

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**Jesus Cabrera Jaramillo, in his individual  
capacity, and in his capacity as the personal  
representative of the estate of Alma Rosa  
Jaramillo,**

**Sara González Calderón, in her individual  
capacity, and**

**Alonso Estrada Gutierrez, in his individual  
capacity, and in his capacity as the personal  
representative of the estate of Eduardo  
Estrada,**

**Plaintiffs,**

v.

**Carlos Mario Jiménez Naranjo, also known as  
“Macaco,” “El Agricultor,” “Lorenzo Gonzalez  
Quinchia,” and “Javier Montañez,”**

**Defendant.**

**CASE NO: 1:10-cv-21951-CIV-  
TORRES**

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**PLAINTIFFS’ MOTIONS FOR SUMMARY JUDGMENT, OR IN THE  
ALTERNATIVE, FOR DEFAULT JUDGMENT**

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## **I. INTRODUCTION**

1. Plaintiff Sara González Calderón (“Plaintiff González”), in her individual capacity, and Plaintiff Alonso Estrada Gutierrez (“Plaintiff Estrada”), in his individual capacity and as the representative of the estate of decedent Eduardo Estrada, file this motion for summary judgment or, in the alternative, for default judgment against Defendant Carlos Mario Jiménez Naranjo (“Defendant”), the founder and former General Commander of the *Bloque Central Bolívar* (“BCB”) paramilitary organization in Colombia. Plaintiffs bring their claims under the Torture Victim Protection Act (“TVPA”), 28 U.S.C. § 1350 note, for Defendant’s role in the extrajudicial killing of Eduardo Estrada and the torture of Plaintiff González, Eduardo’s common law wife.

2. The undisputed evidence demonstrates that Defendant was responsible for these acts pursuant to aiding and abetting, conspiracy and command responsibility liability. Given that there is no issue of material fact in dispute, Plaintiffs respectfully request that the Court grant their motion for summary judgment pursuant to Federal Rule of Civil Procedure 56(c) (Section II).

3. In the alternative, Defendant’s failure to defend or engage in these proceedings fulfills the requirement for an entry of default and a default judgment pursuant to Federal Rule of Civil Procedure 55 (Section III).

4. Should the Court grant either Plaintiffs’ motion for summary judgment or, in the alternative, their motion for default judgment, Plaintiffs submit that they are entitled to compensatory and punitive damages (Section IV).

## **II. THE COURT SHOULD GRANT SUMMARY JUDGMENT IN FAVOR OF PLAINTIFFS**

### **A. The Legal Standard for Summary Judgment**

5. Under Federal Rule of Civil Procedure 56(c), summary judgment is proper “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (quoting Fed. R. Civ. P. 56(c)). Once the moving party has identified the basis for an absence of a genuine issue of material fact, the burden shifts to the nonmoving party to put forth “significant, probative evidence” demonstrating a genuine issue for trial. *Chanel, Inc. v. Italian*



*Activewear of Fla., Inc.*, 931 F.2d 1472, 1477 (11th Cir. 1991). A genuine issue of material fact exists for trial only “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

6. When the summary judgment movant does not bear the burden of proof on an issue at trial, as with an affirmative defense, “the movant has two options: (1) the movant may simply point out an absence of evidence to support the non-moving party’s case; or (2) the movant may provide ‘affirmative evidence demonstrating that the nonmoving party will be unable to prove its case at trial.’” *Jara v. Nunez*, No. 613CV1426ORL37GJK, 2016 WL 2348658, at \*3 (M.D. Fla. May 4, 2016) (quoting *U.S. v. Four Parcels of Real Prop. in Green & Tuscaloosa Cnty. in State of Ala.*, 941 F.2d 1428, 1438 (11th Cir. 1991)).

7. Where the nonmoving party has had ample opportunity to conduct discovery, it must come forward with affirmative evidence to defeat a motion for summary judgment. *Mamani v. Berzain*, 309 F. Supp. 3d 1274, 1294 (S.D. Fla. 2018) (citing *Anderson*, 477 U.S. at 257). Conclusory assertions unsupported by specific facts, presented in affidavits opposing the motion for summary judgment, are insufficient to defeat a proper motion. *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888 (1990). “Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no ‘genuine issue for trial.’” *Matsushita Elec. Indus. Co., Ltd. V. Zenith Radio Corp.*, 475 U.S. 574, 857 (1986) (citation omitted).

8. If a party fails to respond to a dispositive motion, the Federal Rules of Civil Procedure permit the court to “consider the fact[s] undisputed for purposes of the motion” and may “grant summary judgment if the motion and supporting materials – including the facts considered undisputed – show that the movant is entitled to it . . . .” Fed. R. Civ. P. 56(e); *see also* S.D. Fla. L.R. 56.1(c) (“All material facts in any party’s Statement of Material Facts may be deemed admitted unless controverted by the other party’s Statement of Material Facts, provided that: (i) the Court finds that the material fact at issue is supported by properly cited record evidence; and (ii) any exception under Fed. R. Civ. P. 56 does not apply.”); *State Farm Mut. Auto. Ins. Co. v. Filenger*, 362 F. Supp. 3d 1246, 1249 (S.D. Fla. 2018) (accepting plaintiffs’ Statement of Material Facts as admitted and granting motion for summary judgment where defendants failed to respond).

**B. The Court Should Grant Plaintiffs' Summary Judgment Motion on the Extrajudicial Killing Claim**

**1. Prima Facie Elements of Extrajudicial Killing**

9. The Torture Victim Protection Act ("TVPA"), 28 U.S.C. § 1350 note, 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 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, § 2(a)(2). "[T]he term 'extrajudicial killing' means 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." *Id.*, § 3(a).

