

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

INOCENTE ORLANDO MONTANO

No. 12-CR-10044-DPW

DEFENDANT'S SENTENCING MEMORANDUM

Defendant, Inocente Orlando Montano, respectfully submits the following memorandum, attached report, and related appendix submitted by retired General Mauricio Ernesto Vargas to assist the Court with sentencing.

On September 11, 2012, Mr. Montano was charged in a six-count superseding information charging him with immigration fraud, in violation of 18 U.S.C. § 1546(a) (Counts 1, 3, 5, and 7), and perjury, in violation of 18 U.S.C. § 1621(2) (Counts 2, 4, and 6). Mr. Montano has been supervised by Pretrial Services since the date of his release on specific conditions on August 24, 2011. One of the conditions imposed was that he remain in home confinement and it has been monitored with an electronic bracelet.

Mr. Montano submits that a sentence of **five years of probation**, is sufficient, but not greater than necessary, to effectuate the purposes of sentencing set forth in 18 U.S.C. § 3553(a). This is a modest downward departure or variance from the applicable guidelines range of 15-21 months established by this Court at day one of the sentencing hearing conducted on January 15, 2013. The government's arguments in support of a sentence that is nearly three times the high end of this range are fundamentally flawed. First, the purported record of human rights violations that the government attributes to Mr. Montano as a member of the Salvadoran military

and in his capacity as Vice Minister of Public Security is based upon an erroneous understanding of the country's military and governmental hierarchies during the relevant time period. More importantly, the information compiled by the government's expert to support these assertions is unreliable. Second, there is no basis in fact for the government's suggestion that Mr. Montano's history in El Salvador, including his alleged complicity in the Jesuit Massacre of 1989, is relevant to the offense conduct in this case. He had no hand in that event and there has never been *any* attempt or threat to prosecute Mr. Montano, for any reason, by the Salvadoran government from the point at which the Jesuit killings took place in 1989 to the present day. Mr. Montano had no reason to flee to the United States and lie on immigration forms in order to avoid a prosecution in his country that did not exist and would, for various reasons, never occur.

Background¹

A. Offense conduct.

After a string of devastating earthquakes in January and February of 2001, El Salvador was designated for the Temporary Protected Status ("TPS") Program by the United States Department of Justice and the Immigration and Naturalization Service. *See* Federal Register, Vol. 66, No. 47, Friday March 9, 2001; http://www.justice.gov/eoir/vll/fedreg/2000_2001/fr09mr01N.pdf. This designation allows foreign nationals to remain in the United States legally if their home country has experienced an

¹ The background provided here represents an extremely truncated summary of the substantial biographical information presented in the PSR.

ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions. As result of the significant damage to El Salvador's infrastructure, poor overall living conditions, and health concerns for the general population, the country was not able to adequately handle the return of its nationals in the wake of these natural disasters. *Id.* All Salvadoran citizens who had been "continuously physically present" in the United States since March 9, 2001 and had "continuously resided" here since February 13, 2001 were eligible to receive this immigration benefit. *Id.* Those who could not meet this requirement were automatically disqualified. To maintain eligibility for TPS, those who were previously granted the benefit were required to re-apply approximately annually.

The immigration form used to apply for the TPS benefit is the I-821. Any individual seeking TPS has to complete the I-821 by answering all of its questions truthfully and then signing an affirmation under the pains and penalties of perjury. Since there is a fixed date of entry into the United States (February 13, 2001) that determines a Salvadoran national's eligibility for TPS, the answer to that question is material to the ultimate determination of United States Immigration authorities. The criminal charges that Mr. Montano accepted responsibility for relate to his submission of I-821 forms in 2007, 2008, and 2010. In each of those applications, Mr. Montano falsely stated that he had entered the United States on September 30, 2000 when he had in fact entered on July 2, 2001.

B. Mr. Montano's history in the United States from 2001 to the present day.

Inocente Orlando Montano, now 70 years old, was born in El Salvador but has been living in the United States since July of 2001. When he entered this country, he used his true

name and date of birth. He was photographed and his fingerprints were taken as part of the United States Department of Homeland Security (“DHS”) protocol for acquiring the Temporary Protected Status (“TPS”) benefit.² During the decade plus that Mr. Montano has resided in the United States, he has never attempted to use a false name or disguise his identity in any way. Further, he has always lived in Massachusetts and has only had three different addresses, one of which he remained at from 2003 through 2011. *See* PSR ¶ 80.

Similarly, Mr. Montano has had stable and steady employment during his time in this country. From 2003-2011, he worked at the NECCO Confectionary Manufacturing Plant in Revere, MA. He was a factory employee who worked on a production line earning a little over \$14.00 an hour. *See* PSR ¶ 99. Because of the prosecution of this case, Mr. Montano lost his job at the NECCO plant and he and his wife were forced to move in with his sister in Saugus, Massachusetts during the time he has been on Pretrial Services supervision. *See* PSR ¶¶ 80, 99.

Mr. Montano has been compliant with the conditions of his release while on supervision. On April 18, 2012, Mr. Montano was arrested at the Salvadoran Consulate in Boston. He was there attempting to renew his Salvadoran passport so that he could continue receiving benefits related to his military pension. Mr. Montano’s daughter receives these benefit payments in El Salvador and depends on them for her day to day expenses. In order to continue the flow of payments to his daughter, Mr. Montano needed to renew his passport and sign various documents at the consulate. As result of his failure to communicate the situation adequately to Pretrial Services, an arrest took place and Mr. Montano was brought before Magistrate Judge

²DHS requires that applicants for the TPS benefit pay a “biometric fee” which includes photograph and fingerprint processing. *See* <http://www.uscis.gov/files/form/i-821instr.pdf>

Dein. After hearing from defense counsel, and a representative of the Salvadoran Consulate, regarding Mr. Montano's purpose for renewing his passport, Judge Dein released Mr. Montano on April 19, 2012. Further, defense counsel filed a motion on Mr. Montano's behalf to amend the conditions of his release so he could renew his passport and secure his pension benefits for his daughter. Judge Dein allowed the request. *See* Docket No. 38.

In terms of his health, Mr. Montano suffers from a number of debilitating physical conditions. His bladder was removed in 2008 due to a diagnosis of cancer and he now has to permanently use a colostomy bag. *See* PSR ¶ 85. Following his bladder cancer surgery, he developed a bacterial infection where the incision was made and experienced weakness in his knees and ankle. The infection has persisted since that time and Mr. Montano is treated regularly to control it by his primary care physician. *See* PSR ¶ 86. Since the time of the surgery in 2008, he has suffered through repeated urinary tract infections. Some of these have led to hospitalizations at Brigham and Women's Hospital. *Id.* He currently takes at least four different medications for treatment of the infection, acid reflux, and skin irritations. *Id.* Further, Mr. Montano has developed arthritis in his knees, shoulder, and ankles and walks with the use of a cane. Lastly, he also suffers from irritable bowel syndrome and high blood pressure. *See* PSR ¶ 87.

Although the pendency of this prosecution has been incredibly stressful for Mr. Montano given the order to remain in home confinement, his inability to work, his deteriorating health, and his depressed demeanor, he has the unfailing support of family members here in the United States. These include his wife, Maria, and his sister Nora and her children. Mr. Montano's remaining family include two adult children (one of whom is a member in good standing of the

Salvadoran Armed Forces) as well as two brothers who currently live and work in El Salvador.

During his lengthy time in the United States, Mr. Montano has never been arrested or convicted of any criminal offense. He has also never been arrested or prosecuted for any criminal offense in El Salvador. *See* attached Exhibit A, Certified documents from El Salvador. From the date of his entry into the United States in 2001 to the present, no formal request has ever been made by the government of El Salvador for Mr. Montano's extradition to allow for a criminal prosecution or to speak to law enforcement officials in connection with any criminal investigation.

C. Background in El Salvador through 2001.

The United States of America had an intimate relationship with El Salvador and its decade-long civil war from its beginnings in 1980. The Salvadoran government and its military found themselves hopelessly entangled in a violent struggle with a number of well organized leftist rebel guerilla groups (five in total) that coalesced into what is now known as the Farabundo Marti Liberation Front ("FMLN"). This was a successful and extremely sophisticated Marxist insurgency that was being supported by the flow of weapons from the Soviet Union through Cuba, Nicaragua, Costa Rica and Belize. Fearing a communist takeover of the local government such as had been seen in Cuba, former Presidents Ronald Reagan and George H.W. Bush, Sr., encouraged the development of policies favoring financial and military support for the government of El Salvador and its armed forces. President Ronald Reagan stated "What we see in El Salvador is an attempt to destabilize the entire region and eventually move chaos and anarchy toward the American border." *Address to the Nation on United States Policy*

in Central America, May 9, 1984. At the height of the war, this amounted to over one million dollars of United States aid per day. This continued over the course of a decade and over a billion dollars was funneled into the country for the specific purpose of maintaining the country's democratic government and preventing communist expansion generally in Central America.

