) The Elements of Crimes Annex to the Rome Statute of the International Criminal Court contains the most recent definition adopted by the international community of the crime against humanity of murder. To establish such a claim, a prosecutor must prove that (1) the perpetrator killed – which is "interchangeable with the term 'caused death'"[12] of – one or more persons; (2) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (3) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

Likewise, murder has been defined by the International Criminal Tribunal for Rwanda (ICTR) as the "unlawful, intentional killing of a human being." *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, para. 589 (Sept. 2, 1998). Similar to the Rome Statute, for such a claim, the ICTR requires proof of the following: (a) the victim is dead; (b) the death resulted from an unlawful act or omission of the accused or a subordinate; (c) at the time of the killing the accused or a subordinate had the intention to kill or inflict grievous bodily harm on the deceased having known that such bodily harm is likely to cause the victim's death, and is reckless whether death ensues or not. *Id*; *see also* Exh. B ¶¶ 8-21.

Defendant contends that Plaintiff's claim for murder as a crime against humanity fails because the complaint does not include any allegations concerning "an intent to murder Isis Murillo for any reason (political or otherwise) on the part of the Honduran Army" or that

[12] Elements of Crimes, Art. 7(1)(a) and footnote 7.

"Micheletti had any harmful or malicious intent toward Isis Murillo or his family." However, as described above, intent is not an element of proof for a claim of murder as a crime against humanity. Indeed, Defendant cites not legal authority for his implicit claim that proof of intent is necessary. Since the mental state, purpose, and malice have no bearing on the claim raised here, Plaintiff is not required to make any allegations about them.

The well-pled factual allegations that are in the complaint speak to the specific elements cited above as necessary for proving the claim of murder as a crime against humanity. Paragraphs 36-46 of the Complaint clearly and factually describe the events of July 5, 2009, at the airport in Tegucigalpa, which led to the shooting and killing of Isis Murillo by Honduran military. Combined with the factual allegations detailing the context of the widespread and/or systematic attack against the civilian population, Micheletti's command responsibility, the complaint is more than sufficient to allow the court to draw the reasonable inference that the defendant is liable for the claims.

Accordingly, Defendant's motion to dismiss this claim should be denied.

c. Persecution As a Crime Against Humanity: Plaintiffs' Allegations Are Sufficient to Show the Murder of Isis Murillo as an Act of Persecution and Defendant's Liability Under the Doctrine of Command Responsibility.

The crime against humanity of persecution is defined as "the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity." ICC Statute, art. 7(2)(g).[13] The "fundamental rights" referred to in the definition of persecution are generally understood to be those found in the Universal Declaration

[13] Similarly, the International Criminal Tribunal for the former Yugoslavia (ICTY) has held that persecution "consists of an act or omission which: 1) discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law (the actus reus); and 2) was carried out deliberately with the intention to discriminate on one of the listed grounds… (the mens rea)." *Prosecutor v. Krnojelac* (IT-97-25-T), Judgment, at para. 431.

of Human Rights or in the International Covenant on Civil and Political Rights, including the right to life, liberty, security of person, non-discrimination, freedom of expression and assembly and religion. *See* Dermot Groome, *Persecution* in The Oxford Companion to International Criminal Justice, (Antonio Cassese, ed., Oxford University Press 2008). The prohibited grounds of persecution include race, ethnicity, religion, nationality, political grounds,[14] culture, and gender.

The drafters of the Rome Statute of the International Criminal Court, desiring more specificity in order to satisfy the requirements of *nullum crimen sine lege* set out the elements of the crime of persecution in the Elements of Crimes Annex Art. 7(1)(h) as follows:

> (1) The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights;
> (2) The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such;
> (3) Such targeting was based on political, racial, national, ethnic, cultural, religious, gender ... or other grounds that are universally recognized as impermissible under international law;
> (4) The conduct was committed in connection with any act referred to in article 7, paragraph 1,[15] of the Statute or any crime within the jurisdiction of the Court;
> (5) The conduct was committed as part of a widespread or systematic attack directed against a civilian population;
> (6) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

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[14]Persecution on 'political grounds' can include grounds "of or concerning the State or its government, or public affairs generally" and need not necessarily be limited to membership in a particular political party. *See* Machteld Boot and Christopher K. Hall, *Persecution* in Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article (Otto Triffterer, ed. Nomos Verlagsgesellschaft Baden-Baden 1999).

[15] These acts include: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution; enforced disappearance of persons; apartheid; other inhumane acts.

Elements of Crimes Annex to the Statute of Int'l Criminal Court.

The jurisprudence of the *ad hoc* international criminal tribunals has identified a number of persecutory acts, including murder, torture, sexual assault, beatings, deportation and forced transfer, indiscriminate attacks on populated areas, imprisonment, inhumane treatment, infliction of mental suffering, destruction of a victim's livelihood, serious deprivations or property and destruction of cultural property. Guenael Mettraux, International Crimes and the Ad Hoc Tribunals, at pp. 182-188 (Oxford University Press 2005); *See also*, Groome, *supra* at 454.

The complaint clearly details acts that constitute persecution in that it describes with specificity instances involving the severe deprivation of fundamental rights of Isis Murillo and his parents David Murillo and Silvia Mencias by the Honduran security forces. Paragraphs 36-46 describe the events of July 5, 2009, at the airport in Tegucigalpa when Isis Murillo was shot and killed by Honduran military during a peaceful demonstration awaiting the return of Zelaya; these factual allegations support a claim for persecution as murder and the deprivation of his fundamental right to life. Paragraphs 47-55 describe the continued persecution of Murillo's family in the aftermath of, and in addition to, his killing: plaintiffs David Murillo and Silvia Mencias were threatened and harassed with calls and texts (Compl. ¶ 48), were surveilled and menaced by police, who employed the use of a police helicopter to fly over their home and drop threatening fliers (Compl. ¶¶ 49-55), to the point where they had to flee their home and relocate elsewhere.

d. The Crime Against Humanity of Inhumane Acts Is Cognizable under the ATS as a 'Specific, Universal, and Obligatory' International Legal Norm *and* Is Sufficiently Pled and Plausible.

The defendant challenges the plaintiffs' Fifth Claim to Relief in part on the basis that it fails to state a valid claim upon which relief can be granted, arguing that the crime against

humanity of inhumane acts fails to meet the standard set by the Supreme Court in *Sosa* that a violation under the ATS be one of a "specific, universal and obligatory" international legal norm.

The crime against humanity of inhumane acts has long been considered a crime in both humanitarian law and international criminal law and, like murder and persecution, constitutes a core crime against humanity prohibited by customary international law. (Exh. B at 22-35.) As such, it easily satisfies and falls squarely within the parameters set by the Supreme Court in *Sosa*.

The Court drew upon its own precedent in identifying how to ascertain the prohibitions of customary international law:

> [W]here there is no treaty, and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations; and, as evidence of these, to the works of jurists and commentators, who by years of labor, research and experience, have made themselves peculiarly well acquainted with the subjects of which they treat. Such works are resorted to by judicial tribunals, not for the speculations of their authors concerning what the law ought to be, but for trustworthy evidence of what the law really is.

The Paquete Habana, 175 U.S., at 700. The existence of a norm or customary international law is determined, in part, by reference to the custom or practices of many states and the broad acceptance of that norm by the international community. *Abdullahi v. Pfizer, Inc*., 562 F.3d 163, 176 (2d Cir. 2009). Furthermore, whether a treaty that embodies the alleged crimes is self-executing is relevant to, but not determinative of, the question of whether the norm permits ATS jurisdiction. *Id*.

A survey of key developments in international law confirms that inhuman acts fall within the *Sosa* margins. The Nuremberg Tribunal established that crimes against humanity encompass "atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian

population, or persecutions on political, racial or religious grounds." Control Council Law No. 10, art. II(1)(c), *quoted in United States v. Flick*, 6 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, 1191 (1949). *Id.* at ¶ 28. The Nuremberg Tribunal noted that Control Council Law No. 10 was a "statement of international law which previously was at least partly uncodified." *Flick*, 6 Trials at 1189. The same formulation of crimes against humanity, including inhumane acts, was included in article 5 of Tokyo Charter of the International Military Tribunal for the Far East.

'Inhumane acts' was also included as an offense in the statutes of the ICTY and ICTR. ICTY Statute, art. 5(i); ICTR Statute, art. 3(i). The jurisprudence of the ICTY and ICTR have further elaborated on the crime and concluded that the offense:

> Constitutes an act or omission that is intentional, being an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury. It covers those acts that do not meet the purposive requirements for the offence of torture, although clearly all acts constituting torture could also fall within the ambit of this offence.

Celebici Judgment, para. 509. Through this approach, the ICTY affirmed the approach found in the Commentaries to the Geneva Conventions that the suffering involved includes 'moral suffering' and can be both physical and mental. *See* Machteld Boot, *Other Inhumane Acts* in Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article (Otto Triffterer, ed. Nomos Verlagsgesellschaft Baden-Baden 1999).

The Elements of Crimes Annex to the Statute of the International Criminal Court, contains the most recent iteration of the offense and delineates the elements of the crime against humanity of inhumane acts as:

> (1) The perpetrator inflicted great suffering, or serious injury to body or to mental or physical health, by means of an inhumane act;
>
> (2) Such act was of a character similar to any other act referred to in article 7, paragraph 1, of the Statute;
>
> (3) The perpetrator was aware of the factual circumstances that established the character of the act; and
> (4) The conduct was committed as part of a widespread or systematic attack directed against a civilian population; and
>
> (5) The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Elements Annex, Art. 7(1)(k).

The fact that the crime of inhumane acts was codified in Control Council Law No. 10 and the Tokyo Charter as among the prohibitions that pre-existed the creation of the Nuremberg and Far East tribunals and the fact that the offense has been included in the foundational statutes of every international criminal tribunal established since, is the clearest indication that the prohibition of inhumane acts has long since achieved the status of customary international law envisioned by the Supreme Court in *Sosa*. Its inclusion in international criminal statutes sanctioning and penalizing conduct and which give rise to individual criminal responsibility, constitutes the clearest evidence that it is 'specific, universal and obligatory.' To the extent Defendant has challenged Claims 5 & 6 for failing to allege a cognizable legal claim, the motion should be denied.

The defendant also urges that the claim be dismissed on the grounds that it lacks specificity under *Iqbal* and *Twombly*. This request too should be denied. Paragraphs 36-55 clearly establish the factual basis for the claim that the plaintiffs were subjected to great suffering, including moral suffering and serious injury to mental health, by means of the

inhumane acts committed against them – the killing of their son and the threats, harassment and intimidation that followed. As detailed above, the factual basis underlying defendant's command responsibility is factually pled throughout the complaint. Paragraphs 56-80 highlight the factual basis that establishes the context of crimes against humanity, i.e. the widespread or systematic attack on a civilian population.

3. The claims of violation of the right to life, liberty and security and the rights of freedom of assembly and association are cognizable under the ATS as 'specific, universal, and obligatory' international legal norms.

The defendant challenges the plaintiffs' Sixth Claim to Relief (Violation of the Right to Life, Liberty and Security and the Right to Freedom of Assembly and Association) in part on the basis that plaintiff fails to state a valid claim upon which relief can be granted, arguing that the violations fail to meet the standard set by the Supreme Court in *Sosa* that a violation under the ATS be one of a "specific, universal and obligatory" international legal norm.

a. The Complaint sufficiently states plausible and valid claims of violation of the right to life, liberty and security of person and freedom of assembly and association.

The right to life, liberty, and personal security is so fundamental that it is a feature of every major treaty on civil and political human rights. (Exh. B ¶¶ 36-49**.)** The Restatement (Third) § 702(c) also recognizes the right to life as customary international law, stating that "[a] state violates international law if, as a matter of state policy, it practices, encourages, or condones … the murder or causing the disappearance of individuals." Similarly, the right to participate in peaceful protests resides within the core principles of freedom of association and assembly protected by customary international law norms and included in all of the major international law instruments. (*Id*. ¶¶ 50-55.)

A number of U.S. courts have already found the right to life, liberty and security of person to be violated where the conduct alleged included summary execution or extrajudicial killing. *See Estate of Cabello v. Fernandez-Larios,* 157 F. Supp. 2d 1345, 1349 (S.D. Fla. 2001) (execution of a Chilean general's political opponent violated the right to life); *Xuncax v. Gramajo*, 886 F. Supp. 162, 185 (D. Mass. 1995) (recognizing the "right to life coupled with a right to due process to protect that right."); *Doe v. Liu Qi*, 349 F. Supp. 2d at 1328 n.45 (right to life an actionable norm under the ATS for victims who had been killed); *Taciona v. Mugabe,* 234 F. Supp. 2d 401, 432 (S.D.N.Y. 2002); *Forti v. Suarez-Mason,* 694 F. Supp. 707, 710-711 (right to life encompasses prohibition against "causing disappearance").

ATS decisions in U.S. courts have also held that actions such as those alleged by Plaintiffs state ATS claims for violations of the right to life, liberty and security of persons and freedom of association and assembly. *Estate of Rodriquez v. Drummond Co.*, 256 F. Supp. 2d 1250, 1260, 1262-64 (N.D. Ala. 2003) (finding violation of "the rights to associate and organize" give rise to ATS jurisdiction).

In order to meet the *Sosa* requirement of a clearly defined, widely accepted international law norm, it is not necessary that the full scope of the violation be clearly defined, as long as the conduct challenged falls within a widely accepted core of the definition. *See Sosa*, 542 U.S. at 732 (using as a model the definition of piracy developed in *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 161, 163-180 (1820), which noted that there is agreement about the core of piracy, despite a "diversity of definitions" as to its full scope). Indeed, *Sosa's* central holding illustrates this dynamic in that the facts describing the 'arbitrary detention' alleged as the violation of the ATS did not rise to the level of a customary international law prohibition although the Court did not foreclose the possibility that arbitrary detention, given the right facts might. *See also Xuncax*

v. Gramajo, 886 F. Supp. 162, 187 (D. Mass. 1995) ("It is not necessary that every aspect of what might comprise [an international tort] be fully defined and universally agreed upon before a given action meriting the label is clearly proscribed under international law.").

ATS decisions in U.S. courts have also held that actions such as those alleged by Plaintiffs state ATS claims for violations of the right to life, liberty and security of persons and freedom of association and assembly. *Estate of Rodriquez v. Drummond Co.*, 256 F. Supp. 2d 1250, 1260, 1262-64 (N.D. Ala. 2003) (finding violation of "the rights to associate and organize" give rise to ATS jurisdiction).

Defendant cites to *Flores v. Southern Peru Copper Corp.*, 414 F.3d 233, 254, 258 (2d Cir. 2003), in support of his motion to dismiss this claim but Flores is inapplicable to the instant case. In *Flores*, the alleged violations of the right to life arose out of environmental pollution; the court held that any norm governing environmental harm was too "boundless and indeterminate" and "infinitely malleable" to state an ATS claim.

In the instant case, the complaint alleges that the killing of Isis Murillo, who was shot and killed while at a peaceful demonstration violated his right to life, liberty and security of person as well as his right to freedom of assembly and association. The complaint further alleges that the killing of Isis, and subsequent persecution, threats and harassment also violated the plaintiffs' rights to security of person, association and assembly.

Defendant's 12(b)(6) motion to dismiss for failure to state a claim should be denied as plaintiffs have a stated valid claims under the ATS for violations of the right to life, liberty and security of person as well as freedom of association and assembly.

Defendant's motion to dismiss on the ground of lack of specificity in the complaint should also be dismissed. Paragraphs 36-46 describing the killing of Isis Murillo by Honduran

military at a peaceful demonstration clearly constitute sufficient factual allegations to show the violation of Isis Murillo's right to life, liberty and security of person. Paragraph 47-55 describing the threats and harassment of plaintiffs by Honduran police clearly constitute violations of the right to security of person. Plaintiffs have pled numerous factual allegations detailing the events, the offenses giving rise to the claims, the context of widespread and systematic human rights abuses and the defendant's liability under a theory of command responsibility.

B. The Complaint Sufficiently States a Valid and Plausible Claim for Extrajudicial Killing Under the TVPA.

1. The Complaint Sufficiently States a Valid and Plausible Claim for Extrajudicial Killing Under the TVPA.[16]

Defendant also urges that the First Claim for Relief – the Extrajudicial Killing of Isis Murillo – should be dismissed as inadequately pled. Defendant suggests that plaintiffs have failed to "plead any nonclusory facts that demonstrate a link between Micheletti and the killing of Isis Murillo, much less a "deliberate" will on the part of Micheletti toward Isis Murillo. Def. Motion to Dismiss, ¶ 74. As discussed above, defendant misses the point of the allegation concerning Micheletti's liability under the doctrine of command responsibility. As with the claims under the ATS and state law claims, plaintiffs have likewise sufficiently pled a factual basis for the claims and defendant's liability.

The TVPA provides that an "individual who, under actual or apparent authority, or color of law, of any foreign nation… subjects an individual to extrajudicial killing shall, in a civil

[16] Both the ATS and TVPA are included as bases for the First Claim for Relief. Plaintiffs note that defendant did not make the same plausibility challenge under *Iqbal* with respect to the First Claim for Relief of Extrajudicial Killing under the ATS. To the extent that the court would extend the arguments concerning adequacy of pleading to the ATS claim, the same factual basis would apply to and satisfy the claim under statutes.

action, be liable for damages to the individual's legal representative, or to any person who may be a claimant in an action for wrongful death." 28 U.S.C. 1350 (note). 'Extrajudicial killing' is defined in Sec. 3 of the TVPA as "a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

The TVPA, in defining extrajudicial killings as "deliberated," sought to exclude deaths which are the "the unforeseen or unavoidable incident of some legitimate end." *Cf. Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 93 (D.C. Cir. 2002) (discussing deliberateness in the context of the FSIA's incorporation of the TVPA's definition of torture). The complaint alleges that the Honduran military, under the command of Micheletti intentionally targeted and killed Isis Murillo, a peaceful, unarmed civilian whose death was the foreseeable result of those actions and was clearly avoidable.

As described more fully above, Micheletti had command responsibility for the troops acting under his direction, particularly in the immediate aftermath of a coup that he helped facilitate and after which he assumed power. The complaint alleges that Micheletti asserted control over the military and police during the period of his de facto government, that he used the military and police to carry out and enforce a number of executive orders he issued, and that there was a pattern and practice of widespread human rights abuses under Micheletti. Micheletti not only failed to prevent the killing of Murillo, he failed to take all necessary and reasonable measures to investigate and punish the offense. In fact, the complaint alleges facts that, when taken as true, indicate that not only did Micheletti not take all reasonable measures to punish the offenses, he followed a course of conduct and policy that served to obstruct civilian efforts to investigate the abuses and violations. Compl. ¶¶ 43-46.

2. Defendant Has Failed to Meet Its Substantial Burden of Demonstrating that 'Alternative and Adequate' Remedies Are Available in Honduras for Plaintiffs' TVPA Claim.

Defendant has also moved to dismiss the TVPA claim on the grounds that plaintiffs have not exhausted their domestic remedies as required by the TVPA. Defendants have not met their substantial burden to establish that an adequate remedy is available to plaintiffs, against the defendant, in Honduras. Courts have followed the lead of the Senate Committee that considered the TVPA in holding that a case brought under the TVPA "will be virtually *prima facia* case evidence that the claimant has exhausted his or her remedies in the jurisdiction in which the torture occurred." S. Rep. No. 102249, at 9-10 (1991), reprinted in 1991 WL 258662; *see also Jean v. Dorelien*, 431 F.3d 776, 781-82 (11th Cir. 2005); *Hilao v. Estate of Marcos*, 103 F.3d 767, 778 n.5 (9th Cir. 1996); *Sinaltrainal v. Coca-Cola Co*., 256 F. Supp. 2d 1345, 1357-58 (S.D. Fla. 2003); *Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322, 1347 n.30 (N.D. Ga. 2002); *Cabiri v. Assasie-Gyimah*, 921 F. Supp. 1189, 1197 n.6 (S.D.N.Y. 1996); *Xuncax v. Gramajo*, 886 F. Supp. 162, 178 (D. Mass. 1995). The Senate Report goes on to state that the exhaustion requirement, consistent with general principles of international law and United States common law, requires the defendant to raise the issue of non-exhaustion of remedies as an affirmative defense and to point to remedies abroad that have not been exhausted. The burden then shifts to the plaintiff "to rebut by showing that the local remedies were ineffective, unobtainable, unduly prolonged, inadequate, or obviously futile. The ultimate burden of proof and persuasion on the issue of exhaustion of remedies, however, lies with the defendant." *Id.* at 10. See *Abiola v. Abubakar*, 435 F. Supp. 2d 830, 835-838 (N.D. Ill. 2006); *Lizarbe v. Rondon*, 642 F. Supp. 2d 473, 484-485 (D. Md. 2009); *Enahoro v. Abubakar*, 408 F.3d 877, 892 (7th Cir. 2005) ("to the extent that there is any doubt . . . both Congress and international tribunals have mandated that . .

. doubts [concerning the TVPA and exhaustion are to] be resolved in favor of the plaintiffs.") *Barrueto v. Larios*, 291 F. Supp. 2d 1360, 1365 (S.D. Fla. 2003) (citing *Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322, 1347 n. 30 (N.D. Ga. 2002)); *Cabiri v. Assasie-Gyimah*, 921 F. Supp. 1189, 1197 n. 6 (S.D.N.Y. 1996) (noting that the legislative history of the TVPA indicates that the exhaustion requirement "was not intended to create a prohibitively stringent condition precedent to recovery under the statute"); *Xuncax v. Gramajo*, 886 F. Supp. 162, 178 (D. Mass 1995) (holding that "when foreign remedies are unobtainable, ineffective, inadequate, or obviously futile," exhaustion pursuant to TVPA is not required) (quoting S. Rep. No. 102-249 (1991)).

In this instance, defendant has not met his burden, which is substantial, of showing that there are available remedies abroad that have been exhausted. He merely provided an affidavit by his successor in the Honduran Congress, who replaced Micheletti after he became de facto head of state subsequent to the coup, reciting recourses that are at best aspirational at this time in Honduras. As described in more detail in the Declaration of Tamara Taraciuk Broner, remedies in Honduras are 'unobtainable, ineffective, and obviously futile.' (Exh. A.)

As discussed more fully above, after extensive investigation and interviews, Taraciuk Broner describes the deplorable state of affairs in the Honduran justice system since the coup of June 28, 2009. In particular, she documents that there have been no convictions for any of the human rights abuses that have been committed since the coup. (*Id.* at ¶16.) Further, military and police officials and agencies have obstructed the efforts of prosecutors to investigate and prosecute offenses and have refused to provide access to evidence and premises. (*Id.* at ¶¶ 9, 29-35.) Additionally, she describes the lack of witness protection and the prosecutors' difficulty in

gaining the assistance of victims and witnesses due to the lack of protection and the general climate of fear of retaliation. (*Id.* at ¶¶ 44-48.)

Taraciuk Broner also documents the problems with the judiciary in Honduras and reviews a number of reports and criticisms leveled by international experts in this regard. In particular, the role the Honduran Supreme Court played before, during, and after the coup has been criticized by experts as a cause for concern as well as their retaliation against lower court judges and magistrates who spoke out against the coup or who attempted to initiate a judicial review of the events surrounding the coup. *Id.*

Honduras is still in a state of crisis and severe human rights violations. No one has been held accountable for the coup that caused the rupture in society nor for the widespread human rights violations that followed. The defendant's motion to dismiss the TVPA claim on the grounds that plaintiffs have not exhausted their domestic remedies should be denied as it is a preposterous suggestion given the situation as it now stands in Honduras, the defendant's role in the affairs that gave rise to the claims, and the vulnerability of victims and witness in Honduras.

C. The Complaint Sufficiently States Plausible Claims for Wrongful Death, Intentional Infliction of Emotional Distress and Negligence Under Texas State Law.

The plaintiffs have clearly provided a sufficient factual basis for the claim of wrongful death. The complaint details the events surrounding the killing of Murillo by Honduran military and the defendant's command responsibility arising from his authority over the military. The complaint provides a plausible, factually detailed basis to allow the court to arrive at the reasonable inference that the defendant is liable under the doctrine of command responsibility and that discovery will further yield admissible evidence that would go to show damages arising from Murillo's death and Micheletti's liability therefor.

Likewise, the plaintiffs have clearly provided a sufficient factual basis for the claim of intentional infliction of emotional distress, which requires that "a plaintiff must establish that: (1) the defendant acted intentionally or recklessly; (2) the defendant's conduct was extreme and outrageous; (3) the defendant's actions caused the plaintiff emotional distress; and (4) the resulting emotional distress was severe." *Hoffmann-La Roche, Inc. v. Zeltwanger,* 144 S.W.3d 438, 445 (Tex. 2004). "Extreme and outrageous conduct is conduct 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized society.'" *Id.* (quoting *Twyman v. Twyman,* 855 S.W.2d 619, 621 (Tex. 1993). Moreover, "a claim for intentional infliction of emotional distress will not lie if emotional distress is not the intended or primary consequence of the defendant's conduct." *GTE Sw., Inc. v. Bruce,* 998 S.W.2d 605, 611 (Tex. 1999).

In this case, "emotional distress" was the "intended or primary consequence" of the defendant's conduct. While not alleged to be the direct perpetrator, Micheletti allowed the excessive and patently unwarranted use of force against unarmed civilians, and continued to do so even after Murillo's death. He failed to punish and indeed took steps to ensure that the crime would not be punished. In doing so, he acted intentionally or recklessly and his conduct was extreme and outrageous and caused the plaintiffs emotional distress that was severe, as pleaded in the complaint.

Finally, the complaint sufficiently states a valid and plausible cause of action for negligence which requires a showing (1) of the existence of a legal duty; (2) a breach of that duty; and (3) damages proximately caused by that breach. The complaint details the events surrounding the killing of Murillo by Honduran military and the defendant's command responsibility arising from this authority over the military. The complaint provides a plausible,

factually detailed basis to allow the court to arrive at the reasonable inference that the defendant owed a duty to the plaintiffs and breached that duty in not taking measure to prevent the killing of unarmed civilians by the Honduran military and in failing to punish the violations. Defendant's authority and control over the Honduran military subsequent to the coup, and authorization and countenancing of the use of excessive force caused the decedent's death and the plaintiffs' damages.

CONCLUSION

The defendant's motion to dismiss should be denied.

Dated: 11/3/2011

Respectfully submitted,

s/ Pamela C. Spees
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleading was sent to the following via ECF on this the 3rd day of November, 2011:

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID MURILLO and SILVIA MENCIAS on behalf of themselves and as Personal Representatives of their deceased son, ISIS OBED MURILLO, and his next of kin, including his SIBLINGS v. ROBERTO MICHELETTI BAIN	Case No. 4:11-CV-2373

DECLARATION OF PAMELA SPEES
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

I, PAMELA SPEES, the undersigned, declare:

1. I am a staff attorney with the Center for Constitutional Rights and counsel of record for the plaintiffs in this action. I am admitted to practice law in the states of Louisiana and New York and for limited appearance before this Court. I submit this declaration in support of Plaintiffs' Opposition to Defendant's Motion to Dismiss.
2. Attached hereto as Exhibit A is a true and correct copy of the Declaration of Tamara Taraciuk Broner, dated November 2, 2011.
3. Attached hereto as Exhibit B is a true and correct copy of the Declaration of International Law Experts Roger S. Clark, Ralph G. Steinhardt and David S. Weissbrodt, dated November 1, 2011.
4. Attached hereto as Exhibit C is a true and correct copy of the Código Procesal Civil, Capítulo II (Second Chapter of the Honduran Civil Code of Procedure) and a true and correct English

translation of the same.

5. Attached hereto as Exhibit D is a true and correct copy of the Affidavit of Elizabeth J. Bradley, dated October 5, 2011.
6. Attached hereto as Exhibit E is a true and correct copy of the executed Proof of Service via International Registered Mail, for Barrio Las Delicias, 3 Avenida y 4 Calle, El Progreso, Yoro, Honduras, dated July 7, 2011, as e-filed on August 19, 2011 (Doc. 16).
7. Attached hereto as Exhibit F is a true and correct copy of the executed Proof of Service via International Registered Mail, for Colonia Satelite Casa No. 911, Comayaguela, Honduras, dated July 7, 2011, as e-filed on August 19, 2011 (Doc. 15).
8. Attached hereto as Exhibit G is a true and correct copy of the executed Proof of Service via Federal Express, for Barrio Las Delicias, 3 Avenida y 4 Calle, El Progreso, Yoro, Honduras, dated August 12, 2011, as e-filed on August 19, 2011 (Doc. 18).
9. Attached hereto as Exhibit H is a true and correct copy of the executed Proof of Service via Federal Express, for Colonia Satelite Casa No. 911, Comayaguela, Honduras, dated August 12, 2011, as e-filed on August 19, 2011 (Doc. 17).
10. Attached hereto as Exhibit I is a true and correct copy of the Statutory Durable Power of Attorney of Siomara Giron de Micheletti and Roberto Micheletti Bain, dated November 4, 2010, as e-filed for record by the County Clerk of Montgomery County, Texas.
11. Attached hereto as Exhibit J is a true and correct copy of the executed Proof of Service upon Jenny Vivas, as Power of Attorney for Roberto Micheletti Bain, at 32125 Joseph Road, Hockley, Texas 77447, dated June 28, 2011, as e-filed on August 8, 2011 (Doc. 8).
12. Attached hereto as Exhibit K is a true and correct copy of the Affidavit of Service, upon Jenny Vivas, as Power of Attorney for Roberto Micheletti Bain, at 32125 Joseph Road,

Hockley, Texas 77447, signed by Robert A. Horton, dated June 28, 2011.

13. Attached hereto as Exhibit L is a true and correct copy of Section 490 of the Texas Probate Code, as provided by LexisNexis, as of November 2, 2011.

14. Attached hereto as Exhibit M is a true and correct copy of the Montgomery Central Appraisal District Property Detail Sheet for "Lake CK Ranchettes 02, LOT 30, ACRES 15.000," identifying as the property's owner Siomara Giron de Micheletti, of 32125 Joseph Road, Hockley, Texas 77447, available at http://www.mcad-tx.org/html/records.html, last visited on October 29, 2011.

15. Attached hereto as Exhibit N is a true and correct copy of the Montgomery County Notice of 2011 Taxes Due for "Lake CK Ranchettes 02, LOT 30, ACRES 15.000," identifying as the property's owner Siomara Giron de Micheletti, of 32125 Joseph Road, Hockley, Texas 77447, dated October 3, 2011, and available at http://www.mctx.org/.

16. Attached hereto as Exhibit O is a true and correct copy of the Montgomery County Tax Collection History for "Lake CK Ranchettes 02, LOT 30, ACRES 15.000," identifying as the property's owner Siomara Giron de Micheletti, of 32125 Joseph Road, Hockley, Texas 77447, last visited October 29, 2011, and available at http://www.mctx.org/.

17. Attached hereto as Exhibit P is a true and correct certified copy of the Special Cash Warranty Deed, for Lots 14 and 15, Block 6, Remington Forest, in Waller County, TX, dated November 19, 2008.

18. Attached hereto as Exhibit Q is a true and correct copy of the "Property Appraisal Information 2011," for Lots 14 and 15, Block 6, Remington Forest, in Waller County, TX, by the Waller County Appraisal District, printed on June 24, 2011.

19. Attached hereto as Exhibit R is a true and correct certified copy of the Warranty Deed, for a

15-acre parcel at 29814 Amarillo St., Magnolia, Texas, dated December 3, 2010.

20. Attached hereto as Exhibit S is a true and correct copy of the Montgomery Central Appraisal District Property Detail Sheet for 29814 Amarillo Street, Magnolia, TX 77354, also known as "DECKER HILLS 01, BLOCK1-C, LOT 18," available at http://www.mcad-tx.org/html/records.html, last visited on October 29, 2011.

21. Attached hereto as Exhibit T is a true and correct copy of the Declaration of Jeffrey H. Luber, dated November 1, 2011. Attached as Appendices to the Declaration of Jeffrey H. Luber are: a true and correct copy of Mr. Luber's Curriculum Vitae; a true and correct copy of the Statutory Durable Power of Attorney, dated November 4, 2010; a true and correct copy of the Warranty Deed, dated August 11, 2005, designated as Recorded in Book 15652, Pages 1347-1348, in the State of Florida, Hillsborough County; a true and correct copy of the Declaration of Roberto Micheletti Bain Under Penalty of Perjury, dated September 22, 2011; a true and correct copy of the Request for Certification of Personal Status in an Investigation, dated July 12, 2011; the "Truth in Testimony" Disclosure Form"[sic], dated June 14, 2011, from the Testimony of Mr. Roberto Micheletti Bain for the House of Representatives Committee on Foreign Affairs, Subcommittee on the Western Hemisphere, available at http://www.foreignaffairs.house.gov/112/bai061411e.pdf; the signed letter and statement of Roberto Micheletti Bain, dated November 22, 2010, as published in the Truth and Reconciliation Commission 2011 Report, Vol. 2, Chap. 3, available at http://www.cvr.hn/assets/Documentos-PDF/Informes-Finales/TOMO-II-3.pdf.

22. Attached to Exhibit C is a true and correct copy of the Affidavit attesting to the accuracy of the translation of the document from Spanish to English.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 3, 2011
New York, NY

PAMELA C. SPEES

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID MURILLO and SILVIA MENCIAS on behalf of themselves and as Personal Representatives of their deceased son, ISIS OBED MURILLO, and his next of kin, including his SIBLINGS. v. ROBERTO MICHELETTI BAIN	Case No. 4:11-CV-2373

DECLARATION OF TAMARA TARACIUK BRONER

1. I, TAMARA TARACIUK BRONER, make this declaration based on my knowledge and experience in investigating and analyzing the human rights situation in Honduras subsequent to the coup d'etat of June 28, 2009.[1]

2. I attach as an appendix to this declaration a summary of my credentials, which provides evidence of my work and expertise in this field.

[1]This expert declaration is based on research, interviews and documentation conducted for a report published by Human Rights Watch in December 2010. I have updated the information contained herein for the purposes of this declaration where appropriate and to the extent possible. *See* Human Rights Watch, "After the Coup: Ongoing Violence, Intimidation, and Impunity in Honduras," December 2010. *Available at*: http://www.hrw.org/en/reports/2010/12/21/after-coup.

3. I have been asked to provide an opinion as to the general climate of impunity for post-coup abuses and violations of human rights and obstacles to justice and accountability in the post-coup context in Honduras.

I. Background and Summary

4. The military coup d'etat that ousted President Manuel Zelaya on June 28, 2009—and the attacks on journalists, human rights defenders, and political activists in the coup's aftermath—represent the most serious setbacks for human rights and the rule of law in Honduras since the height of political violence in the 1980s.

5. After the coup, security forces committed serious human rights violations, killing some protesters, repeatedly using excessive force against demonstrators, and arbitrarily detaining thousands of coup opponents. The de facto government installed after the coup also adopted executive decrees that imposed unreasonable and illegitimate restrictions on the rights to freedom of expression and assembly.

6. Since the inauguration of President Porfirio Lobo in January 2010, there have been new acts of violence and intimidation against journalists, human rights defenders, and political activists.

7. Impunity for violations has been the norm. No one has been held criminally responsible for any of the human rights violations committed under the de facto government in 2009. And available information indicates that there has been little or no progress in investigating the attacks and threats that have occurred since January 2010. Such attacks have had a chilling effect on the media and political opposition. Lack of

witness protection and lack of cooperation by military and police are among the key obstacles to justice and accountability in the wake of the coup.

A. Impunity for Post-Coup Abuses

8. As of December 2010, the Human Rights Unit of the Attorney General's Office—responsible for investigating allegations of human rights violations committed by police or military personnel—had filed charges in 20 cases of alleged violations committed under the de facto government. Judges acquitted the defendants in eight of these cases and the rest were still pending before the courts, some of them stalled because the accused are at large.

9. This lack of progress in prosecuting perpetrators of human rights crimes has not been due to a lack of effort by the Human Rights Unit. Rather, it is primarily the result of the lack of cooperation with, and support for, the unit from other state institutions, particularly during the early stages of the investigations in 2009. In particular, prosecutors in the unit have faced threats and obstruction of their efforts to investigate allegations of abuse by military and police.

10. The Human Rights Unit has faced several obstacles that undermine its ability to adequately investigate and prosecute these cases, including:

a. Lack of independent investigators: The unit's prosecutors rely on investigative police who lack the independence necessary to conduct impartial investigations into violations committed by security forces. These investigators are members of the national police force. Like other police, their careers—including promotions, benefits, and disciplinary matters—are determined by the Ministry of Security, which is also responsible for placing them with the Attorney General's Office.

Even while working with the Attorney General's Office, they maintain a strong institutional loyalty to the police force. Consequently, prosecutors do not feel they can rely on the police to investigate cases involving other police officers.

b. Lack of cooperation by security forces: Under the de facto government, there was an "absolute" lack of cooperation with investigations by military and police personnel, according to members of the Human Rights Unit. Military or police officers refused to turn over firearms for ballistics tests, provide information on police officers accused of committing violations, or grant access to military installations.

c. Lack of implementation of a Witness Protection Program: Honduras's Witness Protection Program has been rendered largely inoperative due to the state authorities' failure to allocate funds to it. Consequently, prosecutors are unable to guarantee even minimal protection for witnesses who may be at risk of reprisal.

d. Limited resources: Although the volume of human rights cases increased dramatically after the coup, the unit's staff and budget were not expanded to meet the heavier caseload. As of December 2010, the unit consisted of 15 prosecutors. Each has had to handle approximately 400 cases. The unit possessed only two cars, one in Tegucigalpa and another in San Pedro Sula, which had severely limited prosecutors' ability to carry out travel necessary for their investigations. According to the unit's director, these conditions have left the prosecutors "overwhelmed." A one-year budget increase approved by Congress in October 2010 for 2011 has yet to be fully assigned to the unit.

e. Lack of judicial independence: Actions by the Honduran Supreme Court immediately after the coup created a climate in which lower court judges were discouraged from ruling against de facto authorities and in favor of coup opponents, independent of the facts of the case at hand. The Supreme Court

issued public statements immediately after the coup declaring that the military's actions on June 28 had been legal without mentioning that the military physically removed former President Zelaya from the country and forced him into exile. The broad and unqualified endorsement of the military's actions sent a clear message that the Supreme Court did not object to them. The Court then disregarded constitutional appeals challenging the legality of policies by the de facto government. While Honduran law establishes the principle that lower courts should be independent of undue influence from higher courts, until February 2011 it also granted the Supreme Court administrative and disciplinary powers over lower court judges. The Supreme Court exercised this authority in an arbitrary and seemingly political fashion in May 2010 when it fired four judges who publicly questioned the legality of the coup. A law implementing a constitutional reform adopted in February 2011 to grant disciplinary powers to a new Council of the Judiciary is still being debated.

B. Ongoing Attacks Against Journalists, Human Rights Defenders, and Political Activists

11. Since President Lobo was inaugurated in January 2010, there have been at least 18 killings of journalists, human rights defenders, and political activists, several in circumstances that suggest the crimes were politically motivated.

12. For example, on February 15, 2010 gunmen shot and killed Julio Benitez, an opponent of the coup who had previously received numerous threatening phone calls warning him to abandon his participation in opposition groups. On March 14, 2010 gunmen shot and killed Nahúm Palacios, who directed TV Channel 5 of Aguán and had covered several politically sensitive issues, including anti-coup demonstrations, corruption, drug trafficking, and agrarian conflicts.