10. When a claim requiring state action is based on conduct by a private actor, "there must be proof of a symbiotic relationship between a private actor and the government that involves the torture or killing alleged in the complaint to satisfy the requirement of state action . . ." *Romero v. Drummond Co.*, 552 F.3d 1303, 1317 (11th Cir. 2008). Within the paramilitary context, a symbiotic relationship is established where the state "not only tolerates the paramilitaries, but also encourages, supports, and relies on their existence." *Doe v. Drummond Co.*, No. 2:09-CV-01041-RDP, 2010 WL 9450019, at \*6 (N.D. Ala. Apr. 30, 2010) ("*Drummond I*") (finding color of law properly pled given allegations of specific connections between AUC paramilitaries and state actors); *see also In re Chiquita Brands Int'l, Inc. Alien Tort Statute & S'holder Deriv. Litig.*, 792 F. Supp. 2d 1301, 1329 (S.D. Fla. 2011) (state action element met given allegations detailing "the government's role in creating, financing, promoting, and collaborating with the AUC in the common objective of fighting the leftist guerrillas," through "joint membership, intelligence sharing, and the government's role in training and arming the AUC"), *rev'd sub nom. on other grounds by Cardona v. Chiquita Brands Int'l, Inc.*, 760 F.3d 1185 (11th Cir. 2014); *Doe v. Saravia*, 348 F. Supp. 2d 1112, 1150 (E.D. Cal. 2004) (government provision of financial and logistical support to private assassin met color of law requirement). A symbiotic relationship also exists where state actors purposefully turn a blind eye to the conduct at issue. Order on Defendant's Motion to Dismiss Plaintiff's Amended Complaint at 12, ECF No. 117 (citing *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248-49 (11th Cir. 2005)).

11. “While the symbiotic relationship must involve ‘the torture or killing alleged in the complaint,’” the relevant inquiry is “whether ‘the symbiotic relationship between the paramilitaries and the Colombian military had anything to do with the conduct at issue.’” *Chiquita Brands*, 792 F. Supp. 2d at 1325 (quoting *Romero*, 552 F.3d at 1317). In other words, Plaintiffs in this case must show a symbiotic relationship between state actors and the BCB with respect to the BCB’s campaign of torture and killing of civilians in the Middle Magdalena region, “not specific government involvement with each individual act of torture and killing of Plaintiffs’ relatives.” *Id.* at 1326; *see also Drummond I*, 2010 WL 9450019, at \*6.

**2. Plaintiffs’ Evidence Establishes Without Genuine Factual Dispute that Eduardo Estrada Was Extrajudicially Killed by the *Bloque Central Bolívar***

12. On July 16, 2001, a BCB paramilitary killed Eduardo Estrada in San Pablo by deliberately shooting him in the back of the head. The killing, which was ordered by BCB paramilitaries under Defendant’s command and carried out in accordance with the BCB’s *modus operandi* for extrajudicial killings in urban areas, was not authorized by a previous judgment pronounced by a regularly constituted court. *See* Statement of Undisputed Material Facts in Support of Plaintiffs’ Motion for Summary Judgment, filed concurrently herewith (“Pltfs’ SoF”) § III.B

13. State actors turned a blind eye to the BCB’s extrajudicial killing of Eduardo Estrada. A soldier passed by the scene of the killing while Eduardo was grievously wounded but simply left without offering any assistance or calling for backup. Despite being within earshot of the nearby local police station, the police never came to inquire about the multiple gunshots or the screaming at the scene of the killing. No one from the army or the police ever assisted Eduardo, either at the scene of his shooting or later that night at the hospital where he died. *Id.* § III.B.

14. The army and the police’s willful blindness to Eduardo’s killing was a feature of the symbiotic relationship that existed between state actors and the BCB in the Middle Magdalena region. Within the region, which was ground zero for military-paramilitary collaboration in Colombia, state actors encouraged, supported and relied on the BCB’s existence. State security forces in particular routinely provided the BCB with information to identify and kill perceived guerrilla sympathizers within the civilian population. State security forces also provided intelligence, weapons and military uniforms to the BCB. The BCB maintained a payroll for payments to the state security forces in the region, who San Pablo residents considered to be the

“same” as the paramilitaries. As with Eduardo’s killing, and the 1999 San Pablo massacre that announced the BCB’s presence in the town, state security forces routinely turned a blind eye to the BCB’s targeting of civilians perceived to be guerilla sympathizers. *Id.* § I.B.

**C. The Court Should Grant Plaintiffs’ Summary Judgment Motion on the Torture Claim**

**1. *Prima Facie* Elements of Torture**

15. The TVPA provides that “an individual who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to torture shall, in a civil action, be liable for damages to that individual . . . .” 28 U.S.C. § 1350 note, § 2(a)(1). Torture is defined as:

[A]ny act, directed against an individual in the offender’s custody or physical control, by which severe pain or suffering . . . whether physical or mental, is intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind . . . .

*Id.*, § 3(b)(1).

16. A single incident is sufficient to constitute torture. *Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322, 1346 (N.D. Ga. 2002). Custody or physical control extends to circumstances where an individual’s freedom of movement is restrained by a concrete threat. *Jaramillo v. Naranjo*, No. 10-21951-CIV, 2014 WL 4898210, at \*14 (S.D. Fla. Sept. 30, 2014); *see also Boniface v. Viliena*, 338 F. Supp. 3d 50, 56 (D. Mass. 2018) (finding the elements of torture under the TVPA satisfied where plaintiffs were beaten, chased and shot at by the offenders on a public street). Mental pain or suffering refers to prolonged mental harm caused by or resulting from: “(A) the intentional infliction or threatened infliction of severe physical pain or suffering; . . . (C) the threat of imminent death; or (D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering . . . .” 28 U.S.C. § 1350 note, § 3(b)(2). *See also* Court’s Instructions to the Jury, *Cabello v. Fernandez-Larios*, No. 99-0528-CIVLENARD (S.D. Fla. May 24, 2004), ECF No. 352 (verdict *aff’d*, 402 F.3d 1148 (11th Cir. 2005)).

**2. Plaintiffs’ Evidence Establishes Without Genuine Factual Dispute that Plaintiff González was Tortured by the *Bloque Central Bolívar***

17. Plaintiff González was forced to witness a BCB paramilitary shoot her spouse in the head so close to her that she lost consciousness from the impacts of the shots. When she regained consciousness, the paramilitary who shot Eduardo was still standing over her with his gun in his

hand. Fearing for her own life, Sara could not move, or even speak while Eduardo continued to bleed out at her side. Being knocked unconscious by gunfire then witnessing Eduardo's violent death while simultaneously fearing for her own life was a traumatic experience that continues to cause her severe mental harm and suffering to this day. Pltfs' SoF §§ III.B and III.C.