Inocente Orlando Montano interrupted his studies at the National University in El Salvador in 1961 to attend military school between 1962 and 1966. At that time, he graduated as a lieutenant and became a full member of the military. He served in various capacities culminating in attaining the rank of colonel between 1963-1994. He was later able to complete his studies and obtain a degree in engineering. During the latter part of his career in public service, he was chosen by then President Alfredo E. Cristiani to serve in his cabinet as Vice Minister of Public Security and later held a diplomatic post in Mexico . *See* Docket No. 48, letter from Alfredo E. Cristiani.

During his time in the military, Mr. Montano (along with other members of the Salvadoran armed forces) received specialized training from the American military. In 1982 he attended a six month training program in Panama at the School of the Americas. He also trained with United States Army Special Forces personnel at Fort Benning, GA.³ The United States was fully supportive of Mr. Montano, and the Salvadoran military generally, during this time and its support was not limited to training sessions in Panama or within its own borders. The United

³American Special Forces personnel were actively involved in training members of the Salvadoran army's Belloso Battalion which is referenced in the report of Professor Terry Lynn Karl ("Karl report") as an alleged repeated perpetrator of human rights violations. *See* Karl report, pp. 41.

States maintained a presence in El Salvador during its civil war in the form of various military advisors and or intelligence personnel. El Salvador was broken down into a number of geographical districts that surrounded the capital of San Salvador. Each of these districts contained a Salvadoran military outpost and each outpost was attended by American military/intelligence personnel who acted in an advisory capacity.

While involved with the Salvadoran military and its government, Mr. Montano traveled to the United States on more than one occasion. In addition to the training he received at Fort Benning, Mr. Montano also traveled to the United States in his capacity as Vice Minister of Public Security in 1990-1991. He attended a specialized training program, run by the United States Department of Justice, called the International Criminal Investigative Training Assistance Program (“I.C.I.T.A.P.”). This program was developed in the United States and worked “with foreign governments to develop professional and transparent law enforcement institutions that protect human rights, combat corruption, and reduce the threat of transnational crime and terrorism.” *See* I.C.I.T.A.P mission statement, <http://www.justice.gov/criminal/icitap/>. Interestingly, this training took place in the wake of the Jesuit murders in 1989 at the time that Professor Karl suggests Vice Minister Montano was actively obstructing the formal investigation of those deaths.

Mr. Montano is a man of humble beginnings who obtained an education and rose through the ranks of the Salvadoran military out of a true sense of patriotism. *See* Report of General Mauricio Ernesto Vargas, “Vargas Report”. As a military engineer, he strove to improve conditions in impoverished areas of El Salvador through programs designed to build schools, athletic/recreational fields, and to modernize road and irrigation systems in rural areas. In 1973,

Mr. Montano used his engineering skills to help with a humanitarian effort in Mexico after a devastating earthquake the killed and or displaced thousands.

The most notable of Mr. Montano's humanitarian efforts in El Salvador at the beginning of the military conflict with the FMLN was the founding in August of 1985 of an orphanage called "El Hogar Infantil de Zacatecoluca". *See* Vargas Report. This effort was done in conjunction with the aid of the local Catholic Diocese with whom Mr. Montano has always enjoyed a relationship of mutual admiration. *See* Appendix to Vargas Report, Exhibit B, letters of support from Mosignor Romeo Tovar Astorga, Bishop of Zacatecoluca. Finally, in October of 1986, Mr. Montano was involved in another large scale humanitarian and rescue effort with the Salvadoran military to help the victims of a large scale earthquake that affected central San Salvador. These are just a few of the many examples of Mr. Montano's positive public service record which are detailed in the Vargas Report.

D. Motives for leaving El Salvador for the United States.

The deaths of the Jesuit priests had taken place in November of 1989 during the height of the FMLN's most ambitious offensive. Mr. Montano continued in his position as Vice Minister of Public Security and then worked at his diplomatic position in Mexico through the passage of the General Amnesty law that followed in 1993. Mr. Montano was never accused or implicated in the Jesuit killings either before or after the implementation of amnesty which derived from the formal acceptance of the Salvadoran Peace Accords. Colonel Guillermo Alfredo Benavides and his confederates had been tried and convicted of the murders of the Jesuits and two civilians and the amnesty law freed them all from their convictions and prison

terms in 1993.

From 1993 until 2001, Mr. Montano remained in El Salvador living and working in his diplomatic position in Mexico and later as a private citizen. Never once during that time was he called before any judicial or military tribunal due to accusations of human rights violations or for complicity in the murders of the Jesuits. During the decade between 1990 and 2000, the political climate in El Salvador was not a threat to Mr. Montano, the amnesty law was firmly in place, and the prosecutions and convictions of military leaders in other Central American countries had no bearing whatsoever on his decision to leave for the United States in 2001.

Although the Karl Report implies that these events did influence Mr. Montano, it also suggests, albeit indirectly, that El Salvador was the safest place for him to remain. Although the political situation in the country changed in 2000 in a manner that supposedly favored a prosecution of individuals tied to the Jesuit killings in 1989, the General Amnesty was in no danger of disappearing and there was no movement in the law enforcement and judicial communities to change the situation.⁴ See Karl Report, pp. 36. Prof. Karl suggests that many judges were reluctant to engage in discussions of prosecutions out of fear of former high-ranking military officers who were currently “powerful businessmen” who are described in the report as a band of thugs that had ties to organized crime. *Id.* If this were truly the case, why would any of them, including Mr. Montano, have chosen to leave El Salvador in 2001 or at any time?

Ironically, one of the things that truly did influence Mr. Montano’s decision to leave his country

⁴In 2008, even the FMLN relented and changed its position regarding the repeal of the Amnesty law. Many say this was motivated by two concerns: first, the desire to see an FMLN candidate ascend to the Presidency (Mauricio Funes in 2009) and second, the desire to shield former FMLN military commanders from being prosecuted for war crimes and human rights violations.

was the loss of a large part of his life savings in several business ventures that floundered and then came to an abrupt end (local cable television company/service provider and a car-wash/service venture similar to Jiffy Lube in the United States). The reality was that he was anything but a “powerful” businessman in his own country.

In addition to the financial difficulties he was experiencing, El Salvador was hit hard by the aforementioned repeated major earthquakes in January and February of 2001. These disasters caused hundreds of deaths, major landslides, the destruction of thousands of homes, and the spread of disease due to problems with sanitation and the availability of clean water. *See* http://www.justice.gov/eoir/vll/fedreg/2000_2001/fr09mr01N.pdf. After living through these horrendous hardships, Mr. Montano made an understandable decision to relocate to the United States and join other family members who were already there. It is beyond question that the “threat” of prosecution for the deaths of the Jesuits had been non-existent in El Salvador for more than a decade and thus had absolutely no relation to Mr. Montano’s decision to come to this country. Although an error in judgement, it is clear that misrepresenting his date of entry into the United States on various TPS forms was initially prompted by a desire to avoid returning to a country that was literally in ruins and where his financial situation was at its nadir with no hope of improving in the near future. Once Mr. Montano settled in the United States with his family and engaged in steady employment, his motivations to stay were more related to his ability to make a living and his desire to remain with his family in a place where he was comfortable.

Argument

Mr. Montano submits that the proposed sentence of five years of probation will be “sufficient, but not greater than necessary, to comply with the purposes of sentencing.” 18 U.S.C. § 3553(a).

The Court is required to compute the Guideline Sentencing Range (“GSR”) as a “starting point and the initial benchmark.” *Gall v. United States*, 128 S.Ct. 586, 596 (2007). Here, there is no dispute that the GSR is 15-21 months (level 14, CHC I). However, the Guidelines are not the sole, nor even the first among the factors that Congress has commanded the courts to apply in section 3553(a). The Court “may not presume that the Guidelines range is reasonable” and must “make an individualized assessment based on the facts presented.” *Id.* at 596-7. Indeed, “the Guidelines are only one of the factors to consider . . . and 3553(a) directs the judge to consider sentences other than imprisonment.” *Id.* at 602 (emphasis added). The Supreme Court later emphasized again that the “Guidelines are not only not mandatory on sentencing courts; they are also not to be presumed reasonable.” *Nelson v. United States*, 129 S.Ct. 890, 892 (2009) (emphasis in original).