13. Human Rights Watch has also received credible reports of dozens of cases involving threats or attacks against journalists, human rights defenders, and political activists in 2010 and 2011. For instance, on April 8, 2010, Father Ismael Moreno—a Jesuit priest and human rights advocate—received a text message threatening to kill the family of a female coup opponent who had been raped by police officers. Father Moreno had been helping the woman and her family to leave Honduras. On September 15, 2010, police and military members attacked the offices of Radio Uno, a station that has been critical of the coup. They launched tear gas into the radio station's offices, broke windows in the building, damaged equipment, and seriously injured one person. In early 2011, Leo Valladares Lanza, a prominent human rights defender who previously served as Honduras' ombudsman and president of the Inter-American Commission of Human Rights, received intimidating phone calls, and noticed people monitoring his home and following him after he publicly questioned the increasing power of the Honduran military since the coup.

14. The ongoing political polarization in Honduras and circumstantial evidence in the majority of the 2010 cases documented by Human Rights Watch—including explicit statements by perpetrators in some instances—indicate that many victims have been targeted because of their political views, fueling a climate of fear that has undermined the exercise of basic freedoms in Honduras.

15. This situation has generated serious concerns in the international community. In October 2010, 30 members of the US Congress urged the US Secretary of State to suspend military and police aid to Honduras until the Lobo administration distances itself

from individuals involved in the coup and adequately addresses the ongoing violations. International human rights bodies, including the Inter-American Commission on Human Rights (IACHR) and the Office of the High Commissioner for Human Rights (OHCHR), have called on Honduras to hold perpetrators accountable. Several countries expressed concern regarding the human rights situation in the country during the Universal Periodic Review of Honduras in November 2010.

II. Impunity for Post-Coup Abuses

16. At the time of this writing, no one has been held criminally responsible for the human rights violations and abuses of power committed after the coup.[2] In the vast majority of the abuse cases documented by international human rights bodies, prosecutors have not brought charges against anyone. As of December 2010, the Human Rights Unit of the Attorney General's Office was working on approximately 200 cases of alleged human rights violations committed by police or military personnel since the coup, but had filed charges in only 20 arising during the de facto government's tenure.[3]

[2] Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, Tegucigalpa, October 26, 2011.

[3] Each case may involve several victims. The vast majority of the abuses under investigation—approximately 90 percent— had occurred during the de facto government of Roberto Micheletti. Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010; Human Rights Watch interview with Juan Carlos Griffin and Jaime Ramos, prosecutors of the Human Rights Unit, Tegucigalpa, August 25, 2010; Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit, Tegucigalpa, October 28, 2010; Human Rights Unit of the Attorney General's Office, "Report" (Informe), November 1, 2010. Information provided to Human Rights Watch by Jaime Ramos, prosecutor in the Human Rights Unit, November 1, 2010.

17. Human Rights Watch obtained documentation on 17 of these cases. In eight of them, the defendants were acquitted. As of December 2010, the rest were still pending before the courts, some of them stalled because the defendants were at large.

A. Obstacles to Accountability

Lack of Independent Investigative Police

18. A major obstacle to advancing these cases has been the lack of independent investigators to support the work of the Human Rights Unit. Prosecutors rely on an investigative police force that is part of the Ministry of Security: such investigators face an inherent conflict of interest when called on to investigate alleged violations committed by other police officers, who belong to the same ministry.

19. A 1998 reform removed the investigative police force from the Attorney General's Office and placed it under the jurisdiction of the Ministry of Security.[4] As of September 2010, the National Directorate of Criminal Investigations (*Dirección Nacional de Investigación Criminal*), one of six offices within the Ministry of Security, had 2000 police investigators. This included approximately 100 in Tegucigalpa, 100 in San Pedro Sula, and the remainder in rural and municipal areas throughout the country.[5]

20. Under Honduran law, police investigators work under the direct supervision of prosecutors.[6] The director of the National Directorate of Criminal Investigations told

[4] The 1998 Organic Law of the Police establishes that the General Directorate of Criminal Investigation (Dirección General de Investigación Criminal) reports directly to the Ministry of Security. Organic Law of the Police (Ley Orgánica de Policía), art. 30.
[5] Human Rights Watch telephone interview with General Commissioner Marco Tulio Palma Rivera, director of the National Directorate of Criminal Investigations, Tegucigalpa, September 10, 2010.
[6] Code of Criminal Procedures, art. 279.

Human Rights Watch that police investigators face no difficulties when they investigate other police officers because they always work with "objectivity."[7]

21. But a conflict of interest is built-in to the system. As with all other police, the careers of these investigators—including promotions, benefits, and disciplinary matters—are determined by the Ministry of Security, which is also responsible for placing them with the Attorney General's Office.[8] Furthermore, they partake of an institutional culture that emphasizes loyalty, one that undoubtedly yields influences even while working with the Attorney General's Office.

22. Prosecutors do not trust the investigative police force to carry out thorough and independent investigations in cases in which other police officers are suspects. Danelia Ferrera, the general director of prosecutors (*Directora General de Fiscalías*) at the Attorney General's Office, told Human Rights Watch that this creates enormous difficulties for investigations, particularly those carried out by the Human Rights Unit, as members of the investigative police "are investigating their fellow officers."[9]

23. Consequently, instead of relying on investigators, prosecutors prefer to investigate the cases themselves.[10] As a result, prosecutors can only focus on a limited

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[7] Human Rights Watch telephone interview with General Commissioner Marco Tulio Palma Rivera, director of the National Directorate of Criminal Investigations, Tegucigalpa, September 10, 2010.
[8] Ibid; Human Rights Watch telephone interview with General Commissioner Marco Tulio Palma Rivera, director of the National Directorate of Criminal Investigations, Tegucigalpa, November 1, 2010.
[9] Human Rights Watch telephone interview with Danelia Ferrera, general director of prosecutors (directora general de fiscalías) at the Attorney General's Office, Tegucigalpa, September 7, 2010.
[10] Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010; Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General's Office, San Pedro Sula, August 27, 2010.

number of cases because their workload is much heavier than it would be if they could rely on independent investigators.

24. As discussed further below, a budget increase for 2011 was supposed to have enabled the Human Rights Unit to hire 20 independent investigators to cooperate directly with prosecutors, but the funding has yet to be fully assigned to the unit, and so only 2 independent investigators – 10% of the original request – have been hired.[11]

Obstruction of Investigations by Military and Police Personnel

25. Military and police personnel have failed to cooperate with investigations into human rights violations. This obstruction violates the obligation that all civilian and military authorities have under Honduran law to cooperate with prosecutors.[12]

26. During the de facto government of Roberto Micheletti, the lack of cooperation of military and police personnel was "absolute" and "a common practice," according to prosecutors in the Human Rights Unit.[13] Despite the fact that since President Lobo took office law enforcement officers gradually have begun cooperating with prosecutors,

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[11] Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, Tegucigalpa, October 28, 2010.

[12] Law of Public Prosecutors (Ley del Ministerio Público), http://www.mp.hn/Biblioteca/Ley%20del%20Ministerio%20Publico.htm (accessed November 1, 2011), art. 3: "… all civilian and military authorities of the Republic are obliged to provide cooperation and support required by public prosecutors to ensure the best performance of their functions. Those public officials and employees who fail to cooperate without justification will be sanctioned for having violated their duties and for disobeying authority"; Criminal Procedures Code of the Republic of Honduras (Código Procesal Penal de la República de Honduras), http://www.oas.org/juridico/mla/sp/hnd/sp_hnd-int-text-cpp.pdf (accessed September 1, 2010), art. 237: "Government authorities and public officials will cooperate with judges, prosecutors and the national police in the fulfillment of their obligations, for which they must respond without delay to the requests that they make."

[13] Human Rights Watch interview with Juan Carlos Griffin and Jaime Ramos, prosecutors of the Human Rights Unit, Tegucigalpa, August 25, 2010.

prosecutors from the Human Rights Unit told Human Rights Watch that they still face some resistance. And, in certain instances, the lack of cooperation during the initial months of the investigations had a serious, and possibly irreversible, impact on the investigations.[14]

Failing to Turn over Firearms for Ballistics Tests

27. To identify the military officers who killed Isis Obed Murillo during a pro-Zelaya demonstration near the Tegucigalpa airport on July 5, 2009, the Human Rights Unit requested that the military turn over firearms used that day to analyze if they matched the bullets they found at the crime scene.[15] The military refused.

28. The Human Rights Unit then asked the courts to order the military to cooperate with the investigation, but the courts rejected the request. In October 2009, a lower court judge held that because the Armed Forces needs its weapons to provide security to the nation, the request must "be more specific" and "individualize the weapon or weapons that were supposedly used the day of the events."[16] The prosecutor turned to

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[14] Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010; Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General's Office, San Pedro Sula, August 27, 2010.

[15] Ibid; Human Rights Watch interview with Juan Carlos Griffin and Jaime Ramos, prosecutors of the Human Rights Unit, Tegucigalpa, August 25, 2010.

[16] Request by Carlos Roberto Flores, prosecutor in the Human Rights Unit, to the Judge of the Judicial Section of the Department Francisco Morazán (juez de letras de la Sección Judicial del Departamento Francisco Morazán), October 9, 2009. Decision by Judge Nelly Lizbeth Martínez, Criminal Court of the Judicial Section of Tegucigalpa, Department Francisco Morazán, on File 42,334-09, October 15, 2009. On appeal the same judge upheld her previous decision. The judge argued that if the military had stated they would turn over the guns, they "intended to collaborate" with prosecutors (even if they had not actually cooperated). And she reiterated the argument that the military needs its guns, despite the fact that prosecutors had requested that the military turn over 50 firearms at a time, which would have a minimal

an appeals court, which responded that prosecutors could not challenge a lower court judge's decision regarding specific evidence.[17]

29. The military only began turning over the firearms in early August 2010, approximately one year after the initial request. At this point, according to the prosecutors in charge of the investigation, there is no guarantee that the ballistics tests will shed any light as to which gun was used in the shooting of Isis Obed Murillo, given that the military has had more than enough time to alter the firearms in a way that could modify the test results.[18]

Failing to Respond to Requests to Identify Police Officers

30. Prosecutors have repeatedly asked police authorities for the names of officers involved in human rights violations, without obtaining an adequate response.[19]

31. For example, in June 2010 a prosecutor in Tegucigalpa requested that the director of the national police identify four officers who are seen in a video beating protesters.[20] The Human Rights Unit twice asked for the complete names of the officers,

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impact on national security. Decision by Judge Nelly Lizbeth Martínez, Criminal Court of the Judicial Section of Tegucigalpa, Department Francisco Morazán, on File 42,334-09, October 20, 2009.

[17] First Appeals Court of the Department Francisco Morazán (Corte Primera de Apelaciones del departamento de Francisco Morazán), Notice (cédula de notificación) on File 508-09, December 10, 2009. After a final appeal by the prosecutor (recurso de reposición), the court upheld its decision in January 2010. First Appeals Court of the Department Francisco Morazán (Corte Primera de Apelaciones del departamento de Francisco Morazán), Notice (cédula de notificación) on File 508-09 R, January 14, 2010. At the time of this writing, an appeal is pending before the Supreme Court of Justice. Constitutional appeal (acción constitucional de amparo) presented by Carlos Roberto Flores Chávez, prosecutor in the Human Rights Unit, before the Supreme Court of Justice of the Republic of Honduras, March 15, 2010.

[18] Human Rights Watch interview with Juan Carlos Griffin and Jaime Ramos, prosecutors of the Human Rights Unit, Tegucigalpa, August 25, 2010.

[19] Ibid.

[20] Ibid.

the place where they were assigned, and the number of years they had worked in the force, arguing that the information was "urgently needed" for a criminal investigation.[21] According to the prosecutor in charge of the case, several police officers unofficially identified all the officers involved. But it took the human resources office of the Ministry of Security a month and a half to identify anyone, and even then it named only two of the four people in the video.[22]

32. Another incident involves police officers accused of violently dispersing a demonstration in the central park of San Pedro Sula on November 29, 2009. A prosecutor requested several times that police authorities provide information on the officers sent to the park, as well as those in charge of the operation, including their names and ranks, the type of weapons they carried, and the numbers on their helmets and jackets. The legal advisor of the national police and a police commissioner responded to the first requests stating they were not the competent authority to provide the information.[23] As of August 2010, prosecutors had still not received the requested information.[24]

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[21] Human Rights Unit of the Attorney General's Office, Document FEDH 496-2010 (Oficio FEDH 496-2010), June 2, 2010; Human Rights Unit of the Attorney General's Office, Document FEDH 698-2010 (Oficio FEDH 698-2010), July 29, 2010.

[22] Human Rights Watch interview with Juan Carlos Griffin and Jaime Ramos, prosecutors of the Human Rights Unit, Tegucigalpa, August 25, 2010.

[23] Letter from Danelia Ferrera Turcios, general director of prosecutors (directora general de fiscalías) at the Attorney General's Office, to Commissioner Manuel Fuentes Aguilar, national director of the preventive police force, August 19, 2010. The letter mentions five previous information requests sent by prosecutors of the Human Rights Unit requesting the same information.

[24] Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General's Office, San Pedro Sula, August 27, 2010.

Denying Access to Military Installations

33. On September 30, 2009, Captain Carlos Roberto Rivera Cardona denied prosecutors access to the Communications Battalion in Las Mesas, municipality of San Antonio. Prosecutors intended to verify if the broadcasting equipment of Radio Globo and Channel Cholusat Sur, which had been confiscated two days earlier by military and police officers, was being kept at the battalion. Captain Rivera told prosecutors that the equipment was not there, and that they required authorization from high level military officials (*Estado Mayor Conjunto*) to enter the military installation. According to prosecutors of the Human Rights Unit, such authorization is not required. As of December 2010, Captain Rivera was under criminal investigation for not cooperating with prosecutors.[25]

Threatening Prosecutors

34. Immediately after the coup, in at least two instances military officers threatened human rights prosecutors who were doing their job. On June 29, 2009, a prosecutor who was monitoring developments outside the Presidential Palace noticed that military officers were beating an elderly woman. He immediately requested that the men stop. A captain who was nearby walked up to the prosecutor and threatened to beat him.[26]

35. Another example occurred in early July 2009 when prosecutors investigating the closure of Radio El Progreso sought to enter a military battalion to review records

[25] Human Rights Unit of the Attorney General's Office, Charges filed on Case 0801-2010-21216 (Requerimiento Fiscal en Expediente 0801-2010-21216), June 30, 2010. Judge 19 of the Criminal Court of Tegucigalpa (Juzgado de Letras Penal de la Sección Judicial de Tegucigalpa, departamento de Francisco Morazán) is in charge of the case.

[26] Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010.

that would have the names of the military officers who closed the radio station. At that time, an army officer told a prosecutor of the Human Rights Unit, "I wish I were in the Cold War, the days of Pinochet, the days when you could just disappear (someone)." The prosecutor interpreted this as a direct threat.[27]

Lack of Sufficient Resources

36. The Human Rights Unit's ability to investigate the post-coup cases has been severely hampered by lack of resources, a problem that has plagued the unit since its creation in 1994. With little funding for personnel, vehicles, and expenses, prosecutors have been "totally overwhelmed," according to Sandra Ponce, the head of the unit.[28]

37. The 2010 annual budget for the Human Rights Unit was US$500,000. According to Ponce, most of the budget is spent on salaries. As of December 2010, the unit staff consisted of 15 prosecutors, 10 based in Tegucigalpa and five in San Pedro Sula.[29]

38. In 2010, all of the prosecutors in the Human Rights Unit shared two cars (one in each city) to work on all cases.[30] In August 2010, the Ministry of Security offered the unit a second car to be used in Tegucigalpa—but prosecutors had to rent it and only had

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[27] Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010. The officer said: "Ojala que estuviera en la guerra fria, los dias de Pinochet, los dias cuando podrias desaparecer (a alguien)".

[28] Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and with Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010.

[29] Ibid. The director of the San Pedro Sula office told Human Rights Watch that there were seven prosecutors in his office. Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General's Office, San Pedro Sula, August 27, 2010.

[30] Ibid.

access to it for a month.[31] Prosecutors say they need the cars to get to crime scenes promptly, provide transportation to witnesses or victims who would otherwise be unable to cooperate with them, and transport forensic experts to analyze evidence.[32]

39. Another major problem is that the Human Rights Unit lacks sufficient investigators to support the work of prosecutors. The Ministry of Security told Human Rights Watch that there were 40 investigative police officers assisting human rights prosecutors.[33] However, according to the Human Rights Unit, the ministry provided the unit with only eight investigators (six based in Tegucigalpa and two in San Pedro Sula).[34] Even if the ministry figure were correct, investigative police officers lack the independence necessary to conduct rigorous investigations into police and military misconduct, a subject addressed above.

40. Other specialized units do not face such limitations. The unit in charge of investigating crimes against women, for example, had a budget in 2010 of $1.35 million. In 2010, it had 46 prosecutors, who work with 15 independent investigators and several

[31] Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010; Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, Tegucigalpa, October 28, 2010.

[32] Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit, Tegucigalpa, October 28, 2010; Human Rights Watch telephone interview with Jaime Ramos, prosecutor in the Human Rights Unit, Tegucigalpa, October 27, 2010.

[33] Human Rights Watch telephone interview with General Commissioner Marco Tulio Palma Rivera, director of the National Directorate of Criminal Investigations, Tegucigalpa, September 10, 2010.

[34] Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010. The director of the San Pedro Sula office told Human Rights Watch that they had only one investigator working with them. Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General's Office, San Pedro Sula, August 27, 2010.

psychologists. Prosecutors in this unit had nine cars at their disposal in different locations throughout the country.[35]

41. The lack of resources in the Human Rights Unit has become more urgent since the coup, given the substantial increase in the unit's workload. According to Ponce, the unit received approximately 250 more cases in the second half of 2009 than in the first half of the year. As of December 2010, each human rights prosecutor handled an average of 400 cases, including many dating from before the coup.[36]

42. In October 2010, the Honduran Congress approved a three-fold increase in the Human Rights Unit's budget, which was supposed to be effective in April 2011, raising it to 31 million lempiras ($ 1.63 million). According to the spending plan presented by the Human Rights Unit to President Lobo, who submitted it to Congress, once the funds were available, the Human Rights Unit should be able to hire approximately 20 independent investigators to work with prosecutors, eight additional prosecutors, three psychologists, three doctors, and three social workers; open an office in La Ceiba; buy 10 additional vehicles; and purchase a camera to take pictures and film to produce evidence.[37]

43. As of October 2011, according to Ponce, the Unit had yet to receive the totality of the funds approved for 2011. The Attorney General's Office had only

[35] The 2009 budget of the women's rights unit was 9,575,000 lempiras from the regular budget and 16,000,000 from a special fund to investigate murders of women. Human Rights Watch email correspondence with Ela Paredes and Danelia Ferreira, general director of prosecutors (directora general de fiscalías) at the Attorney General's Office, September 17 and 22, 2010.

[36] Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010.

[37] Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, Tegucigalpa, October 28, 2010; Human Rights Watch email correspondence with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, October 29, 2010.

authorized the unit to hire two independent investigators, and it had offered to rent six additional vehicles for human rights prosecutors to use.[38]

Inadequate Implementation of a Witness Protection Program

44. In 2007, the Honduran Congress passed a law creating a Witness Protection Program to increase the likelihood that eyewitnesses would be willing to give testimony in criminal cases.[39] But the office in charge of implementing the Witness Protection Program still has no resources specifically assigned to it.

45. The 2007 law establishes, among other measures, that individuals who participate in the Witness Protection Program may be relocated, offered a new identity, or assigned police protection; in some circumstances, cases are to be heard on an expedited basis to minimize the threats they face.[40] The program would be implemented by a director, regional units, and an advisory council (composed of the attorney general, the general director of prosecutors, and the director of the Witness Protection Program).

46. In December 2010—three years after the law was passed—the program staff consisted of only two people (a director and a driver). The Attorney General's Office had

38 Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, October 26, 2011.

[39] Law to Protect Witnesses in Criminal Procedures (Ley de Protección a Testigos en el Proceso Penal), July 18, 2007, http://www.poderjudicial.gob.hn/NR/rdonlyres/E3AA256D-FC8A-4397-91FB-8F41558A1581/1129/LeydeProteccinaTestigosenelProcesoPenal.pdf (accessed November 1, 2011).

[40] Law to Protect Witnesses in Criminal Procedures, arts. 11 and 12.

been using limited funds that were intended to cover other costs to implement the program.[41]

47. Due to this lack of resources, the Witness Protection Program has failed to provide adequate protection to witnesses in human rights cases. For example, the director of the Human Rights Unit in San Pedro Sula told Human Rights Watch that they had requested protection in two serious cases in 2009, but both requests were denied because the Witness Protection Program lacked sufficient resources.[42] According to the prosecutor, both women who were denied protection were "indispensable" to build the cases and faced "a high risk for [their] life and physical integrity."[43]

48. In one case, a prosecutor sought protection for a woman who claimed she had been raped in her home by a police officer on August 31, 2009. The prosecutor had been able to identify three suspects, all of whom were active members of the police and constantly threatened the woman.[44] In the other case, a prosecutor requested protection for a woman who was detained by police officers while she was participating in a

[41] Human Rights Watch telephone interview with Yuri Manuel Moreno Gallegos, director of the Witness Protection Program, Tegucigalpa, October 6, 2010; Human Rights Watch telephone interview with Danelia Ferrera, general director of prosecutors (directora general de fiscalías) at the Attorney General's Office, Tegucigalpa, September 7, 2010.

[42] Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General's Office, San Pedro Sula, August 27, 2010.

[43] Memorandum "FERDH-355-09" from Johnny Bladimir Dubon, prosecutor in the Human Rights Unit, to Yuri Manuel Moreno, director of the Witness Protection Program, November 18, 2009; Memorandum "FERDH-354-09" from Johnny Bladimir Dubon, prosecutor in the Human Rights Unit, to Yuri Manuel Moreno, director of the Witness Protection Program, November 18, 2009.

[44] Memorandum "FERDH-355-09" from Johnny Bladimir Dubon, prosecutor in the Human Rights Unit, to Yuri Manuel Moreno, director of the Witness Protection Program, November 18, 2009.

demonstration on August 14, 2009, driven to an undisclosed location, and raped. The prosecutor had identified four suspects, all of whom were active members of the police.[45]

49. According to prosecutors in the Human Rights Unit, witnesses are generally afraid of suffering reprisals if they testify against the police or the military.[46] Ponce, the head of the Human Rights Unit, stated that an adequate Witness Protection Program would be a very useful tool to help convince witnesses to testify in cases that the unit is currently investigating.[47] As of October 2011, according to Ponce, the situation had not changed.[48]

B. Independence of the Judiciary Compromised

The Supreme Court's Support of the Coup

50. In the wake of the 2009 coup, the Honduran Supreme Court issued strong public statements declaring that the military's actions on June 28 had been legal.[49] These

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[45] Memorandum "FERDH-354-09" from Johnny Bladimir Dubon, prosecutor of the Human Rights Unit, to Yuri Manuel Moreno, director of the Witness Protection Program, November 18, 2009.

[46] Human Rights Watch interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, and Juan Carlos Griffin, prosecutor in the Human Rights Unit, Tegucigalpa, August 23, 2010; Human Rights Watch interview with John César Mejía, director of the San Pedro Sula office of the Human Rights Unit of the Attorney General's Office, San Pedro Sula, August 27, 2010.

[47] Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, Tegucigalpa, October 28, 2010.

48 Human Rights Watch telephone interview with Sandra Ponce, head of the Human Rights Unit of the Attorney General's Office, Tegucigalpa, October 26, 2011.

[49] The day of the coup, the Supreme Court issued a press release stating that, given that a court had ordered the military to stop the executive's attempt to carry out a national poll that day, "the Armed Forces, defending the Constitution, have acted in defense of the rule of law, forcing the fulfillment of the law by those who have publicly stated and acted against … the Constitution." In addition, the press release states that, "if the origin of the acts that occurred today is a judicial order issued by a competent judge, carrying out [these measures is the consequence of] … existing legal norms." Judicial Branch of the Nation (Poder Judicial de la Nación), Press Release, June 28, 2009. On June 30, the Court issued another press release explaining the judicial process that led to the events of June 28. The Court argued that on June 26, a lower court had ordered the Armed Forces to "suspend all activities related to a consultation that would take place on June 28, and to proceed to seize all materials to be used in the previously declared illegal consultation."

statements avoided any specific reference to the fact that the military forcibly flew President Zelaya out of Honduras, forcing him into exile, which was the reason military leaders could claim that there was a power vacuum that they had a duty to fill.

51. The Supreme Court's statements justified the creation of the de facto government, arguing that the appointment of Roberto Micheletti constituted a "constitutional succession of power." In a meeting with Human Rights Watch in August 2010, members of the Supreme Court claimed that those statements had merely recognized the fact that "the president was out of the country, for whatever reason" and that under those circumstances, according to the Constitution, the appointment of the president of Congress as the president of the Republic was "a constitutional succession of power."[50]

52. In September 2009 the Supreme Court failed to resolve in a timely manner appeals challenging the constitutionality of an executive decree of the de facto government that limited basic rights. On September 28, two days after the decree was issued, several people presented an appeal challenging its constitutionality, arguing that it limited freedom of expression by broadly and unjustifiably prohibiting all public statements that offend human dignity, public officials, or "run counter the law or government decisions." Over ten additional appeals were subsequently presented before

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It also stated that on June 26, the Court had ordered the military to detain Zelaya, who had been accused by the attorney general of committing several crimes, including treason and abuse of authority. Supreme Court of Justice of the Republic of Honduras, Special Press Release, June 30, 2009. See also Supreme Court of Justice of the Republic of Honduras, Press Release, July 20, 2009.

[50] Human Rights Watch interview with Justice Jorge Rivera Aviles, president of the Supreme Court of Justice of the Republic of Honduras, Justice Rosa de Lourdes Paz Haslam, Justice José Tomás Arita Valle, and Justice José Antonio Gutiérrez Navas, Tegucigalpa, August 25, 2010.

the court. According to Honduran law, courts must resolve constitutional appeals that deal with purely legal issues within three days.[51] But the Supreme Court waited more than three weeks—and only after the executive branch itself revoked the decree—to resolve the appeals, ruling that they lacked merit precisely because the decree was no longer in force.[52]

Abusing Disciplinary Powers

53. After the coup, the Supreme Court applied a double standard when it used its disciplinary powers. It fired four judges who opposed the coup, arguing that judges may not get involved in politics. But it failed to sanction judges who supported the appointment of Roberto Micheletti as the de facto president of Honduras, despite the fact that those statements were as "political" as statements questioning the coup.

54. During the de facto government, the Supreme Court opened administrative investigations into the statements and actions of four judges who opposed the coup.[53] It investigated:

> Tirza del Carmen Flores Lanza, magistrate of the San Pedro Sula Court of Appeals, for presenting a constitutional appeal challenging the ouster of former

[51] Law on Constitutional Appeals (Ley de Amparo), art. 29.

[52] Supreme Court of Justice of the Republic of Honduras, Report by Daniel Arturo Sibrian Bueso, secretary of the Constitutional Chamber, to Justice Jose Antonio Gutiérrez Nava, president of the Constitutional Chamber, August 26, 2010; Information provided to Human Rights Watch by Justice Gutiérrez Nava, September 20, 2010.

[53] The four judges are members of the Association of Judges in favor of Democracy (Asociación de Jueces por la Democracia), a nongovernmental organization that openly criticized the coup.

President Zelaya, and for formally requesting that the Attorney General's Office investigate government authorities involved in the coup.[54]

Ramón Enrique Barrios, lower court judge in San Pedro Sula and constitutional law professor at the University of San Pedro Sula, for stating in an academic conference that what happened on June 28 had been a coup d'etat.[55] The investigation began after a newspaper reproduced his statements in its print edition.[56]

Luis Alonso Chévez de la Rocha, judge in the Special Tribunal against Domestic Violence in the Department of Cortes, for participating in a demonstration on August 12, 2009, in which he asked police officers to stop beating protesters.[57]

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[54] Human Rights Watch interview with Tirza del Carmen Flores Lanza, San Pedro Sula, August 26, 2010; Deputy Directorate of Personnel, Judicial Career, "Notice" (Cedula de Citacion), November 20, 2009. The constitutional appeal, presented by seven individuals, argued that the events of June 28 had violated several constitutional guarantees, including the right of all Hondurans not to be extradited out of the country (provided for in article 102 of the Honduran Constitution). Constitutional Appeal (Recurso de Amparo), June 30, 2009. The request to investigate government officials was presented by 14 people. Request for investigation (Denuncia), June 30, 2009. Judge Guillermo López Lone also signed both documents, but was not investigated for having done so. Copy on file at Human Rights Watch. The Court held that Flores was out the office that day without permission; litigated a case, which judges are not allowed to do; gave the court's address to receive notifications about the case; presented a complaint before the Attorney General's Office; and commented on decisions adopted by other judicial bodies and the Supreme Court. Supreme Court of Justice of the Republic of Honduras, Document No. 1181-SCSJ-2010 (Oficio No. 1181-SCSJ-2010), June 4, 2010. Flores appealed the Supreme Court's decision before the Council on Judicial Careers on June 30, 2010.

[55] Human Rights Watch telephone interview with Ramón Enrique Barrios, San Pedro Sula, May 12, 2010; Human Rights Watch interview with Ramón Enrique Barrios, San Pedro Sula, August 26, 2010; Deputy Directorate of Personnel, Judicial Career, "Notice" (Cedula de Citacion), October 27, 2009. The Court held that judges may only discuss current events with their students from a legal point of view, but this right "does not extend to audiences other than duly registered students." According to the Court, his decision to accept an invitation to participate in "events that could lead to altering public order" and to authorize a newspaper to reproduce his statements were incompatible with the honor of being a judge. Supreme Court of Justice of the Republic of Honduras, Oficio No. 1291-SCSJ-2010, June 16, 2010. Barrios appealed the Supreme Court's decision before the Council on Judicial Careers on June 30, 2010.

[56] Opinion of Ramón Enrique Barrios (Opinion de Ramón Enrique Barrios), "There was no constitutional succession" (No hubo sucesión constitucional), *Tiempo*, August 28, 2009.

[57] Human Rights Watch telephone interview with Luis Chévez, San Pedro Sula, May 12, 2010; Human Rights Watch interview with Luis Chévez, San Pedro Sula, August 26, 2010; Deputy Directorate of Personnel, Judicial Career, "Notice" (Cedula de Citacion), October 27, 2009.

Chévez was detained for six hours for his behavior during the demonstration, until a judge ordered his release, stating that his detention had been arbitrary.[58]

Guillermo López Lone, lower court judge in San Pedro Sula, for participating in a demonstration against the coup near the Tegucigalpa airport on July 5, 2009, the day President Zelaya was supposed to return to Honduras.[59]

55. The Supreme Court fired the four judges in May 2010 (10 justices voted in favor of firing them, and 5 voted against),[60] and notified the judges of the decision the following month.[61] The judges filed appeals with the Council of the Judicial Careers,

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The Court held that Chévez had not fulfilled his obligations as a judge when he participated in "acts that alter public order" and for having "provoked discussions with fellow judicial officials… for his political position regarding the facts that occurred in the country." Supreme Court of Justice of the Republic of Honduras, Document No. 1183-SCSJ-2010 (Oficio No. 1183-SCSJ-2010), June 4, 2010. Chévez appealed the Supreme Court's decision before the Council on Judicial Careers on June 30, 2010.

[58] Decision adopted by Judge Katya Sánchez Martínez (Juez ejecutor), San Pedro Sula, Cortes, August 12, 2009.

[59] Human Rights Watch telephone interview with Guillermo López Lone, San Pedro Sula, May 12, 2010; Human Rights Watch interview with Guillermo López Lone, San Pedro Sula, August 26, 2010; Deputy Directorate of Personnel, Judicial Career, "Notice" (Cedula de Citacion), November 24, 2009. The Court held that a statement López made during the administrative hearing differed from the information he had included in an insurance document, which violated his obligation to act independent and impartially. Supreme Court of Justice of the Republic of Honduras, Document No. 1290-SCSJ (Oficio No. 1290-SCSJ), June 16, 2010. According to information reviewed by Human Rights Watch, there was no such discrepancy. During the administrative hearing, López said he had broken his leg when demonstrators started to run after the military opened fire to disperse the demonstration. And in the insurance document, López had one line to explain the facts and said that he "was walking, fell, injured [his] knee and could no longer walk." López appealed the Supreme Court's decision before the Council on Judicial Careers on June 30, 2010.

[60] Secretariat of the Supreme Court of Justice of the Republic of Honduras, Certified Copy of Document 24 (describing the court's deliberations on May 5-7, 2010), June 25, 2010.

[61] Supreme Court of Justice of the Republic of Honduras, Document No. 1181-SCSJ-2010 (Oficio No. 1181-SCSJ-2010), June 4, 2010; Supreme Court of Justice of the Republic of Honduras, Document 1290-SCSJ (Oficio No. 1290-SCSJ-2010), June 16, 2010; Supreme Court of Justice of the Republic of Honduras, Document 1291-SCSJ-2010 (Oficio No. 1291-SCSJ-2010), June 16, 2010; Supreme Court of Justice of the Republic of Honduras, Document 1183-SCSJ-2010 (Oficio No. 1183-SCSJ-2010), June 4, 2010; Human Rights Watch interview with Justice Jorge Rivera Aviles, president of the Supreme Court of Justice of the Republic of Honduras, Justice Rosa de Lourdes Paz Haslam, Justice José Tomás Arita Valle, and Justice José Antonio Gutiérrez Navas, Tegucigalpa, August 25, 2010. In addition to the appeals before the Council

which upheld the dismissals of Flores Lanza and López Lone but decided that Chévez de la Rocha was improperly fired. However, the Council did not order that he be reinstated to his position.[62]

56. Three United Nations human rights experts issued a joint statement criticizing the Court's decision.[63] The joint statement notes that, "none of the resolutions [firing the judges] … includes legal arguments that explain why the conduct under investigation was serious" and that the removal of the judges, "appears to be related to their public opposition to the events that occurred during the political crisis of June 2009."[64]

57. The president of the Supreme Court and four other justices told Human Rights Watch that the four judges were not fired for opposing the coup, but rather for

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on Judicial Careers, the four judges took their case to the Inter American Commission on Human Rights in July. Letter signed by the four judges and representatives of the non governmental organization CEJIL to Santiago Canton, executive director of the Inter American Commission on Human Rights, July 5, 2010.

[62] In August 2011, the Council of the Judicial Career rejected the appeals by Judges Flores Lanza and López Lone, and although it decided that Justice Chévez de la Rocha was improperly fired and was entitled to be paid the salary he would have earned had be not been fired, it did not order his reinstatement. As Justice Barrios Maldonado, did not personally appear before the Council, a copy of the resolution in his case was not made available the same day as the decisions in relation to the other judges, and Human Rights Watch does not know the Council's decision in his case. Human Rights Watch email communication with Tirza Flores Lanza, October 18, 2011.

[63] The Special Rapporteur on the Independence of Judges and Lawyers; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Special Rapporteur on the Situation of Human Rights Defenders issused a joint statement on July 29, 2010.

[64] According to the experts, "this would represent an inadmissible attack against the independence of Honduran judges and magistrates, as well as to the freedoms of opinion, expression, assembly, and association…" Joint press release by the Gabriela Knaul, Special Rapporteur on the Independence of Judges and Lawyers; Frank La Rue, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; and Margaret Sekaggya, Special Raporteur on the Situation of Human Rights Defenders, "Firing of Judges in Honduras sends an intimidating message to the Judiciary, warn UN experts" (Despido de jueces en Honduras envía mensaje intimidatorio al Poder Judicial, advierten expertos de la ONU), July 29, 2010, http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=10235&LangID=S (accessed November 1, 2011).

participating in politics, which is prohibited by Honduran law.[65] The Constitution states that judges "may not participate for any reason in any type of partisan activities."[66] And the Law on the Organization and Attributions of Courts states that judicial authorities may not participate "in meetings, demonstrations, or other political acts, even if other citizens are allowed to do so."[67]

58. According to the four judges, their criticism of the coup was not a "partisan" or "political" act because they were advocating for the return of the rule of law.[68] When judges are sworn in, they promise "to be faithful to the Republic, [and] to comply with and to enforce the Constitution and the laws."[69] The judges told Human Rights Watch that they opposed the coup as citizens who wanted to restore the country's constitutional order.[70]

59. In any case, if the Court was in fact attempting to sanction judges who, in broad terms, participated in politics, it should have also sanctioned all the judges who openly supported the coup. For example, on July 6, 2009, Judge Norma Iris Coto, head of

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[65] Human Rights Watch interview with Justice Jorge Rivera Aviles, president of the Supreme Court of Justice of the Republic of Honduras, Justice Rosa de Lourdes Paz Haslam, Justice José Tomás Arita Valle, and Justice José Antonio Gutiérrez Navas, Tegucigalpa, August 25, 2010.

[66] Constitution of the Republic of Honduras, art. 319.

[67] Law on the Organization and Attributions of Courts (Ley de Organización y Atribuciones de los Tribunales), art. 3 (6).

[68] Human Rights Watch interview with Guillermo López Lone, Tirza Flores, Luis Chévez, and Ramón Barrios, San Pedro Sula, August 26, 2010.

[69] Constitution of the Republic of Honduras, art. 322.

[70] Constitution of the Republic of Honduras, art. 2: "supplanting popular sovereignty and usurping constituted powers constitutes treason. The responsibility in these cases is not subject to statutes of limitation and may be deduced ab officio or per request of any citizen." Constitution of the Republic of Honduras, art. 3: "No one must obey an usurping government, nor those who assume functions or public positions by force or using medium or procedures that violate… this Constitution and the laws…. The people have a right to recur to insurrection to defend the constitutional order."

the Association of Judges and Magistrates of Honduras (*Asociación de Jueces y Magistrados de Honduras*, ASOJMAH), told the newspaper *La Prensa* that, "in the end the world will understand that what happened in Honduras [on June 28] was, strangely, the restoration of constitutional order."[71] ASOJMAH, which has approximately 500 members, also issued a press release stating that the acts carried out by the Armed Forces and the police on June 28 "were based on judicial orders from competent authorities" and their purpose was to uphold judicial rulings that the executive had ignored.[72]

60. But the Court did not sanction Judge Coto or other coup supporters. According to the Court itself, of the 25 judges dismissed in 2009 and 2010, only Flores Lanza, López Lone, Barrios, and Chévez de la Rocha were sanctioned for statements or actions related to the events of June 28, 2009.[73] The Inter-American Commission on Human Rights found that several judges and magistrates who publicly supported the coup were not subject to similar investigations.[74]

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[71] "Le salió mejor no estar acá" (It was better for him not to be here), *La Prensa*, July 6, 2009. "Ya no era presidente cuando fue detenido" (He was no longer president when he was detained), *La Prensa*, July 7, 2009.

[72] Statement by the ASOJMAH, undated; Documentation in Human Rights Watch's offices; The current president of ASOJMAH denied they had issued a statement on the events of June 28, 2009. Human Rights Watch telephone interview with Teodoro Bonilla, president of ASOJMAH, Tegucigalpa, September 30, 2010.