18. The BCB carried out Eduardo's killing, and Sara's torture, in retaliation for what the BCB wrongly perceived to be Eduardo's status as a civilian guerilla sympathizer. In carrying out the killing, and subjecting Sara to severe mental and physical suffering, the BCB relied on state actors turning a blind eye to their conduct. *See supra* II.B.2; *see also* Pltfs' SoF §§ I.B and III.B.

**D. The Court Should Grant Summary Judgment as to Defendant's Responsibility for Extrajudicial Killing and Torture**

19. Secondary theories of liability apply under the TVPA. *Mohamad v. Palestinian Auth.*, 566 U.S. 449, 458 (2012) (noting that the TVPA contemplates direct liability as well as "liability against officers who do not personally execute the torture or extrajudicial killing"); *see also Doe v. Drummond Co.*, 782 F.3d 576, 607 (11th Cir. 2015) ("*Drummond II*") ("secondary or indirect theories of liability recognized by U.S. law are available for claims brought under the TVPA."); *Cabello*, 402 F.3d at 1158.

20. Defendant is responsible for the extrajudicial killing of Eduardo Estrada and the torture of Plaintiff González because he: (1) aided and abetted the BCB members who directly committed the harms suffered by Plaintiffs; (2) conspired with BCB members to commit the harms suffered by Plaintiffs; and/or (3) exercised command responsibility over the BCB members who committed the harms suffered by Plaintiffs.

**1. Defendant Aided and Abetted Subordinates in the *Bloque Central Bolívar* Who Carried Out the Extrajudicial Killing and Torture**

**a. *Prima Facie* Elements of Aiding and Abetting**

21. Defendant may be held liable for extrajudicial killing and torture under the TVPA pursuant to aiding and abetting liability. *Drummond II*, 782 F.3d at 605. Aiding and abetting liability requires that the wrongful act at the center of the claim was, in fact, committed, and the defendant gave knowing substantial assistance to the person or persons who committed the wrongful act. *Id.* at 608 (citing *Cabello*, 402 F.3d at 1158-59 and *Halberstam v. Welch*, 705 F.2d 472, 478 (D.C. Cir. 1983)). Under an aiding and abetting theory, it is not necessary that Defendant knew specifically which wrongful acts were being committed by the perpetrators so long as they were a natural and foreseeable result of the activity Defendant helped undertake.

*Halberstam*, 705 F.2d at 488.

**b. Defendant's Knowing Substantial Assistance**

22. On July 16, 2001, BCB paramilitaries under Defendant's command killed Eduardo Estrada in San Pablo. Plaintiff González, who witnessed Eduardo's killing and feared for her own life, suffered severe mental trauma. In keeping with its pattern and practice, the BCB targeted and killed Eduardo because he was perceived to be a civilian guerilla sympathizer. *See supra* II.B.2 and II.C.2; *see also* Pltfs' SoF § III.B.

23. As the founder and General Commander of the BCB, Defendant provided knowing substantial assistance to the BCB subordinates who carried out Eduardo's killing. Defendant knew of the BCB's pattern and practice of killing civilians perceived as guerilla sympathizers. Defendant met personally with the various BCB zone commanders to evaluate the situation in the regions under their control, including the Middle Magdalena. Reports were sent up the BCB's hierarchical chain of command by subordinates, including information on the number of guerilla sympathizers killed, BCB casualties, the procurement of weapons and whether a superior's order had been fulfilled. The BCB's regulations required that critics of the paramilitaries be designated as military targets for murder. At a minimum, Defendant's BCB subordinates committed upwards of 1,300 murders, including the mass killings of civilians and families – men, women and children alike – while under his command. The BCB was, in the words of its former military commander, “a killing machine.” In San Pablo, where Eduardo was killed, many people, including civilians, were branded as guerrilla sympathizers by the BCB and killed by BCB paramilitaries. The BCB's murder of Eduardo was a natural and foreseeable result of the BCB's activities. Pltfs' SoF §§ I.A, II.A.

24. As the BCB's General Commander, Defendant played key roles in enabling the organization to function and carry out its policy and practice of targeted violence, including: exercising authority over lower-ranking members; managing the BCB's income, expenditures and budget; designating, removing and transferring zone commanders; and managing the BCB's high value assets, *matériel* and military supply-chain. Defendant's narco-trafficking proceeds were also integral to the BCB's operations and to his authority over the organization. In addition to serving as the hierarchical head of the BCB, Defendant delegated and then directly assumed control of the BCB fronts operating in San Pablo. *Id.* §§ II.A, II.B.

**2. Defendant Conspired with Subordinates in the *Bloque Central Bolívar* Who Carried Out the Extrajudicial Killing and Torture**

**a. *Prima Facie* Elements of Conspiracy**

25. Defendant may be held liable for extrajudicial killing and torture under the TVPA pursuant to conspiracy liability. *Cabello*, 402 F.3d at 1159. The elements of conspiracy under the TVPA are met when: (1) two or more persons agreed to commit a wrongful act; (2) a defendant joined the conspiracy knowing of at least one of the goals of the conspiracy and intending to help accomplish it; and (3) one or more of the violations was committed by someone who was a member of the conspiracy and acted in furtherance of the conspiracy. *Id.* (citing *Halberstam*, 705 F.2d at 481, 487). Once the conspiracy has been formed, all of its members are liable for injuries caused by acts pursuant to or in furtherance of the conspiracy and all acts that were the natural and foreseeable consequence of the conspiracy. *See Halberstam*, 705 F.2d at 481.

**b. Defendant's Conspiratorial Conduct**

26. Defendant founded and led the BCB as its hierarchical head. By the time of its demobilization in 2005, the BCB had grown to upwards of 7,000 paramilitary members. Under the Defendant, the BCB's twin goals were to control the illegal drug trade and to combat guerilla forces, including through its policy and practice of killing civilians perceived by the BCB as guerilla sympathizers. The BCB's murder of Eduardo Estrada was a natural and foreseeable result of the BCB's activities. *See supra* II.D.1.b.; Pltfs' SoF §§ I.A, II.A.