Thus, district courts are now permitted, indeed, directed to consider whether the Sentencing Commission’s underlying policies, and/or their application to the facts of a particular case, result in a sentence that is unreasonably high. *See United States v. Kimbrough*, 552 U.S. 85, 128 S.Ct. 558, 575 (2007); *United States v. Boardman*, 528 F.3d 86 (1st Cir. 2008); *United States v. Martin*, 520 F.3d 87, 93-94 (1st Cir. 1998).

The First Circuit elaborated on the meaning and breadth of the so-called parsimony principle in *United States v. Yonathan Rodriguez*, 527 F.3d 221 (1st Cir. 2008). In *Rodriguez*, the First Circuit stressed that the Supreme Court ruling in *Kimbrough* requires a “more holistic

inquiry” and that “section 3553(a) is more than a laundry list of discrete sentencing factors; it is, rather, a tapestry of factors, through which runs the thread of an overarching principle.” *Id.* at 228. That overarching principle is to “impose a sentence sufficient but not greater than necessary.” *Id.* In reaching a decision on what constitutes an appropriate sentence, the district court should “consider all the relevant factors” and “construct a sentence that is minimally sufficient to achieve the broad goals of sentencing.” *Id.* (emphasis added)

I. An Upward Departure or Variance Pursuant to U.S.S.G. § 4A1.3 is not Warranted.

The government urges an upward departure pursuant to U.S.S.G. §4A1.3. This guideline allows for an upward departure if “reliable information” indicates that the defendant's criminal history category substantially under-represents the seriousness of his criminal history or the likelihood the he will commit other crimes. In this case, the Court should not depart upward under §4A1.3 because the information presented by the government is not the type of “reliable” information that typically supports this departure.

In §4A1.3, the Sentencing Commission delineated certain types of information which would typically be considered “reliable”:

- a. Prior *sentence(s)* not used in computing the criminal history category (e.g. sentences for foreign and tribal offenses).
- b. Prior *sentence(s)* of substantially more than one year imposed as a result of independent crimes committed on different occasions.
- c. Prior similar misconduct *established by a civil adjudication* or by a failure to comply with an administrative order.

- d. Whether the defendant was pending trial or sentencing on another charge at the time of the instant offense.
- e. Prior similar adult criminal conduct not resulting in a criminal conviction.

See U.S.S.G. § 4A1.3(2)(A-E) (emphasis added). The guideline specifically distinguishes the type of information listed above from arrest records, stating “[a] prior arrest record itself shall not be considered for purposes of an upward departure under this policy statement.” U.S.S.G. § 4A1.3(a)(3). This guideline policy statement recognizes the limitation on the value of an arrest as information about a defendant’s criminal propensity. *See United States v. Zapete-Garcia*, 447 F.3d 57, 60-61 (1st Cir. 2006) (noting the distinction between direct evidence of past criminal behavior and mere arrests that may or may not have been the result of wrongdoing, and noting that “arrest ‘happens to the innocent as well as the guilty’” citing *Michaelson v. United States*, 335 U.S. 469, 482 (1948)). This limitation is relevant here, as the information presented by the government is in the nature of an accusation whose underlying facts have never been litigated, Montano has not been criminally charged in El Salvador for his alleged role in the Jesuit massacre, and the information presented by the government relies upon a series of inferences and speculation, and does not rise to the level of direct evidence which courts have deemed “reliable” for the purpose of departing upward under § 4A1.3.

Although, as the government notes, a criminal history departure *can* be based on conduct that “was neither charged nor the subject of a conviction” (Gov. Mem. at 26), in practice it is rare and done only when sufficient indicia of reliability exists. Thus, for example, in *United States v. Brewster*, 127 F.3d 22, 27 (1st Cir. 1997) cited by the government in support of its

request, the First Circuit affirmed an upward departure on the basis of the defendant's history of uncharged domestic violence, but only given the defendant's refusal to disavow the allegations when specifically given the opportunity to do so during a colloquy with the court, coupled with his wife's notarized statement authored under oath and police reports and issuance of a state protective order which corroborated that statement. In *United States v. Hardy*, 99 F.3d 1242 (1st Cir. 1996), also cited by the government, the court relied heavily on the fact that defendant never objected the description of the facts underlying his prior, since vacated, convictions. Other courts have noted that the policy statement in §4A1.3 focuses on the accused's formal record and emphasizes convictions and the cornerstone of reliability. *United States v. Astronomo*, 183 F.Supp.2d 158, 174-175 (D. Mass. 2001) ("to be sure, just because the Guidelines seem to give a judge the discretion to look to criminal conduct rather than convictions, it does not mean that a judge should do so. Once one ventures past formal convictions and formal sentences, one is in troubling territory . . . While §4A1.3 is phrased broadly, in fact the cases in which upward departures have been granted typically involve some sort of formal proceeding - a formal investigation by the police, a vacated sentence, or some official act that gives credence to the additional criminal conduct."). See also *United States v. Flores*, 230 F.Supp.2d 138 (D. Mass. 2002) (rejecting government's request to depart upward under 4A1.3 to count a conviction vacated in the state court, and noting that the underlying facts of the conviction had never been litigated); *United States v. Pena*, 268 F.Supp.2d 65, 68-69 (D. Mass. 2003) (declining to depart upward in lieu of lack of reliable information and distinguishing case from *United States v. Footman*, 66 F.Supp.2d 83 (D. Mass. 1999) in which defendant made admissions about his prior criminal conduct); *United States v. Ryan*, 964 F.Supp.526 (D. Mass. 1997) (rejecting

government's request to depart upward under 4A1.3 for witness charged with criminal conduct, where individual was granted immunity from prosecution for those activities and where evidence of those activities was speculative).

Furthermore, at least one court has held that under §4A1.3, an upward departure cannot be grounded on foreign criminal conduct of which the defendant had not been convicted. *See United States v. Chunza-Plazas*, 45 F.3d 51, 56 (2d Cir. 1995). First, the *Chunza-Plazas* court noted that the guidelines give special attention to the role of foreign convictions and sentences in determining criminal history category, noting that not even foreign *sentences* may be used initially in determining criminal history category (U.S.S.G. §4A1.2(h)) but may be used as a basis for an upward departure. The court went on to note that:

In light of these precise provisions as to how charges and foreign sentences may be used, it is significant that nowhere do the guidelines specifically authorize the use of unrelated, uncharged foreign criminal conduct, or even foreign arrests, for a departure in the criminal history category.

Id. The *Chunza-Plazas* court then rejected the government's argument that the upward departure was justified under 4A1.3(e) ("prior similar adult criminal conduct not resulting in a criminal conviction"), noting that Chunza-Plazas' alleged acts of terrorism, homicide, and drug dealing in Columbia were not similar to his possessing false U.S. immigration and social-security documents. The court also rejected the government's contention that Chunza-Plazas came to the United States to avoid punishment for his misdeeds in Columbia. *Id.* at 57.⁵

⁵Although the First Circuit in *United States v. Brewster* rejected the *Chunza-Plazas* view that a criminal history departure under 4A1.3(e) must be based on similar conduct, it did not address the portion of *Chunza-Plazas* dealing with foreign criminal conduct. *Brewster*, 127 F.3d at 27. As discussed above, the reliability of Brewster's prior misconduct was not seriously in contention given his refusal to disavow the allegations during a colloquy with the court.

Although the government urges this court to look at *United States v. Boskic*, as a “useful guide” (Gov. Mem. at 26), to applying §4A1.3 in a situation where the prior criminal conduct is foreign and uncharged, it is not a useful comparison. In *Boskic* the defendant’s prior underlying conduct of murder was not disputed. In departing upward under §4A1.3 this court specifically relied upon the fact that Boskic “ha[d] admitted to participating in multiple murders.” See *United States v. Boskic*, No. 04-10298-DPW, Transcript of Sentencing Hearing (“Sent. Tr.”) at 27, 22, 51. See also *United States v. Boskic*, 545 F.3d 69 (1st Cir. 2008).⁶ Boskic’s admissions satisfied §4A1.3’s requirement of reliability. That type of reliable evidence is not present here.

II. There is no Basis for Raising the Offense Level Pursuant to U.S.S.G. §5K2.0.

The government cites the *Boskic* case for the proposition that the base offense level applicable in Mr. Montano’s case is insufficient and does not capture the “real offense conduct” in this case. This argument is wholly dependent on the premise that Mr. Montano fled from El Salvador to avoid prosecution there for alleged human rights violations including the murders of the Jesuits and two civilians in 1989. It is for that reason that the government suggests this court should utilize 18 U.S.C. § 1073 by analogy to set the base offense level, as it did in *Boskic*, in Mr. Montano’s case as a better way to calibrate the seriousness of the offense.