[73] Supreme Court of Justice of the Republic of Honduras, "List of documents-decisions of removal of magistrates of appeals courts and judges, 2009-2010" (Relación de oficios-acuerdos de cancelación de Magistrados-Magistradas de Cortes de Apelaciones, Jueces y Juezas, Años 2009-2010), undated; Information sent to Human Rights Watch via international courier, received on September 20, 2010.

[74] Inter-American Commission on Human Rights (IACHR), "Preliminary Observations of the Inter-American Commission on Human Rights about its visit to Honduras on May 15-18, 2010," June 3, 2010, http://cidh.org/pdf%20files/HondurasObservacionesVisitaCIDH2010.pdf (accessed November 1, 2011), para. 84.

61. The Court also appeared to issue an open invitation to participate in demonstrations supporting the coup. On June 30, 2009, Sandra Lizeth Rivera Gallo, head of human resources of the Supreme Court distributed via email an invitation to all judges and employees of the judiciary to participate in a pro-coup march in Honduras.[75] Rivera Gallo claimed she had received orders from the secretary of the Supreme Court president to distribute the email.[76] Supreme Court justices told Human Rights Watch, however, that the decision to distribute the invitation did not come from the Court and that they had initiated an administrative investigation into Rivera Gallo's responsibility for sending out the invitation.[77]

III. Ongoing Attacks

62. For a report published in December 2010, Human Rights Watch documented 18 cases in which journalists, human rights defenders, and political activists were killed since President Lobo took office in January 2010. The report also describes credible reports we received in 29 cases in which journalists, human rights defenders, and political

[75] The invitation reads: "Based on instructions from above, public officials and employees of the judicial branch are invited to participate in the "March for the Peace in Honduras" that will take place in the central park of Tegucigalpa, today, Tuesday, June 30, 2009, between 9:30 a.m. and 1 p.m." IACHR, "Preliminary Observations of the Inter-American Commission on Human Rights about its visit to Honduras on May 15-18, 2010," para. 83.

[76] Judicial Branch, Directorate of Personnel (Dirección de Administración de Personal), "Statement" (Manifestación), April 12, 2010.

[77] Human Rights Watch interview with Justice Jorge Rivera Aviles, president of the Supreme Court of Justice of the Republic of Honduras, Justice Rosa de Lourdes Paz Haslam, Justice José Tomás Arita Valle, and Justice José Antonio Gutiérrez Navas, Tegucigalpa, August 25, 2010.

activists had been threatened or attacked.[78] Information collected by local human rights organizations suggests the number of attacks could be significantly higher.[79]

63. Despite repeated requests, Human Rights Watch was unable to obtain complete information directly from Honduran authorities as to the status of the investigations in the majority of these cases. However, available information suggests that little or no progress has been made; thus, in most of the cases, it was not possible to determine whether the attacks or threats were politically motivated or whether there was any official involvement.

64. In the majority of the cases, there is circumstantial evidence—including explicit statements by the perpetrators in some instances—that suggests that the victims

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[78] See Human Rights Watch, "After the Coup: Ongoing Violence, Intimidation, and Impunity in Honduras," December 2010.

[79] According to the Committee of Family Members of the Disappeared in Honduras (Comité de Familiares Detenidos-Desaparecidos de Honduras, COFADEH), between January 30 and July 31, 2010, there were 23 politically motivated killings, 8 journalists killed, 92 death threats, including 59 against human rights defenders, and 76 instances of intimidation or persecution. COFADEH, "Human rights violations in Honduras not only continue in the aftermath of the coup… they are too many" (Violaciones a DDHH en Honduras no solo continúan en la continuidad del golpe… son demasiado), August 30, 2010, p. 13. See also Human Rights Platform (Plataforma de Derechos Humanos), "Press Release," August 26, 2010, http://www.defensoresenlinea.com/cms/documentos/Plataforma_DDHH_Comunicado_26_agosto_2010.pdf (accessed November 1, 2011). The members of the Human Rights Platform are leading human rights non governmental organizations in Honduras: Center for the Rights of Women (Centro de Derechos de Mujeres, CDM), Center to Investigate and Promote Human Rights (Centro de Investigación y Promoción de los Derechos Humanos, CIPRODEH), Committee for the Defense of Human Rights in Honduras (Comité para la Defensa de los Derechos Humanos en Honduras, CODEH), COFADEH, Center for the Prevention, Treatment, and Rehabilitation of Torture Victims and their Families (Centro de Prevención, Tratamiento y Rehabilitación de las Víctimas de la Tortura y sus Familiares, CPTRT), and Food First Information & Action Network (FIAN) – Honduras. COFADEH, "There is a systematic state policy of violating human rights" (Existe una política de Estado de violación sistemática a los derechos humanos), August 6, 2010. Defensoresenlinea.com, "Criminalization and Lack of Protection surrounds the lives of human rights defenders" (Criminalización e indefensión rodean la videa de los defensores y defensoras de ddhh), April 13, 2010, http://www.defensoresenlinea.com/cms/index.php?option=com_content&view=article&id=696:criminalizacion-e-indefension-rodean-la-vida-de-los-defensores-y-defensoras-de-ddhh&catid=71:def&Itemid=166.

have been targeted because of their political views. Whatever the motive of the attacks and threats, the cumulative effect has been to generate a climate of fear that has had a chilling effect on the exercise of basic rights in Honduras.

Lack of Adequate Protection

65. Since the coup, the IACHR has issued "precautionary measures" (*medidas cautelares*) ordering the government of Honduras to provide protection to over 150 journalists, human rights defenders, coup opponents, and their families. This includes at least 14 cases arising since President Lobo took office.[80]

66. In June 2010, the commission emphasized that efforts by Honduras to comply with these measures have been "few, late in coming, and in some cases nonexistent."[81] As evidence of the government's ineffective compliance, the commission cited the case of Nahúm Palacios, a journalist who was killed after the commission had requested that the Honduran government protect him.

67. In August 2010, Ana Pineda, the human rights advisor to President Lobo at the time, told Human Rights Watch that the major difficulties in implementing protective measures were identifying the victim, determining where he or she lives, and establishing what sort of protection the person needs. According to Pineda, after the government issued a public invitation in three major newspapers asking individuals who had been granted precautionary measures to present themselves to obtain protection, officials were

[80] IACHR, "Precautionary Measures granted in Honduras. June 28, 2009 to date" (Medidas Cautelares otorgadas en Honduras. 28 de junio de 2009 hasta la fecha), http://www.cidh.org/medidas/2010Hond.sp.htm (accessed November 1, 2011).
[81] IACHR, "Preliminary Observations of the Inter-American Commission on Human Rights about its visit to Honduras on May 15-18, 2010," para. 71.

able to reach agreement with 217 such individuals as to what sort of protection the government would provide. At the time, she said that the government still had not provided protection to another 96 people who had been granted precautionary measures by the IACHR but with whom the government had yet to reach an agreement.[82]

68. In October 2010, however, four NGOs representing almost 200 people granted precautionary measures by the IACHR reported that two people who should have received protection had been killed, 35 had received death threats, and nine had fled Honduras with their families.[83]

69. Representatives from Honduran human rights organizations that brought the cases to the IACHR also told Human Rights Watch in 2010 that the protection provided by the government had been inadequate, and that many victims said they did not trust the police to protect them. In one case, a victim was given a phone number to call in case it was necessary to contact the police, but when he called, no one answered the phone.[84] In another instance, a person who was supposed to receive police protection had to wait for an hour at the police station for the officer who was to provide a police escort. When the officer arrived and the victim offered him water, the officer responded he did not want anything "from coup-plotters."[85]

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[82] Human Rights Watch interview with Ana Pineda, human rights advisor to President Porfirio Lobo, Tegucigalpa, August 25, 2010.

[83] "CEJIL: The government of Honduras does not respect the IACHR" (CEJIL: El Estado de Honduras irrespeta la CIDH), Radio El Progreso, October 29, 2010.

[84] Human Rights Watch interview with Bertha Oliva, president of COFADEH, Tegucigalpa, August 24, 2010.

[85] Human Rights Watch interview with Andrés Pavón, president of CODEH, Tegucigalpa, August 24, 2010.

Chilling Effect

70. The Human Rights Watch report published in December 2010 documented that the ongoing killings, threats, and attacks had generated a climate of fear and intimidation that undermined the exercise of basic rights in Honduras.

71. According to Leo Valladares, a human rights defender and formerly the national ombudsman of Honduras, these cases reflected a broader chilling effect on Honduran society. Even though there was still active civil society participation in political affairs, the threats and attacks generated fear, which inhibited journalists and defenders from doing their work.[86] Similarly, Father Ismael Moreno told Human Rights Watch that the killings of journalists had led to self-censorship.[87] According to Osman López, president of C-Libre, an NGO that monitors freedom of expression in Honduras, this was particularly evident in rural areas, where most of the killings of journalists took place.[88]

IV. Honduras's Obligations under International Law

A. Obligation to Deter, Prevent, and Investigate Abuses

72. Honduras is party to several international treaties that impose an obligation to respect, protect, and fulfill human rights listed in the treaties.[89] Those same treaties also

[86] Human Rights Watch telephone interview with Leo Valladares, director of the Association to Promote Participatory Citizenship (Asociación para una Ciudadanía Participativa), Tegucigalpa, October 27, 2010.
[87] Human Rights Watch email correspondence with Father Ismael Moreno, October 28, 2010.
[88] Human Rights Watch email correspondence with Osman López, president of C-Libre, October 30, 2010.
[89] Parts of this section were previously published in Human Rights Watch, *Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations*, April 2009.

impose on the Honduran state the obligation to deter and prevent violations of those rights, to investigate and prosecute offenders, and to provide remedies to victims.[90]

73. The obligation to deter and prevent is, in part, a corollary to the obligation to respect, protect, and fulfill the human rights, reflecting the view that effective protection and prevention require investigation and punishment. The IACHR, for example, has held that "the State has the obligation to use all the legal means at its disposal to combat [impunity], since impunity fosters chronic recidivism of human rights violations and total defenselessness of victims and their relatives."[91]

74. The duty to investigate and punish also derives from the right to a legal remedy that these treaties extend to victims of human rights violations. Under international law, governments have an obligation to provide victims of human rights abuses with an effective remedy, including justice, truth, and adequate reparations. Under the International Covenant on Civil and Political Rights (ICCPR), governments have an obligation "to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy."[92] The ICCPR imposes on states the duty to

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[90] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Honduras on August 25, 1977. American Convention on Human Rights (ACHR) ("Pact of San Jose, Costa Rica"), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), ratified by Honduras on October 5, 1977; UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention Against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Honduras on April 16, 1996, arts. 2(1),11, 16.

[91] Inter-American Court of Human Rights, Paniagua Morales et al., Judgment of March 8, 1998, Inter-Am.Ct.H.R., (Ser. C) No. 37 (1998), para. 173.

[92] ICCPR, art. 2(3)(a).

ensure that any person shall have their right to an effective remedy "determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy."[93]

75. At the regional level, the American Convention on Human Rights (ACHR) states that every individual has "the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."[94] The IACHR has held that this right imposes an obligation upon states to provide victims with effective judicial remedies.[95]

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[93] ICCPR, art. 2 (3)(b). Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of international Human Rights Law and Serious Violations of International Humanitarian Law, March 21, 2006, adopted by the 60th session of the United Nations General Assembly, A/RES/60/147, principle II.3.(d): "The obligation to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, inter alia, the duty to: (d) Provide effective remedies to victims, including reparation, as described below."

[94] ACHR, art. 25. Similarly, the Inter-American Convention to Prevent and Punish Torture requires states to "take effective measures to prevent and punish torture" and "other cruel, inhuman, or degrading treatment or punishment within their jurisdiction" (Article 6). It also requires states parties to guarantee that "any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case," and that "their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process" (Article 8).

[95] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R., (Ser. C) No. 4 (1988), paras. 166, 174, 176; Inter-American Court of Human Rights, Loayza Tamayo Case, Judgment of November 27, 1998, Inter-Am.Ct.H.R., (Ser. C) No. 33 (1998), para. 169.

76. States also have specific obligations to prevent and punish torture and to ensure that whenever torture occurs there is effective investigation and prosecution and a proper remedy for the victim.[96]

B. International Standards on Judicial Independence and Impartiality

77. Several international treaties, including the ICCPR and the ACHR, require that individuals be tried by "independent and impartial tribunals."[97] A series of authoritative international documents set forth criteria to determine whether a justice system is in fact independent and impartial:

> a. Judges should be free from constraints, pressures, or orders imposed by the other branches of government. According to the UN Basic Principles on the Independence of the Judiciary (UN Basic Principles), "[i]t is the duty of all governmental and other institutions to respect and observe the independence of the judiciary," and the judiciary "shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions,

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[96] UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 4-6, 12-14.

[97] ICCPR, art. 14(1): "Everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law"; ACHR, art. 8(1): "[E]very person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law"; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 18(1); art. 18 states that migrant workers and their families "shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law"; European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols Nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively.,art. 6(1): "Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law"; African Charter on Human and Peoples' Rights, adopted 27 June 1981 , OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986 , art. 7(1) (b, d), art. 7 states that everyone shall have the "right to be presumed innocent until proved guilty by a competent court or tribunal" and the "right to be tried within a reasonable time by an impartial court or tribunal."

improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason."[98]

b. Proper training and qualifications should be the basis of the appointments of judges. The Universal Charter of the Judge points out that "[t]he selection and each appointment of a judge must be carried out according to objective and transparent criteria based on proper professional qualification."[99] The UN Basic Principles, similarly, state that "[a]ny method of judicial selection shall safeguard against judicial appointments for improper motives."[100]

c. Judges should have security of tenure to avoid fear of being removed from their posts for the decisions they adopt. The UN Basic Principles state that "[t]he term of office of judges, their independence, security, adequate remuneration,

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[98] Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985, U.N. Doc. A/CONF.121/22/Rev.1 at 59 (1985), http://www2.ohchr.org/english/law/indjudiciary.htm (accessed November 1, 2011), arts. 1 and 2. The Bangalore Principles of Judicial Conduct (Bangalore Principles) further add that "[a] judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason" and that "[a] judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free there from." The Bangalore Principles of Judicial Conduct, revised at the Hague, November 25-26, 2002, arts. 1(1) and 1(3), http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf (accessed November 1, 2011).
The Council of Europe has stated that "[i]n the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason" and that "[j]udges should not be obliged to report on the merits of their cases to anyone outside the judiciary"; Council of Europe, Recommendation No. R (94) 12 of the Committee of Ministers to Member States on the Independence, Efficiency and Role of Judges, adopted on October 13, 1994, http://www.coe.int/t/e/legal_affairs/legal_co-operation/steering_committees/cdcj/cj_s_just/recR(94)12e.pdf (accessed September 29, 2010).
[99] The Universal Charter of the Judge, http://www.hjpc.ba/dc/pdf/THE%20UNIVERSAL%20CHARTER%20OF%20THE%20JUDGE.pdf (accessed November 1, 2011), art. 9. The Council of Europe has also noted that "[a]ll decisions concerning the professional career of judges should be based on objective criteria, and the selection and career of judges should be based on merit, having regard to qualifications, integrity, ability and efficiency." Council of Europe, principle I, art. 2 (c).
[100] UN Basic Principles, art. 10.

conditions of service, pensions and the age of retirement shall be adequately secured by law" and that "[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists."[101]

d. Judges may only be suspended or removed from their jobs "for reasons of incapacity or behaviour that renders them unfit to discharge their duties" and they have the right to a fair hearing.[102] According to the Statute of the Iberoamerican Judge, "the disciplinary responsibility of judges will be determined by the judicial bodies established by law, through processes that guarantee the respect of due process and, in particular, the right to a hearing, to defense, to contest [evidence], and to applicable legal recourses."[103]

V. Conclusion

78. As set out above, Honduras has failed to bring to justice those responsible for the coup of June 28, 2009, as well as for the human rights violations committed in the aftermath. This lack of accountability is due, in large part, to the obstacles faced by human rights prosecutors, charged with investigating alleged abuses committed by members of the police and the Armed Forces. The obstacles include lack of cooperation by military and police, and obstruction and harassment by those entities they are to investigate and prosecute. Moreover, the government has failed to provide adequate

[101] UN Basic Principles, arts. 11 and 12. Similarly, the Council of Europe says that "[j]udges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office." Council of Europe, principle I, art. 3.

[102] UN Basic Principles, arts. 17 and 18.

[103] Statute of the Iberoamerican Judge (Estatuto del Juez Iberoamericano), adopted by the VI Iberoamerican Meeting of Supreme Court Presidents (VI Cumbre Iberoamericana de Presidentes de Cortes Supremas y Tribunales Supremos de Justicia) on May 23-25, 2001, http://www2.scjn.gob.mx/investigacionesjurisprudenciales/codigos/ibero/estatuto-del-juez-iberoamericano.pdf (accessed November 1, 2011), art. 20.

security to victims and witnesses and, prosecutors say, witnesses are afraid of suffering reprisals if they testify against the police or military.

79. In addition to the problems faced by the prosecutors in their efforts to ensure accountability, the independence of the judiciary in Honduras has been severely compromised, thereby contributing to an existing climate of impunity for post-coup abuses in the country.

80. In light of these conditions and those set out in more detail above, victims of human rights abuses committed after the coup have been unable to find adequate redress in the judicial system of Honduras.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: November 2, 2011

TAMARA TARACIUK BRONER

APPENDIX

Tamara Taraciuk Broner joined Human Rights Watch's Americas Division as a fellow in September 2005, and covered Mexico for Human Rights Watch until 2009. Since then, she works as Americas researcher for Human Rights Watch, researching and documenting human rights developments in South America and Honduras. She was previously a junior scholar at the Latin American Program of the Woodrow Wilson International Center for Scholars, where she coordinated a project on citizen security in Latin America. Prior to that, she worked at the Inter-American Commission on Human Rights of the Organization of American States (OAS). Tamara was born in Venezuela, and grew up in Argentina, where she studied law. She holds a post-graduate diploma on human rights and transitional justice from the University of Chile, and a Master of Laws degree (LLM) from Columbia Law School.

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID MURILLO and SILVIA MENCIAS on behalf of themselves and as Personal Representatives of their deceased son, ISIS OBED MURILLO, and his next of kin, including his SIBLINGS.

v.

ROBERTO MICHELETTI BAIN

Case No. 4:11-CV-2373

DECLARATION OF INTERNATIONAL LAW EXPERTS

1. We make this declaration based on our knowledge and decades of experience studying, teaching, writing about, and practicing international human rights law. If called to testify about the issues addressed in this declaration, we could and would do so.

2. We attach as an Appendix to this Declaration summaries of our credentials, which provide evidence of our work, scholarship and expertise in the field of international law.

3. We have been asked to provide an opinion as to the content of certain customary international law standards and norms: (a) prohibiting extrajudicial killing; (b) prohibiting crimes against humanity, in particular the crime against humanity of persecution; (c) protecting the right to life, liberty and security of person; (d) protecting the right of assembly and association; and (e) establishing secondary liability through aiding and abetting liability and command responsibility. We were also asked to provide an opinion on the requirements for exhaustion of domestic remedies under international law. We express no opinion as to whether exhaustion is required for claims under the Alien Tort Statute.

4. Customary international law is commonly defined as law that results from a general practice of states out of a sense of legal obligation, or *opinio juris*. Restatement (Third) of Foreign Relations Law of the United States § 102(2). As article 38 of the Statute of the

International Court of Justice succinctly puts it, customary law is "a general practice accepted as law."

5. A variety of sources may be consulted to determine whether a particular norm has risen to the level of customary international law. These include international conventions, international customs, treatises, and judicial decisions rendered in this and other countries. Malcolm N. Shaw, International Law 59 (1991) (citing Article 38(1) of the Statute of the International Court of Justice).

6. For the reasons stated below, it is our opinion that clearly defined and widely accepted norms of customary international law proscribe extrajudicial killings and crimes against humanity, and protect the right to life, liberty and security of person, and the right to assembly and association. These norms are as well-defined and as widely accepted as were the eighteenth century norms against piracy, affronts to ambassadors, and violations of safe passage. We therefore conclude that that violations of these norms are actionable in U.S. federal courts under the Alien Tort Statute, 28 U.S.C. § 1350.

7. The bases for these opinions are set out below as follows: Section I addresses the norm prohibiting extrajudicial killing; Section II addresses the norm prohibiting crimes against humanity; Section III addresses the norm protecting the right to life, liberty and security of person; Section IV addresses the norm protecting the right to assembly and association; Section V addresses the norms allowing claims on the basis of secondary liability, including both aiding and abetting and command responsibility; and Section VI addresses the requirement of exhaustion of domestic remedies in international law.

I. CLEARLY DEFINED AND WIDELY ACCEPTED CUSTOMARY INTERNATIONAL LAW NORMS PROHIBIT EXTRAJUDICIAL KILLINGS, INCLUDING THE ILLEGAL OR EXCESSIVE USE OF FORCE BY BOTH LAW ENFORCEMENT AND MILITARY FORCES.

8. Clearly defined and widely accepted customary law norms prohibit extrajudicial killing.

9. Various instruments of international human rights law and the decisions of their corresponding adjudicatory bodies have clarified the specific content of the norms against extrajudicial killing. Jurists and commentators on international law have long condemned extrajudicial killing.

10. William Blackstone, writing in 1765, observed that life, as the "immediate donation of the Great Creator," could not "legally be disposed of or destroyed by any individual . . . merely upon their own authority." William Blackstone, 1 Commentaries on the Laws of England 133. States whose constitutions "vest[ed] in any man, or body of men, a power of destroying at pleasure, without the direction of laws, the lives or members of the subject" were to be considered "in the highest degree tyrannical." *Id.*

11. The clearly defined and widely accepted nature of the norm against extrajudicial killing is established by a wide panoply of international law sources, including commentary, treaties, authoritative interpretations, international courts, and regional courts. For example, the International Covenant on Civil and Political Rights (Civil and Political Covenant), Dec. 16, 1996, 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, guarantees that one's right to life "shall be protected by law" and that "[n]o one shall be arbitrarily deprived of his life." *Id.*, art. 6(1). The prohibition on extrajudicial killing is fully obligatory, as it is listed among those norms that are non-derogable, even in exceptional circumstances. *Id*., art. 4(2). The Covenant (which has 167 States Parties, including the United States) is one of the useful reference points to determine whether a tort has been "committed in violation of the law of nations" under the ATS – or to use more modern terminology – customary international law. *See e.g*. *Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2797 n.66 (2006) (plurality op.) (referencing the Civil and Political Covenant as source for fundamental trial protections recognized by customary international law).

12. The Human Rights Committee, which was established to monitor compliance with the Civil and Political Covenant, has repeatedly found Article 6 violations in cases of extrajudicial execution. *See e.g., Vicente et al. v. Colombia*, Comm. No. 612/1995, para. 8.3 (finding the state responsible for a violation in the case of forced disappearance and subsequent murder). The U.N. General Assembly has also consistently expressed concern regarding instances of extrajudicial executions. For examples, *see,* David Weissbrodt, *Principles Against Execution*, 13 Hamline L. Rev. 579, 582 & n.15 (1990) (citing several resolutions).

13. In 1989, the U.N. Economic and Social Council adopted Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principle 1 of which declares that governments shall outlaw "all extra-legal, arbitrary and summary executions."

14. The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions has

consistently found violations of the prohibition on extrajudicial killings in cases in which individuals were killed by state agents with no judicial proceedings whatsoever. *See, e.g.*, Report by the Special Rapporteur, Extrajudicial, Summary or Arbitrary Executions, paras. 64-61, U.N. Doc. E/CN.4/1993/46 (Dec. 23, 1992); Report by the Special Rapporteur, Extrajudicial, Summary or Arbitrary Executions, paras. 54-67, U.N. Doc. E/CN.4/1993/46 (Dec. 23, 1992); Report by the Special Rapporteur, Extrajudicial, Summary or Arbitrary Executions, para. 9, U.N. Doc. E/CN.4/2005/7 (2004).

15. Decisions of international bodies have consistently held that intentional killings by state actors in the absence of any judicial process violate international law. *See, e.g.*, *Vicente et al. v. Colombia*, Comm. No. 612/1995, para. 8.3 (Human Rights Committee); *Free Legal Assistance Group and Others v. Zaire*, African Commission on Human and Peoples' Rights, Comm. No. 25/89, 47/90, 56/91, 100/93, para. 43 (1995); InterAmerican Court of Human Rights, *Case of Myrna Mack Chang*, Judgment of Nov. 25, 2003, Series C, No. 101; *Khashiyev and Akayeva v. Russia*, Nos. 57942/00 and 57945/00, 24 Feb. 2005, [2005], European Commission on Human Rights 132.

16. Article 4 of the African Charter on Human and Peoples' Rights provides: "Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right." African Charter on Human and Peoples' Rights, June 27, 1981, 1520 U.N.T.S. 217, 21 I.L.M. 58. The African Commission has explicitly held that extrajudicial executions violate Article 4 of the African Charter. *See, e.g.*, *Free Legal Assistance Group and Others v. Zaire*, African Commission on Human and Peoples' Rights, Comm. No. 25/89, 47/90, 56/91, 100/93 (1995), para. 43.

17. Similarly, Article 4 of the American Convention on Human Rights guarantees that the right to life "shall be protected by law" and that "[n]o one shall be arbitrarily deprived of his life." American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123, *entered into force* July 18, 1978. The Inter-American Court on Human Rights has found that killings by state agents occurring outside the bounds of the judicial process violate the right to life. In *Myrna Mack Chang v. Guatemala*, the Court deemed an assassination conducted by state agents an "extra-legal execution" that violated the right to life. 2003 Inter-Am. Ct. H.R. (ser. C) No. 101, paras. 138–58 (Nov. 25, 2003). In *Bamaca-Velasquez v. Guatemala*, the Court inferred from the victim's disappearance and the state's practice of extrajudicial executions that Article 4 was

violated. 2000 Inter-Am. Ct. H.R. (ser. C) No. 70, paras. 173–75 (Nov. 25, 2000). *See also Velásquez-Rodríguez v. Honduras*, 1988 Inter-Am. Ct. H.R. (ser. C) No. 4, para. 157 (July 29, 1988) (calling a secret execution without trial a "flagrant violation of the right to life").

18. The European Convention on Human Rights stipulates in Article 2 that the right to life "shall be protected by law" and provides: "No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law." Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2, 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, *as amended by* Protocols Nos 3, 5, 8, and 11 *which entered into force* on Sept. 21, 1970, Dec. 20, 1971, Jan. 1, 1990, and Nov. 1, 1998, *respectively*. The European Court of Human Rights has found violations of the Article 2 "right to life" guarantee in cases of killings by state agents absent any judicial process. For example, in *Khashiyev v. Russia*, [2005] E.C.H.R. 132, the Court held that Russia was guilty of a right to life violation for the killing of civilians at or near their homes by Russian soldiers. *See id.* para. 147; *see also Estamirov and Others v. Russia*, [2006] E.C.H.R. 860, para. 114 (finding an Article 2 violation stemming from an attack by Russian soldiers of a family in its home).

19. In the context of an armed conflict, the intentional killing of civilians would also violate the laws of war. The International Criminal Tribunal for the Former Yugoslavia (ICTY) has considered "willful killing" to be a grave breach of the Geneva Conventions; it has also considered the crime of "murder" as an element of crimes against humanity. *See* Statute for the International Criminal Tribunal for the Former Yugoslavia, arts. 2, 5, May 25, 1993, 32 I.L.M. 1192 (1993); *see also* Allison Marston Danner, *When Courts Make Law: How the International Criminal Tribunals Recast the Laws of War*, 59 Vand. L. Rev. 1, 44 (2006) (noting that the ICTY has prosecuted "extrajudicial executions of prisoners" which have "long been proscribed by the laws of war"). In the *Srebrenica* case, the ICTY noted that "[m]urder has consistently been defined by the ICTY and the ICTR as the death of the victim resulting from an act or omission of the accused committed with the intention to kill or to cause serious bodily harm which he/she should reasonably have known might lead to death." *Prosecutor v. Krstic*, Case No. IT-98-33-T, Judgment, para. 485 (Aug. 2, 2001). The Tribunal concluded that the summary executions committed at Srebrenica fit within the definition of "murder." *Id.* paras. 486–89. The Trial Chamber has treated "willful killing" and "murder" similarly. *See Prosecutor v. Delalic*, Case

No. IT-96-21-T, Judgment, paras. 421–23 (Nov. 16, 1998); *see also Prosecutor v. Brdanin*, Case No. IT-99-36-T, Judgment, para. 381 (Sept. 1, 2004) (observing that the elements of "murder" as an element of crimes against humanity and "willful killing" as a grave breach of the Geneva Conventions are the same). Included in the concept of willful killing is an analysis of the risk taken, taking into account the weapons used and the position of the accused in relation to the victim, with a proscription on excessively risking human life. *Delalic*, para. 436.[1] The ICTY Appeals Chamber has referred to its standard for "willful killing" and "murder" in relation to the broader international protections for the right to life. *See Prosecutor v. Kordic*, Case No. IT-95-14/2-A, Judgment, para. 106 (Dec. 17, 2004) ("With respect to the charges of willful killing, murder, causing serious injury, and inhuman treatment, the Appeals Chamber considers that the inherent right to life and to be free from cruel, inhuman or degrading treatment or punishment is recognized in customary international law and is embodied in Articles 6 and 7 of the ICCPR, and Articles 2 and 3 of the ECHR.").

20. The ICTR sets out the same elements for murder, which it calls the "unlawful, intentional killing of a human being." *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgment, para. 589 (Sept. 2, 1998). The elements are: (a) the victim is dead; (b) the death resulted from an unlawful act or omission of the accused or a subordinate; (c) at the time of the killing the accused or a subordinate had the intention to kill or inflict grievous bodily harm on the deceased having known that such bodily harm is likely to cause the victim's death, and is reckless whether death ensues or not. *Id.*

21. Thus, "it is a violation of international law for a state to kill an individual other than as lawful punishment pursuant to conviction in accordance with due process of law" except under exigent circumstances as might apply to police officials in line of duty in defense of themselves or of other innocent persons. Restatement (Third) of Foreign Relations Law of the United States §702, comment f. Section IV, *infra*, discusses the customary norm limiting the use of deadly force by law enforcement officials.

1 This point is especially relevant in the context of right to life violations and excessive use of force. *See* Section IV, *infra*.

II. CLEARLY DEFINED AND WIDELY ACCEPTED CUSTOMARY INTERNATIONAL LAW NORMS PROHIBIT CRIMES AGAINST HUMANITY

22. There are clearly defined and widely accepted customary law norms which prohibit crimes against humanity.

23. Various instruments of international human rights law and the decisions of their corresponding adjudicatory bodies have clarified the specific content of the norms against crimes against humanity. Jurists and commentators on international law have long condemned crimes against humanity.

24. Customary international law has condemned crimes against humanity for at least the last half century. Crimes against humanity are deemed to be part of *jus cogens* – those legal norms so fundamental that they are non-derogable. *See* Cherif Bassiouni, *Crimes Against Humanity*, in Crimes of War: What the Public Should Know, (Roy Gutman & David Rieff, eds., W.W. Norton 1999).

25. The term "crimes against humanity" originated in the 1907 Hague Convention preamble, which codified the customary law of armed conflict.

26. In 1945, the Allied Powers drafted the Nuremberg Charter for the International Military Tribunal, and enacted Control Council Law No. 10, which condemned crimes against humanity and set forth basic definitional requirements. Charter of the International Military Tribunal, Aug. 8, 1945, art. 6(c), 59 Stat. 1544, 1547, 82 U.N.T.S. 279, 288 (1945) (Nuremberg Charter); Control Council Law No. 10, Punishment of Persons Guilty of War Crimes, Crimes Against Peace and Against Humanity, December 20, 1945, 3 Official Gazette Control Council for Germany 50-55 (1946) (Control Council Law No. 10). These doctrines were reaffirmed in the Nuremberg Principles, drafted in 1950 by the International Law Commission at the request of the U.N. General Assembly. Report of the International Law Commission to the General Assembly, U.N. GAOR, 5th Sess., Supp. No. 12, at 1, U.N. Doc. A/1316 (1950), reprinted in [1950] 2 Y.B. Int'l L. Comm'n 364, 374-378.

27. Since World War II, other international instruments have condemned crimes against humanity. The United Nations issued repeated statements confirming the international community's position on the subject. In 1946, General Assembly Resolution 3 specifically called for the punishment of those responsible for crimes against humanity, by reference to the Nuremberg Charter. G.A. Res. 3(I), U.N. Doc. A/OR/1-1/R (Feb. 13 1946), available at

http://daccess-ods.un.org/ TMP/4935496.html. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity noted that "war crimes and crimes against humanity are among the gravest crimes in international law." G.A. Res. 2391 (XXIII), preamble, 23 U.N. GAOR Supp. (No. 18) at 40, U.N. Doc. A/7218 (1968), *entered into force* Nov. 11, 1970.

28. Crimes against humanity are well-defined. The Nuremberg Tribunals established that crimes against humanity encompass "atrocities and offenses, including but not limited to murder, extermination, enslavement, deportation, imprisonment, torture, rape, or other inhumane acts committed against any civilian population, or persecutions on political, racial or religious grounds." Control Council Law No. 10, art. II(1)(c), *quoted in United States v. Flick*, 6 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10, 1191 (1949).

29. As the Tribunal noted, Control Council Law No. 10 is a "statement of international law which previously was at least partly uncodified." *Flick*, 6 Trials at 1189. Time and again, the international community has defined crimes against humanity in virtually identical terms to those used in Control Council Law No. 10. *See, e.g.,* The Statute of the Iraqi Special Tribunal, (Dec. 10, 2003) available at www.cpa-iraq.org/human_rights/statute.htm; ICC Statute, art. 7, U.N. Doc. A/CONF/183/9 (July 17, 1998); Statute of the International Tribunal for Rwanda, U.N. SCOR 49th Sess., art. 3, U.N. Doc. S/RES/995 (Nov 8, 1994) [hereinafter the Statute of the ICTR]; Statute of the ICTY, *supra* n.8*,* art. 7; Nuremberg Charter, *supra* n.8, art.

30. The "civilian population" requirement is fulfilled by "either a finding of widespreadness, which refers to the number of victims, or systematicity, indicating that a pattern or methodical plan is evident." *Tadic*, Case No. IT-94-1-T, at 648. The notion of widespread abuses includes the cumulative effect of a series of inhumane acts. *Prosecutor v. Rutuganda*, Case No. ICTR-96-3-T, Judgment and Sentence, para.65 (Dec. 6 1999).

31. The ICTY has held that "a single act by a perpetrator taken within the context of a widespread or systematic attack against a civilian population entails individual criminal responsibility, and an individual need not commit numerous offences to be held liable." *Tadic,* Case No. IT-94-1-T, at para. 649.

32. The crime against humanity of persecution is defined as 'the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the

group or collectivity.' ICC Statute, art. 7(2)(g). The 'fundamental rights' referred to in the definition of persecution are generally understood to be those found in the Universal Declaration of Human Rights, or in the International Covenant on Civil and Political Rights. *See* Dermot Groome, *Persecution* in The Oxford Companion to International Criminal Justice, (Antonio Cassese, ed., Oxford University Press 2008). The ICC Statute expanded the prohibited bases of persecution beyond those previously recognized in customary international law – political, racial and religious - to also include ethnicity, culture, nationality and gender. ICC Statute, art. 7(2)(g).

33. Persecution on 'political grounds' can include grounds "of or concerning the State or its government, or public affairs generally" and need not necessarily be limited to membership in a particular political party. *See* Machteld Boot and Christopher K. Hall, *Persecution* in Commentary on the Rome Statute of the International Criminal Court, Observers' Notes, Article by Article (Otto Triffterer, ed. Nomos Verlagsgesellschaft Baden-Baden 1999).

34. The ICTY has further described the crime of persecution in holding that it "consists of an act or omission which: 1) discriminates in fact and which denies or infringes upon a fundamental right laid down in international customary or treaty law (the actus reus); and 2) was carried out deliberately with the intention to discriminate on one of the listed grounds… (the mens rea)." *Prosecutor v. Krnojelac* (IT-97-25-T), Judgment, at para. 431.

35. The jurisprudence of the ad hoc international tribunals has identified a number of persecutory acts, including murder, torture, sexual assault, beatings, deportation and forced transfer, indiscriminate attacks on populated areas, imprisonment, inhumane treatment, infliction of mental suffering, destruction of a victim's livelihood, serious deprivations or property and destruction of cultural property. Guenael Mettraux, International Crimes and the Ad Hoc Tribunals, at pp. 182-188 (Oxford University Press 2005); *See also*, Groome, *supra* at 454.

III. CLEARLY DEFINED AND WIDELY ACCEPTED CUSTOMARY INTERNATIONAL LAW NORMS PROTECT THE RIGHT TO LIFE, LIBERTY AND SECURITY OF PERSON.

36. There are clearly defined and widely accepted customary law norms which protect the right to life liberty, and security of person and limit the use of force by law enforcement and military officials.

37. The rights to life, liberty and personal security are the most fundamental of all human

rights that are protected under international law. They have their roots in natural law, first articulated in positive law in the English Magna Carta (1215) ("No Freeman shall be taken, or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we pass upon him, nor condemn him, but by lawful Judgment of his Peers, or by the Law of the Land.").

38. The right to life, liberty, and security is recognized in virtually every international instrument dealing with civil and political human rights. *See, e.g.*, Universal Declaration of Human Rights, art. 3 *adopted* Dec. 10, 1948, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948), *reprinted in* 43 Am. J. Int'l. L. Supp. 127 (1949) (guaranteeing "life, liberty and security of person"); Civil and Political Covenant, art. 6 (guaranteeing right to life), art. 9 (providing that liberty and security of person are treated concurrently with the prohibition of arbitrary arrest or detention); African Charter on Human and Peoples' Rights, art. 4, *adopted* June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986 (guaranteeing "respect for his life and integrity of his person" and prohibiting arbitrary deprivation of that right); American Convention on Human Rights, art. 4, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992) (guaranteeing "the right to have his life respected" and prohibiting the arbitrary deprivation of life); European Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 2, 5, 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, as amended by Protocols Nos. 3, 5, 8, and 11 *which entered into force through* 1 November 1998 (guaranteeing the right to life, which shall be protected by law, and the right to liberty and security of person); American Declaration of the Rights and Duties of Man, art. I, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992) and *reprinted in* 43 Am. J. Int'l. L. Supp. 127 (1949) (hereinafter "American Declaration")

39. The right to life is not concerned only with instances of intentional killing but also limits the use of force which may, as an unintended outcome, result in the deprivation of life. *McCann and Others v. United Kingdom*, European Court of Human Rights 17/1994/464/545 (1995), para. 148. As a result, the planning and control of a law enforcement operation must be done so as to "minimise, to the greatest extent possible, recourse to lethal force." para. 194.

40. There is a clear international consensus that certain definable acts exceed international limits on the amount of force that can permissibly be used, in particular, against peaceful demonstrators. Such acts include the use of force that is not strictly necessary and the lethal use of firearms that is not strictly unavoidable in order to protect life. We are aware of no state that claims the right to use force in excess of those limits.

41. The *Restatement (Third) of Foreign Relations Law* affirms that the right to life is widely recognized to limit the scope of police officers' permissible use of force. As the Restatement notes, killings by police officers are prohibited by the customary right to life unless "necessary under exigent circumstances, for example . . . in defense of [the officer] or other innocent persons, or to prevent serious crime." § 702 comment f (1987).