**3. Defendant Exercised Command Responsibility Over the *Bloque Central Bolívar* Subordinates Who Carried Out the Extrajudicial Killing and Torture**

**a. *Prima Facie* Elements of Command Responsibility**

27. Defendant may be held liable for extrajudicial killing and torture under the TVPA pursuant to command responsibility. *Drummond II*, 782 F.3d at 609. The elements of command liability under the TVPA are:

(1) the existence of a superior-subordinate relationship between the commander and the perpetrator of the crime; (2) that the commander knew or should have known, owing to the circumstances at the time, that his subordinates had committed, were committing, or planned to commit acts violative of the law of war; and (3) that the commander failed to prevent the commission of the crimes, or failed to punish the subordinates after the commission of the crimes. *Id.*

28. The existence of a superior-subordinate relationship between a defendant and the person or persons who committed the human rights abuses is established where a defendant had

“effective control” over the perpetrator. *See Mamani v. Berzain*, 21 F. Supp. 3d 1353, 1376 (S.D. Fla. 2014) (effective control is satisfied if defendant had the legal authority or practical ability to exert control over his subordinates), *aff’d in part, appeal denied in part*, 825 F.3d 1304 (11th Cir. 2016); *Doe v. Qi*, 349 F. Supp. 2d 1258, 1331-32 (N.D. Cal. 2004) (superior-subordinate relationship was established where one defendant had supervisory authority over perpetrators, and another defendant “played a major policy-making and supervisory role in the policies and practices that were carried out”). Defendant cannot escape liability where his own action or inaction caused or significantly contributed to a lack of effective control over his subordinates. *Ford ex rel. Estate of Ford v. Garcia*, 289 F.3d 1283, 1291, 1297-98 (11th Cir. 2002). Effective control can be exercised by civilians as well as military commanders, and need not be exercised over a formal military force or during a conflict. *Drummond II*, 782 F.3d at 609-10.

29. The knowledge requirement is established where “the commander knew or should have known, owing to the circumstances at the time, that his subordinates had committed, were committing, or planned to commit” extrajudicial killing or torture. A defendant should have known that extrajudicial killing and torture were being committed if his subordinates were engaged in a pattern, practice, or policy of committing extrajudicial killing and torture. *Paul v. Avril*, 901 F. Supp. 330, 335 (S.D. Fla. 1994) (finding that defendant bore “personal responsibility for a systematic pattern of egregious human rights abuses” committed by his subordinates without requiring defendant’s knowledge that the plaintiffs would be specifically targeted); *Xuncax v. Gramajo*, 886 F. Supp. 162, 171-73, 174-75 (D. Mass. 1995) (knowledge requirement established where defendant was aware of and supported widespread acts of brutality committed by personnel under his command); *see also* Torture Victim Protection Act of 1991, S. Rep. No. 102-249, at 9 (1991) (hereinafter “TVPA Senate Report”).

30. The third element of command responsibility is satisfied where a defendant failed to take all necessary and reasonable measures to prevent extrajudicial killing or torture, or failed to punish the subordinates after the commission of extrajudicial killings or torture. *Drummond II*, 782 F.3d at 609; *Ford*, 289 F.3d at 1288.

**b. Defendant’s Command Responsibility as the BCB’s General Commander**

31. As the General Commander, Defendant exercised authority as a superior over all lower-ranking paramilitary members of the BCB, including those in San Pablo. As memorialized in the



BCB's "Functions Manual" (*Regimen Disciplinario Interno, Manual de Funciones* (April 2001)), Defendant's power included the ability to designate, remove or transfer BCB zone commanders, including when they committed abuses; order or authorize the creation, dissolution, annexation, or merger of zones and fronts within the BCB's territory; and purportedly ensure that subordinates comply with international humanitarian law and human rights law. Within that hierarchical command structure, Defendant issued orders to subordinates and received reports from subordinates regarding BCB activities. Subordinates who did not carry out the orders of their superiors were killed by the BCB. Pltfs' SoF § II.A.

32. As General Commander, Defendant initially delegated responsibility for the operation of the BCB fronts in Southern Bolívar, where San Pablo is located, to Military Commander Rodrigo Pérez Alzate (alias Julián Bolívar). In early 2001, Defendant assumed personal oversight of those fronts – including San Pablo – and transferred Pérez Alzate elsewhere. On July 15, 2001, BCB zone commander John Francis Arrieta (alias Gustavo Alarcón) passed down an order to kill Eduardo Estrada to the BCB's military commander of San Pablo Felipe Candado; the order was received by the BCB commander in San Pablo, alias Juan Esteban, who tasked two BCB hitmen with carrying out the murder that same night. *Id.* §§ II.B., III.B.

33. Defendant knew or should have known that his subordinates were carrying out the BCB's policy and practice of targeted violence against perceived guerilla sympathizers within the civilian population. The BCB's violence was so widespread and continuous that, at a minimum, Defendant's subordinates committed upwards of 1,300 murders, including mass killings of civilians, under his command. The BCB was, in the words of its former military commander, "a killing machine." While he later called off the order, Defendant personally ordered the killing of Father Francisco de Roux, a Jesuit priest. *Id.* §§ I.A., IIA.

34. Despite Defendant's authority to discipline his BCB subordinates, including for violations of international humanitarian and human rights law, Defendant failed to take any steps, let alone reasonable ones, to prevent or punish the commission of their crimes. Quite the opposite. Defendant formed and oversaw a murderous paramilitary organization that carried out a policy and practice of targeted violence against civilians who, like Eduardo Estrada, were perceived by the BCB to be guerilla sympathizers. *Id.* §§ I.A., IIA.

**E. The Court Should Grant Summary Judgment as to the Exhaustion of Local Remedies**

**1. Prima Facie Elements of the Exhaustion of Local Remedies Affirmative Defense**

35. “[T]he exhaustion requirement pursuant to the TVPA is an affirmative defense, requiring the defendant to bear the burden of proof. This burden of proof is substantial.” *Jean v. Dorelien*, 431 F.3d 776, 781 (11th Cir. 2005) (citations omitted). Plaintiffs are “entitled to a presumption that local remedies have been exhausted, which Defendants must overcome before Plaintiffs are required to prove exhaustion or, presumably, the futility of exhausting local remedies.”