⁶Although the government requested an upward departure pursuant to §4A1.3 in *United States v. Carlos de Graca Lopes*, Criminal Action No. 07-CR-10437-MLW, the district court declined to address the issue in light of its decision to depart upward under §5K2.0, given substantial evidence that the defendant fled to the United States after being arrested, questioned, and ordered not to leave his home country. A review of the *Lopes* case indicates that the evidence presented by the United States regarding *Lopes* prior misconduct was more substantial than that presented here, the district court characterized it as “considerable” and noted that it included multiple witness statements. See Sentencing Transcript at 70-71.

This argument is valid only in the instance where the government can establish that a person “*can be prosecuted* for his actions and flees”. See *United States v. Frank*, 864 F.2d 992, 1007 (3rd Cir.1988), Emphasis added. Mr. Montano concedes that Section 1073 can be applied regardless of whether formal criminal charges were pending against him in El Salvador prior to his departure in 2001. However, the government’s argument fails in suggesting that Mr. Montano *could have been prosecuted* in El Salvador for the Jesuit murders prior to his departure. The general amnesty law that was in place from 1993 forward eliminated the potential for prosecution in El Salvador and that distinguishes Mr. Montano’s situation from that of Boskic. Further, this court referenced Section 1073 in Boskic’s case because he had personally admitted to committing acts of violence in his home country; Mr. Montano maintains his innocence regarding any participation in the Jesuit murders or in human rights abuses in El Salvador. Similarly, the government’s reference to *United States v. Lopes*, No. 07-10437-MLW for the proposition that an upward departure in offense level is appropriate here fails for the same reasons. It was established in the *Lopes* case that the defendant had criminal charges pending against him in Cape Verde for assaulting prisoners in his custody. See Gov. Mem. pp. 25. No criminal charges have ever been filed in El Salvador against Mr. Montano.

III. The Karl Report and Relevant Conduct cited by the Government do not Form a Valid Basis for a Sentence Above the Applicable Range.

Under 18 U.S.C. § 3553 (a), the Court must evaluate the information before it concerning Mr. Montano’s history and characteristics. This is premised on the proposition that the information is accurate and conveys credible facts that can be referenced to aid the Court in making a sentencing decision. As explained in more detail below, the government has presented

a report by Prof. Terry Lynn Karl that does not present a complete and or reliable picture of what was happening in El Salvador during the time of its civil war. It is based upon a limited knowledge of the country's laws, governmental, and military hierarchies. The government has also made much of Mr. Montano's responses to other questions answered on the I-821 regarding prior military service. The suggestion is that these answers evidence his desire to hide his military background while here in the United States. Like the Karl Report, the government has not given the Court all of the information surrounding why those answers were given and made a suggestion that is out of context.

A. Mr. Montano is Not Responsible for the Human Rights Abuses cited in the Karl Report.

The GSR that applies in this case (15-21 months) more than captures the offense conduct which is succinctly described as follows: false statements made by Mr. Montano in the I-821 application for three separate years, signed under the pains and penalties of perjury, specifically regarding his date of entry into the United States. As described above, Mr. Montano's decision to enter and remain in the United States was made in the wake of the natural disasters and financial difficulties that negatively affected his day to day living situation in El Salvador. There is no evidence that he was so plagued by any real or even speculative fear of prosecution for human rights violations in El Salvador that he felt an irresistible desire to flee. The fact that he remained in El Salvador for a decade after the Jesuit murders is significant evidence that undermines the government's contentions. Ultimately, the Karl Report's attempts to link Mr. Montano to these murders and to a lengthy list of human rights violations perpetrated by Salvadoran military elements are tenuous and misinformed.

In order to present the Court with a rebuttal to the Karl Report's assertions in this regard, Mr. Montano has previously submitted the report of retired General Mauricio Ernesto Vargas. *See* Docket entry 72, "Vargas Report".⁷ General Vargas is currently a respected businessman, religious activist, political analyst, and Professor at the Colegio de Altos Estudios Estrategicos (CAEE) in his native El Salvador. General Vargas was a respected member of the Salvadoran military that was asked to be a part of the special Commission formed to discuss and generate the Chapultepec Peace Accords of 1993. The Commission was composed of representatives of both sides of the conflict, the government /El Salvador Armed forces ("ESAF") and the FMLN. He was a signatory on this peace agreement and can offer this Court a unique view into the Salvadoran military command structure and the events surrounding the murder of the Jesuits in 1989.

Further, General Vargas describes the organized campaign of propaganda and misinformation carried on by the FMLN during the Salvadoran civil war and offers a more balanced and accurate view of events than Prof. Karl. The main goal of the FMLN's efforts was to win public support by casting the Salvadoran government and the military as oppressors and murderous villains. The FMLN's viewpoint was summarily adopted by the United States Congressional Delegation, led by then Congressman Joseph Moakley, whose goal it was to lead a partisan effort to end America's financial and military support of the government of El Salvador. Moreover the FMLN's views permeate the United Nation's Truth Commission Report that this delegation helped generate. That report accuses Mr. Montano of complicity in the Jesuit

⁷Defense counsel submitted General Vargas' original report written in Spanish. The report is being translated for the Court's and the government's benefit and will be submitted when received.

murders because of his presence at a meeting in November of 1989 at which high-level members of the military purportedly gave the order to kill Father Igancio Ellacuria and his associates at the Catholic University (“UCA”). General Vargas presents information in his report that exonerates Mr. Montano from any involvement in the deaths of the Jesuits.

United States Sentencing Guidelines Section 6A1.3 (a) advises that when any factor important to the sentencing determination is reasonably in dispute, the parties are allowed an opportunity to present information regarding that factor. Although the Court can consider this information without regard to its admissibility under the rules of evidence applicable at a trial, the information has to have a sufficient indicia of reliability to support its probable accuracy. In this case, the government is utilizing the information provided in the Karl Report to unnecessarily distract the Court from the real offense conduct in this case and attempt to obtain a much higher sentence than the guidelines suggest.

As is highlighted by General Vargas, the Karl Report contains various factual errors and relays a one-sided view of past events in El Salvador. It clearly minimizes the violent role of the FMLN in the Salvadoran conflict as well as its forceful efforts to misinform the local population, and the international community, about the government’s and the military’s activities. In the case of *United States v. Boskic*, this Court stated that it saw a “certain due process problem that is related to having someone charged with a particular crime and using that to obtain a sentence for a much more severe crime”. *See United States v. Boskic*, 04-10298-DPW, Transcript of Sentencing Hearing on November 26, 2006, pp. 16, ll. 18-21. This is precisely what the government is attempting to do in Mr. Montano’s case through the use of the Karl Report.

One of the many points that the Vargas Report makes is that if there were any truth to Mr. Montano's complicity in a lengthy list of human rights violations as a member of the Salvadoran military and Defense Ministry, why is there no evidence of any criminal investigation, criminal conviction, or civil lawsuit naming him in El Salvador over the last two decades? *See* attached Exhibit B, Appendix to the Vargas Report, Various certifications from El Salvador indicating no criminal convictions for Inocente Orlando Montano. Granted, the government's arguments regarding the power of the so called *Tandona's* membership and the general fear they allegedly instilled in the populace might have kept people silent for the time that they retained authority but that period ended long ago. Further, the remnants of the FMLN formed a powerful political party in the aftermath of the Peace Accords. As cited in the Karl Report, the FMLN became a strong voice in the Salvadoran legislature from the year 2000 onward. This culminated in the election of the country's first FMLN party President, Mauricio Funes, on March 15, 2009. Even in the wake of this unprecedented political shift, Mr. Montano has not been accused, sought for prosecution, or been named in any wrongful death or other type of civil lawsuit. Neither has he been named in a civil suit in the United States as have others such as former Generals Jose Guillermo Garcia and Carlos Eugenio Vides Casanova in Florida.

The Karl Report misstates a number of points regarding Mr. Montano's military career. It is inaccurate to state that "Throughout Colonel Montano's 30-year military career, he ordered, abetted, and assisted, and/or commanded troops that participated in a strategy of state terror against civilians." *See* Karl Report, pp. 1. The Salvadoran civil war (during which 100% of the human rights abuses cited by the Karl Report in Appendix II occurred) took place over a 12 year period beginning in 1980; it did not last three decades. Further, the Karl Report fails to describe

the positive humanitarian efforts made by Mr. Montano during his tenure in the Salvadoran military as described in the Vargas Report. The civil war pitted the ESAF against the rebel guerilla forces of the FMLN. Civilian casualties took place as result of this conflict, as they would in any violent civil war, but it was not due to a targeted effort by the government and the ESAF to harm the civilian populace. Moreover, many of these deaths occurred as result of the FMLN's activities and abuse of the civilian population to attain its goals. Again, those instances are entirely ignored by the Karl Report.