42. Violations of the norms limiting the use of force are condemned in and defined by international agreements and other international norm-setting instruments. In particular, the prohibitions contained in the United Nations Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, annex, 34 U.N. GAOR Supp. (No. 46) at 186, U.N. Doc. A/34/46 (1979) ("Code of Conduct"), and its Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990) ("Basic Principles"), reflect the universal consensus regarding the use of force by law enforcement officers. The Code of Conduct applies to "all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention," and provides that "[i]n countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services." Code of Conduct, art. 1(a)-(b).

43. The limits placed by international law on the permissible use of force are definable, and preclude the use of force (particularly but not exclusively lethal force) against non-violent, unarmed protestors. Article 3 of the Code of Conduct states that "law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty." The requirements of strict or absolute necessity and proportionality are universally recognized principles of international law.

44. The commentary to Article 3 of the Code of Conduct reiterates the specific prohibition under international law on the use of firearms in all cases except those immediately threatening

human life:

> The use of firearms is an extreme measure. Every effort should be made to exclude the use of firearms. . . . [F]irearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of the others and less extreme measures are not sufficient to restrain or apprehend the offender.

Code of Conduct, art. 3 commentary.

45. The Basic Principles note that "law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights." Basic Principles, Preamble.

46. Universally-recognized standards also specifically regulate the use of firearms by law enforcement officers. Principle 9 of the Basic Principles reflects a clear international consensus on this issue, and thus further defines the content of the customary norm stated in Article 3 of the Code of Conduct:

> Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Basic Principles, Principle 9.

47. To further limit the use of firearms, Principle 10 of the Basic Principles mandates that:

> in the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

Basic Principles, Principle 10.

48. Customary international law recognizes that these principles limiting the use of force fully apply when law enforcement officers seek to suppress non-violent assemblies. This norm is expressed in Principle 13 of the Basic Principles, which states that when dispersing assemblies,

force must be avoided or, if that is not possible, used only to the minimum extent necessary. Indeed, Principle 14 makes clear that even if the assembly is violent, firearms may be only be used when "less dangerous means are not practicable and only to the minimum extent necessary," and such use must accord with Principle 9.

49. In sum, the use of unnecessary or disproportionate force, the use of firearms where not strictly necessary to protect life, and the planning of law enforcement operations without adequately ensuring that these first two requirements will be respected all violate clearly defined and widely accepted norms of international law protecting the right of life, liberty, and security of person.

IV. CLEARLY DEFINED AND WIDELY ACCEPTED CUSTOMARY INTERNATIONAL LAW NORMS PROTECT THE RIGHT TO ASSEMBLY AND OF ASSOCIATION AND RESTRICT THE USE OF FORCE BY LAW ENFORCEMENT AND MILITARY OFFICIALS AGAINST NON-VIOLENT PROTESTERS

50. The rights to peaceful assembly and expression free from violent dispersal are clearly defined and widely accepted norms of customary international law. Universal Declaration of Human Rights of 1948, art. 20; Civil and Political Covenant, arts. 19, 21; American Declaration of the Rights and Duties of Man, art. 4; European Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 10, 11; African [Banjul] Charter on Human and Peoples' Rights, art. 11.

51. Assembly and expression are necessary to permit individuals to vindicate other basic international human rights, such as the right of a people not to "be deprived of its own means of subsistence." *See* Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, arts. 5, 12, G.A. Res.53/144, annex, 53 U.N. GAOR Supp., U.N. Doc. U.N. Doc. A/RES/53/144 (1999).[2] *See also* Civil and Political Covenant, art. 1(2); International Covenant on Economic, Social and Cultural Rights, art. 1(2) G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

2 Article 5 provides: "For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) to meet or assemble peacefully." Article 12 provides: "Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms."

Accordingly, the right to expression must be rigorously protected.

52. The killing or assaulting of non-violent protestors, even if their protest were to be illegal, necessarily has a chilling effect on the freedom of association and expression that would be very difficult to overstate. Similarly the killing or assaulting of non-violent protestors, even if their protest were to be illegal, violated the rights to life and security of person as described above in Section III.

53. The freedom of association is universally recognized to prohibit the shooting of peaceful protestors, even where their protest is illegal under domestic law. *See, e.g,* United Nations Security Council Resolution 134, U.N. Doc S/RES/134 (Apr. 1, 1960) ("Having considered. . . the situation arising out of the large-scale killings of unarmed and peaceful demonstrators against racial discrimination and segregation in the Union of South Africa . . . *Deplores* that the recent disturbances in the Union of South Africa should have led to the loss of life of so many Africans . . . [and] *Deplores* the policies and actions of the Union of South Africa which have given rise to the present situation.").

54. Principle 12 of the Basic Principles acknowledges that the limits on the use of force which protect even those persons engaged in non-violent but illegal protests specifically protect the freedom of association:

> As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with [international law], Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

Basic Principles, Principle 12.

55. In sum, the violent dispersal of peaceful protestors, even where the protest violates local law, is a violation of customary international law.

V. CLEARLY DEFINED AND WIDELY ACCEPTED CUSTOMARY INTERNATIONAL LAW NORMS RECOGNIZE CLAIMS MADE ON THE BASIS OF SECONDARY LIABILITY.

56. Customary international law provides for secondary liability, including liability for aiders and abettors to parties that violate international norms, and for commanders responsible for their subordinates' violations of international norms.

A. SECONDARY LIABILITY FOR AIDING AND ABETTING IS WELL-ESTABLISHED IN CUSTOMARY INTERNATIONAL LAW.

57. From the Nuremberg tribunals to the recent case law of the ICTY and ICTR and the statute of the International Criminal Court (ICC), the notion of individual responsibility for violations of international law and the various kinds of conduct that can give rise to such responsibility are well-established, and form part of customary international law. Several activities may give rise to individual responsibility under customary international law, including planning, instigating, ordering, committing or otherwise aiding or abetting in the planning, preparation, or execution of a crime. Indeed, the focus of international criminal law has been on those individuals who assist the actual perpetrators in committing their crimes. *See* William A. Schabas, *Enforcing International Humanitarian Law: Catching the Accomplices*, 83 Int'l Rev. Red Cross 439, 440 (2001) ("International penal repression, dating from its early manifestations at Nuremberg and Tokyo to the contemporary tribunals, has focused not so much on the 'principal' perpetrator – that is, the concentration camp torturer or front-line executioner – as on the leaders who are, technically speaking, 'mere' accomplices.").

58. Secondary liability is essential to the enforcement of international law because it ensures that individuals who facilitate the commission of a crime are held accountable.

> Although only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or village, etc.), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question.

Prosecutor v. Tadic, Case No. IT-94-1-A, para. 191 (ICTY Appeals Chamber July 15, 1999).

59. At the end of World War II, the Allied Powers adopted Control Council Law No. 10, which authorized the prosecution of persons guilty of war crimes, crimes against peace, and crimes against humanity. The law imposed liability on any person who was: (a) a principal; (b) an accessory to the commission of any crime or ordered or abetted the same; or (c) took a consenting part; or (d) was connected with plans or enterprises involving its commission; or (e) was a member of any organization or group connected with the commission of any such crime. Control Council Law No. 10, art. II(2).

60. Several decisions issued by the United States Military Tribunals established pursuant to

Control Council Law No. 10 held individuals liable for aiding and abetting violations of international law. In *United States v. Krauch*, for example, the Military Tribunal indicated that personal criminal liability for war crimes is not limited exclusively to active participation. *United States v. Krauch*, 8 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10 at 1081 (1952). Rather, liability could be established in several ways, including if a defendant abetted in illegal activities. *Id.* at 1137.

61. More recently, the Statutes of the ICTY and ICTR establish that a variety of conduct may give rise to individual responsibility, including planning, instigating, ordering, committing or otherwise aiding or abetting in the planning, preparation, or execution of a crime. *See* ICTY Statute, at art. 7(1); ICTR Statute, at art. 6(1).

62. Cases decided by the ICTY and ICTR have elaborated on the various forms of conduct that give rise to individual criminal liability, including aiding and abetting. In *Prosecutor v. Furundzija*, Case No. IT-95-17/1-PT (ICTY Dec. 10, 1998), for example, the Trial Chamber for the International Criminal Tribunal for the former Yugoslavia indicated that "not only the commission of rape or serious sexual assault, but also the planning, ordering or instigating of such acts, as well as aiding and abetting in the perpetration, are prohibited." *Id.* at para. 187. *See also Prosecutor v. Tadic*, at para. 229 (To be liable as an aider and abettor, one must "carr[y] out acts specifically directed to assist, encourage or lend moral support to the perpetration of a certain specific crime . . . and this support [must have] a substantial effect upon the perpetration of the crime."); *Prosecutor v. Galic*, Case No. IT-98-29 (ICTY Dec. 5, 2003) ("'Aiding and Abetting' means rendering a substantial contribution to the commission of a crime."); *Prosecutor v. Krnojelac*, Case No. IT-97-25 (ICTY Sept. 17, 2003).After a comprehensive review of international law, the Trial Chamber indicated that "the clear requirement in the vast majority of the cases is for the accomplice to have knowledge that his actions will assist the perpetrator in the commission of the crime. . . . Moreover, it is not necessary that the aider and abettor should know the precise crime that was intended and which in the event was committed. If he is aware that one of a number of crimes will probably be committed, and one of those crimes is in fact committed, he has intended to facilitate the commission of that crime, and is guilty as an aider and abettor." *Id.* at para. 246.

> In sum, the Trial Chamber holds the legal ingredients of aiding and abetting in international criminal law to be the following: the actus reus consists of practical

> assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime. The mens rea required is the knowledge that these acts assist the commission of the offence.

Id. at para. 249. As the Trial Chamber emphasized, *quis per alium facit per se ipsum facere videtur* – he who acts through others is regarded as acting himself. *Id.* at para. 256.

63. In *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T (Sept. 2, 1998), the Trial Chamber for the ICTR held that an individual "can be held responsible for the criminal acts of others where he plans with them, instigates them, orders them or aids and abets them to commit those acts.[3] *Id.* at para. 472. The Trial Chamber in *Akayesu* stated that, "Aiding means giving assistance to someone. . . . [I]t is not necessary for the person aiding or abetting another to commit the offence to be present during the commission of the crime." *Id.* at para. 484 (emphasis in original). The Trial Chamber emphasized that the accomplice need not even wish that the principal offense be committed. "[A]nyone who knowing of another's criminal purpose, voluntarily aids him or her in it, can be convicted of complicity even though he regretted the outcome of the offence." *Id.* at para. 539.

64. The ICC Statute contains similar provisions that establish individual responsibility for various forms of participation, including aiding and abetting. Article 25(c), for example, provides that a person shall be criminally responsible if that person aids, abets, or otherwise assists in the commission or attempted commission of a crime within the Court's jurisdiction. Like the case law of the international tribunals, Article 25 makes clear that aiding and abetting is a well-established form of individual liability. *See generally* The Rome Statute of the International Criminal Court: A Commentary 798-801 (Antonio Cassese, et al., eds., 2002); Commentary on the Rome Statute of the International Criminal Court 481-483 (Otto Triffter ed., 1999).

B. THE DOCTRINE OF COMMAND RESPONSIBILITY IS WELL-ESTABLISHED IN CUSTOMARY INTERNATIONAL LAW

65. The doctrine of command responsibility is well-established in customary international law. *See The Prosecutor v. Kayishama,* 1995 ICTR, Case No. ICRR 95-1 (June 25, 1999) para. 209, p. 28 ("The principle of command responsibility is firmly established in international law.") (citing *the Prosecutor v. Delalic*, ICTY, Case No. IT-96-21-T (Nov. 16, 1988), art. 6(3) and art.

[3] *See also Prosecutor v. Rutaganda*, Case No. ICTR-96-3-I (ICTR Dec. 6, 1999).

28 of the Statute of the International Criminal Court); *The Prosecutor v. Blaskic*, ICTY, Case No. IT-95-14-T, para. 322, p. 69 (stating that command responsibility became the international standard after World War II if the commander "should have had knowledge" that his subordinates were about to or had committed war crimes).

66. As the first international war crimes tribunal since the Nuremberg and Tokyo Trials in the aftermath of World War II, the U.N.-sponsored International Criminal Tribunal for the Former Yugoslavia ("ICTY") is the foremost modern forum for command responsibility cases. The ICTY was established in 1993 by the United Nations Security Council to prosecute individuals charged with serious violations of international humanitarian law in the former Yugoslavia.

67. The ICTY Statute explicitly codifies a three-prong standard for command responsibility, requiring: i) a superior-subordinate relationship; ii) the superior "knew or had reason to know that the subordinate was about to commit [a crime] or had done so"; and iii) "the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof." ICTY Statute, art. 7(3).

68. The ICTR Statute and the ICC Statute similarly codify a three-prong standard. The Statute of the International Criminal Tribunal for Rwanda states that:

> The fact that any of the acts referred to in articles 2 to 4 of the present Statute [genocide, crimes against humanity, and violations of Common Article Three] was committed by a subordinate does not relieve his or her superior of criminal responsibility if he or she knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

ICTR Statute, art. 6(3).

69. Article 28 of the ICC Statute likewise defines the scope of liability for commanders and superiors:

> (a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
>
> > (i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

> (ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
>
> (b) With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
>
> (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
>
> (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
>
> (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

70. In their case law, the ICTY and the ICTR have duly applied the three-prong test for command responsibility set out in their Statutes. (To date the ICC has yet to generate case law.) In *The Prosecutor v. Delalic et al*, ICTY, Case No. IT-96-21-T (Nov. 16, 1998), the ICTY's first major command responsibility case, the tribunal held the warden of a prison camp criminally responsible for the atrocities he allowed his subordinates to commit. Applying its Statute, the tribunal noted:

> It is thus possible to identify the essential elements of command responsibility for failure to act as follows:
>
> (i) the existence of a superior-subordinate relationship;
>
> (ii) the superior knew or had reason to know that the criminal act was about to be or had been committed; and
>
> (iii) the superior failed to take the necessary and reasonable measures to prevent the criminal act or punish the perpetrator thereof.

Id. at para. 346.

71. A commander need not have known of the crime at issue in order to be held liable under the command responsibility doctrine. According to *Delalic*, the knowledge prong is satisfied

when a commander "had in his possession information of a nature, which at the least, would put him on notice of the risk of such [crimes] by indicating the need for additional investigation in order to ascertain whether such crimes were committed or were about to be committed by his subordinates." *Delalic*, para. 383, p. 57-58. The absence of knowledge is not a defense if the commander "knew, or should have known, by use of reasonable diligence of the commission of atrocities by his subordinates." *Id.* para. 389, p. 60 (quoting *United States v. Soemu Toyoda*, p. 5006, The Complete Transcripts of the Proceedings of the International Military Tribunal for the Far East, *reprinted in* R. John Pritchard and Sonia Magbanua Zaide (eds.), The Tokyo War Crimes Trial, Vol. 20 (Garland Publishing: New York & London, 1981) (internal quotations omitted).

72. ICTY command responsibility cases since *Delalic* have applied the same three-prong command responsibility test, and have explicated it further. *See, e.g., The Prosecutor v. Aleksovski*, para. 69, p. 16 ; *The Prosecutor v. Tihomir Blaskic*, ICTY, Case No. IT-95-14-T, para. 294 (Mar. 3, 2000). For example, the *Alesovski* judgment points out that whether a commander took "appropriate steps" to prevent atrocities committed by subordinate troops is a factual question, dependent on the circumstances of each case. Therefore the detailed answer must vary from case to case.

73. The *Blaskic* case illustrates that a commander may not avoid responsibility with evidence of measures that he knew would be ineffective, or that troops would not take seriously. *See Blaskic*, para. 487, p. 102 (stating that issuing "preventive" orders after an order to attack vitiated any preventive effect the order could have had and thus subordinates "clearly understood that certain types of illegal conduct were acceptable and would not lead to punishment"). A commander must have a reasonable expectation that his actions would prevent atrocities, and may not avoid command responsibility by taking facially preventive measures. *See id.* at para. 487, p. 102 and para. 561, at p. 165; *cf. Hirota*, Complete Transcripts of the Proceedings of the International Military Tribunal for the Far East, *reprinted in* R. John Pritchard and Sonia Magbanua Zaide (eds.), The Tokyo War Crimes Trial, Vol. 20 (Garland Publishing: New York & London, 1981) (finding criminally negligent Japanese Foreign Minister Hirota's reliance "on assurances which he knew were not being implemented while hundreds of murders, violations of women and other atrocities were being committed daily" in the Rape of Nanking).

74. Though the customary international law norm that a commander can be held responsible for the acts of his or her subordinates developed in the context of liability for violations of the laws of war and was originally limited in application to war crimes in the context of international armed conflicts, *see* Additional Protocol I, Articles 86 and 87, the principle has come to be applied with respect to substantive crimes other than violations of the laws of war.

75. The ICTY Statute requires that crimes against humanity be "committed in armed conflict," but includes no such requirement for genocide. ICTY Statute, art. 5. The subsequent ICTR and ICC Statutes include no requirement that crimes against humanity be committed in armed conflict. ICTR Statute, art. 3; ICC Statute, art. 7. As noted above, all of the statutes provide that commanders may be held liable for the crimes of their subordinates, including genocide and crimes against humanity.

76. The ICTY trial chambers have concluded that the Article 7(3) principle of individual criminal responsibility of superiors for their failure to prevent or repress the crimes committed by subordinates formed part of customary international law at the time of the commission of the offenses charged in the indictment against the accused. *See Prosecutor v. Blaskic*, Case No IT-95-14-PT, Decision on Defence Motion to Strike Portions of the Amended Indictment Alleging "Failure to Punish" Liability, Apr. 4, 1997, paras. 6-11, 17; *Prosecutor v. Kordic and Cerkez*, Case No IT-95-14/2-PT, Decision on Joint Defence Motion to Dismiss for Lack of Jurisdiction Portions of the Amended Indictment Alleging "Failure to Punish Liability," Mar. 2, 1999, paras. 9-16; *Prosecutor v. Momcilo Krajisnik*, Case No. IT-00-39, PT, Decision on Motion Challenging Jurisdiction - With Reasons," Sept. 22, 2000, para. 19-24; *see also Prosecutor v. Delalic et al.*, Judgment, Case No. IT-96-21-A, 20 Feb. 2001, paras. 195, 231, 235. These decisions, which confirm that command responsibility is a principle of customary international law, were not limited to violations of the laws of war.

77. The ICTR Statute, which includes no requirement that crimes against humanity be committed in armed conflict, contains a provision on superior responsibility that is applicable and has been applied to such crimes. The ICTR Statute, together with ICTR judgments in which the accused were convicted for genocide and crimes against humanity on the basis of the principle of superior responsibility confirm that under contemporary international criminal law this principle applies beyond the context of violations of the laws of war. *See Prosecutor v. Kambanda*, Judgment and Sentence, ICTR Case No. 97-23-S, Sept. 4, 1998; *Prosecutor v.*

Musema, Judgment and Sentence, Case No. ICTR-96-13-T, Jan. 27, 2000; *Prosecutor v. Omar Serushago*, Judgment, Case No. ICTR 98-39-S, 5 February 1999; *Prosecutor v. Kayishema and Ruzindana*, Judgment, Case No. ICTR-95-1-T, 21 May 1999.

78. Thus, it is not the case that a commander may only be held responsible for the acts of his or her subordinates in the context of war crimes or crimes committed during armed conflict. Indeed, through the statutes and jurisprudence of the ICTY and ICTR, the principle of command responsibility has been applied in relation to a wide range of international crimes, including war crimes, crimes against humanity and genocide. *See also* International Law Commission, Draft Code of Crimes against the Peace and Security of Mankind with commentaries, comments to arts. 2, 6 (1996) available at http://untreaty.un.org/ilc/texts/7_4.htm (reviewing international jurisprudence and concluding that command responsibility extends to crimes against humanity, genocide and war crimes).

VI. UNDER INTERNATIONAL LAW, EXHAUSTION OF DOMESTIC REMEDIES IS EXCUSED WHEN AVAILABLE REMEDIES DO NOT PROVIDE AN EFFECTIVE MEANS OF REDRESS OR ARE FUTILE.

79. It is a well-recognized rule in international law that "that local remedies must be exhausted before international proceedings may be instituted." Restatement (Third) of the Foreign Relations Law of the United States § 713 cmt. c (1986).

80. Under the rules governing exhaustion, a claimant is only required to have recourse to remedies which are capable of providing effective means of redress. *Nielsen v. Denmark*, Application 343/57 (1959) in 2 Yearbook of the European Convention on Human Rights 412 (1958-1959).

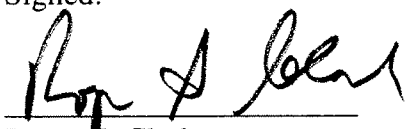
81. Among the instances in which recourse to a domestic forum may be rendered futile are when the local court has no jurisdiction over the issue and when the available remedies will not provide the relief sought by claimant. *See* Hittharanjan Amerasinghe, Local Remedies in International Law 325-346 (2nd ed., 2004). *See also* Restatement (Third) of the Foreign Relations Law of the United States § 713 reporter's note 5 (1986).

82. These and other exceptions to the exhaustion rule are reflected in the decisions of numerous international tribunals and adjudicatory bodies. *See, e.g., Ambatielos Claim (Greece v.*

U.K.), 12 R.I.A.A. 91, 119-120 (1956); *Panevezys-Saldutiskis Railway Case (Estonia v. Lithuania)*, P.C.I.J., ser. A/B, No. 76 at 18 (1939); *see also Finnish Ships Case*, 3 R.I.A.A. 1495, 1504 (1934); *Prince v. Jamaica*, U.N. Human Rights Committee Communication No. 269/1987 (Oct. 19, 1989) *in* Reports of the Human Rights Committee 242 (1992), U.N. Doc. A/47/40 (1994).

I declare under penalty of perjury that the foregoing is true and correct.

Signed:



Date: 1 November 2011

Roger S. Clark
Board of Governors Professor
Rutgers School of Law, Camden

_____ Date:_____

Ralph G. Steinhardt
Arthur Selwyn Miller Research Professor of Law
George Washington University Law School

_____ Date:_____

David Weissbrodt
Regents Professor & Fredrikson
& Byron Professor of Law
University of Minnesota School of Law

U.K.), 12 R.I.A.A. 91, 119-120 (1956); *Panevezys-Saldutiskis Railway Case (Estonia v. Lithuania)*, P.C.I.J., ser. A/B, No. 76 at 18 (1939); *see also Finnish Ships Case*, 3 R.I.A.A. 1495, 1504 (1934); *Prince v. Jamaica*, U.N. Human Rights Committee Communication No. 269/1987 (Oct. 19, 1989) *in* Reports of the Human Rights Committee 242 (1992), U.N. Doc. A/47/40 (1994).

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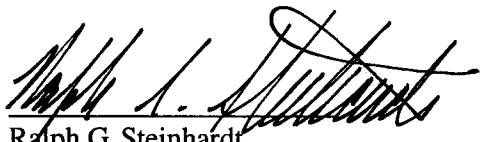

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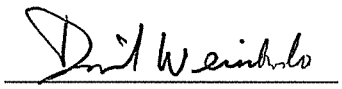 Date: November 1, 2011

David Weissbrodt
Regents Professor & Fredrikson
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APPENDIX

Roger S. Clark is the Board of Governors Professor at Rutgers School of Law. He holds an LL.M. and J.S.D. from Columbia as well as graduating B.A., LL.B., LL.M., LL.D. from Victoria University in New Zealand, and is a prolific scholar in international law and human rights and criminal law. A member of the United Nations Committee on Crime Prevention and Control between 1986 and 1990, he has authored or co-authored over a hundred articles and ten books. The most recent books are INTERNATIONAL CRIMINAL LAW: CASES AND MATERIALS (2004), INTERNATINOAL AND NATIONAL LAW IN RUSSIA AND EASTERN EUROPE: ESSAYS IN HONOR OF GEORGE GINSBURGS (2001) and THE CASE AGAINST THE BOMB (1996). In 1995 and 1996 he represented the Government of Samoa in arguing the illegality of nuclear weapons before the International Court of Justice in The Hague. Since 1995, he has represented Samoa in negotiations to create the International Criminal Court and to get the Court running successfully. Professor Clark teaches Criminal Law, International Law, Foreign Relations and National Security Law, and International Criminal Law.

Ralph G. Steinhardt is the Arthur Selwyn Miller Research Professor of Law and International Relations at the George Washington University Law School, in Washington, D.C., and as of Spring 2008, a Senior Research Fellow at Yale Law School. He is the co-founder and director of the Programme in International Human Rights Law, at New College, Oxford University.

For twenty-five years, Professor Steinhardt has been active in domestic litigation of international human rights norms, having represented pro bono various human rights organizations, as well as individual human rights victims, before all levels of the federal judiciary, including the U.S. Supreme Court. The most recent domestic cases in which he has appeared as counsel include *Sosa and United States v. Alvarez-Machain*, 542 U.S. 692 (2004), challenging the legality of the abduction of a Mexican national in Mexico by agents of U.S. multinational corporations for their complicity in human rights violations. He currently serves on the International Commission of Jurists' Expert Legal Panel on Corporate Complicity in International Crimes. He is also the Founding Chairman of the Board of Directors of the Center for Justice and Accountability, an anti-impunity organization that specializes in litigation under the Alien Tort Statute.

Professor Steinhardt is the author of various books and articles, including: INTERNATIONAL HUMAN RIGHTS LAWYERING: CASES AND MATERIALS (West, 2009) (with Paul Hoffman and Christopher N. Camponovo); "Corporate Responsibility and the International Law of Human Rights: The New *Lex Mercatoria*," NON-STATE ACTORS AND HUMAN RIGHTS (Oxford University Press, 2005); "The Role of Domestic Courts in Enforcing International Human Rights Law," in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE (Transnational, 4th ed., 2004);

International Civil Litigation: Cases and Materials on the Rise of Intermestic Law (2002); *The Alien Tort Claims Act: An Analytical Anthology* (1999) (with Tony D'Amato), and *International Law and Self-Determination* (1994). He serves on the Board of Editors of the Oxford University Press Project on International Law in Domestic Courts.

Professor Steinhardt received his B.A. *summa cum laude* from Bowdoin College, where he was elected to Phi Beta Kappa. He was then awarded a Henry Luce Foundation Scholarship and appointed Visiting Scholar at the University of the Philippines Law Center. He received his J.D. from Harvard Law School, where he served as Articles Editor of the *Harvard International Law Journal* and won the Jessup Moot Court Competition. He then practiced law in Washington, D.C., for five years, before joining the faculty at the George Washington University Law School.

David S. Weissbrodt is the Regents Professor and Frederikson & Byron Professor of Law at the University of Minnesota Law School. He is a world-renowned scholar in international human rights law and teaches international human rights law, administrative law, immigration law, and torts, and is the author of 200 articles, books, and monographs. He received his A.B. from Columbia University and attended the London School of Economics. He graduated Order of the Coif from the University of California at Berkeley, where he received his J.D. (1969) and was Note and Comment Editor for the CALIFORNIA LAW REVIEW. Following graduation, he clerked for Justice Mathew O. Tobriner of the California Supreme Court and practiced law with Covington & Burlington.

In 1996, Professor Weissbrodt was elected and in 2000 he was re-elected by the U.N. Commission on Human Rights to serve as a member of the U.N. Sub-Commission on the Promotion and Protection of Human Rights. In 2001-02, he became the first United States citizen since Eleanor Roosevelt to head a United Nations human rights body when he served as chairperson for the U.N. Sub-Commission on the Promotion and Protection of Human Rights. He was designated the United Nations Special Rapporteur on the rights of non-citizens from 2000-03. In July 2005, he was designated as one of twenty Regents Professors at the University of Minnesota and the first Regents Professor from the Law School.

EXHIBIT C

PODER JUDICIAL DE HONDURAS

CORTE SUPREMA DE JUSTICIA

República de Honduras, C. A.

CODIGO PROCESAL CIVIL

CAPÍTULO II
ACTOS DE COMUNICACIÓN

Artículo 135.- CLASES.
El tribunal se comunicará con las partes, con los terceros y con las autoridades, mediante la utilización de los siguientes instrumentos:
1. Notificaciones, cuando tengan por objeto dar noticia de una resolución, diligencia o actuación.

2. Emplazamientos, para personarse y para actuar dentro de un plazo.

3. Citaciones, cuando determinen lugar, fecha y hora para comparecer y actuar.

4. Requerimientos para ordenar, conforme a la ley, una conducta o inactividad.

5. Mandamientos, para ordenar el libramiento de certificaciones o testimonios y la práctica de cualquier actuación cuya ejecución corresponda a registradores, corredores de comercio, o a funcionarios del tribunal.

6. Oficios, para las comunicaciones con autoridades no judiciales y funcionarios distintos de los mencionados en el número anterior.

Artículo 136.- NOTIFICACIÓN DE RESOLUCIONES.
1. Las resoluciones judiciales se notificarán a todos los que sean parte en el proceso.

2. La primera comunicación se regulará por las disposiciones de los artículos siguientes. La segunda y demás comunicaciones a las mismas partes y terceros se efectuarán en el domicilio o lugar en que tuvo éxito la primera de ellas.
3. Los juzgados y tribunales también notificarán el proceso pendiente a las personas que, según el mismo expediente, puedan verse afectadas por la sentencia que en su momento se dictare, así como a los terceros en los casos previstos por esta ley.

4. Todas las resoluciones judiciales se notificarán en el mismo día o al siguiente de su fecha o publicación.

Artículo 137.- FORMA DE LA COMUNICACIÓN.
1. Los actos de comunicación se realizarán bajo la dirección del secretario, que será el responsable de la adecuada organización del servicio. Tales actos se efectuarán en alguna de las formas siguientes, según disponga este Código:

a) A través del profesional del derecho, en funciones de representante procesal, tratándose de comunicaciones a quienes estén personados en el proceso con representación de aquél.

b) Remisión de lo que haya de comunicarse mediante correo electrónico, postal, telegrama, fax, o cualquier otro medio técnico que permita dejar en el expediente constancia fehaciente de la recepción, de su fecha y del contenido de lo comunicado.

c) Entrega al destinatario de copia literal de la resolución que se le haya de notificar, del requerimiento que el tribunal le dirija o de la cédula de citación o emplazamiento.

2. La cédula expresará el tribunal que hubiese dictado la resolución, y el litigio en que haya recaído, el nombre y apellidos de la persona a quien se haga la citación o emplazamiento, el objeto de éstos y el lugar, fecha, día y hora en que deba comparecer el citado, o el plazo dentro del cual deba realizarse la actuación a que se refiera el emplazamiento, con la prevención de los efectos que, en cada caso, la ley establezca.

3. En las notificaciones, citaciones y emplazamientos no se admitirá ni consignará respuesta alguna del interesado, a no ser que así se hubiera mandado. En los requerimientos se admitirá la respuesta que dé el requerido, consignándola sucintamente en la diligencia.

Artículo 138.- COMUNICACIÓN AL PROFESIONAL DEL DERECHO DE LA PARTE.
1. La comunicación con las partes personadas en el juicio se hará a través de su representante procesal, quien firmará las notificaciones, emplazamientos, citaciones y requerimientos de todas clases que deban hacerse a su poderdante en el curso del pleito, incluso las de sentencias y las que tengan por objeto alguna actuación que deba realizar personalmente el poderdante.

2. La comunicación se dirigirá al domicilio profesional designado en los primeros escritos de las partes, por cualquiera de los medios previstos por este Código.

Artículo 139.- COMUNICACIONES DIRECTAS A LAS PARTES.
1. Cuando las partes no tengan profesional del derecho o se trate del primer emplazamiento o citación al demandado, los actos de comunicación se harán por remisión al domicilio de las partes.

2. El domicilio del demandante será el que haya hecho constar en la demanda o en la petición o solicitud con que se inicie el proceso. Asimismo, el demandante designará, como domicilio del demandado, a efectos del primer emplazamiento o

citación de éste, uno o varios de los lugares a que se refiere el artículo siguiente. Si el demandante designare varios lugares como domicilio, indicará el orden por el que, a su entender, puede efectuarse con éxito la comunicación.

3. Asimismo, el demandante deberá indicar cuantos datos conozca del demandado y que puedan ser de utilidad para la localización de éste, como números de teléfono, de fax o similares.

4. El demandado, una vez comparecido, podrá designar, para sucesivas comunicaciones, un domicilio distinto.

Artículo 140.- DESIGNACIÓN DE DOMICILIO.
1. A efectos de actos de comunicación, podrá designarse como domicilio el que aparezca en registros oficiales como domicilio privado, sea en propiedad o como arrendatario, o profesional. También podrá designarse como domicilio, a los referidos efectos, el lugar en que se desarrolle actividad profesional o laboral no ocasional.

2. Si las partes no estuviesen representadas por profesional del derecho, las comunicaciones efectuadas en cualquiera de los lugares previstos en el numeral anterior, que se hayan designado como domicilios, surtirán plenos efectos en cuanto se acredite la correcta remisión de lo que haya de comunicarse y conste su recepción por el destinatario.

3. Si la comunicación tuviese por objeto el personamiento en juicio o la realización o intervención personal de las partes en determinadas actuaciones procesales y no constare la recepción por el interesado, se estará a lo dispuesto para la comunicación subsidiaria por medio de entrega de copia de la resolución o cédula.

4. Cuando las partes cambiasen su domicilio durante la sustanciación del proceso, lo comunicarán inmediatamente al tribunal. Asimismo deberán comunicar los cambios relativos a su número de teléfono, fax o similares, siempre que estos últimos estén siendo utilizados como instrumentos de comunicación con el tribunal.

Artículo 141.- AVERIGUACIÓN DEL DOMICILIO.
1. En los casos en que el demandante manifestare que le es imposible designar un domicilio o residencia del demandado, a efectos de su personamiento, se utilizarán los medios oportunos para averiguar esas circunstancias, pudiendo dirigirse, en su caso, a registros oficiales, organismos, colegios profesionales, entidades y empresas que puedan dar información sobre ello.

2. Si estas averiguaciones resultaren infructuosas, la comunicación se llevará a cabo mediante edictos.

Artículo 142.- COMUNICACIONES CON TERCEROS.
1. Las comunicaciones que deban hacerse a testigos, peritos y otras personas que, sin ser parte en el juicio, deban intervenir en él, se remitirán a sus destinatarios por alguno de los medios previstos en el artículo siguiente. La comunicación se remitirá al domicilio que designe la parte interesada, pudiendo realizarse, en su caso, las averiguaciones domiciliarias a que se refiere esta ley.

2. Cuando conste en el expediente el fracaso de la comunicación mediante remisión, o las circunstancias del caso lo aconsejen, atendidos el objeto de la comunicación y la naturaleza de las actuaciones que de ella dependan, el tribunal podrá ordenar que se proceda con arreglo a lo dispuesto para la comunicación subsidiaria por medio de entrega de copia de la resolución o cédula.

3. Las personas a que se refiere este artículo deberán comunicar al tribunal cualquier cambio de domicilio que se produzca durante la sustanciación del proceso. En la primera comparecencia que efectúen se les informará de esta obligación.

Artículo 143.- REMISIÓN DE LAS COMUNICACIONES POR CORREO ELECTRÓNICO, FAX, MENSAJERO PRIVADO O CORREO ORDINARIO.
1. Cuando proceda la remisión de la copia de la resolución o de la cédula por correo electrónico, fax, mensajero privado, correo ordinario o certificado, incluso por telegrama con acuse de recibo, o por cualquier otro medio de comunicación que permita dejar en el expediente constancia fehaciente de haberse recibido la notificación, de la fecha de la recepción, y de su contenido, el secretario dará fe en el expediente de la remisión y del contenido de lo remitido, y unirá a aquéllos, en su caso, el acuse de recibo o el medio a través del cual quede constancia de la recepción.

2. A instancia de parte y a costa de quien lo solicite, podrá ordenarse que la remisión se haga de manera simultánea a varios lugares.

3. Las partes y los profesionales que intervengan en el proceso deberán comunicar al tribunal el hecho de disponer de los medios antes indicados y su dirección.

4. Cuando el destinatario tuviere su domicilio en el departamento o circunscripción en donde radique la sede del tribunal, y no se trate de comunicaciones de las que dependa el personamiento o la realización o intervención personal en las actuaciones, podrá remitirse, por cualquiera de los medios a que se refiere el numeral 1, cédula de emplazamiento para que el destinatario comparezca en dicha sede a efectos de ser notificado o requerido o de entregársele copia de algún escrito.

5. La cédula expresará con la debida precisión el objeto para el que se requiere la comparecencia del emplazado, indicando el procedimiento y el asunto a que se refiere, con la advertencia de que, si no comparece sin causa justificada dentro del plazo señalado, se tendrá por hecha la comunicación de que se trate o por efectuado el traslado.

Artículo 144.- COMUNICACIÓN SUBSIDIARIA POR MEDIO DE ENTREGA DE COPIA DE LA RESOLUCIÓN O DE CÉDULA.
1. La entrega al destinatario de la copia de la resolución o de la cédula se efectuará en la sede del tribunal o en el domicilio de la persona que deba ser notificada, requerida, citada o emplazada, sólo en caso de que los medios de notificación previstos en los artículos anteriores hubieran resultado fallidos.

2. La entrega se documentará por medio de diligencia, que será firmada por el secretario que la efectúe y por la persona a quien se haga, cuyo nombre se hará constar.

3. Cuando el destinatario de la comunicación sea hallado en el domicilio y se niegue a recibir la copia de la resolución o la cédula, o no quiera firmar la diligencia acreditativa de la entrega, el secretario le advertirá sobre la obligación que le impone el artículo anterior y, si insistiere en su negativa, le hará saber que queda a su disposición en la secretaría del tribunal, produciéndose los efectos de la comunicación, de todo lo cual quedará constancia en la diligencia.

4. Si el domicilio donde se pretende practicar la comunicación fuere el lugar en el que el destinatario tenga su domicilio según registros oficiales, publicaciones de colegios profesionales, o fuere la vivienda o local arrendado al demandado, y no se encontrare allí dicho destinatario, podrá efectuarse la entrega a cualquier empleado o familiar, mayor de 14 años, que se encuentre en ese lugar, advirtiendo al receptor que está obligado a entregar la copia de la resolución o la cédula al destinatario de ésta, o a darle aviso, si sabe su paradero.

5. Si la comunicación se dirigiere al lugar de trabajo habitual del destinatario, en ausencia de éste, la entrega se efectuará a persona que manifieste conocerle o, si existiere dependencia encargada de recibir documentos u objetos, a quien estuviere a cargo de ella.
6. En la diligencia se hará constar el nombre del destinatario de la comunicación y la fecha y la hora en la que fue buscada y no encontrada en su domicilio, así como el nombre de la persona que recibe la copia de la resolución o la cédula, y su relación con el destinatario, produciendo todos sus efectos la comunicación así realizada.

7. En el caso de que no se halle a nadie en el domicilio a que se acuda para la práctica de un acto de comunicación, el secretario o funcionario designado procurará averiguar si vive allí su destinatario. Si ya no residiese o trabajase en él y alguna de las personas consultadas conociese el actual, se consignará en la diligencia, la negativa de comunicación.

8. Si no pudiera conocerse por este medio el domicilio del demandado y el demandante no hubiera designado otros posibles domicilios, se procederá a averiguar su domicilio conforme a lo previsto en este Código.

Artículo 145.- SERVICIO COMÚN DE NOTIFICACIONES.
La Corte Suprema de Justicia aprobará un reglamento de creación y funcionamiento del Servicio Judicial de Notificaciones, que cuando esté operativo practicará los actos de comunicación que hayan de realizarse en los procesos civiles.