*Sinaltrainal v. Coca-Cola Co.*, 256 F. Supp. 2d 1345, 1357-58 (S.D. Fla. 2003); *see also* TVPA Senate Report at 8 (“[I]n most instances the initiation of litigation under [the TVPA] will be virtually prima facie case evidence that the claimant has exhausted his or her remedies.”).

36. Where a plaintiff is demonstrably involved in a domestic criminal case that makes little progress over the course of years, domestic remedies are considered inadequate or unavailable. *Lizarbe v. Rondon*, 642 F. Supp. 2d 473, 485 (D. Md. 2009) (finding that the defendant failed to meet his burden on exhaustion given that “[t]he record is barren of any evidence that the criminal case against [defendant] is proceeding apace or that there is any reasonably foreseeable date for its conclusion.”), *aff’d in part, appeal dismissed in part*, 402 F. App’x 834 (4th Cir. 2010); *Xuncax*, 886 F. Supp. at 178 (plaintiff exhausted local remedies where the domestic criminal case had made no progress for several years).

**2. Plaintiffs Exhausted Local Remedies**

37. Defendant has proffered no evidence to support his burden to show that Plaintiffs failed to exhaust local remedies, a *lacuna* that is sufficient to grant Plaintiffs’ motion for summary judgment on the issue. *Jara*, 2016 WL 2348658, at \*3 (citing *Four Parcels*, 941 F.2d 1428).

38. Plaintiffs offer uncontroverted affirmative evidence that despite their diligent efforts, local remedies remain inadequate and unavailable. Plaintiffs sought justice for Eduardo Estrada’s killing through the Colombian criminal justice system. Close to two decades after Eduardo’s murder, no one has ever been held responsible for his killing. Plaintiffs also sought remedies through the Colombian Justice and Peace process, from which Defendant was formally expelled for continuing to engage in drug trafficking activities, all still to no avail. Pltfs’ SoF § III.C.

39. For all the reasons set forth above, Plaintiffs’ motion for summary judgment should be granted in its entirety.

### III. IN THE ALTERNATIVE, THE COURT SHOULD GRANT AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT IN FAVOR OF PLAINTIFFS

40. In the alternative, should the Court deny Plaintiffs' motion for summary judgment, an entry of default and a corresponding default judgment against Defendant are warranted.

41. "Under Federal Rule of Civil Procedure 55(a), an entry of default is appropriate '[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise.'" *Tara Prods., Inc. v. Hollywood Gadgets, Inc.*, 449 F. App'x 908, 910 (11th Cir. 2011) (quoting Fed. R. Civ. P. 55(a)). In accordance with Rule 55(a), courts in the 11th Circuit routinely enter default judgments where the defendant has failed to defend or otherwise engage in the proceedings. *See In re Worldwide Web Sys., Inc.*, 328 F.3d 1291, 1294-95 (11th Cir. 2003). In particular, while Rule 55(a) is narrowly construed, an entry of default is proper "as a sanction for a defendant's dilatory tactics, or its failure to comply with court orders or rules of procedure." *Liberty Mut. Ins. Co. v. Fleet Force, Inc.*, No. CV-09-S-773-NW, 2013 WL 3357167, at \*7 (N.D. Ala. July 1, 2013) (granting entry of default where defendants repeatedly disregarded obligations under Rules 12(a) and 15(a) to timely file responsive pleadings, as well as caused a substantial delay in the resolution of the case); *see also Cook v. Furniture Marketing Direct, LLC*, No. 1:17-CV-00200-CMS, 2018 WL 11150617, at \*1 (N.D. Ga. Jan. 29, 2018) (finding entry of default proper where defendant "violated two orders of the Court" and failed to "otherwise acknowledge[] or defend[] against" the lawsuit after filing a motion for summary judgment). Where there has been an entry of default, the allegations in the operative complaint are taken as true. *See Kpadeh v. Emmanuel*, 261 F.R.D. 687, 688 (S.D. Fla. 2009).

42. In conjunction with the entry of default, a court may also enter a default judgment pursuant to Federal Rule of Civil Procedure 55(b)(2) against a defendant who fails to engage in the proceedings. *Weatherby Locums, Inc. v. Lower Bucks Pediatrics, P.C.*, No. 19-CV-62478, 2019 WL 6468714, at \*1 (S.D. Fla. Dec. 2, 2019) ("[D]efault judgment is entirely appropriate . . . where the defendant has failed to defend or otherwise engage in the proceedings."); *Bryant v. City of Marianna, Fla.*, 532 F. Supp. 133, 137 (N.D. Fla. 1982) (finding default judgment where defendants, *inter alia*, had "not sought nor provided discovery" and had "disobeyed . . . court orders"). That standard has been more than satisfied in this case.

43. As the Court is aware, Defendant's inaction and lack of responsiveness has prevented

Plaintiffs from being able to advance their case – now a decade old – towards resolution. *See, e.g.,* Status Report, ECF No. 170 (detailing Defendant and his counsel’s failures to respond to Plaintiffs’ communications and attempts to advance the proceedings).<sup>1</sup> Among other things, Defendant caused significant delay throughout the discovery process, made multiple misrepresentations to this Court, and most recently failed to comply with the Court’s order that he appoint substitute counsel. It is now clear that, following his removal to Colombia in August 2019, Defendant has stopped engaging with these proceedings.

44. Plaintiffs noticed Defendant’s deposition for October 2019, but defense counsel failed to make him available and ignored repeated correspondence from Plaintiffs’ counsel seeking basic status updates over the course of several months. *Id.* at 2-4. There is no indication that Defendant will ever sit for a deposition in this case; in fact, all signs point to the contrary. Plaintiffs also served supplemental written discovery requests in January 2020, which Defendant ignored. Defendant’s complete refusal to take any steps to defend this case, which Plaintiffs have documented with the Court,<sup>2</sup> follows the inaccurate representation to this Court at the July 15, 2019 status conference, where defense counsel unambiguously assured both the Court and Plaintiffs that they would “continue litigating this case, including making the Defendant available for deposition,” notwithstanding his then-anticipated removal to Colombia. *See* July 15, 2019 Telephonic Hearing Transcript at 11:10-13.