In another factually erroneous assertion, the Karl Report states that Mr. Montano was sent to Chile to receive training in intelligence methods and that this circumstance necessarily made him an admirer of Chilean General Pinochet. *See* Karl Report, pp. 38. This information is purportedly derived from an interview with a former Salvadoran army Colonel who was a commander of Mr. Montano's. *Id.* at footnote 163. It is not clear who conducted this interview in October of 2012 or whether Mr. Montano was directly referenced by this individual. The reality is that Mr. Montano never met General Pinochet and there is no formal documentation in his Salvadoran military service record that indicates he ever received training in Chile or any assignment in that country. *See* Vargas Report, pp. 38. Further, Mr. Montano was an engineer and not an intelligence specialist while with the ESAF so he would not have received such specialized training in that area. *Id.* Lastly, it is erroneous to state that Chile was ever considered a leader in intelligence training methods by other Latin American countries. According to General Vargas, El Salvador developed its own military intelligence protocols with some guidance from the United States.

The Vargas Report cites further factual errors in Prof. Karl's conclusions that evidence the use of unreliable informational sources and a fundamental misunderstanding of both the command structure of the Salvadoran military and the governmental hierarchy. These repeated inaccuracies cast serious doubt on the dataset provided to this Court and described as Appendix II of the Karl Report. *See* Karl Report, pp. 6. This is the table that lists the names of various victims of human rights abuses, the units of the ESAF that were allegedly responsible for these crimes, the dates of the incidents, and the dates of various military command assignments for Mr. Montano. The acceptance of this information as reliable by this Court is of some moment as Prof. Karl attributes over 1,000 violations of human rights to units or troops under Mr. Montano's command. *Id.*

This table of information does not state that Mr. Montano ever gave specific orders to commit each of these particular alleged abuses; it does not even offer proof that he personally knew of any of these incidents. Prof. Karl's argument regarding Mr. Montano's liability for the individual abuses allegedly committed by the troops in his charge is based in the civil legal theory of "command responsibility". This is the argument that she used to help obtain civil, not criminal, judgements against former Salvadoran Generals Jose Guillermo Garcia and Carlos Eugenio Vides Casanova in their South Florida 2002 case. *See Romagoza et al. v. Garcia et al.*, 434 F.3d 1354 (11th Cir.2007). One key element of the command responsibility doctrine is the need to establish that the Salvadoran military and security forces were the main perpetrators of the particular abuses and that Generals Garcia and Casanova held command positions at that time.

The Karl Report falls short in straining to connect Mr. Montano's command assignments with the lengthy list of human rights violations listed in Appendix II. Utilizing the command responsibility doctrine espoused by Prof. Karl, does her report establish with some indicia of reliability that the human rights abuses listed (1) were exclusively committed by ESAF troops? and (2) that Mr. Montano's various military assignments gave him direct authority over battle operations in the field? In terms of question one, the Karl Report attributes essentially 100% of the deaths and human rights abuses that took place over the course of the Salvadoran conflict to the ESAF. That is an extreme misstatement that is undeniably inaccurate. This is a consequence of the United Nations Truth Commission findings which overwhelmingly blamed the majority of violent acts in El Salvador's civil war (85%) on state security forces, the ESAF and allied "death squads". The sources of information which form the basis of the Truth Commission report were compiled with the help of an American Congressional Delegation and other liberal leaning groups that championed the FMLN in their efforts to stop United States aid to the Salvadoran government and the ESAF.

What Prof. Karl relegates to a handful of footnotes in her report and does not discuss in any meaningful detail is that this same United Nations sponsored investigation found that the FMLN killed civilians, shot prisoners, and committed other war crimes. http://articles.latimes.com/1993-03-18/news/mn-12349_1_war-crimes. The Marxist guerillas adopted deliberate and approved policies that violated basic human rights and were aimed at non-military and therefore illegitimate targets. *Id.* The FMLN executed government officials in war zones, planted land mines that killed innocent victims, and killed two United States military servicemen. The Salvadoran government itself was critical of the Truth Commission findings

saying it was biased and paid little attention to most of the crimes committed by the FMLN. Vice President Francisco Merino stated “It really makes you wonder that such care was taken to detail the information related to military officers in each case, but not with the murders and kidnaping attributed to the FMLN...It suggests a certain imbalance.” *Id.* The Salvadoran public was also skeptical regarding the United Nations investigation and the concentration of violent acts it attributed to one FMLN group, the People’s Revolutionary Army. The reaction came because it was common knowledge that many other FMLN factions committed similar acts of violence and human rights violations. *Id.* Thus, even in acknowledging the FMLN’s contribution to war crimes and human rights abuses, the United Nations was still minimizing their overall role in the violence. This is of importance as the lengthy listing of human rights violations that were submitted via the Karl Report in Appendix II may very well be attributable to FMLN forces as opposed to ESAF troops associated with Mr. Montano. As added proof of his non-involvement in the listing of incidents in Appendix II of the Karl Report, Mr. Montano has submitted the Vargas Report and its Appendix, Exhibit B. The Vargas Appendix contains various certifications from the geographical areas cited in the Karl Report as being the locales for various human rights abuses El Salvador. The documents from these districts of El Salvador contained in the Vargas Appendix indicate that no criminal cases or investigations are pending against Mr. Montano.

More importantly, the Vargas Report highlights that Mr. Montano’s former position as Executive Officer of the Belloso Battalion did not entail direct authority to oversee troop operations in the field. General Vargas explains that as Executive Officer, Mr. Montano’s duties would have been largely administrative in nature and would have been confined to the orderly

oversight of various military installations in El Salvador that housed ESAF troops. As Executive Officer of the Belloso Battalion, Mr. Montano would have remained at these military installations and not been present on the battle field. In the Salvadoran military hierarchy, direct orders to troops in the field would not have come from the Executive Officer of a specific ESAF unit, they would have come from a field operations officer.

B. Mr. Montano had no Involvement in the Jesuit Murders.

As described in the Vargas Report, in November of 1989, the FMLN launched coordinated attacks upon El Salvador's key military bases and brought 2,000 combatants into the capital city of San Salvador. The offensive was grand in scale and insurgents gained control of various geographic zones both inside and surrounding the perimeter of the capital. During the first night of the offensive, the FMLN attacked the residences of Salvadoran President Alfredo Cristiani, Vice President Francisco Merino, the President of the Legislative Assembly, as well as those of other governmental figures. The violence included the use of civilians as human shields by FMLN guerillas. They also forced civilians to build fortified barricades to strengthen their hold in these areas. Further, on November 12, 1989, FMLN forces took control of Santa Teresa Hospital in the district of Zacatecoluca and destroyed it. This hospital was used to treat wounded ESAF troops and many were killed as a result of that attack.

In an effort to combat the FMLN offensive and retain control of the capital city, a form of martial law was imposed in which independent military units of the ESAF were given control over each of the country's jurisdictional zones. On November 13, 1989, the ESAF designated that Colonel Guillermo Alfredo Benavides Moreno would be in charge of the military unit

responsible for security of the Military Academy zone. This area encompassed the Office of the Ministry of Defense, the headquarters of the ESAF (“Estado Mayor”), the residential districts of Arce and Palermo (areas primarily containing the residences of members of the military which were under attack from FMLN forces), the United States Consulate, and the area comprising the Catholic University (“UCA”). Colonel Benavides and troops based at the Military Academy were responsible for the deaths of the Jesuits and two civilians who accompanied them. They were tried and convicted for their actions. These murders took place at the height of the chaos created by the FMLN offensive. These actions were not sanctioned or ordered by Mr. Montano in his capacity at the time as Vice Minister of Public Security for El Salvador.

In his detailed description of the governmental and military heirarchy existing in El Salvador in November of 1989, General Vargas notes that Mr. Montano’s public security post attached him to agencies such as the National Police, National Guard, and Treasury Police. There is no dispute that none of these agencies were implicated in the deaths of the Jesuits. Colonel Benavides, not Vice Minister Montano, had complete authority of the military elements that were responsible for these actions. Mr. Montano’s position as Vice Minister would not have given him such authority over the military units controlled by Colonel Benavides during a time of military/national emergency. The Vargas Report describes that Mr. Montano did not have a hand in the deaths of the Jesuits and the civilians at the UCA in November of 1989 and that he did nothing to attempt to cover the tracks of those responsible or hinder that investigation in any way.