Artículo 146.- COMUNICACIÓN EDICTAL.
1. Una vez practicadas, en su caso, las averiguaciones a que se refiere este Código, si no pudiere conocerse el domicilio del destinatario de la comunicación, o no pudiere hallársele ni efectuarse la comunicación con todos sus efectos, el tribunal, mediante providencia, mandará que se haga la comunicación fijando la copia de la resolución o la cédula en la tabla de avisos. A costa de la parte, se publicará la comunicación en un diario impreso y en una radiodifusora en ambos casos de cobertura nacional por tres veces, con intervalo de diez (10) días hábiles.

Artículo 147.- ACTOS DE COMUNICACIÓN MEDIANTE AUXILIO JUDICIAL.
1. Cuando los actos de comunicación hayan de practicarse por tribunal distinto del que los hubiere ordenado, se acompañará al despacho la copia o cédula correspondiente y lo demás que en cada caso proceda.

2. Estos actos de comunicación se cumplimentarán en un plazo no superior a quince (15) días, contados a partir de su recepción. Cuando no se realice en el tiempo indicado, se habrán de expresar, en su caso, las causas de la dilación.

Artículo 148.- NULIDAD Y SUBSANACIÓN DE LOS ACTOS DE COMUNICACIÓN.
1. Serán nulos los actos de comunicación que no se practicaren con arreglo a lo dispuesto en este Código y pudieren causar indefensión.

2. Sin embargo, cuando la persona notificada, citada, emplazada o requerida se hubiera dado por enterada en el asunto, y no denunciase la nulidad de la diligencia en su primera actuación, surtirá ésta desde entonces todos sus efectos, como si se hubiere hecho con arreglo a las disposiciones de este Código.

Artículo 149.- COMUNICACIÓN DE OFICIOS Y MANDAMIENTOS.
1. Los mandamientos y oficios se remitirán directamente a la autoridad o funcionario a que vayan dirigidos. No obstante, si así lo solicitaren, las partes podrán diligenciarlos personalmente.

2. En todo caso, la parte a cuya instancia se libren los oficios y mandamientos habrá de satisfacer los gastos que requiera su cumplimiento.

Artículo 150.- RESPONSABILIDADES.
1. El secretario o funcionario que, en el desempeño de las funciones de comunicación que por este Código se le asignan, diere lugar, por malicia o negligencia, a retrasos o dilaciones indebidas, será corregido disciplinariamente por la autoridad de quien dependa.

2. El profesional del derecho que incurriere en dolo o morosidad en los actos de comunicación cuya práctica haya asumido, o no respetare alguna de las formalidades legales establecidas, causando perjuicio a la otra parte o a tercero, será responsable de los daños y perjuicios ocasionados y podrá ser sancionado conforme a lo dispuesto en las normas legales o estatutarias.

CAPÍTULO III
ACTOS DE DOCUMENTACIÓN

Artículo 151.- FE PÚBLICA JUDICIAL.
1. El secretario ostenta la fe pública judicial, mediante la que deja constancia oficial en el expediente de la realización de las actuaciones procesales, por sí o mediante el registro correspondiente, de cuyo funcionamiento será responsable, de la recepción de escritos con los documentos y recibos que les acompañen, así como de la producción de hechos con trascendencia procesal.

2. El secretario expedirá copias certificadas y testimonios de las actuaciones no secretas ni reservadas a los interesados.

3. El secretario podrá ser sustituido en los términos previstos en la ley.

Artículo 152.- DOCUMENTACIÓN DE ACTOS PROCESALES NO ESCRITOS.
1. Las actuaciones procesales que no consistan en escritos y documentos se documentarán por medio de actas, diligencias y notas.
2. Cuando la ley disponga que se levante acta, se recogerá en ella, con la necesaria extensión y detalle, todo lo actuado. Sin embargo, cuando se trate de las actuaciones

JUDICIAL BRANCH OF HONDURAS

SUPREME COURT OF JUSTICE
Republic of Honduras, C.A.

CIVIL CODE OF PROCEDURE

CHAPTER II
COMMUNICATIONS

Article 135. - TYPES.
The Court shall communicate with the parties, third parties, and authorities through the following mechanisms:
1. Notifications -- to notify a decision, certificate of service, or action.

2. Summonses -- to require a person to appear in court and to act within a certain

period.

3. Subpoenas -- to indicate the place, date, and time to appear or act.

4. Injunctions -- to order, in accordance with the law, a certain behavior or to cease

activity.

5. Orders -- to order the payment of certifications or testimonies and to command any action to be performed by the registrars, notaries public, or officers of the court.

6. Official letters -- for communications with non-judicial authorities and officers other than those mentioned in the section above.

Article 136.-NOTIFICATION OF DECISIONS.
1. Notices of judicial decisions shall be sent to all parties in an action.

2. The first communication shall be governed by the provisions of the following articles. The second and subsequent communications to the same parties and third parties shall be made to the domicile or place where the first communication was successfully delivered.

3. The courts and tribunals shall also provide notice of pending procedures to those persons who, according to the case record, may be affected by an impending ruling, and to third parties in such instances set forth in this rule.

4. Notice of all judicial decisions shall be sent on the same day or on the day after their date or publication.

Article 137. - METHOD OF COMMUNICATION.

1. Communications shall be issued under the direction of the Clerk, who shall be responsible for arranging service. Such communications shall be effected in any of the following methods, as established in this Code:

a) Through the legal professional fulfilling the role of legal counsel, for communications to those persons who are a party to the action and represented by the legal professional.

b) Transmittal by electronic mail, postal mail, telegram, fax, or other technical means that may provide reliable confirmation for the record of the receipt, date and contents of the communication.

c) Hand delivery to the addressee of a true copy of the decision that is to be notified, of the injunction ordered by the Court, or of the subpoena or summons document for service.

2. The service document shall state the Court that has ordered the decision, and the case caption the given and surnames of the person who to be subpoenaed or summonsed, the purpose of the subpoena or summons, and the place, date, day, and time in which the person must appear in court, or the period in which the person must complete the act referenced in the summons to avoid the penalties established by law.

3. For notifications, subpoenas and summonses, no response of any kind from the interested person will be accepted or recorded, unless such response was ordered. For injunctions, a response shall be allowed to be stated briefly on the certificate of service.

Article 138. - COMMUNICATION TO A PARTY'S LEGAL PROFESSIONAL.
1. Communication with parties to the action shall be made through each party's legal counsel who shall sign all notifications, summonses, subpoenas, and orders that must be performed by his or her client during the course of the litigation, including notifications of rulings and of any act that his or her client must personally perform.

2. The communication shall be addressed to the domicile of the legal counsel specified in the first pleadings of the case, by any of the means set forth in this Code.

Article 139. - DIRECT COMMUNICATIONS TO THE PARTIES.
1. If the parties do not have legal counsel or if it is the first summons or subpoena to the defendant, communications shall be delivered to the parties' domicile.

2. The plaintiff's domicile shall be that which was stated in the complaint or in the petition or request that initiated the action. Additionally, the plaintiff shall specify, as the defendant's domicile, for the purpose of the first summons or subpoena, one or several places referred to in the following article. If the plaintiff specifies several places as a

domicile, the plaintiff shall indicate, to the best of his knowledge, the order in which communications may be delivered successfully.

3. The plaintiff shall also indicate how much information is known about the defendant and what is useful in locating the defendant, such as telephone, fax or other numbers.

4. The defendant, upon appearing in court, shall specify a different domicile for future communications.

Article 140. - SPECIFICATION OF DOMICILE.

1. For communication purposes, the private domicile listed in the official records, whether at a privately owned property or a rental property, or business property, may be specified as the domicile. Also for the aforementioned purposes the place where non-occasional professional or work activity is performed may be specified as a domicile.

2. If the parties are not represented by a legal professional, the communications delivered to any of the places in the foregoing section that have been specified as domiciles, shall become effective as soon as the correct transmission of what has been communicated is confirmed and the addressee has acknowledged receipt of it.

3. If the communication is to command an appearance in an action or the performance or involvement of the parties in a certain procedural act, and the interested party has not acknowledged receipt, it shall remain on standby for the contingent communication by means of hand delivery of a copy of the decision or service document.

4. Whenever the parties change their domicile while the action is pending, they shall immediately communicate the change to the Court. Likewise, they shall communicate changes regarding their telephone, fax, or other numbers, provided that these numbers are being used by the Court for communication purposes.

Article 141. - DOMICILE SEARCH

1. In such cases in which the plaintiff states that he or she is unable to specify a domicile or residence for the defendant for the purpose of service, convenient search methods shall be used to obtain the information, including searches in official records, agencies, professional associations, organizations, and businesses that may provide such information.

2. If these searches are futile, the communication shall be made by edict.

Article 142.- COMMUNICATIONS WITH THIRD PARTIES.
1. Communications that must be made to witnesses, experts, and other persons who are not part of the action but must be involved in it, shall be sent to the addressees by any of the means set forth in the following article. The communication shall be sent to the domicile specified by the interested party, which could be obtained, if necessary, through the domicile search referenced in this rule.

2. When the record reflects a failure to effect communication, or the circumstances of the case so provide, upon attending to the purpose of the communication and the nature of the acts described in the communication, the Court shall order that the case proceed on the basis of contingent communication by hand delivery of a copy of the decision or service document.

3. The persons referred to in this article must communicate to the Court any change of domicile that occurs while the action is pending. The parties will be informed of this obligation during their first court appearance.

Article 143. - TRANSMITTAL OF COMMUNICATIONS BY ELECTRONIC MAIL, FAX, COURIER OR REGULAR MAIL.
1. When a copy of a decision or service document is issued by electronic mail, fax, courier, regular mail or certified mail, including by telegram with delivery confirmation, or by any other communication method that may provide reliable confirmation for the record of the date of receipt and contents of the notification, the clerk shall certify the transmission and contents of the notification in the record and shall attach to the record the delivery confirmation or the means by which receipt was confirmed.

2. At the request of the party and at the cost of the requester, it may be ordered that the communication be transmitted simultaneously to several places.

3. The parties and the professionals involved in the action shall inform the Court the communication means previously mentioned that are available to them and their address.

4. When the addressee's domicile is in the same department or district of the courthouse, and the communication does not depend on personal service or performance or involvement in the proceedings, the summons document to be served may be sent by any of the means referenced in section 1, so that the addressee may appear in said court for the purpose of being notified or ordered or receiving a copy of a court filing.

5. The service document shall state with due precision the purpose for which the appearance is ordered, indicate the caption and subject matter, and include a warning that if the person without reasonable cause does not respond within the period

indicated, the subject matter or notice referenced in the communication shall take effect.

Article 144. - CONTINGENT COMMUNICATION BY HAND DELIVERY OF COPY OF THE DECISION OR SERVICE DOCUMENT.

1. Hand delivery to the addressee of a copy of the decision or the service document shall be effected in the courthouse or in the domicile of the person to be notified, ordered, subpoenaed, or summonsed only in instances in which notification by the methods mentioned in the foregoing articles failed.

2. The hand delivery shall be documented by certificate of service, which shall be signed by the clerk who effects service and by the person to receive service, whose name shall be recorded.

3. When the addressee of the communication is located at the domicile and denies receiving a copy of the decision or service document, or refuses to sign the certificate of service, the Clerk shall advise the addressee of his or her duty pursuant to the foregoing article and, if the addressee continues to refuse, he or she shall be advised that it will be available in the Clerk's Office and the subject of the communication shall take effect and be recorded on the certificate.

4. If the domicile where the communication to be effected is a place where the addressee has his or her domicile according to official records, professional association directories, or is a residence or office rented by the defendant, and the said addressee cannot be found there, the document may be hand delivered to any employee or family member over 14 years of age who is at that place, advising the receiver that he or she must deliver the copy of the decision or service document to the addressee or give notice to the addressee, if the receiver knows his or her whereabouts.

5. If the communication is addressed to the addressee's usual place of work, in the addressee's absence, the delivery may be made to the person who says he or she knows the addressee or, to the agent responsible for receiving documents or objects for the addressee.

6. The certificate of service shall state the addressee's name, the date, and the time at which the addressee was looked for and not found at his or her domicile, as well as the name of the person who received the copy of the decision or service document, and his or her relationship with the addressee, and the communication shall be deemed delivered.

7. In the event that no one is found at the domicile on whom service may be effected, the designated officer or clerk shall try to find out whether the addressee lives there. If he or she no longer lives or works there and someone knows the current domicile, it shall be noted on the certificate that service was not effected.

8. If the defendant's domicile could not be obtained by this means, and the plaintiff has not specified other possible domiciles, a domicile search shall be made in accordance with this Code.

Article 145.- CENTRAL NOTIFICATION SERVICE.
The Supreme Court of Justice shall approve regulation for the creation and functioning of the Judicial Notification Service, which, when it begins to operate, shall effect service of communications in civil actions.

Article 146 .- EDICTS.
1. If upon completion of the domicile search referenced in this Code the addressee's domicile could not be obtained or the addressee could not be found and service of the communication could not be effected, the Court, through an order, shall mandate that the communication be made by affixing a copy of the decision or service document on the court bulletin board. At the cost of the party, the communication shall be published in a print newspaper and by radio, both with national coverage, three times, at intervals of ten (10) business days.

Article 147.- COMMUNICATIONS BY JUDICIAL ASSISTANCE.
1. When communications must be effected by a court different from the court that issued the communication, the corresponding service document or copy shall be included, along with other documents, depending on the case.

2. These communications shall be completed within a maximum period of fifteen (15) days from their receipt. When the communication is not completed within the time indicated, the cause for the delay, if applicable, shall be stated.

Article 148.- ANNULLING AND RECTIFYING COMMUNICATIONS.
1. Communications not made in accordance with this Code shall be void and may be indefensible.

2. However, when the person notified, subpoenaed, summonsed, or ordered had been informed of the matter and did not report the annulment of the first service attempt, the communication shall for all purposes shall be deemed to have been completed at that time in accordance with this Code.

Article 149. - COMMUNICATION OF OFFICIAL LETTERS AND ORDERS.
1. Orders and official letters shall be transmitted directly to the authority or official to whom they are addressed. However, they may be served personally, upon the parties' request.

2. In all cases, the party serving the official letters and orders must pay the expenses required for completion of service.

Article 150. - RESPONSIBILITIES.
1. Clerks or officials, who in the performance of the communication duties as assigned to them by this Code cause improper setbacks or delays, due to malice or negligence, shall be disciplined by their supervisor.

2. Legal professionals who commit fraud or cause delays in communications that have been accepted, or who do not abide by any of the established legal formalities, causing harm to the other party or to a third party, shall be responsible for the loss and damages incurred and shall be sanctioned pursuant to the laws and statutes.

THE MULTI–LINGUAL GROUP
8 Faneuil Hall Marketplace - Boston, Massachusetts 02109 - Tel.: (617) 973-5077 – Fax: (617) 213-5408
www.themultilingualgroup.com

AFFIDAVIT

I, the undersigned, Robin R. Randolph, in the city of Richmond, Virginia, make an oath and declare that:

1) I am a legal translator and interpreter certified by the American Translators Association.

2) I earned an M.A. in Translation from the University of Puerto Rico.

3) I am a member of the American Translators Association.

4) I am fluent in both Spanish and English.

5) Attached to this affidavit is an English translation that I completed of the (a) cover page and (b) *Capitulo II: Actos De Comunicación* of the following Spanish-language document, *Codigo Procesal Civil*.

6) My translation is true to the best of my knowledge and ability and represents the content of the document supplied to me by the client.

American Translators Association
ata
Robin R. Randolph
Spanish into English
Certification #455564
Certified Translator
Verify at www.atanet.org/verify

Signature of Translator

Certification credentials may be verified online at www.atanet.org/verify.

Sworn before me on this 1st day of the month of November of the year 2011

In the City of Richmond, State of Virginia .

Teresa M. Owens
NOTARY PUBLIC

My commission expires: 11/30/2011

TERESA M. OWENS
NOTARY PUBLIC
REG # 253030
MY COMMISSION EXPIRES
11/30/2011
COMMONWEALTH OF VIRGINIA

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID MURILLO and SILVIA MENCIAS on behalf of themselves and as Personal Representatives of their deceased son, ISIS OBED MURILLO, and his next of kin, including his SIBLINGS.

v.

ROBERTO MICHELETTI BAIN

Case No. 4:11-CV-2373

AFFIDAVIT

I, ELIZABETH J. BRADLEY, declare as follows:

1. I am a United States citizen and over eighteen years old. Between November 2007 and July 2011, I was employed as a Legal Worker for the Center for Constitutional Rights ("CCR"). In the course of my employment I coordinated the service of the Complaint and summonses to the defendant Roberto Micheletti Bain (here after "the defendant" or "Micheletti") in the above-captioned matter.
2. On June 23, 2011, I helped file the Complaint and requested seven summonses to be issued for service on the defendant. Five of the summonses were to be served in Texas as follows: (1) One was to be served on Jenny Correa Vivas, who we believe holds his power of attorney; (2) two were to be served at properties for which he is listed as owner, and (3) two others were to be served at addresses he had previously listed as his own on legal documents. The information about his power of attorney and addresses in Texas was obtained through a public records search conducted by investigators retained

by CCR. Two additional summonses were to be served upon his usual places of residence when in Honduras. The information about his addresses in Honduras was obtained via publicly available sources.

3. On June 27, 2011, we received the seven stamped and issued summonses from the Clerk of Court in the Houston Division of the United States District Court for the Southern District of Texas.

Service of Summonses and Complaint in Texas

4. On June 27, 2011, I sent the five original stamped summonses to be served in Texas along with copies of the Complaint, Civil Cover Sheet and Order for Conference to process server Robert Horton at Certified Civil Process, 14930 Telge Lake Trail, Cypress, TX 77429. I instructed Mr. Horton that if defendant Micheletti was not available for personal service, he could leave a copy of the papers with someone of suitable age and discretion who resides at the address indicated on the summons.

5. On June 29, 2011, Mr. Horton informed me that he had successfully executed service of three of the five Texas summonses. Two of the summonses and accompanying documents, one addressed care of power of attorney Jenny Correa Vivas and one addressed to the defendant at 32125 Joseph Road, Hockley, Texas, were served upon Jenny Correa Vivas on June 28, 2011. The summons addressed to the defendant at 16626 Walnut Springs, Magnolia, TX was also served with the accompanying documents upon and received by a female named Suyapa Vivas on June 28, 2011 at that same address. Mr. Horton informed me that he attempted to complete service at 29814 Amarillo, Magnolia, TX and 27220 Remington Forest East, Magnolia, TX, but service

was not executed because the residents claimed that they did not know the defendant personally.

6. Mr. Horton returned the five Service Returns to me via United Parcel Service on June 30, 2011.

Service of Summonses and Complaint in Honduras

7. On June 27, 2011, I had a conversation with an individual at the Clerk's Office for the Houston Division of the Southern District of Texas regarding the proper procedure to complete service upon the defendant at his Honduran addresses pursuant to Rule 4(f)(2)(C)(ii) of the Federal Rules of Civil Procedure, which governs service upon an individual in a foreign country. According to Rule 4(f)(2)(C)(ii), if there is no internationally agreed means, or if an international agreement allows but does not specify other means, and unless prohibited by the foreign country's law, a summons can be served upon an individual in a foreign country "using any form of mail that the clerk addresses and send to the individual and that requires a signed receipt." The individual with whom I spoke at the Clerk's Office informed me that usual procedure for serving a foreign national from the Southern District of Texas is for the Clerk to accompany the person who is mailing the summons and court papers via registered mail to the United States Post Office and witness the mailing. The Clerk's Office would then keep a copy of the receipt and tracking number for verification.

8. On July 6, 2011, I sent two original summonses and copies of the Complaint, Civil Cover Sheet and Order for Conference, as well as courtesy Spanish translations of the summons, Complaint, and Order for Conference to Mr. Horton for service upon the

defendant at his Honduran addresses via registered mail with the United States Postal Service. I informed Mr. Horton of the instructions provided me by the Clerk's Office on June 27, 2011.

9. On July 7, 2011, Mr. Horton informed me that he successfully completed the mailing via registered mail of the two summonses, court papers and courtesy translations to defendant Micheletti's Honduran addresses: Barrio Las Delicias, 3 Avenida y 4 Calle, El Progreso, Yoro, Honduras and Colonia Satélite Casa No. 911, Comayaguela, Honduras, and that the mailing of both was witnessed by Deputy Clerk Ketta Christen.
10. Mr. Horton returned the Proofs of Service, mailing receipt and tracking numbers for the mailings to Honduras to me on July 11, 2011.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 5th day of October 2011.
New York, NY

Elizabeth J. Bradley

Subscribed and sworn to or affirmed before
me this 5TH day of October, 2011.

Notary Public
(Affix seal or stamp.)

MARIA C. LaHOOD, ESQ.
Notary Public, State of New York
No. 02LA6161980
Qualified in Kings County
Commission Expires February 26, 2015

EXHIBIT E

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 4:11-CV-02373

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Roberto Micheletti Bain

was received by me on *(date)* 07/07/2011 .

☐ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☑ Other *(specify)*: 7/7/11 the Summons, Complaint, Civil Cover Sheet, Judge's Order for Conference, and translations were Served at Barrio Las Delicias, 3 Avenida y 4 Calle, El Progresso, Yoro, Honduras via International Registered Mail witnessed by Deputy Clerk: Ketta Christen using US Customs Declaration Form LJ046519049US as means of tracking.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 07/07/2011

_____
Server's signature

Robert A. Horton, Process Server SCH-2560
Printed name and title

945 McKinney, Suite 200
Houston, Texas 77002

_____
Server's address

Additional information regarding attempted service, etc:

Track & Confirm

GET EMAIL UPDATES PRINT DETAILS

YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
LJ046519049US		Processed through Sort Facility	July 07, 2011, 6:41 pm	HOUSTON, TX 77201	International Letter
		Acceptance	July 07, 2011, 3:30 pm	HOUSTON, TX 77002	

Check on Another Item

What's your label (or receipt) number?

Find

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

David Murillo and Silvia Mencías

Plaintiff

v.

Roberto Micheletti Baín

Defendant

Civil Action No. H-11-2373

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Roberto Micheletti Baín
Barrio Las Delicias
3 Avenida y 4 Calle
El Progreso, Yoro, Honduras

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Pamela Carol Spees
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT **DAVID J. BRADLEY**

Date: JUN 23 2011

Signature of Clerk or Deputy Clerk

EXHIBIT F

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 4:11-CV-02373

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Roberto Micheletti Bain

was received by me on *(date)* 07/07/2011 .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

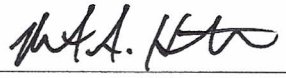
❒ I returned the summons unexecuted because _____ ; or

☑ Other *(specify)*: 7/7/11 the Summons, Complaint, Civil Cover Sheet, Judge's Order for Conference, and translations were Served at Colonia Satelite Casa No. 911, Comayaguela, Honduras via International Registered Mail witnessed by Deputy Clerk: Ketta Christen using US Customs Declaration Form LJ046518635US as means of tracking.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 07/07/2011



Server's signature

Robert A. Horton, Process Server SCH-2560

Printed name and title

945 McKinney, Suite 200
Houston, Texas 77002

Server's address

Additional information regarding attempted service, etc:

Track & Confirm

GET EMAIL UPDATES PRINT DETAILS

YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
LJ046518635US		Processed through Sort Facility	July 07, 2011, 6:40 pm	HOUSTON, TX 77201	International Letter
		Acceptance	July 07, 2011, 3:36 pm	HOUSTON, TX 77002	

Check on Another Item

What's your label (or receipt) number?

Find

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

David Murillo and Silvia Mencias

Plaintiff

v.

Roberto Micheletti Bain

Defendant

Civil Action No. H-11-2373

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Roberto Micheletti Bain
Colonia Satélite Casa No. 911
Comayaguela, Honduras

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Pamela Carol Spees
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date: JUN 23 2011

Signature of Clerk or Deputy Clerk

EXHIBIT G

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 4:11-CV-02373

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Roberto Micheletti Bain

was received by me on *(date)* 08/12/2011 .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

☑ Other *(specify)*: 8/12/11 the Summons, Complaint, Civil Cover Sheet, Judge's Order for Conference, and translations were Served at Barrio Las Delicias, 3 Avenida y 4 Calle, El Progresso, Yoro, Honduras. via FedEx International Waybill # 855461285587 witnessed by Deputy Clerk: Steve Murdock and deposited into the FedEx outbox located at the US District Court.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 08/12/2011

_____
Server's signature

Robert A. Horton, Process Server SCH-2560
Printed name and title

945 McKinney, Suite 200
Houston, Texas 77002

_____
Server's address

Additional information regarding attempted service, etc:

FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone: 901-369-3600

August 17,2011

Dear Customer:

The following is the proof-of-delivery for tracking number **855461285587**.

Delivery Information:

Status:	Delivered	**Delivery location:**	EL PROGRESO
Signed for by:	T.BUSTILLO	**Delivery date:**	Aug 16, 2011 11:30
Service type:	Priority Pak		

NO SIGNATURE IS AVAILABLE
FedEx Express proof-of-delivery details appear below; however, no signature is currently available for this shipment. Please check again later for a signature.

Shipping Information:

Tracking number:	855461285587	**Ship date:**	Aug 12, 2011
		Weight:	0.8 lbs/0.4 kg

Recipient:
EL PROGRESO HN

Shipper:
NEW YORK, NY US

Reference 486

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service
1.800.GoFedEx 1.800.463.3339

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

David Murillo and Silvia Mencías

Plaintiff

v.

Roberto Micheletti Baín

Defendant

Civil Action No. 4:11-cv-02373

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Roberto Micheletti Baín
Barrio Las Delicias
3 Avenida y 4 Calle
El Progreso, Yoro, Honduras

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Pamela Carol Spees
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DAVID J. BRADLEY
CLERK OF COURT

Date: AUG 09 2011

Stephanie Austin
Signature of Clerk or Deputy Clerk

EXHIBIT H

AO 440 (Rev. 12/09) Summons in a Civil Action (Page 2)

Civil Action No. 4:11-CV-02373

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Roberto Micheletti Bain

was received by me on *(date)* 08/12/2011 .

❒ I personally served the summons on the individual at *(place)* _____

_____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____

_____ , a person of suitable age and discretion who resides there,

on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is

designated by law to accept service of process on behalf of *(name of organization)* _____

_____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

☑ Other *(specify):* 8/12/11 the Summons, Complaint, Civil Cover Sheet, Judge's "Order for Conference," and courtesy translations were Served at Colonia Satelite Casa No. 911, Comayaguela, Honduras via FedEx International Waybill # 855461285598 witnessed by Deputy Clerk: Steve Murdock and deposited into the FedEx outbox located at the US District Court.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 08/12/2011

_____
Server's signature

Robert A. Horton, Process Server SCH-2560
Printed name and title

945 McKinney, Suite 200
Houston, Texas 77002

_____
Server's address

Additional information regarding attempted service, etc:

FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone: 901-369-3600

August 18,2011

Dear Customer:

The following is the proof-of-delivery for tracking number **855461285598**.

Delivery Information:

Status:	Delivered	**Delivered to:**	Residence
Signed for by:	.JHONY ZEPEDA	**Delivery location:**	COMAYAGUELA
Service type:	Priority Pak	**Delivery date:**	Aug 17, 2011 15:47

NO SIGNATURE IS AVAILABLE
FedEx Express proof-of-delivery details appear below; however, no signature is currently available for this shipment. Please check again later for a signature.

Shipping Information:

Tracking number:	855461285598	**Ship date:**	Aug 12, 2011
		Weight:	0.8 lbs/0.4 kg

Recipient:
COMAYAGUELA HN

Shipper:
NEW YORK, NY US

Reference 486

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service
1.800.GoFedEx 1.800.463.3339

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

David Murillo and Silvia Mencias

Plaintiff

v.

Roberto Micheletti Bain

Defendant

Civil Action No. 4:11-cv-02373

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Roberto Micheletti Bain
Colonia Satélite Casa No. 911
Comayaguela, Honduras

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Pamela Carol Spees
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

DAVID J. BRADLEY
CLERK OF COURT

Date: AUG 09 2011

Stephanie Austin
Signature of Clerk or Deputy Clerk

EXHIBIT I

Doc# 2010109501
Pages: 4

CHICAGO TITLE
GF 1050574-CF

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, Roberto Carlos Micheletti and Siomara Giron De Micheletti of 32125 Joseph Rond Hockley, Texas 77447 appoint Jenny Vivas of 11250 West Road #A, Houston, Texas 77065, as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU SHOULD CROSS OUT EACH POWER WITHHELD.

INITIAL

_____ (A) real property transactions;
_____ (B) tangible personal property transactions;
_____ (C) stock and bond transactions;
_____ (D) commodity and option transactions;
_____ (E) banking and other financial institution transactions;
_____ (F) business operating transactions;
_____ (G) insurance and annuity transactions;
_____ (H) estate, trust, and other beneficiary transactions;
_____ (I) claims and litigation;
_____ (J) personal and family maintenance;
_____ (K) benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
_____ (L) retirement plan transactions;
_____ (M) tax matters;
X (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

The power granted by this document is for the specific purpose of the purchase and closing a transaction on real estate described on Exhibit "A" attached hereto and made a part hereof for all purposes.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for all claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

Roberto Carlos Micheletti Siomara Giron De Micheletti

Signed this 4 day of November, 2010.

THE STATE OF Texas ()

COUNTY OF Harris ()

This document was acknowledged before me on the 4 day of November, 2010, by Roberto Micheletti Baire and Siomara Dalia.

Notary Public, State of Texas
Notary's printed name:
Notary's commission expires:

KAREN C. PLUMMER
Notary Public, State of Texas
My Commission Expires 09-24-2013

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

EXHIBIT A

Being a 15.000 acre tract out of a 182.19 acre tract, said 182.19 acre tract described and recorded in Volume 999, Page 242 of Montgomery County Deed Records, said 15.000 acre tract being more particularly described as metes and bounds as follows:

COMMENCING at a found concrete monument for southeast corner of the above mentioned 182.19 acre tract, thence N. 00 deg. 21 min. 19 sec. E. 899.45 feet to a point thence N. 00 deg. 08 min. 56 sec. W. 1287.02 feet to a point, thence N. 89 deg. 56 min. 58 sec. W. 2848.17 feet to POINT OF BEGINNING and northeast corner of this tract,

Thence S. 00 deg. 03 min. 02 sec E. 703.57 feet to a southeast corner;

Thence N. 89 deg. 57 min. 11 sec. W. 901.39 feet to a southwest corner,

Thence N. 13 deg. 11 min. 43 sec. W. 147.45 feet to a point,

Thence N. 00 deg. 40 min. 51 sec. E. 660.13 feet to northwest corner,

Thence N. 89 deg. 56 min. 58 sec. W. 927.77 feet to the POINT OF BEGINNING.

This tract includes a 30 foot roadway esaement along the west boundary.

Doc# 2010109501
Pages: 4

E-FILED FOR RECORD
12/07/2010 3:57PM

Mark Turnbull

COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify this instrument was e-FILED in file number sequence on the date and at the time stamped herein by me and was duly e-RECORDED in the Official Public Records of Montgomery County, Texas.

12/07/2010

Mark Turnbull

County Clerk
Montgomery County, Texas

EXHIBIT J

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Jenny Correa Vivas

was received by me on *(date)* 6-28-11 .

☑ I personally served the summons on the individual at *(place)* Jenny Correa Vivas as power of attorney for Roberto Micheloff: Bain on *(date)* 6/28/11 @ 8:50 pm; or 32125 Joseph Rd, Hockley, Tx 77447, Waller County, Texas.

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____, a person of suitable age and discretion who resides there, on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: 6-28-11

R.A. Ha
Server's signature

Robert A. Horton SCH-2560
Printed name and title

P.O. Box 692310, Houston, Tx 77269
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Texas

David Murillo and Silvia Mencías

Plaintiff

v.

Roberto Micheletti Baín

Defendant

Civil Action No. H-11-2373

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Roberto Micheletti Baín
c/o Jenny Correa Vivas (as power of attorney)
11250 West Road #A
Houston, TX 77065

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Pamela Carol Spees
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT DAVID J. BRADLEY

Date: JUN 23 2011

Signature of Clerk or Deputy Clerk

EXHIBIT K

CAUSE NO. H-11-2373

DAVID MURILLO SILVA MENCIAS	§	**IN THE UNITED STATES**
VS.	§	**DISTRICT COURT**
ROBERTO MICHELETTI BAIN	§	**SOUTHERN DISTRICT OF TEXAS**

AFFIDAVIT OF SERVICE

I, ROBERT HORTON, having been first duly sworn do state the following that:

I am over the age of eighteen years and have no interest in the outcome of the above referenced cause.

All of the facts stated herein are true and correct.

On JUNE 28, 2011 at 4:00 P.M., I received SUMMONS AND COMPLAINT to be SERVED on ROBERTO MICHELETTI BAIN, 32085 Joseph Road, Hockley, Texas 77447

On JUNE 28, 2011, at 8:50 PM; the above-referenced documents were served to JENNY VIVAS as POWER OF ATTORNEY for defendant at 32125 Joseph Road, Hockley, Texas 77447. Jenny Vivas stated that the defendant was due to be in town in July and she would personally see to it that the defendant received the summons and complaint.

Further Affiant saith not.

Robert A. Horton SCH-2560

SUBSCRIBED AND SWORN TO BY Robert Horton, on this the 28 day of June, 2011 to attest witness my hand and seal of office.

LESLIE ANN GAMBLE
Notary Public, State of Texas
My Commission Expires
February 28, 2015

Notary Public in and for the State of Texas

EXHIBIT L

1 of 1 DOCUMENT

*** This document is current through the 2011 First Called Session ***
*** Federal case annotations: July 14, 2011 postings on Lexis ***
*** State case annotations: July 2, 2011 postings on Lexis ***

PROBATE CODE
CHAPTER XII. DURABLE POWER OF ATTORNEY ACT

GO TO TEXAS CODE ARCHIVE DIRECTORY

Tex. Prob. Code § 490 (2011)

§ 490. [Repealed January 1, 2014] Statutory Durable Power of Attorney

(a) The following form is known as a "statutory durable power of attorney." A person may use a statutory durable power of attorney to grant an attorney in fact or agent powers with respect to a person's property and financial matters. A power of attorney in substantially the following form has the meaning and effect prescribed by this chapter. The validity of a power of attorney as meeting the requirements of a statutory durable power of attorney is not affected by the fact that one or more of the categories of optional powers listed in the form are struck or the form includes specific limitations on or additions to the attorney in fact's or agent's powers.

The following form is not exclusive, and other forms of power of attorney may be used.

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, (insert your name and address), appoint (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to all of the following powers except for a power that I have crossed out below.

TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.

Real property transactions;

Tangible personal property transactions;

Stock and bond transactions;

Commodity and option transactions;

Banking and other financial institution transactions;

Business operating transactions;

Insurance and annuity transactions;

Estate, trust, and other beneficiary transactions;

Claims and litigation;

Personal and family maintenance;

Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;

Retirement plan transactions;

Tax matters.

IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.

SPECIAL INSTRUCTIONS:

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

I grant my agent (attorney in fact) the power to apply my property to make gifts, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this

purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

Signed this day of , 19

(your signature)

State of

County of

This document was acknowledged before me on

(date) by

(name of principal)

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires:

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

(b) A statutory durable power of attorney is legally sufficient under this chapter if the wording of the form complies substantially with Subsection (a) of this section, the form is properly completed, and the signature of the principal is acknowledged.

(c) [Repealed by Acts 1997, 75th Leg., ch. 455 (S.B. 620), § 7, effective September 1, 1997.]

HISTORY: Enacted by Acts 1993, 73rd Leg., ch. 49 (S.B. 176), § 1, effective September 1, 1993; am. Acts 1997, 75th Leg., ch. 455 (S.B. 620), § 4, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 455 (S.B. 620), § 7, effective September 1, 1997.

EXHIBIT M

BACK TO MCAD SITE OPTIONS

Montgomery Central Appraisal District

Data on this Web site represents Preliminary 2012 values

Home
General Information
News
FAQ
Searches
- Property ID Search
- Account Search
- Owner Search
- Address Search

Property Data
- **Detail Sheet**
- Datasheet

Other
- Taxing Units
- Neighborhoods
- Abstracts
- Subdivisions
- Building Codes
- Pers Prop Depr Sched

Property Detail Sheet (R115188)

History | GIS Map | Datasheet

Owner Information

Owner ID:	O0421940
Owner Name:	MICHELETTI, SIOMARA GIRON DE
Owner Address:	32125 JOSEPH RD HOCKLEY,TX 77447
Property Address:	

Parcel Information

Legal Description:	LAKE CK RANCHETTES 02, LOT 30, ACRES 15.000
Neighborhood:	53135.0(Lake Creek Ranchettes)
Acreage:	15.000
Cross Reference:	6614-02-03000
Undivided Interest:	
Exemption Codes:	
Entity Codes:	F10 (Emergency Ser Dist #10) GMO (Montgomery Cnty) HM1 (Mont Co Hospital) JNH (Lone Star College) SMA (Magnolia ISD)
Deed Type:	Warnty Deed
Deed Book:	
Deed Page:	2010109502
Map Page:	

Values Breakdown	2012 Preliminary Value
Land HS:	$0 +
Land NHS:	$11,250 +
Improvement HS:	$0 +
Improvement NHS:	$0 +
Ag Market:	$0
Ag Use:	$0 +
Timber Market:	$0
Timber Use:	$0 +
Assessed:	$11,250 =

Land

ID	Type	SPTB	Acres	Market
Land1	A1 (Front Acreage)	D2 (D2 - Vac Tr > 5 Ac Not Qualify Ag Or Tim)	15.00	$ 11,250

* Adobe Acrobat Reader 5.0 (minimum) is required to view pdf documents. Acrobat Reader is a free program available here.

EXHIBIT N

NOTICE OF 2011 TAXES DUE FOR MONTGOMERY COUNTY, et.al.