45. On May 19, 2020, the Court denied Defendant’s motion to stay the proceedings and defense counsel’s motion to withdraw as attorney. Paperless Order Denying Motion to Stay;

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<sup>1</sup> Defendant has failed to engage with the proceedings since the start of this litigation, prior to the transfer of this case from Judge Ungaro to this Court. On July 5, 2011, following the withdrawal of Defendant’s prior counsel and Defendant’s subsequent failure to file an Answer or otherwise respond to the Complaint, Judge Ungaro issued an Order directing the Clerk to enter a default against Defendant. Order Directing Clerk to Enter Default, ECF No. 51; *see also* Clerk’s Default, ECF No. 50 (noting that Defendant “is in default for failure to appear, answer or otherwise plead to the complaint filed herein within the time required by law.”). On July 20, 2011, following Defendant’s belated appearance before the Court, Judge Ungaro vacated the Clerk’s Default. Order Granting Motion to Vacate Clerk’s Default, ECF No. 56. Defendant is thus clearly on notice that his lack of engagement with the proceedings may result in an entry of default.

<sup>2</sup> *See e.g.,* Plaintiffs’ Response to Defense Counsel’s Renewed Motion to Withdraw at 4-6, ECF No. 193 (highlighting Defendant’s refusal to participate in these proceedings now that he has returned to Colombia); Plaintiffs’ Opposition to Defendant’s Motion to Stay the Case Or, In the Alternative, To Defendant’s Counsel’s Motion to Withdraw at 4-10, ECF No. 179 (same).

denying Motion to Withdraw as Attorney, ECF No. 188. In August, following a renewed motion for withdrawal Defendant was ordered to retain substitute counsel in these proceedings by September 8, 2020. Paperless Order Granting Motion to Withdraw, ECF No. 196 (noting that “[f]ailure to retain substitute counsel may make it impossible for Defendant to defend against the action given his status.”). More than three months have passed since the September 8, 2020 deadline; no substitute counsel has made an appearance, nor is there any indication that Defendant is engaging in this litigation. Defendant’s failure to defend this action and abide by the Court’s order warrant an entry of default and a granting of default judgment. *See Podzemelnyy v. Prolog Corp.*, No. 18-62395-CIV-MORENO/SELTZER, 2019 U.S. Dist. LEXIS 180801 (S.D. Fla. Oct. 15, 2019) (granting default judgment where defendants failed to, *inter alia*, obtain substitute counsel or appear for deposition); *Turcios v. Delicias Hispanas Corp.*, No. 07-20150-CIV, 2008 WL 5157924, at \*1 (S.D. Fla. Dec. 9, 2008) (granting default judgment where defendants failed to comply with court order and obtain new counsel or file a notice of intent to proceed *pro se*); *Mays v. CVM Atlanta, LLC*, No. 1:05-CV-2258-TCB-ECS, 2007 WL 9710024, at \*2 (N.D. Ga. Jan. 8, 2007) (granting default judgment where defendant failed to, *inter alia*, “obtain substitute counsel” per court order after previous counsel withdrew).

#### **IV. THE COURT SHOULD AWARD PLAINTIFFS COMPENSATORY AND PUNITIVE DAMAGES**

46. Plaintiffs have demonstrated Defendant’s responsibility under the TVPA for the brutal extrajudicial killing of Eduardo Estrada and the torture of Plaintiff González. *See supra* Section II. In the alternative, Defendant is liable to Plaintiffs by virtue of his default. *See supra* Section III. Pursuant to the TVPA, Defendant is “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, § 2(a)(2). Plaintiff González, in her individual capacity, and Plaintiff Estrada, in his individual capacity and as the personal representative of the estate of Eduardo Estrada, are entitled to significant compensatory and punitive damages.

##### **A. Plaintiffs Are Entitled to Compensatory Damages, Including for the Pain and Suffering Caused by Defendant’s Actions**

##### **1. The Legal Standard for Compensatory Damages**

47. Compensatory damages measure the loss or injury sustained by an injured Plaintiff and are intended “to make the injured party whole . . . .” *Mercury Motors Exp., Inc. v. Smith*, 393 So.

2d 545, 547 (Fla. 1981). Compensatory damages may be awarded for injuries that are non-economic in nature, such as pain and suffering, “anguish and . . . loss of consortium,” notwithstanding that valuation may present certain “difficult[ies].” See *Lorillard Tobacco Co. v. Alexander*, 123 So. 3d 67, 78 (Fla. Dist. Ct. App. 2013). Where a plaintiff has proved damages by a preponderance of the evidence, the factfinder must consider what fairly compensates a plaintiff for his or her claim. See *Alliant Tax Credit 31, Inc. v. Murphy*, 924 F.3d 1134, 1148 (11th Cir. 2019); see also *Abebe-Jiri v. Negewo*, No. 1:90-cv-2010-GET, 1993 WL 814304, at \*4 (N.D. Ga. Aug. 20, 1993) (finding that plaintiffs were entitled to compensatory damages where they endured physical injuries, mental pain and suffering, and anguish), *aff’d*, 72 F.3d 844, 847 (11th Cir. 1996).

48. For claims under the TVPA, the measurement of compensatory damages is determined by the fact finder. See *Chiminya Tachiona v. Mugabe*, 216 F. Supp. 2d 262, 267, 280 (S.D.N.Y. 2002) (awarding compensatory damages for pain and suffering and noting that “[b]ecause Congress in the TVPA offered no methodology as to how damages should be determined, federal courts are free to and should create federal common law to provide justice for any injury contemplated by the Alien Tort Statute and the TVPA or treaties dealing with the protection of human rights”) (quoting *In re Estate of Marcos Human Rights Litig.*, 910 F. Supp. 1460, 1469 (D. Haw. 1995)), *aff’d*, 234 F. Supp. 2d 401 (S.D.N.Y. 2002). Given the nature of the claims at issue, courts, including those in this Circuit, have awarded significant compensatory damages under the TVPA. See e.g., Judgment in a Civil Case, *Jara v. Nunez*, No. 6:13-cv-1426-Orl-37GJK (M.D. Fla. June 29, 2016) (hereinafter “*Jara Judgment*”) (awarding compensatory damages ranging from \$2,000,000 to \$6,000,000 per plaintiff for torture and extrajudicial killing pursuant to the TVPA); *Ahmed v. Magan*, No. 2:10-CV-00342, 2013 WL 4479077, at \*7 (S.D. Ohio Aug. 20, 2013) (awarding plaintiff \$5,000,000 in compensatory damages for violations of the ATS and TVPA); *Yousuf v. Samantar*, No. 1:04-cv-1360-LMB/JFA, 2012 WL 3730617, at \*16 (E.D. Va. Aug. 28, 2012) (awarding \$7,000,000 in compensatory damages for violations of the ATS and TVPA); Findings of Fact and Conclusions of Law at 13, *Doe v. Constant*, 04 Civ. 10108 (SHS) (S.D.N.Y. Oct. 24, 2006) (2d Cir. 2009) (hereinafter “*Constant Findings of Fact*”) (after default judgment, awarding compensatory damages ranging from \$1,000,000 to \$1,500,000 to each plaintiff for violations under the ATS and the TVPA), *aff’d*, 354 F. App’x 543, 547; Order on Damages at 5, *Lizarbe v. Hurtado*, No. 07-21-21783-CIV-JORDAN (S.D.