C. Mr. Montano Never Purposely misled Immigration Authorities about his History with the Salvadoran Military.

During his time with the Salvadoran military, Mr. Montano trained with American Special Forces Units here in the United States and worked alongside representatives of this country in El Salvador during the civil war. In addition, he visited the United States as Vice Minister of Public security in the early 1990's as part of the United States Department of Justice's I.C.I.T.A.P. program devoted to curbing the potential for human rights abuses in El Salvador and improving that country's law enforcement techniques. It seems to strain credulity that the United States government did not know who Inocente Orlando Montano was when he entered the country in 2001. More than one United States governmental agency undoubtedly had detailed information regarding former Colonel and Vice Minister Montano and his name/identity would have been placed on some form of watch list if there was any reason to believe he was a war criminal in El Salvador. America's intimate involvement with the Salvadoran civil war makes it highly unlikely that the government would not have been aware of Mr. Montano's presence here.

It is within this context that the government suggests Mr. Montano actively tried to hide his military background from United States immigration authorities. How was that accomplished? Mr. Montano never used a false name or identification and given his prior high-level status within the Salvadoran government and military, it is highly unlikely that using his true identification information would have helped him hide from any governmental agency. Moreover, he lived at only three different addresses in Massachusetts, one for over ten years, during his time in the United States. Again, not a tactic designed to avoid detection by the authorities.

The government focuses its argument that Mr. Montano actively tried to hide his involvement with the Salvadoran military on the responses to three questions appearing in the 2008 and 2010 versions of the TPS application. *See* Gov. Memo. pp 7. Mr. Montano answered “NO” to each of the questions listed. It is important to note that these questions *did not* appear in the TPS application form prior to 2008 and Mr. Montano had been applying for the benefit since his arrival in the United States in 2001. Further, Grand Jury testimony in Mr. Montano’s case indicates that these particular TPS forms were filled out and submitted with the aid of Mr. Montano’s niece, Claudia Rivas. She testified at the proceedings that it was routine for her to fill out the TPS forms for her uncle, answering the questions for him and then having him sign the application. She also indicated that he did not even read the questions on the occasions that she helped him.

Ms. Rivas indicated that she answered these questions in the negative because, for the most part, she felt they did not apply to her uncle as they asked about involvement in paramilitary units, vigilante units, rebel and or guerilla groups, and insurgent organizations. A respected member of the ESAF in El Salvador would not be included in those categories. Further, she felt there was no basis to answer in the affirmative concerning a question about being affiliated with groups that used weapons against people or who threatened to do so. Again, this implied criminal activity and she did not believe her uncle fell into this category as a legitimate member of the Salvadoran military. Mr. Montano acknowledged these points in statements he made to law enforcement agents. *See* Gov. Memo., pp. 9. Ultimately, although there is some confusion regarding who filled out these forms and how much participation Mr. Montano had in the process, it seems clear that Ms. Rivas was doing what she felt was necessary to obtain the TPS

benefit for her uncle yet filling out these forms without carefully reading them. Ms. Rivas' grand jury testimony is attached as Exhibit C and the Court can glean from her comments that both she and her uncle were confused by these questions and did not purposefully provide false answers to any question other than the date of entry issue. *See* attached Exhibit C, Grand Jury Testimony of Claudia Rivas.

III. The Proposed Sentence Will Provide Just Punishment and Satisfies the Statutory Sentencing Factors.

The proposed sentence of five years of probation represents a substantial penalty that adequately reflects the seriousness of the offense of conviction, will promote respect for the law, and provide just punishment as required by section 3553(a)(2)(A). While it is easy to become inured to enormous sentences in the federal system, a federal felony conviction resulting five years of probation and deportation after a lengthy period of time in the United States is substantial. As the Supreme Court noted in *Gall v. United States*, 128 S.Ct. 586 (2007), probation and/or supervised release amount to a "substantial restriction of freedom." *Id.* at 595. A judge in this district observed in one of the first sentencing hearings it conducted after *Gall*:

Gall recognized for the very first time in a very long time that probation is not nothing, that there are substantial restrictions on an individual's freedom in probation, that we can structure a probationary sentence that meets all the purposes of sentencing, and that is entirely appropriate. This was one of the things that the guidelines ignored, and the guidelines dramatically changed from preguideline practice and which the Supreme Court is essentially saying we can now look at again.

United States v. Ramos, 04-10275 (D. Mass. 2008) (excerpt of sentencing transcript filed with Judgment, dkt # 62) (ordering probationary sentence for oxycontin trafficking).

The proposed sentence will be more than sufficient to deter Mr. Montano from similar crimes in the future, as required by sections 3553(a)(2)(B) and (C). The interest in general deterrence will be served by the proposed period of probation and its collateral consequences. Nobody looking at what happened to Mr. Montano could mistakenly conclude that giving false responses in an immigration form is not a serious crime. All of this of course is predicated on the Court concluding that Mr. Montano is not a war criminal or a collaborator in the deaths of the Jesuits and two civilians at the UCA in 1989. The Vargas Report offers detailed proof that these assertions are incorrect and that any casualties resulting from Mr. Montano's involvement with the Salvadoran military were the consequence of a legitimate, and non-criminally motivated, defense of El Salvador and its government. This effort was sanctioned and encouraged by the United States of America during the years that the civil war continued in an effort to defeat the communist threat presented by the FMLN and its international supporters.

There are no data to suggest that a longer sentence would have any marginally greater deterrent effect. Indeed, research consistently has shown that "increases in the severity of punishments do not yield significant (if any) marginal deterrent effects." Michael Tonry, *Purposes and Functions of Sentencing*, 34 CRIME & JUST. 1, 28 (2006). "Three National Academy of Science panels . . . reached that conclusion, as has every major survey of the evidence." *Id.*

Finally, Mr. Montano is at little risk of reoffending. Relocating to El Salvador via deportation will prevent him from entering the United States and seeking any type of immigration status for an indefinite period of time. Uprooting him from his current and long

term home and separating him from his family locally will be a hardship that is a consequence of this conviction.

Turning to section 3553(a)(2)(D), Mr. Montano is not in need of correctional treatment of the sort that a prison or jail facility is uniquely equipped to provide. Mr. Montano's serious health issues require constant monitoring by medical professionals and regular treatment with various medications. Any lengthy period of incarceration would only serve to aggravate the poor physical condition of this 70 year old man.

Conclusion

For the foregoing reasons, the Court should impose the recommended sentence of five years of probation. No fine should be imposed in light of Mr. Montano's inability to pay any fine.

Respectfully submitted,

INOCENTE ORLANDO MONTANO

by his attorney

/s/ Oscar Cruz, Jr.

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B.B.O. No. 630813
FEDERAL PUBLIC DEFENDER OFFICE
51 Sleeper Street, 5th Floor
Boston, MA 02210
617-223-8061
OSCAR_CRUZ@FD.ORG

Certificate of Service

I, Oscar Cruz, Jr., hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on April 23, 2013.

/s/ Oscar Cruz, Jr. _____

EXHIBIT A

Ministerio de Justicia y Seguridad Pública,
Dirección General de Centros Penales.



DIRECCION GENERAL DE CENTROS PENALES.



CERTIFICACION DE ANTECEDENTES PENALES

Vista la solicitud de Antecedente Penal No.065751 de fecha: 11 de Diciembre de 2012.
A nombre de el(a) Señor(a) (rita): INOCENTE ORLANDO MONTANO, con Pasaporte de
Identidad No.A70127630; hijo (a) ANTONIO MORALES y de EMILIA MONTANO.

Que será destinada para trámites: MIGRATORIOS.

La suscrita hace constar que a la fecha a nombre de la persona antes mencionada
según el registro que esta dirección lleva **NO TIENE** Antecedentes Penales por
Sentencia Condenatoria Ejecutoriada en su contra, por imputársele delito.

Por lo que se le extiende la presente certificación a requerimiento del el(a)
Señor(rita): JENNYE MARGARITA MONTANO DE BASAGOITIA, en su calidad de **Persona**
Autorizada con Documento Único de Identidad No.02382569-9 en las instalaciones de la
Dirección General de Centros Penales, San Salvador, 11 de Diciembre de 2012.