***PLEASE MAKE PAYMENT TO*	DATE OF STATEMENT	IF PAYMENT MADE:	AMOUNT DUE:
* J. R. MOORE, JR. *	10.03.2011	OCTOBER 2011 00%	244.98
* TAX ASSESSOR-COLLECTOR *		NOVEMBER 2011 00%	244.98
* MONTGOMERY COUNTY *		DECEMBER 2011 00%	244.98
* 400 NORTH SAN JACINTO *		JANUARY 2012 00%	244.98
* CONROE TX 77301-2823 *		FEBRUARY 2012 07%	262.13
* *		MARCH 2012 09%	267.02
**********			

REPORT ERRORS IN TAX TO TAX OFFICE;
OTHERS TO APPRAISAL DISTRICT OFFICE

00.6614.02.03000

LAKE CK RANCHETTES 02, LOT 30, ACRES 15.000

MICHELETTI, SIOMARA GIRON DE
32125 JOSEPH RD
HOCKLEY TX 77447

STATEMENT NUMBER 116031

- - - - - - - - - - - - - - -

PLEASE DETACH TOP PORTION AND RETURN WITH PAYMENT

LAND	REDUC	IMPROVEMENTS	PERSONAL	TOTAL VALUE
11250	0	0	0	11250

YEAR 2011

TAXING UNIT	TOTAL VALUE EXMPT CODE	EXEMPTIONS OVER65	EXEMPTIONS VET	TAXABLE VALUE	TAXRATE	TAX
COUNTY OF MONTGOMERY	11250	0	0	11250	.4838	54.43
HOSPITAL DISTRICT	11250	0	0	11250	.0745	8.38
EMER SVC DIST 10	11250	0	0	11250	.0988	11.12
LONE STAR COLLEGE DIST	11250	0	0	11250	.1210	13.61
MAGNOLIA I.S.D.	11250	0	0	11250	1.3995	157.44

TOTAL TAX 244.98

IF PAYMENT MADE:	AMOUNT DUE:
OCTOBER 2011 00%	244.98
NOVEMBER 2011 00%	244.98
DECEMBER 2011 00%	244.98
JANUARY 2012 00%	244.98
FEBRUARY 2012 07%	262.13
MARCH 2012 09%	267.02

00.6614.02.03000 10.03.2011
LAKE CK RANCHETTES 02, LOT
30, ACRES 15.000
ACRES 15.000 AC

(936) 539-7897
J. R. MOORE, JR.
TAX ASSESSOR-COLLECTOR
400 NORTH SAN JACINTO
CONROE TX 77301-2823

****
* TO PAY BY CREDIT CARD *
* CALL 1-800-2PAY-TAX OR VISIT *
* WWW.OFFICIALPAYMENTS.COM *
* (IF NEEDED, USE JURISDICTION CODE 5331) *

THERE WILL BE A NOMINAL FEE CHARGE FOR THIS SERVICE
****

100% ASSESSMENT RATIO APPRAISAL/ASSESSED VALUES
TAXES ARE DUE UPON RECEIPT AND BECOME DELINQUENT FEB 1ST. ON APRIL 1ST, 2012 FOR PERSONAL PROPERTY AND ON JULY 1ST FOR REAL PROPERTY, AN ADDITIONAL LEGAL FEE WILL BE ADDED. THAT FEE MAY BE 15% OR 20% DEPENDING ON THE TAXING UNIT ATTORNEY CONTRACT. PENALTY & INTEREST WILL CONTINUE TO ACCRUE.
100% ASSESSMENT RATIO APPRAISAL ASSESSED VALUES

EXHIBIT O

TAX NOTICE FOR COLLECTION OFFICE OF MONTGOMERY COUNTY
AS OF 10.29.2011

ACCOUNT NUMBER	[redacted]	**MAILING ADDRESS**
LEGAL DESCRIPTION	LAKE CK RANCHETTES 02, LOT 30, ACRES 15.000	MICHELETTI, SIOMARA GIRON DE 32125 JOSEPH RD HOCKLEY TX 77447
ASI - 15.000	**ASI CODE** - AC	**L** - 11,250 **I** - 0

JURISDICTIONS

CO	SC	CI	CL	DD	MD	RD	FD	HD	ED	WU	FT
M	2		1	0	0	0	10	1	0	0	0

YEAR	TAX	P & I	LEGAL	TOTAL
94	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID $243.03	$0.00	$0.00	$243.03 ON 11.21.1994
95	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID $251.02	$0.00	$0.00	$251.02 ON 11.20.1995
96	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID $264.52	$0.00	$0.00	$264.52 ON 11.12.1996
97	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID $262.76	$0.00	$0.00	$262.76 ON 11.03.1997
98	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID $270.98	$0.00	$0.00	$270.98 ON 11.06.1998
1999	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID $265.86	$0.00	$0.00	$265.86 ON 12.01.1999
2000	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID $254.34	$0.00	$0.00	$254.34 ON 12.01.2000
2001	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID $282.25	$0.00	$0.00	$282.25 ON 10.10.2001
2002	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID $281.29	$0.00	$0.00	$281.29 ON 12.06.2002
2003	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID $279.62	$0.00	$0.00	$279.62 ON 11.13.2003
2004	$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID $280.20	$36.42	$0.00	$316.62 ON 05.26.2005

2005		$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID	$291.60	$37.91	$0.00	$329.51 ON 05.24.2006
2006		$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID	$275.19	$35.78	$0.00	$310.97 ON 05.17.2007
2007		$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID	$247.60	$60.55	$61.64	$369.79 ON 05.18.2009
2008		$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID	$244.12	$31.74	$0.00	$275.86 ON 05.18.2009
2009		$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID	$241.25	$26.54	$0.00	$267.79 ON 04.11.2010
2010		$ 0.00	$ 0.00	$ 0.00	$ 0.00
	PAID	$244.83	$0.00	$0.00	$244.83 ON 12.09.2010
2011		$ 244.98	$ 0.00	$ 0.00	$ 244.98
TOTAL DUE		$244.98	$0.00	$0.00	$244.98

EXHIBIT P

SPECIAL CASH WARRANTY DEED

Texas Property Code Section 11.008.
CONFIDENTIAL INFORMATION IN REAL PROPERTY RECORDS

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

Date: NOVEMBER 19, 2008, but effective as of DECEMBER 08, 2008.

Grantor: FEDERAL HOME LOAN MORTGAGE CORPORATION

Grantor's Mailing Address:

FEDERAL HOME LOAN MORTGAGE CORPORATION
C/O FAACS
3 First American Way
Santa Ana, CA 92707

Grantee: ROBERTO MICHELETTI AND SIOMARA GIRON DE MICHELETTI

Grantee's Mailing Address (including county):

ROBERTO MICHELETTI
SIOMARA GIRON DE MICHELETTI
16626 WALNUT SPRING LANE
MAGNOLIA, TEXAS 77355
WALLER County

Consideration: TEN AND NO/100 DOLLARS and other good and valuable consideration.

Property (including any improvements):

LOTS FOURTEEN (14) AND FIFTEEN (15), BLOCK SIX (6), REMINGTON FOREST, SECTION ONE (1), A SUBDIVISION LOCATED IN THE WILLIAM HILLHOUSE SURVEY, ABSTRACT NO. 136, WALLER COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 681, PAGE 814, OFFICIAL PUBLIC RECORDS OF WALLER COUNTY, TEXAS.

BEING THE SAME PROPERTY DESCRIBED IN DEED DATED SEPTEMBER 11, 2008, EXECUTED OCTOBER 15, 2008, EXECUTED BY CITIMORTGAGE, INC. TO FEDERAL HOME LOAN MORTGAGE CORPORATION, RECORDED IN VOLUME 1135, PAGE 681, OFFICIAL PUBLIC RECORDS OF WALLER COUNTY, TEXAS.

STATE OF TEXAS
COUNTY OF WALLER
I, DEBBIE HOLLAN, County Clerk, Waller County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on

JUN 24 2011

DEBBIE HOLLAN, County Clerk,
Waller County, Texas
By _____ Deputy
Jenifer Deutrich

Reservations From and Exceptions to Conveyance and Warranty:

This conveyance is made and accepted subject to any and all existing restrictions, mineral reservations and interests, conditions, covenants, easements and rights of way, if any, applicable to and enforceable against the above described real property as now reflected by the records of the County Clerk of Waller County, Texas.

Current ad valorem taxes on the above described property as of the date hereof are assumed by grantee and grantee covenants and promises to pay the same.

Grantor, for the consideration, receipt of which is acknowledged, and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, when the claim is by, through or under Grantor, but not otherwise.

GRANTEE, BY ITS RECEIPT AND POSSESSION OF THE PROPERTY DOES ACKNOWLEDGE, ACCEPT AND AGREE WITH THE TERMS AND PROVISIONS OF THIS PARAGRAPH. GRANTEE UNDERSTANDS THAT GRANTOR OBTAINED THE PROPERTY BY FORECLOSURE, DEED IN LIEU OF FORECLOSURE, FORFEITURE OR SIMILAR PROCESS AND CONSEQUENTLY, GRANTOR HAS LITTLE OR NO DIRECT KNOWLEDGE REGARDING THE CONDITION OF THE PROPERTY. Grantee accepts the property in "AS IS" condition at the date of the Contract of Sale, including, without limitation, any hidden defects or environmental condition of the property and Grantee accepts such items in "AS IS" condition at the date of closing. GRANTEE ACKNOWLEDGES THAT NEITHER GRANTOR NOR ITS AGENTS HAVE MADE ANY WARRANTIES, IMPLIED OR EXPRESSED, RELATING TO THE CONDITION OF THE PROPERTY. Grantor and its agents shall not be responsible for the repair, replacement or modification of any deficiencies, malfunctions or mechanical defects in the material, workmanship and mechanical components of the appurtenant structures and improvements prior or subsequent to closing. Items of personal property are not included in the sale. Grantor makes no representation or warranty as to the condition of personal property, title to personal property or whether any personal property is encumbered by liens. Grantee further agrees that Grantor shall have no liability for any claim or losses Grantee or Grantee's successors and/or assigns may incur as a result of any condition or other defect which may not or hereafter exist with respect to the Property.

STATE OF TEXAS
COUNTY OF WALLER
I, DEBBIE HOLLAN, County Clerk, Waller County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on

JUN 24 2011

DEBBIE HOLLAN, County Clerk,
Waller County, Texas
By Jenifer Deutrich Deputy

When the context requires, singular nouns and pronouns include the plural.

FEDERAL HOME LOAN MORTGAGE CORPORATION

BY: _____
IT'S: Jeff Schmidt
of National Default REO Services, a Delaware Limited Liability Company dba First American Asset Closing Services ("FAACS"), as Attorney-in-Fact and/or Agent

ACKNOWLEDGMENT

STATE OF California §
COUNTY OF Orange §

This instrument was acknowledged before me on November 19, 2008, by Jeff Schmidt, Vice President of National Default REO Services, a Delaware Limited Liability Company dba First American Asset Closing Services ("FAACS"), as Attorney-in-Fact and/or Agent of Federal Home Loan Mortgage Corporation, who upon presentation of _____ (describe form of identification presented) did prove to be the person whose name is subscribed to within the instrument and acknowledged to me that said person executed the same in said person's authorized capacity, and that by said person's signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

ANTHONY PHAN
COMM. #1584892
Notary Public - California
Orange County
My Comm. Expires Jun. 4, 2009

_____
Notary Public, State of California

PREPARED IN THE OFFICE OF:

Michael H. Laster
Williams, Birnberg & Andersen, L L P
2000 Bering, Suite 909
Houston, TX 77057

AFTER RECORDING RETURN TO:

F:\WP\Mhl\Tatco\250-08\8000\7088272-scwd wpd

SPECIAL CASH WARRANTY DEED
GF#7250-08-8272

STATE OF TEXAS
COUNTY OF WALLER
I, DEBBIE HOLLAN, County Clerk, Waller County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on

JUN 24 2011

DEBBIE HOLLAN, County Clerk,
Waller County, Texas
By _____ Deputy
Jenifer Deutrich

808234

VOL 1141 PG382

FILED FOR RECORD

08 DEC 11 AM 9:55

CHERYL PETERS
COUNTY CLERK
WALLER COUNTY, TX
Amanda Bryll DEPUTY

13.00
5.00
1.00
19.00 pd

Texas American Title Co.
2000 Bering Drive Suite 900
Houston, TX 77057

THE STATE OF TEXAS
COUNTY OF WALLER

I hereby certify that this instrument was FILED on the date and at the time stamped hereon by me and was duly RECORDED in the Official Public Records of Waller County, Texas, in the Volume and Page as noted hereon by me.

Cheryl Peters
County Clerk, Waller County, Texas

STATE OF TEXAS
COUNTY OF WALLER
I, DEBBIE HOLLAN, County Clerk, Waller County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on

JUN 24 2011

DEBBIE HOLLAN, County Clerk,
Waller County, Texas
By Jenifer Deutrich Deputy
Jenifer Deutrich

EXHIBIT Q

WALLER COUNTY APPRAISAL DISTRICT — PROPERTY APPRAISAL INFORMATION 2011

PROPERTY 192792 R 04/16/2001
Legal Description DBA
S732301 REMINGTON FOREST 1 BLK 6 LOT 14 & 15
ACRES 1.88 S# OC050315366A HUD# PFS0773397;TITLE #
REAL PROPERTY

OWNER ID 306626
OWNERSHIP 100.00%

MICHELETTI ROBERTO
& SIOMARA GIRON DE MICHELETTI
32125 JOSEPH RD
HOCKLEY, TX 77447

Entities	
CAD	100%
ESD	100%
GWA	100%
RFM	100%
SWR	100%

Values		
IMPROVEMENTS		74,430
LAND MARKET	+	41,360
MARKET VALUE	=	115,790
PRODUCTIVITY LOSS	-	0
APPRAISED VALUE	=	115,790
HS CAP LOSS	-	0
ASSESSED VALUE	=	115,790

732301-006-014-000 Ref ID2: R192792 Map ID 313600-001-002-100

ACRES: 1.8800
EFF. ACRES:

SITUS 27220 REMINGTON FOREST EAST ,

APPR VAL METHOD: Cost

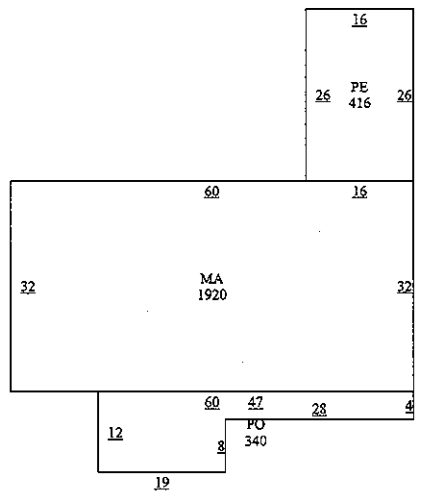
GENERAL

UTILITIES
TOPOGRAPHY
ROAD ACCESS
ZONING
NEXT REASON

LAST APPR.
LAST APPR. YR 2011
LAST INSP. DATE 01/01/2010
NEXT INSP. DATE

REMARKS

SKETCH for Improvement #1 (MOBILE HOME)



EXEMPTIONS

SKETCH COMMANDS

MA	DU32,DR60,DD32,DL60
PO	MR13,DD12,R19,DU8,DR28,DU4,DL47
PE	MU32,MR44,DU26,DR16,DD26,DL16

BUILDING PERMITS

ISSUE DT	PERMIT TYPE	PERMIT AREA	ST	PERMIT VAL

SALE DT	PRICE	GRANTOR	DEED INFO
12/08/2008	*****	FEDERAL HOME LOAN	SWD / 1141 / 379
09/11/2008	*****	CITIMORTGAGE INC	SWD / 1135 / 681
07/01/2008	*****	PORTER BETTY J &	STD / 1133 / 020

IMPROVEMENT INFORMATION

SUBD S732301 100.00% NBHD S732301

#	TYPE	DESCRIPTION	MTHD	CLASS/SUBCL	AREA	UNIT PRICE	UNITS	BUILT	EFF YR	COND.	VALUE	DEPR	PHYS	ECON	FUNC	COMP	ADJ	ADJ VALUE
	MA	MAIN AREA	M	2/	1,920.0	38.36	1	2002	2002	3	73,650	60%	100%	100%	100%	100%	0.60	44,190
	PO		R	2/	340.0	9.59		2002	2002	3	3,260	94%	100%	100%	100%	100%	0.94	3,070
	PE		R	2/	416.0	11.51		2003	2004	3	4,790	96%	100%	100%	100%	100%	0.96	4,600
			STCD: A2		2,676.0		Homesite: Y (100%)				81,700							51,860
	S	SEPTIC	R	*/	1.0	4,000.00	1	2002	2003	3	4,000	94%	100%	100%	100%	100%	0.94	3,760
	SEPTIC		STCD: A2		1.0		Homesite: Y (100%)				4,000							3,760

IMPROVEMENT FEATURES

LAND INFORMATION

SUBD S732301 100.00% NBHD S732301 — IRR Wells: 0 Capacity: 0 IRR Acres: 0 — Ol Wells: 0

#	DESCRIPTION	CLS	TABLE	SC	HS	METH	DIMENSIONS	UNIT PRICE	GROSS VALUE	ADJ	MASS ADJ	VAL SRC	MKT VAL	AG APPLY	AG CLASS	AG TABLE	AG UNIT PRC	AG VALUE
1.	A2		S732301	A2	Y (100%)	A	0.8900 AC	22,000.00	19,580	1.00	1.00	A	19,580	NO			0.00	0
Comment: LT 14 A																		
2.	A2		S732301	A2	Y (100%)	A	0.9900 AC	22,000.00	21,780	1.00	1.00	A	21,780	NO			0.00	0
Comment: LOT 15 A																		
													41,360					0

Effective Date of Appraisal: January 1 Date Printed: 06/24/2011 02:27:43PM by counter2

PROPERTY 192792 R 04/16/2001 **OWNER ID** 306626

Legal Description **DBA**

S732301 REMINGTON FOREST 1 BLK 6 LOT 14 & 15

ACRES 1.88 S# OC050315366A HUD# PFS0773397;TITLE #

REAL PROPERTY

OWNERSHIP 100.00%

MICHELETTI ROBERTO
& SIOMARA GIRON DE MICHELETTI
32125 JOSEPH RD
HOCKLEY, TX 77447

Entities	
CAD	100%
ESD	100%
GWA	100%
RFM	100%
SWR	100%

Values		
IMPROVEMENTS		74,430
LAND MARKET	+	41,360
MARKET VALUE	=	115,790
PRODUCTIVITY LOSS	-	0
APPRAISED VALUE	=	115,790
HS CAP LOSS	-	0
ASSESSED VALUE	=	115,790

Ref ID2: R192792

732301-006-014-000 Map ID 313600-001-002-100

ACRES: 1.8800

EFF. ACRES:

SITUS 27220 REMINGTON FOREST EAST ,

APPR VAL METHOD: Cost

GENERAL

UTILITIES
TOPOGRAPHY
ROAD ACCESS
ZONING
NEXT REASON

REMARKS

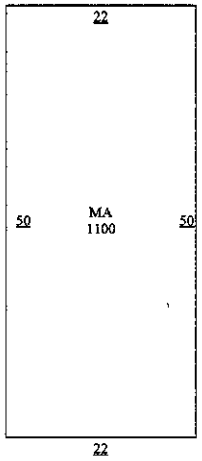
LAST APPR.
LAST APPR. YR 2011
LAST INSP. DATE 01/01/2010
NEXT INSP. DATE

BUILDING PERMITS

ISSUE DT	PERMIT TYPE	PERMIT AREA	ST	PERMIT VAL

SALE DT	PRICE	GRANTOR	DEED INFO
12/08/2008	*****	FEDERAL HOME LOA	SWD / 1141 / 379
09/11/2008	*****	CITIMORTGAGE INC	SWD / 1135 / 681
07/01/2008	*****	PORTER BETTY J &	STD / 1133 / 020

SKETCH for Improvement #3 (RESIDENTIAL BUILDING)



EXEMPTIONS

SKETCH COMMANDS

MA DU50,DR22,DD50,DL22

SUBD S732301 100.00% NBHD S732301 — **IMPROVEMENT INFORMATION**

#	TYPE	DESCRIPTION	MTHD	CLASS/SUBCL	AREA	UNIT PRICE	UNITS	BUILT	EFF YR	COND.	VALUE	DEPR	PHYS	ECON	FUNC	COMP	ADJ	ADJ VALUE
1	MA		C	2P/C1	1,100.0	18.00		2003	2004	3	19,800	95%	100%	100%	100%	100%	0.95	18,810
3	GARAGE		STCD: A2		1,100.0	Homesite: Y (100%)					19,800							18,810

IMPROVEMENT FEATURES

Construction Style	1	C1	0
			0

SUBD S732301 100.00% NBHD S732301 — **LAND INFORMATION** IRR Wells: 0 Capacity: 0 IRR Acres: 0 Oil Wells: 0

#	DESCRIPTION	CLS	TABLE	SC	HS	METH	DIMENSIONS	UNIT PRICE	GROSS VALUE	ADJ	MASS ADJ	VAL SRC	MKT VAL	AG APPLY	AG CLASS	AG TABLE	AG UNIT PRC	AG VALUE

EXHIBIT R

Doc# 2010109502
Pages: 4

CHICAGO TITLE
GF/0505774-CF

WARRANTY DEED

NOTICE OF CONFIDENTIALITY: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE YOUR SOCIAL SECURITY NUMBER AND YOUR DRIVER'S LICENSE NUMBER FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS.

Date:	December 3, 2010
Grantor:	JOE M. OLVERA AND JESSIE CASTILLO, not joined by their spouses as the subject property constitutes no part of their homestead
Grantor's Mailing Address:	5415 Cedar Springs Road Dallas, Texas 75235
Grantee:	SIOMARA GIRON DE MICHELETTI and ROBERTO CARLOS MICHELETTI
Grantee's Mailing Address:	32125 Joseph Road Hockley, Texas 77447

Consideration:

The sum of TEN AND NO/100 DOLLARS ($10.00), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged.

Property:

A tract or parcel of land containing 15 acres located in Montgomery County, Texas and more particularly described by metes and bounds in Exhibit "A" attached hereto.

Reservations from and exceptions to Conveyance and Warranty:

This conveyance is made subject to all easements, rights-of-way, and prescriptive rights, whether of record or not, all presently recorded documents, other than liens and conveyances that affect the herein described property, taxes for the year 2011, the payment of which Grantee assumes, but not subsequent assessments for that and prior years due to change in land usage, ownership,

for that and prior years due to change in land usage, ownership, or both, the payment of which Grantor assumes, and to all zoning laws, regulations and ordinance of municipal and/or other governmental authorities, if any, but only to the extent they are still in effect, relating to the hereinabove described property.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and to hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

JOE M. OLVERA

JESSIE CASTILLO

STATE OF TEXAS :
:
COUNTY OF HARRIS :

This instrument was acknowledged before me on this 3RD day of December, 2010, by JOE M. OLVERA and JESSIE CASTILLO.

NOTARY PUBLIC, STATE OF TEXAS

KAREN C. PLUMMER
Notary Public, State of Texas
My Commission Expires 09-24-2013

AFTER RECORDING RETURN TO:

I hereby certify that this is a true and correct copy of the original record on file in my office.

Mark Turnbull, County Clerk
Montgomery County, Texas

by _____ Deputy

Issued 6/24/11

EXHIBIT A

Being a 15.000 acre tract out of a 182.19 acre tract, said 182.19 acre tract described and recorded in Volume 999, Page 242 of Montgomery County Deed Records, said 15.000 acre tract being more particularly described as metes and bounds as follows:

COMMENCING at a found concrete monument for southeast corner of the above mentioned 182.19 acre tract, thence N. 00 deg. 21 min. 19 sec. E. 899.45 feet to a point thence N. 00 deg. 08 min. 56 sec. W. 1287.02 feet to a point, thence N. 89 deg. 56 min. 58 sec. W. 2848.17 feet to POINT OF BEGINNING and northeast corner of this tract,

Thence S. 00 deg. 03 min. 02 sec E. 703.57 feet to a southeast corner;

Thence N. 89 deg. 57 min. 11 sec. W. 901.39 feet to a southwest corner,

Thence N. 13 deg. 11 min. 43 sec. W. 147.45 feet to a point,

Thence N. 00 deg. 40 min. 51 sec. E. 560.13 feet to northwest corner,

Thence N. 89 deg. 56 min. 58 sec. W. 927.77 feet to the POINT OF BEGINNING.

This tract includes a 30 foot roadway esaement along the west boundary.

Doc# 2010109502
Pages: 4

E-FILED FOR RECORD
12/07/2010 3:57PM

Mark Turnbull

COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify this instrument was e-FILED in
file number sequence on the date and at the time
stamped herein by me and was duly e-RECORDED in
the Official Public Records of Montgomery County, Texas.

12/07/2010

Mark Turnbull

County Clerk
Montgomery County, Texas

I hereby certify that this is a true and correct
copy of the original record on file in my office.

Mark Turnbull, County Clerk
Montgomery County, Texas

by _____ Deputy

Issued 6/24/11

EXHIBIT S

Montgomery Central Appraisal District

Data on this Web site represents Preliminary 2012 values

Home
General Information
News
FAQ
Searches
- Property ID Search
- Account Search
- Owner Search
- Address Search

Property Data
- **Detail Sheet**
- Datasheet

Other
- Taxing Units
- Neighborhoods
- Abstracts
- Subdivisions
- Building Codes
- Pers Prop Depr Sched

Property Detail Sheet (R83123)

History | GIS Map | Datasheet

Owner Information

Owner ID:	O0303720
Owner Name:	OLVERA, JOE M & CINDY M
Owner Address:	29814 AMARILLO ST MAGNOLIA,TX 77354-2952
Property Address:	29814 AMARILLO ST MAGNOLIA, TX 77354

Parcel Information

Legal Description:	DECKER HILLS 01, BLOCK 1-C, LOT 18
Neighborhood:	53055.0(Decker Hills)
Acreage:	
Cross Reference:	3753-00-01800
Undivided Interest:	
Exemption Codes:	HS (Homestead)
Entity Codes:	F10 (Emergency Ser Dist #10) GMO (Montgomery Cnty) HM1 (Mont Co Hospital) JNH (Lone Star College) SMA (Magnolia ISD)
Deed Type:	Gift Deed
Deed Book:	332.10
Deed Page:	2998
Map Page:	

Values Breakdown	2012 Preliminary Value
Land HS:	$7,490 +
Land NHS:	$0 +
Improvement HS:	$71,840 +
Improvement NHS:	$0 +
Ag Market:	$0
Ag Use:	$0 +
Timber Market:	$0
Timber Use:	$0 +
Assessed:	$79,330 =

Improvements

ID	Type	SPTB	Segs	Value
Imp1	R (Residential)	A1 (A1 - Residential Single Family)	4	$ 71,840

Land

ID	Type	SPTB	Acres	Market
Land1	S1 (Primary Site)	A1 (A1 - Residential Single Family)		$ 7,410
Land2	S3 (Residual Land)	A1 (A1 - Residential Single Family)		$ 80

EXHIBIT T

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID MURILLO and SILVIA MENCIAS on behalf of themselves and as Personal Representatives of their deceased son, ISIS OBED MURILLO, and his next of kin, including his SIBLINGS v. ROBERTO MICHELETTI BAIN	Case No. 4:11-CV-2373

DECLARATION OF JEFFREY H. LUBER

1. I, JEFFREY H. LUBER, make this declaration based on my knowledge and experience in forensic document examination, including, but not limited to, handwriting identification.

2. I attach as an appendix to this declaration a summary of my credentials, which provides evidence of my work and expertise in this field.

3. I have been asked to provide an opinion as to whether Roberto Micheletti Bain signed his name as depicted on the ***Statutory Durable Power of Attorney***, dated November 4, 2010, designated "E-FILED FOR RECORD, 12/07/2010 3:57 PM, Doc# 2010109501," in the State of Texas, County of Montgomery ("Questioned Exhibit" or "Q1").

4. The following materials were submitted to me by Ms. Pamela Spees of the Center for Constitutional Rights. All of the exhibits (both Questioned Exhibits and Known Exhibits) are machine copies.

5. I received a certified copy of a ***Warranty Deed***, dated August 11, 2005, designated as Recorded in Book 15652, Pages 1347-1348, in the State of Florida, Hillsborough County ("Known Writing Sample 1a" or "K1a").

6. I received the ***Declaration of Roberto Micheletti Bain Under Penalty of Perjury*** (Spanish), dated September 22, 2011, submitted in connection with *Murillo v. Micheletti,* pending in United States District Court, Southern District of Texas, Houston Division, Case No. 4:11-cv-02373, Doc. 20-1 ("Known Writing Sample 1b" or "K1b").

7. I received the ***Request for Certification of Personal Status in an Investigation*** (Spanish), dated July 12, 2011, submitted in connection with *Murillo v. Micheletti*, pending in United States District Court, Southern District of Texas, Houston Division, Case No. 4:11-cv-02373, Doc. 20-6 ("Known Writing Sample 1c" or "K1c").

8. I received the ***"Truth in Testimony" Disclosure Form"[sic]***, page 1, dated June 14, 2011, from the Testimony of Mr. Roberto Micheletti Bain for the House of Representatives Committee on Foreign Affairs, Subcommittee on the Western Hemisphere ("Known Writing Sample 1d" or "K1d").

9. I also received page 2 of the above-referenced ***"Truth in Testimony" Disclosure Form"[sic]*** ("Known Writing Sample 1e" or "K1e").

10. I received a correspondence to Mr. Eduardo Stein on the **Letterhead Stationery of Roberto Micheletti Bain**, dated November 22, 2010, as published in the Truth and Reconciliation Commission 2011 Report, Vol. 2, Chap. 3, Pg. 540 (Spanish) ("Known Writing Sample 1f" or "K1f").

11. I also received the signed statement to the Truth and Reconciliation Commission, dated November 22, 2010, as published in the Truth and Reconciliation Commission

2011 Report, Vol. 2, Chap. 3, Pg. 562 (Spanish) ("Known Writing Sample 1g" or "K1g").

12. Having examined the signatures contained in documents K1a-g and the Questioned Exhibit, I found that Roberto Micheletti Bain signed his name as depicted on exhibit Q1.

13. The handwriting identification is based upon the combination of handwriting habit patterns found within the known writing of Roberto Micheletti Bain (K1a-g) and those habit patterns found within the questioned signature depicted on exhibit Q1. Handwriting habit patterns consist of features, such as, but not limited to, smoothness and fluency of writing, letter construction, height relationships between letters, letter proportions, connecting strokes, slant, speed of writing, beginning and ending strokes, and baseline orientation.

14. This declaration and the opinions stated herein are based on my analyses of the material I have received to date. I may supplant, revise or refine my opinions as appropriate based on additional tests, documents or other discovery materials that become available.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 1st, 2011

JEFFREY H. LUBER

APPENDIX – CV

JEFFREY H. LUBER

FORENSIC DOCUMENT EXAMINER
229 CEDRUS AVENUE
EAST NORTHPORT, NEW YORK 11731

631-266-6615
mail: qdjeff@optonline.net
web address: www.jeffreyluber.com

EDUCATION:

Masters of Forensic Science., 1980
The George Washington University, Washington, D.C.

Bachelor of Arts, 1978
University of Maryland, College Park, Maryland

EXPERIENCE:

Suffolk County Crime Laboratory* - 1984 to Present
Suffolk County (Long Island), New York
Forensic Scientist III (Questioned Document)
** An ASCLAD (American Society of Crime Laboratory Directors) accredited laboratory utilizing quality control proficiency testing.*

Illinois State Police Crime Lab - 1980 To 1984
Staff Document Examiner - Forensic Scientist II.

Internship with United States Secret Service, Document Section, Summer 1979.

Trained with Stephen McKasson for three years, including two years of supervised casework at the Bureau of Scientific Services Training and Applications Laboratory, Joliet, Illinois.

ADDITIONAL EDUCATION:

United States Secret Service, Washington, D.C.
Questioned Documents Seminar, two weeks, 1979.

Federal Bureau of Investigation, Washington, D.C.
Questioned Documents Seminar, two weeks, 1981.

Federal Bureau of Investigation, Washington, D.C.
Advanced Typewriter and Printing Devices Seminar, one week, 1993

Rochester Institute of Technology, Rochester, NY
Printing Process Identification and Image Analysis, one week, 2001

TRAINING GIVEN:

Taught a two year training program given to two Questioned Document Trainee Detectives from the Nassau County Police Department. 1988, 1989, 1990

TEACHING APPOINTMENTS:

Clinical Professor in the Department of Chemistry and Physical Sciences/Forensic Sciences Program Pace University, One Pace Plaza, New York, New York: Graduate Course – FOR 696B Selected Topics – Forensic Document Examination Spring 2005 - 2010

PROFESSIONAL AFFILIATIONS:

Northeastern Association of Forensic Scientists
American Academy of Forensic Sciences
American Society of Questioned Document Examiners
American Board of Forensic Document Examiners

PUBLICATIONS:

Co-authored "Experimental Exophthalmos: Binding of Thyrotropin and An Exophthalmogenic Factor Derived from Thyrotropin to Retro-Orbital Tissue Plasma Membranes", *Journal of Biological Chemistry*, Vol. 250, No.16, pp. 6516-6521, Aug. 25, 1975.

Luber,J. H., "Digital Embedded Information in Paper Documents", *International Journal of Forensic Document Examiners*, Vol 5, Jan/Dec 1999, pp. 361-364.

COURTROOM EXPERIENCE:

State and County Courts - Illinois
Supreme and County Courts - Suffolk Co.
U.S. Bankruptcy Court, Eastern District of NY
U.S. Court, Eastern District of NY
U.S. Court, Southern District of NY
Superior Court- Waterbury, Danbury, Norwalk, Connecticut
Surrogates Court – Suffolk, Nassau, Kings, Richmond, Queens, Counties, NY
Surrogates Court – Morris County, NJ,

CERTIFICATION:

Diplomate, American Board of Forensic Document Examiners, #236

APPENDIX – Q1

Doc# 2010109501
Pages: 4

CHICAGO TITLE
GF 1050577 4-CF

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, Roberto Carlos Micheletti and Siomara Giron De Micheletti of 32125 Joseph Rond Hockley, Texas 77447 appoint Jenny Vivas of 11250 West Road #A, Houston, Texas 77065, as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU SHOULD CROSS OUT EACH POWER WITHHELD.

INITIAL

_____ **(A) real property transactions;**
_____ **(B) tangible personal property transactions;**
_____ **(C) stock and bond transactions;**
_____ **(D) commodity and option transactions;**
_____ **(E) banking and other financial institution transactions;**
_____ **(F) business operating transactions;**
_____ **(G) insurance and annuity transactions;**
_____ **(H) estate, trust, and other beneficiary transactions;**
_____ **(I) claims and litigation;**
_____ **(J) personal and family maintenance;**
_____ **(K) benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;**
_____ **(L) retirement plan transactions;**
_____ **(M) tax matters;**
X **(N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).**

SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

The power granted by this document is for the specific purpose of the purchase and closing a transaction on real estate described on Exhibit "A" attached hereto and made a part hereof for all purposes.

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

I agree that any third party who receives a copy of this document may act under it. Revocation of the durable power of attorney is not effective as to a third party until the third party receives actual notice of the revocation. I agree to indemnify the third party for all claims that arise against the third party because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, I name the following (each to act alone and successively, in the order named) as successor(s) to that agent:

Roberto Carlos Micheletti Siomara Giron De Micheletti

Signed this 4 day of November, 2010.

THE STATE OF Texas ()

COUNTY OF Harris ()

This document was acknowledged before me on the 4 day of November, 2010, by Roberto Micheletti Baire and Siomara Dalia.

Notary Public, State of Texas
Notary's printed name:
Notary's commission expires:

KAREN C. PLUMMER
Notary Public, State of Texas
My Commission Expires 09-24-2013

THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

EXHIBIT A

Being a 15.000 acre tract out of a 182.19 acre tract, said 182.19 acre tract described and recorded in Volume 999, Page 242 of Montgomery County Deed Records, said 15.000 acre tract being more particularly described as metes and bounds as follows:

COMMENCING at a found concrete monument for southeast corner of the above mentioned 182.19 acre tract, thence N. 00 deg. 21 min. 19 sec. E. 899.45 feet to a point thence N. 00 deg. 08 min. 56 sec. W. 1287.02 feet to a point, thence N. 89 deg. 56 min. 58 sec. W. 2848.17 feet to POINT OF BEGINNING and northeast corner of this tract,

Thence S. 00 deg. 03 min. 02 sec E. 703.57 feet to a southeast corner;

Thence N. 89 deg. 57 min. 11 sec. W. 901.39 feet to a southwest corner,

Thence N. 13 deg. 11 min. 43 sec. W. 147.45 feet to a point,

Thence N. 00 deg. 40 min. 51 sec. E. 660.13 feet to northwest corner,

Thence N. 89 deg. 56 min. 58 sec. W. 927.77 feet to the POINT OF BEGINNING.

This tract includes a 30 foot roadway esaement along the west boundary.

Doc# 2010109501
Pages: 4

E-FILED FOR RECORD
12/07/2010 3:57PM

Mark Turnbull

COUNTY CLERK
MONTGOMERY COUNTY, TEXAS

STATE OF TEXAS
COUNTY OF MONTGOMERY
I hereby certify this instrument was e-FILED in file number sequence on the date and at the time stamped herein by me and was duly e-RECORDED in the Official Public Records of Montgomery County, Texas.

12/07/2010

Mark Turnbull

County Clerk
Montgomery County, Texas

APPENDIX – K1a

INSTR # 2005483652
O BK 15652 PG 1347
Pgs 1347 - 1348; (2pgs)
RECORDED 10/19/2005 11:45:22 AM
PAT FRANK CLERK OF COURT
HILLSBOROUGH COUNTY
DOC TAX PD(F.S.201.02) 910.00
DEPUTY CLERK Y Roche

THIS INSTRUMENT PREPARED BY AND RETURN TO:

Hometown Title Agency Inc
19321 US Hwy 19 North Bldg C
Clearwater, Florida 33764
Property Appraisers Parcel Identification (Folio) Numbers: **101172-0000**

Space Above This Line For Recording Data

THIS WARRANTY DEED, made the **11th** day of **August, 2005** by **Roberto Micheletti and Siomara Giron Micheletti, husband and wife**, whose post office address is **7902 N Boulevard, Tampa, FL 33604** herein called the grantors, to **Adeline Aguirre, a single woman**, whose post office address is **7902 N Boulevard, Tampa, FL 33604**, hereinafter called the Grantee:
(Wherever used herein the terms "grantor" and "grantee" include all the parties to this instrument and the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations)

W I T N E S S E T H: That the grantors, for and in consideration of the sum of TEN AND 00/100'S ($10.00) Dollars and other valuable considerations, receipt whereof is hereby acknowledged, hereby grants, bargains, sells, aliens, remises, releases, conveys and confirms unto the grantee all that certain land situate in Hillsborough County, State of Florida, viz.:

The East 142 feet of the South ½ of Lot 5, Block 6, WATROUS GARDENS REVISED MAP, according to the map or plat thereof as recorded in Plat Book 11, Page 8, of the Public Records of Hillsborough County, Florida.

Commonly known as: 7902 N Boulevard - Tampa, Florida 33604

Subject to easements, restrictions and reservations of record and to taxes for the year 2005 and thereafter.

TOGETHER, with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD, the same in fee simple forever.

AND, the grantors hereby covenant with said grantee that the grantors are lawfully seized of said land in fee simple; that the grantors have good right and lawful authority to sell and convey said land, and hereby warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever; and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2004.

IN WITNESS WHEREOF, the said grantors have signed and sealed these presents the day and year first above written.

Signed, sealed and delivered in the presence of:

Witness #1 Signature

Aldo Micheletti

Witness #1 Printed Name

Witness #2 Signature

Patricia Anderson

Roberto Micheletti

Siomara Giron Micheletti

COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 11th day of August, 2005 by Roberto Micheletti and Siomara Giron Micheletti who are personally known to me or have produced Republica de Honduras passports as identification.

SEAL

Notary Public

Patricia Anderson

Printed Notary Name

My Commission Expires: Oct. 18 2008

PATRICIA ANDERSON
Notary Public, State of Florida
My comm. expires Oct. 18, 2008
No. DD 363791

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH)
THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE IN MY OFFICE. WITNESS MY HAND AND OFFICIAL SEAL THIS 21 DAY OF October 20 11

PAT FRANK
CLERK OF CIRCUIT COURT
BY D.C.