Fla. Mar. 4, 2008) (hereinafter “*Lizarbe Order*”) (awarding compensatory damages ranging from \$1,000,000 to \$2,500,000 under the TVPA); Final Judgment at 2-3, *Reyes v. López Grijalba*, No. 02-22046-CIV-LENARD/KLEIN (S.D. Fla. Mar. 31, 2006) (hereinafter “*Reyes Judgment*”) (after entry of default, awarding \$21 million in compensatory damages to plaintiffs); Judgment, *Cabello v. Fernandez-Larios*, No. 99-0528-CIV-LENARD (S.D. Fla. Oct. 31, 2003), *aff’d*, 402 F.3d 1148 (11th Cir. 2005) (awarding compensatory damages of \$1,000,000 each to the estate of the decedent and to plaintiffs in their individual capacity for liability under the TVPA and ATS) (“*Cabello Judgment*”); *Saravia*, 348 F. Supp. 2d at 1159 (after entry of default, awarding plaintiff \$5,000,000 in compensatory damages for claims under the TVPA and the ATS); Final Judgment, *Arce v. Garcia*, No 99-8364 CIV-HURLEY (S.D. Fla. July 31, 2002), *aff’d*, 434 F.3d 1254, 1265 (11th Cir. 2006) (hereinafter “*Acre Judgment*”) (awarding one of the plaintiffs \$5,000,000 in compensatory damages for his torture by defendants); *Mehinovic*, 198 F. Supp. 2d at 1359 (after defendant defaulted by failing to appear at trial, awarding \$10,000,000 in compensatory damages to each plaintiff for violations of the TVPA and ATS along with municipal tort claims).

## **2. Compensatory Damages Are Appropriate Where, As Here, Plaintiffs Have Suffered Severe and Lasting Harm**

49. Plaintiff González, in her individual capacity, and Plaintiff Estrada, in both his individual capacity and as the legal representative of Eduardo Estrada’s estate, are entitled to recover compensatory damages for the harms they suffered as a result of Eduardo Estrada’s brutal extrajudicial killing by the BCB. These harms include Eduardo Estrada’s wrongful death and Plaintiffs’ ongoing pain and suffering, including from witnessing his shooting and death. *See Mugabe*, 216 F. Supp. 2d at 267, 280 (discussing the “testimony and declarations from relatives of the victims attesting to the grief they ha[d] suffered as a result of the killings” along with testimony about the torture of the victims as “more than sufficient to justify the awards for pain and suffering” requested by the plaintiffs); *see also Lizarbe Order* at 5 (awarding damages for “wrongful death and pain and suffering” under the TVPA to the plaintiffs). In addition, Plaintiff González is entitled to recover compensatory damages for her torture. *See Mehinovic*, 198 F. Supp. 2d at 1345-47, 1359 (finding defendant liable for the torture of plaintiffs under both the ATS and the TVPA and awarding them significant compensatory damages).

50. Eduardo was a kind and brave man, who worked to create a better life for his community

despite the threat posed by the paramilitaries. *See* Declaration of Alonso Estrada Gutierrez, filed concurrently herewith (“A. Estrada Decl.”) ¶¶ 7-12; Declaration of Sara González Calderón, filed concurrently herewith (“González Decl.”) ¶¶ 16-17. His murder had a severe and devastating impact on each of the Plaintiffs, the rest of his family, and his community. *See* A. Estrada Decl. ¶ 20; González Decl. ¶¶ 16-17; *see also supra* Section II.C.

51. Plaintiff González was witness to the killing of her beloved common law husband and father of her daughter. In addition to her horror at Eduardo’s shooting, she experienced extreme fear for her own life while the killer stood over her with a gun. González Decl. ¶ 8. After the shooter’s departure, she frantically sought help for Eduardo and remained by his side while his life slipped away. *Id.* ¶¶ 9-14. She then had to break the horrific news to their six year-old daughter. *Id.* ¶ 14. In the aftermath of his murder, Sara and her daughter lived for months with various family members out of continued fears for their own safety. *Id.* ¶ 17. Sara also sought psychological help to try to cope with Eduardo’s loss. *Id.* Eduardo’s death robbed Sara of her companion and life partner and his two daughters of their father. *Id.* ¶ 18; A. Estrada Decl. ¶ 20. The events of his murder “will forever haunt” her. González Decl. ¶ 18.

52. Eduardo’s brother, Plaintiff Estrada, has described how his life was shattered by Eduardo’s loss. Plaintiff Estrada came to aid his brother shortly after he was shot and witnessed him “lying on his back with blood all over him” as he desperately tried to get him aid. A. Estrada ¶ 16. Plaintiff Estrada still carries the deep pain of his brother’s loss with him and despite attempts at counseling, “the grief does not subside.” *Id.* ¶ 21. Following Eduardo’s murder, his mother and his father were also overwhelmed; his father lost the will to live and died a little over a year later. *Id.* ¶ 20. Plaintiff Estrada’s anguish is compounded by the fact that, up until this case, “no one has been held accountable for” Eduardo’s death. *Id.* ¶ 21.

53. This Court should find that substantial compensatory damages, including damages for Plaintiffs’ pain and suffering, are appropriate given the serious harm caused by the extrajudicial killing and torture for which Defendant is responsible.