KJM Moreno González

Licda. Karlen Judith Moreno González
Suplente de Sucursal
Registro de Armas

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La presente certificación consta de 01 folio



CUALQUIER ALTERACION ANULA LA PRESENTE CERTIFICACION
ESTE DOCUMENTO SOLO ES VALIDO DURANTE EL PERIODO DE NOVENTA DIAS
CON SUS RESPECTIVOS SELLOS Y FIRMA ORIGINALES



MINISTERIO DE JUSTICIA Y SEGURIDAD PÚBLICA AUTÉNTICAS

frascrito Encargado de la Unidad de Auténticas del Ministerio de Justicia y Seguridad Pública CERTIFICA: que la firma que antecede y que esta debidamente sellada y registrada, es la misma que usa la Licenciada KARLEN JUDITH MORENO GONZÁLEZ, como colaboradora de la sucursal de Antecedentes Penales en el Registro de Armas de San Salvador. Esta autenticación se limita a la firma mencionada y no se responsabiliza del contenido del documento.

San Salvador, dieciocho diciembre dos mil doce.



A handwritten signature in black ink, appearing to read "Alberto Mulato Flamenco".

Alberto Mulato Flamenco



RR.EE.

Nº 175504

MINISTERIO DE RELACIONES EXTERIORES

APOSTILLE (Convention de La Haye du 5 octobre 1961)			
1. País: Country/ Pays:	EL SALVADOR		
El presente documento público This public document/ Le présent acte public			
2. Ha sido firmado por Has been signed by A été signé par	JORGE ALBERTO MULATO FLAMENCO		
3. Quien actúa en calidad de Acting in the capacity of Agissant en qualité de	ENCARGADO DE LA UNIDAD DE AUTENTICAS		
4. Y está revestido del sello/ timbre de Bears the seal / stamp of Est revêtu du sceau / timbre de	MINISTERIO DE JUSTICIA Y SEGURIDAD PUBLICA.		
Certificado Certified / Attesté			
5. En at/ á	MINISTERIO DE RELACIONES EXTERIORES	6. El día the / le	18/12/2012
7. Por by / par	TECNICO VI DE LA DIRECCION GENERAL DEL SERVICIO EXTERIOR		
8. Bajo el número No. Sous No	25346/12		
9. Sello / timbre: Seal/ stamp: Sceau / timbre:			10. Firma: Signature: Signature:
		MARIA DIGNA MELGAR ROMERO	
Tipo de documento: ANTECEDENTES PENALES (Type of document – Type du document:)		Número de hojas que contiene el documento: 2 (Number of sheets contained in the document -- Nombre de feuilles continues dans le document:)	

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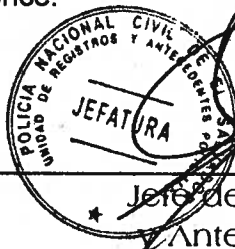
Cette Apostille atteste uniquement la véracité de la signature, la qualité en laquelle le signataire de l'acte a agi et, le cas échéant, l'identité du sceau ou timbre dont cet acte public est revêtu.

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EXONERADO DE DERECHOS CONSULARES

POLICIA NACIONAL CIVIL
UNIDAD DE REGISTRO Y ANTECEDENTES POLICIALES

La infrascrita Jefa de la Unidad de Registro y Antecedentes Policiales de la Policía Nacional Civil de El Salvador, **INSPECTORA AMANDA PATRICIA GUZMAN VARELA**, **CERTIFICA:** Que se han revisado los sistemas informáticos de antecedentes policiales que esta Institución policial lleva para los efectos de ley, y a la fecha no se encontró, a nivel nacional antecedentes policiales pendientes ni fenecidos, en contra de **INOCENTE ORLANDO MONTANO**, nacido en el Departamento de San Vicente, República de El Salvador, el día cuatro de Julio de mil novecientos cuarenta y dos, de nacionalidad salvadoreña, del domicilio actual de San Salvador y residente en la Ciudad de Boston Massachusetts, hijo de **EMILIA MONTANO Y ANTONIO MORALES**. Y a solicitud de la señora **JENNYE MARGARITA MONTANO DE BASAGOITIA**, para efectos de ser presentada ante las autoridades u organismos nacionales o extranjeros que fueren requeridos, extendiendo, firmo y sello la presente certificación de antecedentes policiales, en la Ciudad de San Salvador, República de El Salvador, a los veinticinco días del mes de Octubre de dos mil once.



Jefa de Unidad de Registro
y Antecedentes Policiales

- * Cualquier alteración anula el presente documento.
- * No puede ser utilizado con fines distintos al especificado.



MINISTERIO DE RELACIONES EXTERIORES



APOSTILLE

(Convention de la Haye du 5 de Octobre 1961)

- 1. País: EL SALVADOR
El presente documento Público
- 2. Ha sido firmado por: AMANDA PATRICIA GUZMAN VARELA
- 3. Quien actúa en calidad de: JEFA DE LA UNIDAD DE REGISTRO Y ANTECEDENTES POLICIALES
- 4. Y está revestido del sello de: POLICIA NACIONAL CIVIL

CERTIFICADO

- 5. En: MINISTERIO DE RELACIONES EXTERIORES
- 6. El día 21-12-2011
- 7. Por: TECNICO VI EN LA DIRECCION GENERAL DEL SERVICIO EXTERIOR

8. Bajo el número: 25288/2011

9. Sello



10. Firma

EXONERADO DE DERECHOS CONSULARES

MARIA DIGNA MELGAR ROMERO

EXHIBIT B

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APENDICE I

SOLVENCIA 1	Antecedentes Penales
SOLVENCIA 2	Solvencia de la Policía Nacional Civil
CONSTANCIA 1	Juzgado Primero de Instrucción. Usulután. El Salvador
CONSTANCIA 2	Juzgado Primero de Instrucción. Usulután. El Salvador <i>↳ segundo</i>
CONSTANCIA 3	Juzgado Primero de Primera Instancia. Morazán El Salvador.
CONSTANCIA 4	Juzgado Primero de Instrucción. San Sebastián. El Salvador

Ministerio de Justicia y Seguridad Pública,
Dirección General de Centros Penales.



DIRECCION GENERAL DE CENTROS PENALES.



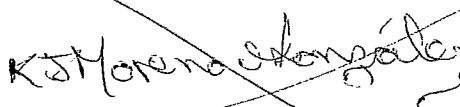
CERTIFICACION DE ANTECEDENTES PENALES

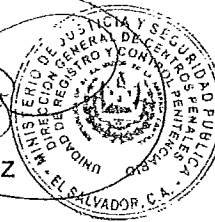
Vista la solicitud de Antecedente Penal No.065751 de fecha: 11 de Diciembre de 2012.
A nombre de el(a) Señor(a) (rita): INOCENTE ORLANDO MONTANO, con Pasaporte de
Identidad No.A70127630; hijo (a) ANTONIO MORALES y de EMILIA MONTANO.

Que será destinada para trámites: MIGRATORIOS.

La suscrita hace constar que a la fecha a nombre de la persona antes mencionada
según el registro que esta dirección lleva **NO TIENE** Antecedentes Penales por
Sentencia Condenatoria Ejecutoriada en su contra, por imputársele delito.

Por lo que se le extiende la presente certificación a requerimiento del el(a)
Señor(rita): JENNYE MARGARITA MONTANO DE BASAGOITIA, en su calidad de **Persona**
Autorizada con Documento Único de Identidad No.02382569-9 en las instalaciones de la
Dirección General de Centros Penales, San Salvador, 11 de Diciembre de 2012.


Licda. Karlen Judith Moreno González
Suplente de Sucursal
Registro de Armas



//JRM.doc//S.R.A.

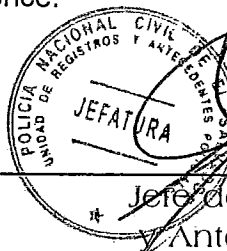
La presente certificación consta de 01 folio



CUALQUIER ALTERACION ANULA LA PRESENTE CERTIFICACION
ESTE DOCUMENTO SOLO ES VALIDO DURANTE EL PERIODO DE NOVENTA DIAS
CON SUS RESPECTIVOS SELLOS Y FIRMA ORIGINALES

POLICIA NACIONAL CIVIL
UNIDAD DE REGISTRO Y ANTECEDENTES POLICIALES

La infrascrita Jefa de la Unidad de Registro y Antecedentes Policiales de la Policía Nacional Civil de El Salvador, **INSPECTORA AMANDA PATRICIA GUZMAN VARELA, CERTIFICA:** Que se han revisado los sistemas informáticos de antecedentes policiales que esta Institución policial lleva para los efectos de ley, y **a la fecha no se encontró, a nivel nacional antecedentes** policiales pendientes ni fenecidos, en contra de **INOCENTE ORLANDO MONTANO**, nacido en el Departamento de San Vicente, República de El Salvador, el día cuatro de Julio de mil novecientos cuarenta y dos, de nacionalidad salvadoreña, del domicilio actual de San Salvador y residente en la Ciudad de Boston Massachusetts, hijo de **EMILIA MONTANO Y ANTONIO MORALES**. Y a solicitud de la señora **JENNYE MARGARITA MONTANO DE BASAGOITIA**, para efectos de ser presentada ante las autoridades u organismos nacionales o extranjeros que fueren requeridos, extendiendo, firmo y sello la presente certificación de antecedentes policiales, en la Ciudad de San Salvador, República de El Salvador, a los veinticinco días del mes de Octubre de dos mil once.