APPENDIX – K1b

EXHIBIT A

EN EL TRIBUNAL DE DISTRITO DE LOS ESTADOS UNIDOS
DISTRITO DEL SUR DE TEXAS
DIVISIÓN DE HOUSTON

DAVID MURILLO y SILVIA MENCIAS, en su propio nombre y en calidad de Representantes personales de su hijo fallecido, ISIS OBED MURILLO, así como en el de sus familiares cercanos, incluidos sus HERMANOS Barrio La Plazuela	§	
	§	CASO N.° 4:11-cv-02373
contra	§	
ROBERTO MICHELETTI BAIN	§	

DECLARACIÓN DE ROBERTO MICHELETTI BAIN
BAJO PENA DE PERJURIO

"Mi nombre es Roberto Micheletti Bain. Tengo más de 18 años de edad, estoy en pleno uso de mis facultades mentales y capacitado para formular esta declaración. Los hechos que se expresan en esta declaración recaen dentro de mi conocimiento personal, son veraces y correctos.

Soy ciudadano y residente de Honduras. Me convertí en miembro del Congreso Nacional de Honduras en 1980. Fui Presidente del Congreso Nacional de Honduras desde enero de 2006 hasta junio de 2009. En junio de 2009, me convertí en el Presidente de Honduras. Me desempeñé como Presidente de Honduras hasta enero de 2010.

No resido en Texas y jamás lo he hecho. Mi hogar, mi familia y mis negocios están, todos, en Honduras. Jamás he poseído ningún interés en alguna compañía en Texas, ni jamás he trabajado para una compañía en Texas. No tengo un agente de notificación en Texas, aunque sí tengo un agente de seguros en Texas. Las compañías hondureñas en las que tengo un interés de propiedad no tienen oficinas en Texas (o en los Estados Unidos para tal asunto), y dichas compañías tampoco venden productos o servicios en Texas ni realizan ningún tipo de publicidad a los residentes de Texas. Jamás he tenido una licencia de conducir de Texas. Jamás he asistido a una escuela en Texas. En un momento tuve una tarjeta verde para vivir en los Estados Unidos durante la década de los años 70. Desde 1974 hasta 1979 viví en Louisiana. Después de regresar a Honduras en 1979, entregué voluntariamente mi tarjeta verde.

Esporádicamente he estado en Texas por vacaciones personales. He volado hasta Houston para viajar a otros destinos en varias oportunidades como miembro del Congreso de Honduras o para vacaciones personales. Jamás he viajado a Texas en carácter comercial y mis viajes a Texas por vacaciones jamás tuvieron una duración de más de una o dos semanas.

Tengo un interés de propiedad en un bien inmueble en Magnolia, Texas (la "Propiedad"). Sin embargo, solamente he visitado la Propiedad en dos oportunidades y en ambas ocasiones solamente por una hora. La Propiedad fue adquirida en 2008. Jamás he vivido allí ni tampoco he permanecido en la Propiedad más de un día. La vivienda que se encuentra en la Propiedad fue arrendada por 1000 dólares estadounidenses al mes durante los últimos años, hasta que la

vivienda se incendió por completo en septiembre de 2011 como resultado de un incendio forestal.

Se abrió una cuenta corriente a mi nombre, así como en nombre de mi esposa e hijos en Houston, Texas, en 2007 para la compra de la propiedad. Yo deposité los fondos iniciales en la cuenta para la compra de la Propiedad. Después de eso, en lo personal no deposité ni retiré fondos de la cuenta. La cuenta corriente se cerró en febrero de 2011. Nunca he manejado o mantenido personalmente la renta o los gastos relacionados con la Propiedad. Se abrió una cuenta de ahorros en mi nombre, así como en el de mi esposa, en diciembre de 2007, cuando se abrió la cuenta corriente. El dinero de la cuenta de ahorros fue depositado en la cuenta corriente (5.400,72 dólares estadounidenses) en diciembre de 2008, y luego dicha cuenta de ahorros fue cerrada.

No he ingresado a los Estados Unidos desde el 29 de marzo de 2009. Mi visa para viajar a los Estados Unidos fue revocada en septiembre de 2009 y no ha sido restituida. Se adjunta una copia fiel y exacta de la carta en la que se revoca mi visa a la Moción de desestimación como Prueba C. El Departamento de Estado de los Estados Unidos recientemente rechazó mi solicitud de una visa que me autorizara a viajar a los Estados Unidos para testificar ante el Comité de Asuntos Exteriores de la Cámara de Representantes. Me vi obligado a testificar por videoconferencia.

Sería una carga para mí defenderme en una acción en Houston, Texas. Según mi leal saber y entender, todos los documentos y testigos que necesito para defenderme en esta acción se encuentran en Honduras. Hablo español como lengua materna, al igual que la mayoría de los residentes de Honduras. La mayoría de los documentos que necesito para defenderme posiblemente estén redactados en español.

Durante mi presidencia, la Oficina del Fiscal de la República de Honduras inició una investigación sobre la muerte de Isis Murillo. En julio de 2011, consulté a la Oficina del Fiscal de la República de Honduras con respecto a si se había presentado una denuncia sobre la muerte de Isis Murillo. Se adjunta una copia fiel y exacta de dicha carta de consulta a la Moción de desestimación como Prueba E. La Oficina del Fiscal contestó que no me habían encontrado responsable de la muerte de Isis Murillo. Se adjunta una copia fiel y exacta de la respuesta de la Oficina del Fiscal de la República de Honduras a la Moción de desestimación como Prueba F.

Declaro bajo pena de perjurio, en virtud de lo que establecen las leyes de los Estados Unidos de América, que lo que antecede es veraz y correcto".

Firmado el día 22 de septiembre de 2011.

Roberto Michelletti Bain

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVID MURILLO and SILVIA MENCIAS on behalf of themselves and as Personal Representatives of their deceased son, ISIS OBED MURILLO, and his next of kin, including his SIBLINGS Barrio La Plazuela	§	
	§	CASE NO. 4:11-cv-02373
v.	§	
ROBERTO MICHELETTI BAIN	§	

DECLARATION OF ROBERTO MICHELETTI BAIN
UNDER PENALTY OF PERJURY

"My name is Roberto Micheletti Bain. I am over 18 years of age, of sound mind and capable of making this declaration. The facts stated in this declaration are within my personal knowledge and are true and correct.

I am a citizen and resident of Honduras. I became a member of the Honduran National Congress in 1980. I was the President of the Honduran National Congress from January 2006 to June 2009. In June 2009, I became the President of Honduras. I served as the President of Honduras until January 2010.

I do not reside in Texas and have never done so. My home, family and businesses are all in Honduras. I have never owned an interest in any business in Texas, nor have I ever worked for a business in Texas. I do not have an agent for service in Texas, although I do have an insurance agent in Texas. The Honduran businesses in which I hold an ownership interest have no offices in Texas (or the United States for that matter), nor do the businesses sell products or services in Texas or advertise in any way to Texas residents. I have never had a Texas driver's license. I have never attended school in Texas. I did at one time have a green card to live in the United States during the 1970s. From 1974 to 1979 I resided in Louisiana. After returning to Honduras in 1979, I voluntarily surrendered my green card.

I have sporadically been to Texas for personal vacations. I have flown through Houston to travel to other destinations on several occasions as a member of the Honduran Congress or for personal vacation. I have never traveled to Texas in a business capacity, nor have my trips to Texas for vacation ever lasted more than a week or two.

I do have an ownership interest in one piece of real property in Magnolia, Texas (the "Property"), however, I have only visited the Property twice, both times for only an hour. The Property was purchased in 2008. I have never resided there, nor have I ever stayed at the Property overnight. The dwelling on the Property was rented for $1000 a month for the last several years until the dwelling was burned to the ground in September 2011 by a wildfire.

A checking account was set up in my name, as well as my wife and children's names, in Houston, Texas in 2007 for the purchase of the property. I deposited the initial funds into the account for the purchase of the Property. After that, I did not personally deposit or withdraw funds from the account. The checking account was closed in February 2011. I have never personally handled or maintained the rent or expenses associated with the Property. A savings account was set up in my name, as well as my wife's, in December 2007 when the checking account was opened. The money from the savings account was deposited into the checking account ($5,400.72) in December 2008, and the savings account was closed.

I have not entered the United States since March 29, 2009. My visa to travel to the United States was revoked in September 2009, and my visa has not been restored. A true and correct copy of the letter revoking my visa is attached to the Motion to Dismiss as Exhibit C. The United States Department of State recently denied my request for a visa to allow me to fly to the United States to testify before the House Committee on Foreign Affairs. I was forced to testify via videoconference.

It would be a burden on me to defend a lawsuit in Houston, Texas. To my knowledge, all of the documents and witnesses necessary for me to defend myself in this lawsuit are located in Honduras. I speak Spanish as my first language, as do most of the residents of Honduras. Most of the documents necessary for me to defend myself will likely be in Spanish.

During my presidency, the Republic of Honduras Prosecutor's Office initiated an investigation into the death of Isis Murillo. In July 2011, I made an inquiry to the Republic of Honduras Prosecutor's Office about whether a complaint was made regarding the death of Isis Murillo. A true and correct copy of that letter of inquiry is attached to the Motion to Dismiss as Exhibit E. The Prosecutor's Office responded that I had not been found responsible for the death of Isis Murillo. A true and correct copy of the response from the Republic of Honduras Prosecutor's Office is attached to the Motion to Dismiss as Exhibit F.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct."

Executed on September 22, 2011.

_____

Roberto Micheletti Bain

TRANSPERFECT

AMSTERDAM
ATLANTA
AUSTIN
BARCELONA
BERLIN
BOGOTÁ
BOSTON
BRUSSELS
CHARLOTTE
CHICAGO
CLEVELAND
COLUMBUS
DALLAS
DENVER
DUBAI
DUBLIN
DÜSSELDORF
FRANKFURT
GENEVA
HONG KONG
HOUSTON
LONDON
LOS ANGELES
LYON
MEXICO CITY
MIAMI
MILAN
MINNEAPOLIS
MONTREAL
MUNICH
NEW YORK
PARIS
PHILADELPHIA
PHOENIX
PORTLAND
PRAGUE
RESEARCH TRIANGLE PARK
SAN DIEGO
SAN FRANCISCO
SAN JOSE
SEATTLE
SEOUL
SINGAPORE
STOCKHOLM
STUTTGART
SYDNEY
TEL AVIV
TOKYO
TORONTO
VANCOUVER
WASHINGTON, DC
ZURICH

City of New York, State of New York, County of New York

I, Cayleigh Powell, hereby certify that the file "Declaration of Roberto Micheletti Bain" is, to the best of my knowledge and belief, a true and accurate translation from English into Spanish.

Cayleigh Powell

Sworn to before me this
September 23, 2011

Signature, Notary Public

KRISTIN MILORO
Notary Public - State of New York
No. 01MI6212799
Qualified in New York County
Commission Expires Oct 19, 2013

Stamp, Notary Public

APPENDIX – K1c

EXHIBIT F

Recibí en mi poder 12 de julio del 2011 a las 3:57 PM

REPÚBLICA DE HONDURAS MINISTERIO PÚBLICO UNIDAD SECRETARIO GENERAL TEGUCIGALPA, M.D.C.

SE SOLICITA CERTIFICACIÓN DE ESTADO PERSONAL EN UNA INVESTIGACIÓN.

SEÑOR FISCAL GENERAL DE LA REPÚBLICA.

Yo, **ROBERTO MICHELETTI IBAIN**, con tarjeta de identidad número 1804-1984-00791, mayor de edad, casado, hondureño, ejecutivo de negocios, con domicilio y residencia en la Ciudad de Progreso, Departamento de Yoro y en tránsito por esta Ciudad, actuando en mi condición personal y con el respeto acostumbrado comparezco ante usted a exponer y solicitar lo siguiente:

Existe información pública que ante esa dependencia que usted dignamente dirige se presento denuncia para investigar la muerte del señor Isis Obed Murillo y por ello solicito se Certifique cual es mi condición en tal investigación, es decir es necesario que se certifique mi situación personal en la investigación referida.

Fundo la presente solicitud en los Artículos 80 de la Constitución de la República y 101 del Código Procesal Penal.

Al señor Fiscal General en reitero de mi respeto Pido: Admitir el presente escrito emitiendo la certificación solicitada en cuanto a mi estado en la investigación referida y resolver de conformidad a derecho.

Tegucigalpa, M. D. C. 12 de julio de 2011.

9630 | 2011

República de Honduras
S.R.E.

SECRETARIA DE RELACIONES EXTERIORES
DE LA REPUBLICA DE HONDURAS

Apostille

(Convention de la Haye du 5 Octobre 1961)

Derechos: 150.00

No Recibo: 7121868

En Honduras el presente documento público ha sido firmado :

MIRNA LIZETTE ALVARADO

Quien actua en calidad de:

SECRETARIA POR LEY

y esta revestido del sello correspondiente a:

SECRETARIA DE LA CORTE SUPREMA DE JUSTICIA

" ESTA OFICINA NO SE HACE RESPONSABLE POR EL CONTENIDO DEL DOCUMENTO QUE LEGALIZA L FIRMA "

Certificado en: Tegucigalpa M.D.C. por:

ARMANDO ROMERO CLAUDINO

JEFE DE AUTENTICAS

Honduras C.A. el: 12 de: JULIO de: 2011

SECRETARIA DE RELACIONES EXTERIORES
SECCION DE AUTENTICAS
TEGUCIGALPA, M.D.C.
HONDURAS, C.A.

Firma

[handwritten:] [illegible] July 12, 2011 [illegible] 3:57 p.m.
[signature]
[stamp:] REPUBLIC OF HONDURAS
PROSECUTOR'S OFFICE
MP
SECRETARY GENERAL
TEGUCIGALPA, M.D.C.

REQUEST FOR CERTIFICATION OF PERSONAL STATUS IN AN INVESTIGATION.

TO THE ATTORNEY GENERAL OF THE REPUBLIC.

I, **ROBERTO MICHELETTI IBAIN** [*sic*], identity card number 1804-1984-00791, of legal age, married, a Honduran, business executive, domiciled and residing in the City of Progreso, Department of Yoro, in transit in this City, acting personally and with the customary respect, appear before you to state and request the following:

There is public information that the office under your management received a complaint to investigate the death of Mr. Isis Obed Murillo and, for this reason, I request a Certification of my status in this investigation, in other words, it is necessary to certify my personal situation in said investigation.

I base this request on Articles 80 of the Constitution of the Republic and 101 of the Code of Criminal Procedure.

I respectfully ask the District Attorney: To admit this document, issuing the certification requested concerning my status in said investigation and resolve according to the law.

Tegucigalpa, M. D. C., July 12, 2011.
[signature]

[seal:] [illegible]

9630	2011

Republic of Honduras
S. R. E.
MINISTRY OF FOREIGN AFFAIRS
OF THE REPUBLIC OF HONDURAS
Apostille

(Convention de La Haye du 5 Octobre 1961)

[Hague Convention of October 5, 1961]

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MIRNA LIZETTE ALVARADO

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SECRETARY BY LAW

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Certified in: **Tegucigalpa M.D.C.** **by:**

ARMANDO ROMERO CLAUDINO
HEAD OF AUTHENTICATIONS

Honduras C.A. **on:** **JULY 12, 2011**

[seal:] [illegible]

[seal:] MINISTRY OF FOREIGN AFFAIRS
DEPARTMENT OF AUTHENTICATIONS
TEGUCIGALPA, M.D.C.
HONDURAS, C.A.

[signature] Signature

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I, Sara Hutchison, hereby certify that the documents:

- Embassy of the United States of America 11 de Septiembre 2009
- Republica de Honduras Constancia
- Senior Fiscal General DeLa Republic Roberto Micheletti Ibain
- Secretaria De Relaciones Exteriores De La Republica De Honduras

are, to the best of my knowledge and belief, a true and accurate translation from Spanish to English.

Sara Hutchison

Sworn to before me this
September 26, 2011

Signature, Notary Public

KRISTIN MILORO
Notary Public - State of New York
No. 01MI6212799
Qualified in New York County
Commission Expires Oct 19, 2013

Stamp, Notary Public

APPENDIX – K1d & K1e

Testimony of Mr. Roberto Micheletti Bain
For the Committee on Foreign Affairs
House of Representatives
USA.

June 14, 2011

Thank you for your invitation and for granting me the opportunity to testify before this honorable committee.

The issue which is upon us at this hearing is of great importance for me because it deals with the traditional relations of friendship between the people of the United States and the people of Honduras, a relationship in which the ideals of freedom and democracy are shared, the ideals from which we emerged as nations and I hope will last forever.

What happened in Honduras on June 28, 2009 resulted from the arbitrary and unlawful behavior of President Zelaya. We acted in agreement with our legislation. I assumed the mandate of the National Congress, a decision ratified by it, 6 months later, at the request of the international community. As President of the Republic I accepted the pledge to shield the democratic process and protect the electoral process which was in danger.

The election process was not supported by the international community or by many in the United States. It was my government which was determined to find a solution to this crisis, fulfilling my commitment to hold free and transparent elections. Zelaya maintained his position to not recognize President Lobo and called for the boycott of the electoral process.

No coup plotter or dictator seeks power for 7 months and promotes elections. I am proud to have protected democracy in Honduras.

I would like to note that the political events of June 28, 2009 in Honduras and the exit from office of former President Manuel Zelaya, led to pressures, sanctions and condemnation from governments in the international community and its integration institutions. I am referring particularly to the actions of the latter and would like to show that they violated the principles of respect, good relations and harmony between peoples. Those institutions acted hastily and went beyond their mandated powers that their charters allow for, of which the Organization of American States (OAS) is a good example of.

Traditionally the good relations between our people and their beautiful country had prevailed. While Zelaya was devoted to offend and denigrate the United States, we stood up in protest and demanded respect for our ally and its friendly people. Surprisingly, we saw how after the events of June 28 the roles were reversed and those who were our friends gave us their back and supported those who never stopped being their adversaries.

The United States government ignored our cry to be heard by dismissing the legality and the justification. It ignored the investigating process to reveal the source of the events as well as the laws and legal underpinnings involved. It at all times refused the right of the defense and did not give the opportunity to hear the positions and justifications. But more unfortunate is that there were visible strong ideological interest in the institution's actions, simply put, they condemned without hearing and harmed a country mainly for ideological reasons.

I want to emphasize in my testimony that the replacement of President Manuel Zelaya was caused by his disrespect and contempt for the law, legally proven from the mandates of the Constitution and decisions of the courts. As a result of this, his oust from power is perfectly legal and legitimate and was made by respecting established legal procedures.

The Supreme Court, the National Congress, the Public Prosecutor, the Attorney General's Office, and the Armed Forces acted by their own motivations and independent in the exercise of their goals and fulfilling the mandates of law. As President installed by the National Congress, I always complied with the Law.

However, no government, no international body had interest in a formal and in-depth investigation of what transpired, the history and precise causes. Diplomatic agents acted superficially in their reports, which led to hasty actions and resolutions without real foundations by their governments. From my point of view, ignorance of Honduras' laws in other countries and international organizations covered by the credibility of American diplomacy cast their convictions and applied pressure and unjust sanctions.

The influence and control of the American decisions in the management of this policy, within the OAS and beyond, was evident. In fact the solution to the problem originated in the decisions of American government. Still, the OAS, acting already outside of the case, tried to ignore the elections in 2009 and the functioning and the existence of other branches of government and its resolutions.

Apart from their lack of knowledge about the legality of the matter, what surprise us was that Ambassador Hugo Llorens, who is aware of former President Manuel Zelaya's sympathies and links with countries that have hostile policies toward the American government and its people and his support of these other countries installations of authoritarian and undemocratic regimes, was not alert to what was happening.

As is the case of former Foreign Minister Patricia Rodas, ideologue of the socialist movement, Minister of Zelaya, a member of the Sandinistas, Castro's political activist, former resident of Cuba for many years, who in her official capacity met with Iranian diplomats. Relationships which alerted and forced me, during my mandate, to take the decision to cancel the entry of nationals from countries linked to terrorism such as Iran, Iraq, Libya and others.

The Llorens report hurt Honduras and compromised the ideals of the state policies of his country, the traditional relationship of the people of Honduras and the United States of America.

Apart from the withdrawal of economic assistance, other sanctions and pressures caused us hurt and anger. The withdrawal of visas to government officials did not permit them to fully meet their civic duty and the revocation of visas of people who just identified with the interim government affected their international business.

I want to note that I am sending the text to support this statement, the documentation for each of the statements I have expressed or sources cited for your review.

I cannot conclude without expressing gratitude to the American government officials who visited us and gave us support as did international lawyers, the U.S. press and the press of other countries which confirmed the reason for the institutional actions of the interim government in Honduras and these opinions and studies were many, extensive and valuable.

I want to conclude by expressing my most earnest desire to prevent recurrence of such situations, and that the U.S. government adopts policies that respect the rights of peoples, but especially that no decisions be made without first having investigated and studied the social and legal circumstances that give rise to these political crises and determine the minds that drive them.

We need friends to preserve the freedoms and democracy in the hemisphere.

Thank you very much.

"TRUTH IN TESTIMONY" DISCLOSURE FORM"

Clause 2(g) of rule XI of the Rules of the House of Representatives and the Rules of the Committee

require the disclosure of the following information. A copy of this form should be attached to your

written testimony.

1.-Name: Roberto Micheletti Bain

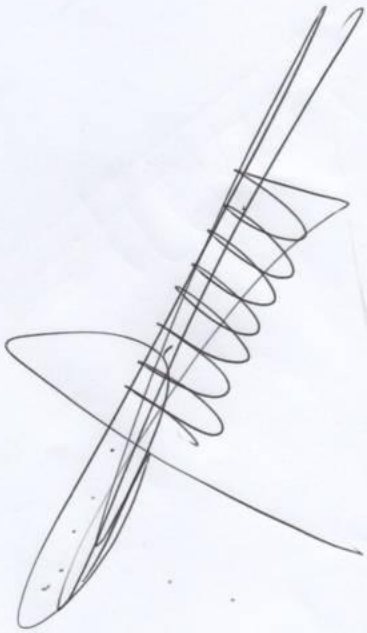
2. Organization or organizations you are representing: private citizen of Honduras.

3. Date of Committee hearing: TUESDAY jun 14th 2011 local time Honduras 1:00 pm 3:00 pm Washington. Marriot hotel

4. Have you received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify? No I have not

5. Have any of the organizations you are representing received any Federal grants or contracts (including any subgrants and subcontracts) since October 1, 2008 related to the subject on which you have been invited to testify?

No I have not



6. If you answered yes to either item 4 or 5, please list the source and amount of each

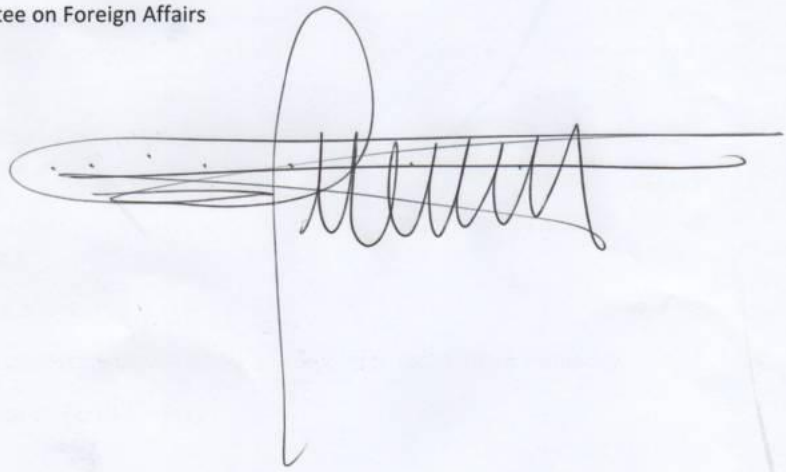
grant or contract, and indicate whether the recipient of such grant was you or the

organization(s) you are representing. You may list additional grants or contracts on

additional sheets.

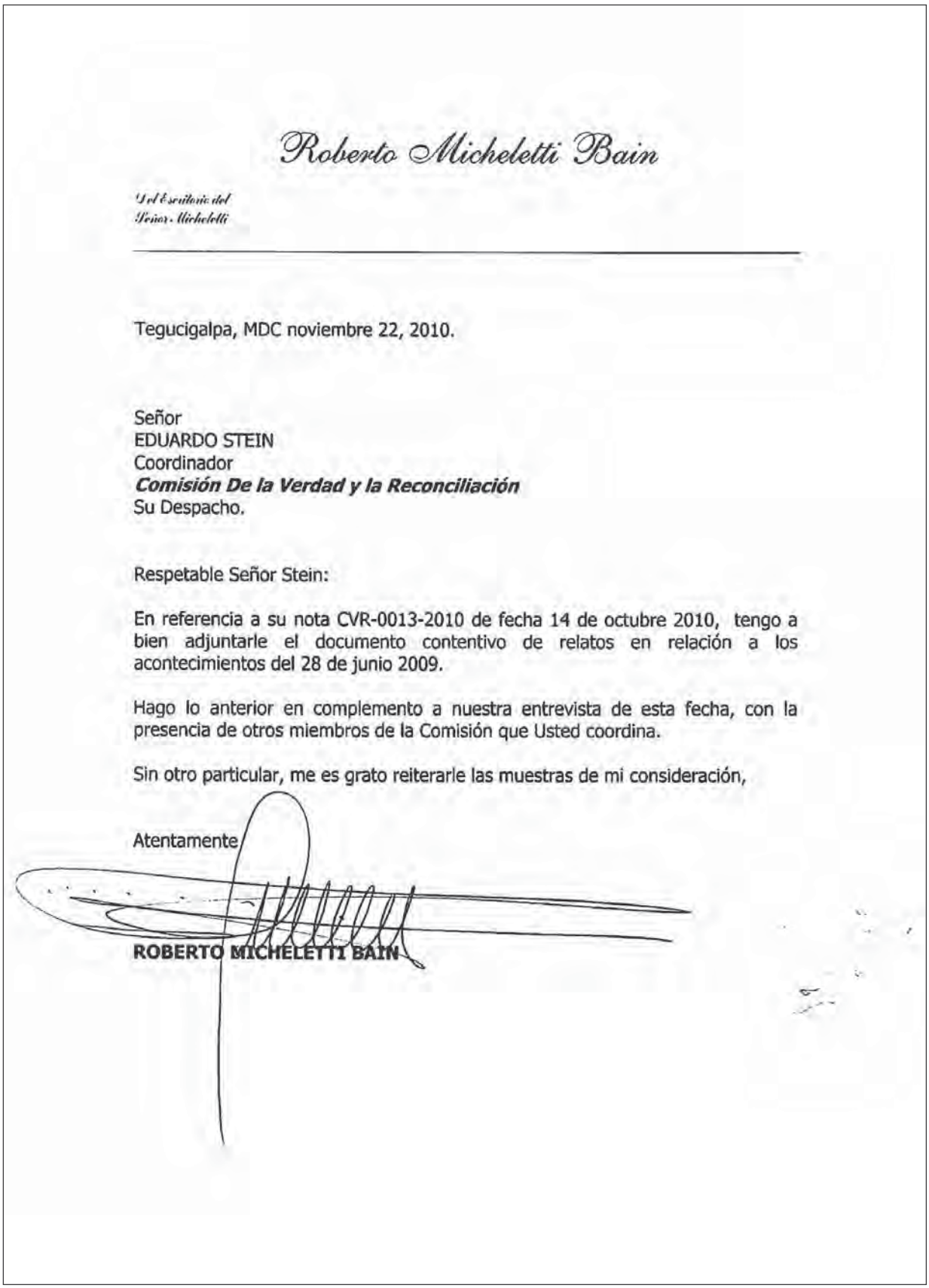
7. Signature: *Please attach a copy of this form to your written testimony.*

Committee on Foreign Affairs



APPENDIX – K1f

2.2. Roberto Micheletti Baín



Roberto Micheletti Bain

Del Escritorio del
Señor Micheletti

Tegucigalpa, MDC noviembre 22, 2010.

Señor
EDUARDO STEIN
Coordinador
Comisión De la Verdad y la Reconciliación
Su Despacho.

Respetable Señor Stein:

En referencia a su nota CVR-0013-2010 de fecha 14 de octubre 2010, tengo a bien adjuntarle el documento contentivo de relatos en relación a los acontecimientos del 28 de junio 2009.

Hago lo anterior en complemento a nuestra entrevista de esta fecha, con la presencia de otros miembros de la Comisión que Usted coordina.

Sin otro particular, me es grato reiterarle las muestras de mi consideración,

Atentamente,

ROBERTO MICHELETTI BAIN

APPENDIX – K1g

Roberto Micheletti Bain

Del Escritorio del
Señor Micheletti

Tegucigalpa, noviembre 22, 2010.

Señores Miembros

COMISIÓN DE LA VERDAD Y LA RECONCILIACIÓN

Honorables Comisionados:

Agradezco la oportunidad que se me brinda de poder expresarme sobre mis actuaciones y puntos de vista en relación a los acontecimientos institucionales y políticos del 28 de junio 2009, en los cuales participé motivado únicamente por mis convicciones, derechos y obligaciones tanto ciudadanas como oficiales enmarcadas en la estricta legalidad. Considero que su invitación es la ocasión oportuna para hacer una relación retrospectiva y prospectiva amplia de situaciones que sirvan como elemento útil en el esfuerzo de esa Comisión para encontrar la verdad en su sentido mas amplio.

Entendiendo el contexto de esa verdad, como la convergencia de la *verdad jurídica* sinónimo de legalidad y la razón jurídica, con la *verdad moral* que es aquella que se ajusta a los valores y las tradiciones que el *pueblo* acepta y anhela.

Entiendo que se trata de encontrar la verdad integral, libre de hipocresías, de agendas ocultas o alienadas por encasillamientos partidarios o ideológicos, de tal forma que la actuación de la Respetable Comisión de la Verdad y la Reconciliación, se sustente únicamente en la prevalencia del bien común, la justicia y la paz.

Honorables Comisionados:

Me alegra mucho saber que el establecimiento de la *Comisión de la Verdad y la Reconciliación* prevista en uno de los Acuerdos suscritos durante mi gestión como

1

Presidente de la República, está planteada como una *puerta para la paz* y de ninguna manera como una plataforma de litigio.

Expreso mi anhelo más sincero para que este ejercicio sirva para escribir las lecciones aprendidas que nos evite incurrir una vez mas en errores históricos, y porque el mandato aceptado por Ustedes sea el punto de partida para el reencuentro con los valores que nos dan orgullo, sentido de pertenencia y solidaridad como Nación.

Me permito anticipar algunos principios a manera de referencia que facilite la interpretación y justificación de mis expresiones; entre ellos:

a) Que la *democracia* es el logro más relevante de la humanidad ya que permite a los pueblos convivir pluralmente en libertad, paz y justicia, buscar su bienestar y gobernarse a si mismas, y aunque imperfecta, es por ahora el único sistema político que permite a las Naciones construir y administrar su propio destino.

b) Que el *Estado de Derecho*, es la conquista más insigne de los pueblos mediante el cual se concreta el imperio de la ley como mecanismo para orientar la conducta social, excluyendo como fuente de poder la determinación autoritaria en el sentido que ninguna voluntad y acción personal está por encima de la Ley y complementariamente, que el logro del bien común solo se alcanza bajo el absoluto respeto y la *ineludible vigencia de nuestros Estados de Derecho con la Constitución como ley insigne, con plena imperatividad y coercitividad.*

c) Que el *sufragio* es consiguientemente el derecho individual y social imprescindible en el cual se afianza y se manifiesta *la verdadera soberanía de los pueblos* y que por esta razón, el sistema de actores políticos hondureños no deben subordinar su actuación a directrices *expatria* y que la opinión y manifestaciones del pueblo libremente y espontáneamente expresadas deben siempre respetarse y tomarse en cuenta.

d) Que damos por establecido que la base de la armonía internacional radica en la existencia de *Estados soberanos* amparados en los principios de libre determinación y no intervención de otros Estados en sus asuntos internos y que la relación de los Estados que conforman la Comunidad Internacional debe entenderse *como la relación de los pueblos* y no como las relaciones de conveniencia de sus gobernantes y que los referentes de tales actos deben ser, el respeto a la *dignidad nacional* y la observancia obligada de los protocolos y procedimientos de la diplomacia.

e) Que *la paz* como la virtud social mas elevada y seguramente el anhelo mas profundo del ser humano y de la sociedad constituye el pilar fundamental y escalón primario para alcanzar la integración y el bien común.

f) Que es insoslayable la vigencia plena de las *libertades, derechos y garantías personales y sociales* que consigna nuestra Constitución con un compromiso mayor en la lucha contra la pobreza y el desequilibrio social.

Honorables Comisionados:

Todos anhelamos la democracia, la libertad y la *paz*, pero pienso que no siempre dedicamos los esfuerzos suficientes para fortalecer e impulsar estos valores; muchas veces no percibimos que otras fuerzas actúan subrepticiamente para deformar o destruir estos fundamentos.

Muchas veces abandonamos nuestro esfuerzo como ciudadanos y como sociedades y dejamos en manos de la institucionalidad pública la custodia de las virtudes democráticas, cuando en muchos casos es desde allí donde se propicia su irrespeto, pero luego, otros ven con extrañeza y suspicacia cuando actuamos para corregir.

Decía Juan Jacobo Rousseau hace mas de 200 años: *"Al pueblo jamás se le corrompe, pero con frecuencia se le engaña"*. Menciono esto porque nuestra legislación electoral determina con precisión y para evitar el engaño político, que los Partidos Políticos están obligados a revelar, a declarar sus principios ideológicos de carácter político, económico y social[1], así como, los Programas de Acción derivados de estos principios; al no cumplir con este postulado, creamos una ventana al engaño, al irrespeto de la voluntad soberana del pueblo y al conflicto social.

Finalizo este preámbulo augurando que la actuación de esta Comisión de la Verdad y la Reconciliación será objetiva, imparcial, abriendo espacios de participación sin exclusiones, ni favoritismos y que sabrá encontrar la verdad, como lo dije al inicio, mas allá de, el cinismo político y el parcialismo ideológico. Espero que mis aseveraciones expresadas con franqueza, pero con respeto sean tomadas en el espíritu de la buena fe y el deseo de promover la paz y la armonía.

[1] *Ley Electoral y de las Organizaciones Políticas*. Artículos 67 y 68.

LOS ACONTECIMIENTOS DEL 28 DE JUNIO 2009

El día domingo 28 de junio 2009, el Congreso Nacional en sesión ordinaria, en cumplimiento de lo dispuesto en el artículo 242 constitucional y mediante Decreto 141-2009 procedió a designar en mi persona las funciones de Presidente de la República, que hasta entonces desempeñara Don José Manuel Zelaya Rosales, En ese momento me desempeñaba como Presidente del Congreso Nacional.

Dicho artículo señala que en caso de falta absoluta del Presidente de la República, ocupará su cargo por el tiempo restante del período, el Vice-Presidente de la República y en caso de falta absoluta de éste, lo ocuparía el Presidente del Congreso Nacional y si se repitiese la ausencia de este último, el cargo lo ocuparía el Presidente de la Corte Suprema de Justicia.

Correspondió la designación a mi persona y no al Vice-Presidente Señor Elvin Santos en virtud de renuncia que éste presentó y que fue aceptada ante el Congreso Nacional en fecha previa, para dedicarse a activar su pre-candidatura a la Presidencia de la República en las elecciones a celebrarse.

El Congreso Nacional sustentó sus actuaciones en la aplicación de las siguientes circunstancias jurídicas:

a) En la improbación de la conducta administrativa del Presidente de la República por las reiteradas violaciones a la Constitución de la República, la desobediencia constante a las leyes y la inobservancia y desafío de las resoluciones y sentencias de los órganos de justicia, al *grado comprobado* de conducir al inminente rompimiento del orden constitucional vigente y consecuentemente del Estado de Derecho, con la *manifiesta y evidente intención* de cambiar el sistema de gobierno y las modalidades de su ejercicio al pretender convocar a una Asamblea Nacional Constituyente que emitiera una nueva Constitución. La improbación de la conducta administrativa evidenció además la imprudencia y el manejo irresponsable de los recursos del Estado.

b) El Congreso Nacional invocó expresamente, en este caso, el incumplimiento de las disposiciones de los artículos 245, numeral 1) y los artículos 321, 322 y 323 que mandan la obligación de los funcionarios públicos de actuar bajo el imperio de la Ley y en el estricto marco de actuación que la ley señala e implícitamente del artículo 239 constitucional.

4

c) La aplicación del artículo constitucional 239 genera *de hecho* la vacante presidencial.

Tuvimos conocimiento de la actuación independiente y del expediente de la Corte Suprema de Justicia[2] que determina la detención del Señor José Manuel Zelaya Rosales en virtud de comprobársele la comisión de delitos contra la institucionalidad y el Estado de Derecho y que expresamente invoca la aplicación del artículo 239 constitucional que señala que quienes quebranten la disposición de buscar reelegirse como Presidente de la República o propongan su reforma, *cesarán de inmediato en el desempeño de sus respectivos cargos* y además, quedarán inhabilitados por un período de diez (10) años para el ejercicio de la función pública, interpretando *como hecho envolvente* que promover la derogación de la Constitución vigente, lleva implícito la derogación del artículo 239 constitucional. El expediente refiere que la publicación en el diario oficial La Gaceta de fecha 25 de junio 2009 del Decreto Ejecutivo PCM –20-2009 evidencia la comisión del ilícito. (flagrancia).

Acontecimientos previos al 28 de junio 2009

Los acontecimientos políticos de Honduras no deben limitarse al análisis de lo sucedido el 28 de junio 2009; lo ocurrido en esta fecha no es mas que el desenlace de una serie de acontecimientos vinculados y *pre-concebidos,* que se desarrollaron a lo largo de tres años y medio con el evidente propósito de acceder a nuevas formas de poder político por parte de personas y grupos con intereses muy particulares, que actuaron con ventaja, imprudencia y *al margen de la legalidad*, con una evidente *intención de continuismo* en el poder público, *afán que divulgó extensa y abiertamente en medios de comunicación.*[3]

El referido plan evolucionó con las siguientes manifestaciones:

a) Acciones para el debilitamiento de los demás Poderes y Órganos Especiales del Estado y desprestigio de sus funcionarios;

b) El debilitamiento y descrédito de la *función electoral*;

c) Una escalada final para abatir la barrera constitucional que prohíbe el continuismo, buscando la convocatoria a una Asamblea Nacional Constituyente para derogar las disposiciones constitucionales vigentes que impiden la reelección presidencial.

[2] Expediente Judicial. Relación documentada. Caso José Manuel Zelaya Rosales. www.poderjudicial.gob.hn
[3] Ver videos y notas de prensa.

5

Desde el inicio del periodo de gobierno arrancó la escalada de eventos para promover desestabilización institucional y política y la intención de aplicar, al final, el mecanismo ilegal denominado "*cuarta urna*" para convocar a una asamblea constituyente.

A continuación cito algunos de los eventos aludidos, lo cuales tienen connotaciones evidentes de irrespeto a la ilegalidad, a la conducta oficial de los funcionarios públicos y a la moral política:

1. Trascendió y se formó expediente de justicia en torno a lo que se llamó "espionaje telefónico"[4] donde funcionarios del Poder Ejecutivo sistemáticamente me denigran, en una actuación impropia de funcionarios de un Poder del Estado hacia otro. El propio Ex-Presidente Zelaya fue parte de este expediente en la Fiscalía del Estado.