## **B. The Court Should Award Punitive Damages Against the Defendant for His Wanton and Malicious Conduct**

### **1. The Legal Standard for Punitive Damages**

54. Punitive damages are generally awarded in civil actions as a deterrence mechanism. *See Owens-Corning Fiberglas Corp. v. Ballard*, 749 So. 2d 483, 486 (Fla. 1999) (“[T]he purpose of



punitive damages is not to further compensate the plaintiff, but to punish the defendant for its wrongful conduct and to deter similar misconduct by it and other actors in the future.”); *see also* *Filártiga v. Peña-Irala*, 577 F. Supp. 860, 866 (E.D.N.Y. 1984) (“Punitive damages are designed not merely to teach a defendant not to repeat his conduct but to deter others from following his example.”) (citation omitted). Punitive damages are especially critical in cases under the TVPA where serious violations of international law are implicated and the need for deterrence is high. *See Mehinovic*, 198 F. Supp. 2d at 1359 (“Punitive damages are an appropriate, if not essential, mechanism for upholding prohibitions against human rights abuses reviled by the international community.”).

55. Courts in the 11th Circuit have considered punitive damages appropriate under the TVPA where defendants have acted “wantonly and maliciously and violated the most fundamental international norms of human rights.” *Id.* at 1360; *see also* Tr. of Trial at 1026, *Cabello v. Fernandez-Larios*, No. 99-0528-CIV-LENARD (S.D. Fla. Oct. 14, 2003), *aff’d*, 402 F.3d 1148 (11th Cir. 2005) (“You may award punitive damages to the plaintiffs if they have proven that the defendant’s conduct was wanton and reckless . . . .”) (“*Cabello* Trial Tr.”). “An act is wanton and reckless” so as to justify the awarding of punitive damages “if it is done in such a manner and under such circumstances as to reflect utter disregard for the potential consequences of the act on the safety and rights of others.” *Id.*; Court’s Instructions to the Jury at 26-27, *Jara v. Nunez*, No. 6:13-cv-1426-Orl-37GJK (M.D. Fla. June 28, 2016) (same).

56. The Supreme Court has given guidance on how to determine the reasonableness of a punitive damages award in light of due process concerns under federal common law, listing factors for courts to consider, such as the reprehensibility of the conduct, the disparity between the punitive award and the potential or actual harm to plaintiffs, and whether there is a “reasonable relationship” to the compensatory damages. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 575, 580, 583 (1996); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003) (“[T]he most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant’s conduct.” (quoting *Gore*, 517 U.S. at 575)); *see also* *Cabello* Trial Tr. at 1027 (“You should also consider the degree of reprehensibility of defendant’s conduct towards the plaintiff . . . .”).

## 2. Defendant's Conduct Warrants an Award of Punitive Damages

57. Punitive damages are routinely awarded in cases arising under the TVPA as the very nature of the conduct in these types of actions easily rises to the level of reprehensibility that warrants such condemnation. *See Mugabe*, 234 F. Supp. 2d at 422-23, 441 (awarding \$5,000,000 in punitive damages for extrajudicial killing and \$5,000,000 in punitive damages for torture to each plaintiff); *see also Jara* Judgment (awarding punitive damages of \$10,000,000 each to the estate of the decedent and to Plaintiffs in their individual capacity for claims of torture and extrajudicial killing pursuant to the TVPA); *Ahmed*, 2013 WL 4479077, at \*7 (awarding punitive damages of \$10,000,000 to plaintiff for violations under the TVPA and ATS); *Yousuf*, 2012 WL 3730617, at \*16 (awarding \$14 million in punitive damages for violations of the ATS and TVPA); *Lizarbe* Order at 5 (awarding a total of \$25,000,000 in punitive damages to the plaintiffs under the TVPA); *Constant* Findings of Fact at 13 (after default judgment, awarding \$15,000,000 in punitive damages for violations under the ATS and the TVPA); *Reyes* Judgment at 2-3 (after entry of default, awarding \$26,000,000 in punitive damages to plaintiffs under the ATS and TVPA); *Saravia*, 348 F. Supp. 2d at 1159 (after entry of default, awarding \$5,000,000 in punitive damages to the plaintiff under the TVPA and ATS); *Cabello* Judgment (awarding \$1,000,000 in punitive damages to the estate of the victim); *Acre* Judgment (awarding one of the plaintiffs \$15,000,000 in punitive damages for his torture by defendants); *Mehinovic*, 198 F. Supp. 2d at 1345-47, 1360 (after defendant defaulted by failing to appear at trial, awarding \$25,000,000 in punitive damages to each plaintiff for violations of the TVPA and ATS along with municipal tort claims).

58. The record in this case clearly establishes an evidentiary basis for a substantial punitive damages award. Defendant was the founder and General Commander of the BCB, a “killing machine” that carried out a policy and practice of executing civilians it perceived as guerilla sympathizers, including murdering entire families. Under Defendant’s command, the BCB specifically targeted community leaders, like Eduardo Estrada, who threatened the paramilitaries’ control. *See* Pltfs’ SoF § I.A.; *see also supra* Sections I and II. Brave community leaders who positioned themselves clearly on the side of peace and economic development for their communities with alternatives to coca farming were viewed by the BCB as opponents and systemically executed. This included at least twelve other PDP leaders. The BCB’s killings had the intent and the effect of silencing any dissent in the community. Eduardo’s death reverberated

throughout San Pablo – more than a thousand people attended his funeral – and had its intended impact: San Pablo “submitted to fear and silence.” *See* Pltfs’ SoF §§ I.A., III.A. Eduardo Estrada’s murder is but one example of the violent repression orchestrated and directed by Defendant. Plaintiffs respectfully request that the Court punish the Defendant for his wanton and malicious conduct and send an unambiguous signal that it condemns such egregious violations of human rights. Under these facts, punitive damages are more than warranted and should be awarded to Plaintiffs.

## V. CONCLUSION

59. In light of the foregoing, Plaintiffs respectfully request that the Court grant their motion for summary judgment or, in the alternative, their motion for default and award Plaintiffs compensatory and punitive damages against Defendant.

Respectfully Submitted,

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/s/ Robert Kerrigan

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