2. La resolución de la Corte Suprema de Justicia que emitió fallo en el año 2008, sobre mi derecho a ser candidato presidencial, fue agresivamente atacada y desafiada por un grupo de juristas designados para tal propósito por el Ex-Presidente de la República, buscando descalificar y desacreditar la fuerza imperativa de este fallo judicial firme.

3. El Poder Ejecutivo igualmente desafió otras resoluciones judiciales, como lo relacionado al caso de disposiciones para regular la circulación de vehículos conocidas como "*Hoy no circula*", que fue declarado improcedente por la Corte Suprema de Justicia. Este proyecto igualmente generó expediente por irregularidades administrativas.

4. La reforma a la ley electoral promovida en el Congreso Nacional[5] para afianzar el financiamiento y celebración las elecciones generales, ratificada constitucionalmente por el Congreso Nacional ante el veto presidencial, dio origen irracionalmente a una campaña mediática de costos millonarios impulsada por el Poder Ejecutivo desacreditando las actuaciones legislativas. La materia electoral no es constitucionalmente función del Poder Ejecutivo[6].

5. En el mes de Abril 2008, varios fiscales se declararon en huelga de hambre acusando y pidiendo al margen de la ley, la destitución o la renuncia al Fiscal General de la República y del Fiscal General Adjunto por supuestas acciones de ocultar expedientes para distorsionar la aplicación de justicia. El Ex-Presidente Zelaya alentó personalmente esta huelga de hambre y llegó al extremo de exigirle públicamente su renuncia al Fiscal General Adjunto. La Fiscalía General o Ministerio Público es un órgano especial del Estado, independiente de las

[4] Ver video adjunto.
[5] Reformas contenidas en Decreto No. 185-2007.
[6] Artículo 51 Constitución de la República.

actuaciones del Poder Ejecutivo. Una Comisión Especial del Congreso Nacional rindió un informe que desvirtuó totalmente las acusaciones.

6. En el desarrollo de la huelga de fiscales, el día 5 de mayo 2008, se llevó a cabo una reunión con la concurrencia de Presidentes de Poderes del Estado, José Manuel Zelaya Poder Ejecutivo, Roberto Micheletti, Poder Legislativo y Vilma Morales Poder Judicial, con el objeto de abordar la problemática de la estabilidad institucional. A esta reunión a la cual se le denominó Primera Cumbre de Presidentes de los Poderes del Estado, asistieron además representantes de la Sociedad Civil y de las Iglesias (Cardenal Oscar Andrés Rodríguez, Licenciado Juan Ferrera, Pastor Oswaldo Canales, Monseñor Darwin Andino), el Comisionado Nacional de los Derechos Humanos Doctor Ramón Custodio y algunos diputados y diputadas. En esta oportunidad se solicitó al Ex-Presidente Zelaya cordura y prudencia en sus actuaciones políticas y en la conducción del Estado.

7. Tres meses después de finalizada la huelga de hambre de los fiscales, se gestó una nueva protesta por parte del gremio magisterial reclamando pagos y recurriendo a la instancia del Congreso Nacional, a pesar de tratarse de un asunto administrativo. En esta ocasión el día 30 de septiembre 2008 se produjeron disturbios en el edificio legislativo en los cuales irresponsablemente y a pesar de continuas peticiones al Poder Ejecutivo, no se brindó apropiadamente la *protección parlamentaria* que manda la Constitución. En esta ocasión los manifestantes se tomaron las instalaciones del Congreso Nacional irrespetaron a negociadores enviados y por espacio de mas de seis horas se mantuvieron secuestrados a diputados, diputadas, al no permitírseles la salida de las instalaciones del Congreso Nacional. Similares situaciones se produjeron en otras ocasiones.

8. En Agosto 2008 en ceremonia pública en ocasión de la adhesión de Honduras a los países del ALBA el Presidente Hugo Chávez de la República Bolivariana de Venezuela, con la presencia de los Presidentes de Nicaragua y Bolivia, hizo en discurso público apologías de naturaleza política e ideológica en apoyo a las acciones del Ex-Presidente Zelaya Rosales y profirió insultos a sectores de nuestra propia ciudadanía.

9. El Poder Ejecutivo desafiando el proceso constitucional de formación de la ley[7], dejó de sancionar o vetar oportunamente mas de 60 Decretos aprobados por el Congreso Nacional en varios años, los cuales quedaron en un limbo legislativo ante la falta de su promulgación. El Congreso Nacional presentó reclamos en este sentido.

10. El Poder Ejecutivo en forma sistemática y sostenida y desobedeciendo requerimientos, presentó con mucho retraso y con inconsistencia de contenido,

[7] *Constitución de la República*. Artículos 215 y 216.

los proyectos de presupuesto de la República para su aprobación por el Congreso Nacional. El Presupuesto correspondiente al año 2009 no fue presentado en debida forma por el gobierno del entonces Presidente Zelaya, quien aprovechaba estas circunstancias para tener liberalidad en el uso de los recursos del Estado.

11. El Poder Ejecutivo desobedeció reiteradamente el mandato constitucional de proveer oportunamente recursos para el funcionamiento del Congreso Nacional[8], reteniendo tales asignaciones al no acreditar por medio de la Tesorería General de la República y por trimestres anticipados los fondos necesarios para atender los gastos de este Poder del Estado. Se emitieron resoluciones haciendo los reclamos ante la Secretaría de Finanzas.

12. Debido a un accidente aéreo ocurrido en el mes de mayo 2008, el Ex-Presidente Zelaya ordena el cierre del aeropuerto Internacional de Toncontín y su *traslado definitivo* a las instalaciones (no aptas para la aeronavegación civil) de una base militar ubicada a 80 kilómetros de Tegucigalpa. Un informe técnico determinó que el accidente no fue causado por condiciones atribuibles al aeropuerto de Toncontín. El Poder Ejecutivo determinó reabrir el aeropuerto en el mes de julio al no poder justificar su decisión en la factibilidad técnica y *conveniencia nacional* y ante la presión de los ciudadanos de la ciudad capital que reclamaban por el daño económico causado, quienes igualmente solicitaron apoyo del Congreso Nacional.

13. El día 25 de enero 2009 en ocasión de elegirse por mandato constitucional, los nuevos Magistrados de la Corte Suprema de Justicia se presentaron ante la Bancada de diputados del Partido Liberal cuatro emisarios del Presidente de la República para proponer la candidatura a la Presidencia de la Corte Suprema de Justicia de la esposa de un Ministro del Gabinete de Gobierno, al margen de los procedimientos que señala la Constitución ya que la propuesta candidata no cumplió con los procedimientos de selección de la Comisión Nominadora [9]. En su insistencia de promover esta acción, llegaron a señalar que al producirse el *estado de excepción constitucional*, por la imposibilidad de integrarse el nuevo pleno de la Corte Suprema de Justicia o de hacerlo en forma viciada, el Poder Ejecutivo gobernaría por medio de un Gabinete de Gobierno, se disolvería el Congreso Nacional y se integraría una nueva Corte Suprema de Justicia. El Ministerio Público abrió expediente de denuncia donde constan declaraciones de testigos de este suceso[10]. Esta fue una de las acciones mas osadas del gobierno Zelaya Rosales para acceder irregularmente al poder, ya que se estuvo a menos de hora y media del colapso constitucional.

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[8] *Constitución de la República.* Artículo 212.
[9] *Constitución de la República.* Artículos 311 y 312.
[10] Ver declaraciones de testigos ante la Fiscalía Especial contra la Corrupción.

14. Con fecha 25 de marzo 2009, el Ministerio Público emitió un pronunciamiento público[11] advirtiendo y previniendo actuaciones y responsabilidades por la emisión de un Decreto (PCM-019-2009) mediante el cual el Poder Ejecutivo promueve una consulta popular al margen de las disposiciones que establece la Constitución de la República y en abierto desafío a la función electoral que es atribución exclusiva de un Tribunal Supremo Electoral, así como a la convocatoria a una asamblea constituyente para reformar o derogar la Constitución vigente.

El referido Decreto Ejecutivo derogado y luego restablecido bajo otro número (PCM-020-2009), publicado el día 25 de junio 2009, dejó en evidencia la ejecución de la irregularidad planteada. Dicho Decreto en su parte esencial conduce a la celebración de una consulta popular bajo el siguiente cuestionario: *¿ Esta de acuerdo en que en las elecciones generales del 2009 se instale una Cuarta Urna en la cual el pueblo decida la convocatoria a una Asamblea Nacional Constituyente ?*

15. En el mes de junio 2009, el Ex-Presidente Zelaya con apoyo de manifestantes se toma instalaciones de la Base Aérea Acosta Mejía en el área de Toncontín y retira personalmente material de la encuesta de la cuarta urna que estaba bajo depósito legal, en abierto desafío y desobediencia a disposiciones de la autoridad y con imprudencia ante la posibilidad de degenerar reacciones de los custodios armados de dicha base militar.

16. Por su parte, el Congreso Nacional denunció formalmente con fecha 23 de junio 2009 ante la Organización de Estados Americanos (OEA) la intervención de la Secretaría de este organismo continental en apoyo al Poder Ejecutivo en el desarrollo de las acciones de la Cuarta Urna, mediante el envío de una Comisión encabezada por el funcionario de dicha organización, el Señor Raúl Alconada Sempé. La referida moción señala: *"No entendemos bajo ningún criterio de formalidad institucional y nos causa suma extrañeza que un organismo con la imagen y compromisos de respeto como la Organización de Estados Americanos (OEA), esté participando en un acto declarado ilegal, ignorando sus consecuencias sociales y jurídicas..."* , luego solicita el inmediato retiro de la referida comisión.

17. Al publicarse en el Diario Oficial La Gaceta el 25 de junio 2009 el Decreto Ejecutivo PCM-20-2009, se evidencia la ilegalidad que reafirma la ruta de acción de los órganos de justicia que finaliza con la sentencia en firme de la Corte Suprema de Justicia para suspender la celebración de la consulta denominada cuarta urna que se llevaría a cabo el 28 de junio 2009, la realización del acto irregular contemplado en el artículo constitucional 239 y consecuente detención del Señor José Manuel Zelaya Rosales.

[11] Publicado el 26 de marzo 2009 en la prensa nacional.

18. Líderes políticos, funcionarios del Estado, observadores, llevaron a cabo reuniones especiales y realizaron en días previos al 28 de junio 2009 esfuerzos intensos, que fallaron en hacer que el Ex-Presidente Zelaya rectificara sus acciones.

Honorables Comisionados,

Este conjunto de acontecimientos citados, muchos de los cuales pueden calificarse como delitos, faltas independientes o circunstancias agravantes pero que tienen una indiscutible vinculación y que se ejecutaron consistentemente contra la institucionalidad, la legalidad y el respeto que establece la Constitución convergen a una sola intención política. Consiguientemente reitero, que lo sucedido en la fecha citada, no debe verse o darle el tratamiento como un hecho aislado, ya que es algo que arrastra sus consecuencias en muchos hechos previos.

Es igualmente importante que en esta cadena de eventos o en cada uno de ellos, no se analicen únicamente los aspectos de la formalidad procesal, por lo cual, solicito vehemente a los Honorables Comisionados que enfoquen su análisis al estudio de los aspectos *sustantivos* de tales acontecimientos y se busquen con mayor profundidad los elementos causales, las motivaciones e intenciones de los actores, así como de las consecuencias sociales y políticas de tales actos.

Otros acontecimientos relevantes

Además de los hechos y consecuencias ya señalados que sucedieron principalmente en las esferas de gobierno y las instancias de los intermediarios políticos, es de vital importancia apuntar que como consecuencia de los mismos, la sociedad en general vivió por lo menos en los quince meses previos al 28 de junio 2009, un ambiente de incertidumbre social, de inseguridad y desconfianza política que pueden apreciarse en manifestaciones de opinión pública, en notas de prensa, en el debate político y jurídico y en los reclamos de la sociedad por la orientación y los resultados de la gestión del gobierno administrativo.

Este acontecer fue abriendo espacios de confrontación que al final contribuyeron a un resquebrajamiento social crítico y que irresponsablemente fue alimentado por una intensa y millonaria campaña mediática originada desde el Poder Ejecutivo por medio del periódico ***"Poder Ciudadano"*** y otros esquemas mediáticos financiados por el Poder Ejecutivo promoviendo líneas de pensamiento y posiciones políticas e ideológicas que confrontaban o dividían a la sociedad.

Honorables Comisionados:

Como epílogo de esta sección, expreso mi mas elevado interés que esta *Comisión de la Verdad y la Reconciliación* proceda a hacer un análisis a profundidad de los acontecimientos oficiales y de la sociedad que he citado, pero con una vehemencia mayor y mucho respeto solicito que la Comisión estudie *imparcialmente* el comportamiento de la opinión pública expresada en los medios de comunicación nacional e internacional, en encuestas, etc., en un período no menor a los dos años anteriores al 28 de junio 2009. Este esquema de investigación retrospectiva le permitirá a la Comisión establecer en una línea de tiempo cuando verdaderamente se inició la fragmentación social creada, y que circunstancias y actores la alimentaron.

Esta sería una oportunidad para que se establezca un nuevo parámetro de juicio de lo acontecido el 28 de junio 2009, no solamente enfocándose en el análisis de las acciones institucionales y de los actores e intermediarios políticos que cito en la primera parte de la narrativa de acontecimiento y se haga con la propiedad mas absoluta y obligada escudriñando y haciendo aflorar las expectativas, las inquietudes y las opiniones de la población, de la ciudadanía, que es el actor primario del quehacer político en cualquier país y para que lo investigado pueda darle vigencia al aforismo de *"Vox Populi, Vox Dei"*. (la voz del pueblo es la voz de Dios.)

Igualmente solicitamos a la Honorable Comisión que haga investigación sobre los expedientes de corrupción abiertos, los indicadores macro-económicos, el manejo presupuestario para establecer en el este análisis conjunto una valoración de los daños institucionales, patrimoniales, sociales y morales en perjuicio de la Nación.

Encontrará en el análisis que propongo, una dimensión novedosa, pero totalmente convergente al estudio de lo acontecido el 28 de junio 2009 que le permitirá a esa Comisión, buscar y conocer la verdad en una perspectiva que hasta ahora no ha merecido la atención debida de observadores independientes, de gobiernos y organismos internacionales.

Ratifico que mis actuaciones en el Congreso Nacional no fueron *decisiones personales* porque surgieron o requirieron del respaldo del consenso mayoritario de ese pleno legislativo para ser viables y que mis esfuerzos por acceder al poder presidencial los hice siguiendo la normativa electoral y de los Partidos Políticos vigente; tal participación concluyó cuando no logré alcanzar la candidatura de mi Partido a la Presidencia de la República en las elecciones primarias celebradas en noviembre 2008.

Para finalizar, reitero a los ilustrados Comisionados, que mis actuaciones en los hechos del 28 de junio, no medió en ningún momento el móvil de alcanzar el

11

poder promoviendo acciones ilegales, mucho menos de permanecer en esa posición mas allá de lo señalado en la Ley, esto último expresado especulativamente por el Secretario General de la OEA, Señor Miguel Insulza en medios internacionales[12] y que, por lo tanto, refuto y rechazo enfáticamente, que la actuación consistente de varias instituciones del Estado cumpliendo con la Ley y *ante hechos sustantivos evidentes y reiterados*, pueda ser calificado como golpe de Estado o como una conspiración política o un acto surgido de la voluntad de mi persona para desfigurar los valores democráticos de mi país.

[12] CNN Programa de la Señora Arestegui. 2010.

HECHOS POSTERIORES AL 28 DE JUNIO 2009

Quiero dejar establecido en este apartado, *"que tomé conciencia que el juramento oficial que presté al sumir el cargo de Presidente de la República conllevaba la absoluta, ineludible y firme responsabilidad de preservar al Estado y mantener incólumes su soberanía total, su territorio, el Estado de Derecho y la institucionalidad pública, la dignidad de la Nación, así como el completo ejercicio de la autoridad en el territorio nacional para proteger y permitir el ejercicio de las libertades y derechos de las personas y las declaraciones y garantías de la sociedad".*

En este sentido, actué siempre bajo una firme convicción democrática y la invariable conducta de preservar y respetar la Constitución y las leyes, conciliando estas acciones con las circunstancias políticas y sociales del momento. Por estas razones en mi discurso de aceptación y toma de posesión[13] dejé establecidos los compromisos de respetar los mandatos de la Constitución, los principios democráticos y republicanos, conciliar a la familia hondureña, el fortalecimiento del sistema electoral y político asegurando la celebración programada de elecciones y las tareas de promover el desarrollo con justicia social.

Ya en el ejercicio del Poder, descubrimos y con mucha sorpresa que aunque actuamos institucionalmente amparados en la ley y respetando las expresiones del pueblo, la reacción impulsiva de la Comunidad Internacional, fue la calificar lo acontecido el 28 de junio 2009 como un golpe de Estado y procedieron a actuar sobre este *fundamento precipitado e inconsistente* a tomar acciones más allá de los marcos y protocolos que rigen las relaciones entre Estados Soberanos, al margen de la jurisprudencia, la doctrina jurídica internacional y excediendo las competencias de los organismos de aplicación.

Se negaron estos cuerpos interventores a conocer e investigar con profundidad la naturaleza de lo acontecido, de estudiar los eventos previos que condujeron al suceso apuntado; tanto los gobiernos e instituciones internacionales no se ocuparon en estudiar nuestra legislación y la conducta generalizada de la ciudadanía y las manifestaciones como opinión pública. Nos dimos cuenta que afrontamos en las acciones del Secretario General de la OEA una reacción que no se enmarcó en las prácticas prudentes del derecho internacional para la investigación y valoración juiciosa de los hechos, lo cual condujo a una *exigua sustentación* de *hechos probatorios* y sin enunciar el marco de sus *competencias* para establecer y aplicar resoluciones condenatorias.

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[13] Discurso Toma de Posesión Presidencial Roberto Micheletti.

No tengo duda que se generaron *estados de indefensión* en perjuicio del Estado de Honduras porque no se permitió la presentación de pruebas de defensa, se negó a funcionarios de nuestro gobierno la comparecencia ante los plenos de esos organismos legal y sencillamente se emitieron resoluciones políticas sin analizar antecedentes de causales con la suficiente retrospección a lo sucedido el 28 de junio 2009, incluso se negó el ingreso a un país sede de la Naciones Unidas, cancelando visas de entrada a funcionarios de mi gobierno. Lo mas lamentable, se ignoró y no se colocó sobre la mesa de los debates, lo referente a la voluntad y anhelos del pueblo en las manifestaciones de las expresiones mayoritarias de sus ciudadanos y organizaciones.

Deseo dejar constancia de mi percepción personal y extrañeza en el comportamiento de las actuaciones que se promovieron contra el gobierno establecido y el pueblo de Honduras a nivel internacional, ya que en ningún momento tuvieron sustento jurídico las actuaciones de la Organización de Estados Americanos (OEA) que violaron el espíritu y contenido de la Carta de las Naciones Unidas; he leído tanto la *Carta Constitutiva* como la *Carta Democrática* de la OEA y no encuentro en ninguno de esos instrumentos potestades que amparen las sobredimensionadas actuaciones[14], que obviamente excedieron su marco constitutivo. Es evidente que se escribieron nuevos protocolos en la diplomacia, se dejaron sin valor los principios aceptados en la Carta de las Naciones Unidas y en la doctrina del derecho internacional. Fundamentos como los consignados en la Doctrina Estrada fueron totalmente avasallados[15].

Me apoyo en el comentario anterior, con los razonamiento de juristas internacionales, de los cuales quiero específicamente referirme a lo sustentado por Luis Ignacio Sánchez Rodríguez en relación al marco de actuación de estos organismos, los cuales comenta en su artículo *"Golpe de Estado y Derecho Internacional"*[16].

Siento que se ofendió la dignidad de una Nación y que se faltó a los principios humanitarios que dan sentido a las relaciones de los pueblos, ya que las medidas adoptadas y las actitudes de ciertos gobiernos han afectado el desarrollo general de Honduras y que fue y sigue siendo notorio el afán intervencionista impulsado por el Secretario General de la Organización de Estados Americanos (OEA), Señor Insulza a pesar del acuerdo inicial de sacar de su esfera el manejo y la solución de este problema trasladándolo al plano centroamericano y luego al plano interno de Honduras.

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[14] La Defensa de los Fundamentos del Estado. Caso Honduras.
[15] Carta Abierta a José Miguel Insulsa.
[16] Luis Ignacio Sánchez Rodríguez. *Golpe de Estado y Derecho Internacional*. Revista de la Cancillería de Honduras No. 15 julio / diciembre 2009. Páginas. 135-170.

Asimismo, el mediador Don Oscar Arias en un acto ajeno al respeto e imparcialidad debida, calificó a la Constitución de Honduras como un adefesio jurídico[17].

A pesar de todos estos eventos desafortunados, respetamos las decisiones soberanas de los gobiernos y mantuvimos siempre una actitud de respeto y el inmenso deseo de restablecer la normalidad en las relaciones del pueblo de Honduras con las demás naciones del planeta.

En el contexto general, quiero dejar sentado, que no existe en la historia política reciente un caso que haya generado tanto debate jurídico como ha sucedido en la valoración de lo actuado en Honduras el día 28 de junio 2009; estudios jurídicos como el elaborado por la Biblioteca de Leyes del Congreso de los Estados Unidos[18], El artículo *"The Honduran Constitution is not a Suicide Pact"*, [19] del autor Frank M. Ealsh adscrito a la firma LexisNexis, así como de, artículos y notas de periódicos[20], en los cuales se rebate la idea de que lo ocurrido no debe calificarse como golpe de Estado y que esta aseveración mas bien parece una argucia mediática, que la expresión de una verdad jurídica.

En contraste con la postura y conducta de la Secretaría de la OEA y de algunos gobernantes, fue evidente una posición favorable al reconocimiento y la solución inmediata y definitiva de la crisis expresados por muchos *pueblos amigos* y organizaciones ciudadanas de países amigos.

Descubrimos la inmensa vocación democrática y de paz de nuestro pueblo, fuimos testigos de manifestaciones excepcionales en todos los poblados importantes del país, condenando lo abusos, pidiendo por la paz y expresando su apoyo y respeto. Hicimos recibimientos respetuosas a las Comisiones de Investigación, a las Delegaciones de Cancilleres del Continente. Siento especial satisfacción en mencionar que recibimos la adhesión voluntaria de muchas organizaciones sociales para defender la Constitución y que siempre respetamos los pensamientos disidentes.

Al haber transcurrido un año de las elecciones generales y diez meses de la toma de posesión del nuevo gobierno, resulta insólito que el Estado de Honduras continúe suspendido en la OEA, que es una organización regional subordinada a

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[17] Declaraciones al "Miami Herald", octubre 1, 2009.
[18] 2009-002965 Law Library of Congress. *Honduras Constitutional Law Issues*. Prepared by Norma C. Gutiérrez. August 2009. Revista de la Chancillería de Honduras No. 15 julio / diciembre 2009. Páginas 83 - 93.
[19] "The Honduran Constitution is not a Suicide Pact". "The legality of Honduran Presidenta Manuel Zelaya removal's" copyright 2010. The Gerorgia Journal of International and Comparative Law by Frank M. Walsh. JD. LexSee 38 GA J. Intl. & Company L. 339 Winter 2010. ANEXO
[20] The Washington Post

la Carta de las Naciones Unidas, y sin embargo Honduras participa plenamente en la Organización de las Naciones Unidas.

Aspectos de la agenda de trabajo presidencial

A continuación me permito señalar las políticas y acciones que se llevaron a cabo durante mi gestión presidencial para afrontar las circunstancias de mi gobierno con miras salvaguardar el Estado, asegurar el bienestar de la población y lograr el restablecimiento de las relaciones internacionales.

Los ejes de estas políticas fueron:

La gestión del proceso electoral.

Cuando presté mi promesa de Ley ante el Congreso, agregué inmediatamente la declaración que daríamos el apoyo político, económico y técnico para que el Tribunal Supremo Electoral a quien por ley compete todo lo relacionado con los actos y procedimientos electorales, para que pudiese garantizar y llevar a cabo las Elecciones Generales del 29 de Noviembre 2009, cuya convocatoria se realizó el 28 de mayo 2008, es decir, antes de los eventos de junio 28, 2009 y sobre las cuales, ya se habían celebrado elecciones primarias en el mes de noviembre 2008.

Precisamente, la firme decisión de hacer respetar el calendario electoral establecido para asegurar el ejercicio del sufragio para evidenciar la capacidad de autodeterminación y la soberanía popular, nos condujo a definir este punto como el elemento imprescindible para solucionar la crisis política[21]. Las elecciones se llevaron a cabo en la fecha prevista (29 de noviembre 2009 en un ambiente de transparencia, altamente participativo y de resultados inobjetables). Nadie impugnó nada y con esto se dejaron abiertas las puertas para el reconocimiento del nuevo gobierno por la comunidad internacional.

Se trató de un proceso especialmente crítico, en el cual mantuvimos la firme posición de llevarlo a cabo conforme lo previamente establecido, aún cuando pesó mucho la opinión internacional de anticiparlo, de oponerse al mismo, incluso de desconocerlo y de descalificar el gobierno que surgiera del mismo. Internamente, los partidarios del Ex-Presidente Manuel Zelaya, incluso hicieron llamados al abstencionismo.

La acciones de política exterior para buscar la normalización de las relaciones diplomáticas y el manejo de la reacción y las presiones de los organismos internacionales.

[21] Replanteamiento a propuesta del Acuerdo San José. Anexos.

Dada la complejidad del asunto electoral, este también fue tema importante de la agenda de política internacional de mi gestión. Los esfuerzos de nuestra Cancillería fueron claves para promover sus resultados y asegurar su aceptación ante los organismos y gobiernos de la Comunidad Internacional.

Como ya dejé expresado, los gobiernos e instituciones internacionales tomaron medidas unilaterales inmediatas, sin que fuéramos oídos, sin hacer consultas e investigaciones de fondo para estudiar nuestro marco jurídico y los hechos causales para calificar y valorar sobre esa base, la legalidad y la legitimidad de las actuaciones de nuestra institucionalidad pública, a pesar de ello, desde el Poder Ejecutivo tuvimos la firme decisión de participar en diálogos y suscribir acuerdos para encontrar una salida a la crisis política.

Destacan en este sentido dos esfuerzos particulares, la propuesta originada en el Departamento de Estado Americano, que buscó trasladar la solución del problema al plano centroamericano, para lo cual se solicitó la mediación del Presidente de Costa Rica, Don Oscar Arias. El Señor Arias estableció unilateralmente un plan (Plan Arias) que planteaba en uno de sus puntos la restitución incondicional del Señor José Manuel Zelaya a la Presidencia del República. Yo personalmente visité Costa Rica en la fase preparatoria de este dialogo. Ante la imposibilidad de establecer una agenda de puntos definitiva y mutuamente aceptada, no se dio la oportunidad de suscribir compromisos en esa oportunidad, en gran medida porque la delegación del Señor Zelaya esta instancia.

El 21 de septiembre 2009 ingresó subrepticiamente a Honduras el Señor Manuel Zelaya Rosales y estando refugiado en las oficinas de la Embajada de Brasil en Tegucigalpa, el Señor José Miguel Insulza Secretario General de la Organización de Estados Americanos (OEA), me solicitó lo recibiera, lo cual hice en las instalaciones de la Base Militar Hondureña de Palmerola; estando en presencia de nuestro Canciller le hice la proposición de instalar la Mesa de Dialogo GUAYMURAS, para resolver *entre hondureños, conforme al derecho hondureño y por hondureños* las cuestiones pendientes de definir; el Señor Secretario General estuvo de acuerdo a nombre de la Asamblea General de su organismo y señaló que si las partes estaban de acuerdo, ellos actuarían como facilitadores, en el entendido *que los acuerdos y negociaciones serían prerrogativa de las partes y que la OEA respetaría.*

La Mesa de Dialogo se instaló en Tegucigalpa, el 7 de octubre 2009, contándose con la asistencia de Cancilleres y representantes de varios países, entre ellos, Estados Unidos, España, de las Naciones Unidas y el propios Secretario General de la OEA, todos en condición de testigos y de apoyo al dialogo y los acuerdos de las partes.

17

Los compromisos esenciales de este acuerdo fueron:

a) Respeto a la Constitución y la renuncia a convocar a una Asamblea Nacional Constituyente;
b) Respeto al proceso electoral y sus resultados;
c) Que la resolución sobre la impugnación del Señor Zelaya Rosales sobre su destitución fuese decidida por el Congreso Nacional y no por la Corte Suprema de Justicia, a petición de la delegación del Señor Rosales;
d) Exhortación a la Comunidad Internacional para que una vez suscrito el acuerdo, se normalizaran las relaciones con Honduras en particular con los organismos internacionales financieros y de cooperación, que habían suspendido sus operaciones con Honduras.

Con fecha 30 de octubre 2009, se suscribió el ACUERDO TEGUCIGALPA/SAN JOSE como parte del *"Dialogo Guaymuras"* el cual, quedó vinculado a las propuestas iniciales de SAN JOSE y el Plan Arias. Destaco el apoyo que brindaron los facilitadores de la OEA y los Señores Thomas Shanon y Craig Kelly del Departamento de Estado Americano. Todos los puntos del dialogo Guaymuras fueron cumplidos, la falta de implementación en algunas aspectos del mismo no se debió a inflexibilidad de mi gobierno

Estoy seguro que Honduras superó la crisis política en base a su derecho interno, sin embargo y aunque se cumplieron con los compromisos derivados de los Acuerdos de San José/Tegucigalpa Dialogo Guaymuras, la presión internacional inexplicablemente planteó una respuesta diferente, ya que no generó la acciones de reconocimiento esperadas y contempladas en el mismo. Sin embargo, las posiciones de algunos gobiernos fueron paulatinamente moderándose[22].

En la documentación de nuestra Cancillería[23] se pueden apreciar en detalle los esfuerzos de la misma en el marco de las acciones de política exterior para promover la comprensión internacional. Entre estos documentos figuran el accionar de nuestro gobierno ante las Naciones Unidas, la Organización de Estados Americanos, las protestas por invasión del espacio aéreo nacional por un avión venezolano el día 5 de julio 2009 y otros incidentes diplomáticos en relación al irrespeto del derecho de asilo.

A manera de conclusión sobre este tema de la diplomacia, deseo reiterar que a pesar de las presiones y situaciones explicadas, Honduras siempre actuó en un marco de respeto y flexibilidad con la comunidad internacional amparados en las normas y protocolos de rigen esa relación. En ningún momento rechazamos los procesos de dialogo y de mediación, mantuvimos nuestras fronteras abiertas a

[22] Traducción de declaraciones de funcionarios norteamericanos.
[23] Revista de la Cancillería de Honduras No. 15 julio – Diciembre 2009. Secretaría de Relaciones Exteriores. Informe de Labores 2009.

18

cualquier observador de cualquier línea de pensamiento, no generamos ningún incidente bochornoso, ni ilegal, aunque si recibimos amenazas de intervención violenta del gobierno venezolano y de otro gobierno miembro de la ALBA.

El caso de Honduras no tiene precedentes en la historia diplomática moderna, y como ya lo reseñé a los funcionarios de mi gobierno se les privó de la oportunidad de brindar explicaciones en las Asambleas y foros de las Naciones Unidas y de otros organismos. Tengo la impresión que al final, nuestro caso, hizo aflorar un debate ideológico internacional huérfano de sustento, más que el manejo de una situación política simple[24] y que esta circunstancia tuvo y sigue teniendo implicaciones y costos políticos para algunos de sus actores.

Las acciones para conservar el orden y la tranquilidad social interna.

Se recurrió a la tolerancia, el respeto al pluralismo y el manejo respetuoso de derechos humanos. Siempre se mantuvo una postura imparcial a las expresiones de los grupos, a pesar de los disturbios en ningún momento se negó el acceso a observadores de derechos humanos. El ingreso subrepticio, la *presencia del Señor Zelaya y su auto asilo en la Embajada del Brasil*, asunto que se manejó con prudencia, se logró reducir al mínimo los efectos de violencia, a pesar de que el día del ingreso del Sr. Zelaya a dicha embajada, se produjo en Tegucigalpa, caos vial y comercial y mas tarde disturbios que generaron daños a la propiedad privada y estatal. Al final la permanencia de cuatro meses del Señor Zelaya, en la cual hizo llamados a la violencia[25] no tuvo mayores repercusiones en el orden interno, excepto algunos incidentes diplomáticos como su intento inconsulto de salida a México.

El financiamiento del presupuesto y otros manejos fiscales. A pesar de las restricciones de recursos, aún de aquellos vitales relacionados a asistencia social básica, se pudo financiar el funcionamiento de la administración del Estado, se cumplieron compromisos con las Municipalidades. Se sometió la aprobación del presupuesto al Congreso Nacional y se revelaron desde el inicio los problemas y manejos incorrectos de la gestión Zelaya Rosales, en la cual, el *endeudamiento público* asumió una dimensión irracional, para el caso el crecimiento de la deuda interna que pasó de 6,000 millones de Lempiras a inicios de 2008 a mas de 16,000 millones en 2009. La deuda externa igualmente creció en forma desproporcionada. La ciudadanía ha ido conociendo los actos de corrupción, los despilfarros de recursos y los resultados de investigaciones que realiza el Ministerio Público y el Tribunal Superior de Cuentas.

[24] Nota: Nicaragua – Honduras and hypocrisy. Wednesday octubre 20, 2010.
[25] Ver video llamados desde Embajada de Brasil. Septiembre 2009.

Derechos Humanos

Desde el inicio de nuestra gestión, dimos absoluta prioridad a lo concerniente a los "derechos humanos"; las Fuerzas Armadas y la Policía Nacional fueron especialmente instruidas para proteger vidas, bienes y los derechos constitucionales de todas las personas, grupos sociales y del Estado mismo; en ningún momento se dieron instrucciones que contrariaran estos principios de respeto a la persona humana. En ninguna circunstancia se han ocultado acontecimientos o información, al contrario, se ha dado entera libertad para que distintas organizaciones y comisiones puedan realizar sus investigaciones, esto incluye con particularidad, la Comisión Especial de Derechos Humanos enviada por la Organización de Estados Americanos, (OEA) que rindió y divulgó un informe de su tarea. Esta Comisión visitó el Congreso Nacional el día 18 de agosto 2009.

Aunque muchas manifestaciones tuvieron connotación de disturbios y se produjeron actos de pillaje, de vandalismo, actuamos con mucha serenidad y tacto aun en aquellos casos donde se abusó para hacer llamados a disturbios o la insurrección[26]. En ningún caso dimos instrucciones de seguridad sobredimensionadas a pesar de la actuación irresponsable de personas que por distintos medios intentaron promover el desorden y la anarquía.

El Comisionado Nacional de los Derechos Humanos de Honduras, tuvo la mas absoluta libertad para actuar y a esta fecha ya ha publicado su informe anual correspondiente al año 2009, mucho de su contenido está referido a los acontecimientos que nos ocupan.

[26] Ver videos y notas de prensa.

MIRANDO HACIA EL FUTURO

He hecho mis relatos hablando con mucha franqueza, con espontaneidad, con firmeza, pero con respeto, sustentando cada una mis pensamientos con las convicciones y principios que anuncié al inicio, pero sobre todo amparado en la verdad y el espíritu de las leyes, que todos sabemos es consustancial con el bien común, con la justicia y la voluntad de la ciudadanía, circunstancias bajo las cuales me someto al juicio de la historia, con mi frente levantada, con orgullo, con dignidad y con la satisfacción de haber servido a mi Patria y a la democracia y mas aún con la esperanza de haber sentado motivaciones para una paz permanente y para no heredar nuestros conflictos y nuestras crisis a las futuras generaciones de hondureños.

Deseo en forma vehemente, que mis expresiones sean útiles únicamente para encontrar la verdad y que de ninguna manera se conviertan en instrumento para encontrar nuevas posiciones de controversia o sencillamente para profundizar divisiones.

Ahora, con cara al futuro, es evidente, que no podemos caminar hacia adelante mirando hacia atrás; el pasado debe ser únicamente una *lección aprendida;* lo importante ahora es afrontar la realidad de nuestro fraccionamiento social para construir a partir de este esta circunstancia, una nueva *cultura de convivencia en paz, respeto mutuo y tolerancia permanente.* Preparémonos para no seguir cayendo en una crisis con una peligrosa agenda en la cual solo se visualicen puntos de interés y de controversia política y hasta ideológica. Tenemos muchos retos que afrontar, necesitamos rescatar y fortalecer el papel del sistema de partidos políticos.

Necesitamos urgentemente reenfocar nuestras actuaciones a resolver los problemas de la Nación, construir una visión de Nación y la ruta para alcanzar estos anhelos.

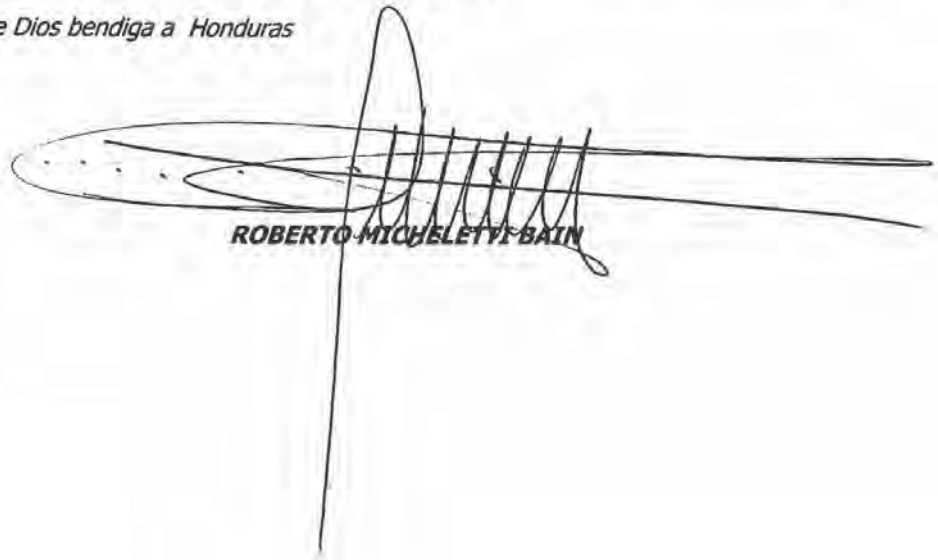
Ratifico mi confianza, que la *Comisión de la Verdad y la Reconciliación tendrá la valentía, el talento y la objetividad para depurar la agenda de la Nación y que su manejo esté libre de intenciones engañosas y móviles distorsionados que impidan o dificulten la construcción de una sociedad de elevada cohesión,* bajo el absoluto entendimiento que ninguna Nación moderna ha construido su prosperidad en ausencia del imperio y el respeto de un Estado de Derecho o sin la firmeza de su institucionalidad pública.

21

Igualmente confío, que su informe promoverá el reconocimiento de la comunidad internacional para Honduras y su plena inserción en los organismos internacionales, en muchos de los cuales ha sido Estado Fundador, todo, bajo el espíritu de la armonía, la paz, respeto y la solidaridad humana entre los pueblos del mundo.

Mi reconocimiento especial a los Respetables Comisionados, por sus esfuerzos en la consolidación de la paz democrática en una sociedad abierta e incluyente y sobre todo en su afán, para reafirmar la plena vigencia de un Estado de Derecho, el respeto a la autoridad, en una Nación próspera.

Que Dios bendiga a Honduras



22