Jefa de Unidad de Registro
y Antecedentes Policiales

- * Cualquier alteración anula el presente documento.
- * No puede ser utilizado con fines distintos al especificado.



**MINISTERIO DE JUSTICIA Y SEGURIDAD PÚBLICA
AUTÉNTICAS**

frascrito Encargado de la Unidad de Auténticas del Ministerio de Justicia y Seguridad Pública CERTIFICA: que la firma que antecede y que esta debidamente sellada y registrada, es la misma que usa la Licenciada KARLEN JUDITH MORENO GONZÁLEZ, como colaboradora de la sucursal de Antecedentes Penales en el Registro de Armas de San Salvador. Esta autenticación se limita a la firma mencionada y no se responsabiliza del contenido del documento. San Salvador, dieciocho diciembre dos mil doce.



Jorge Alberto Mulato Flamenco

RR:EE.

Nº 175504



MINISTERIO DE RELACIONES EXTERIORES

APOSTILLE (Convention de La Haye du 5 octobre 1961)			
1. País: Country/ Pays.	EL SALVADOR		
El presente documento público This public document/ Le présent acte public			
2. Ha sido firmado por Has been signed by A été signé par	JORGE ALBERTO MULATO FLAMENCO		
3. Quien actúa en calidad de Acting in the capacity of Agissant en qualité de	ENCARGADO DE LA UNIDAD DE AUTENTICAS		
4. Y está revestido del sello/ timbre de Bears the seal / stamp of Est revêtu du sceau / timbre de	MINISTERIO DE JUSTICIA Y SEGURIDAD PUBLICA.		
Certificado Certified / Attesté			
5. En at/ á	MINISTERIO DE RELACIONES EXTERIORES	6. El día the / le	18/12/2012
7. Por by / par	TECNICO VI DE LA DIRECCION GENERAL DEL SERVICIO EXTERIOR		
8. Bajo el número No. Sous No	25346/12		
9. Sello / timbre: Seal/ stamp: Sceau / timbre:			10. Firma: Signature: Signature:
		MARIA DIGNA MELGAR ROMERO	
Tipo de documento: ANTECEDENTES PENALES (Type of document – Type du document:)		Número de hojas que contiene el documento: 2 (Number of sheets contained in the document -- Nombre de feuilles continues dans le document:)	

Esta Apostilla certifica únicamente la autenticidad de la firma, la calidad en que el signatario del documento haya actuado y, en su caso, la identidad del sello o timbre del que el documento público esté revestido.
Esta Apostilla no certifica el contenido del documento para el cual se expidió.

This Apostille only certifies the authenticity of the signature and the capacity of the person who has signed the public document, and, where appropriate, the identity of the seal or stamp which the public document bears.
This Apostille does not certify the content of the document for which it was issued.

Cette Apostille atteste uniquement la véracité de la signature, la qualité en laquelle le signataire de l'acte a agi et, le cas échéant, l'identité du sceau ou timbre dont cet acte public est revêtu.
Cette Apostille ne certifie pas le contenu de l'acte pour lequel elle a été émise.

EXONERADO DE DERECHOS CONSULARES



MINISTERIO DE RELACIONES EXTERIORES



APOSTILLE

(Convention de la Haye du 5 de Octobre 1961)

- 1. País; EL SALVADOR
El presente documento Público
- 2. Ha sido firmado por: AMANDA PATRICIA GUZMAN VARELA
- 3. Quien actúa en calidad de: JEFA DE LA UNIDAD DE REGISTRO Y ANTECEDENTES POLICIALES
- 4. Y está revestido del sello de: POLICIA NACIONAL CIVIL

CERTIFICADO

- 5. En: MINISTERIO DE RELACIONES EXTERIORES
- 6. El día 21-12-2011
- 7. Por: TECNICO VI EN LA DIRECCION GENERAL DEL SERVICIO EXTERIOR
- 8. Bajo el número: 25288/2011

9. Sello



10. Firma

EXONERADO DE DERECHOS CONSULARES

[Handwritten Signature]
MARIA DIGNA MELGAR ROMERO



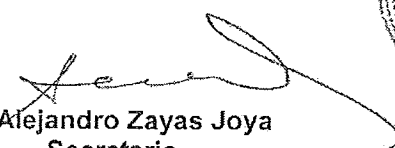
JUZGADO PRIMERO DE INSTRUCCIÓN; USULUTAN
Avenida Guandique y Segunda Calle Poniente
Teléfono: 2662-0417 Fax 2662-2767.-



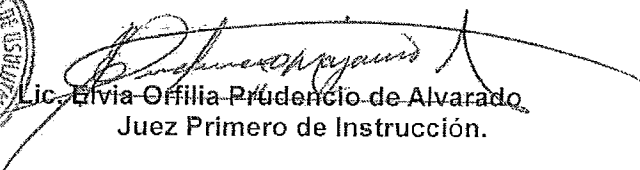
LA INFRASCRIPTA JUEZ:

HACE CONSTAR: Que a este Juzgado se ha hecho presente el Licenciado **YACIR ERNESTO FERNANDEZ SERRANO**, de treinta y ocho años de edad, abogado y Notario del domicilio de San Salvador, con carne de abogado número siete mil trescientos treinta y tres, en su calidad de apoderado General Judicial del señor **SALVADOR ORLANDO MONTANO MENDEZ**, de cuarenta y cinco años de edad, Militar, del domicilio de Santa Tecla, Departamento de La Libertad, quien se identifica con su Documento Único de Identidad número cero dos millones cuatrocientos treinta y cinco mil, ciento cuarenta y cuatro -nueve, y número de identificación tributaria cero seiscientos catorce- doscientos cincuenta mil setecientos sesenta y siete - ciento dos - uno, hijo de **MARÍA MARGARITA ALICIA MÉNDEZ Y DE INOCENTE ORLANDO MONTANO**, poderdante que lo faculta para que en calidad de hijo del señor Montano, tramite la obtención de constancia o certificación de la existencia o no de procesos penales en los años 1987 a 1989, seguidos en contra de **INOCENTE ORLANDO MONTANO**, de setenta años de edad, originario de la ciudad de San Vicente, Departamento de San Vicente, y del domicilio de Boston, Estado de Massachussets, Estados Unidos de América, hijo de Antonio Morales Valladares y María Emilia Montano, portador de su pasaporte número A siete cero uno dos siete seis tres cero y número de identificación tributaria un mil diez - cero cuarenta mil setecientos cuarenta y dos - cero cero uno- cuatro, de lo cual hago constar; que se verificaron minuciosamente los registros que se llevan en este Juzgado, y no se encontró entradas de procesos penales en los años antes indicados seguidos en contra del Señor **INOCENTE ORLANDO MONTANO**, de las generales antes mencionadas,

Y a solicitud del Licenciado **YACIR ERNESTO FERNANDEZ SERRANO**, expido firma y sello la presente en el Juzgado Primero de Instrucción: de la Ciudad de Usulután, Distrito y Departamento del mismo nombre de la República de El Salvador Centro América, a los dieciocho días del mes de Febrero del año dos mil trece.


Lic. Alejandro Zayas Joya
Secretario




Lic. Elvia Orfilia Prudencio de Alvarado
Juez Primero de Instrucción.



LA INFRASCRITA JUEZA DEL JUZGADO SEGUNDO DE INSTRUCCIÓN DE LA CIUDAD DE USULUTÁN.

HACE CONSTAR: Que se ha buscado en los libros de entrada y de archivo que lleva este Juzgado y no se ha encontrado causa pendiente ni fenecida en contra del señor **INOCENTE ORLANDO MONTANO**, de setenta años de edad, originario de San Vicente, del domicilio de Boston, Estado de Massachussets, Estados Unidos de América, hijo de Antonio Morales Valladares y de María Emilia Montano, con Pasaporte Número A siete cero uno dos siete seis tres cero y Número de Identificación Tributaria un mil diez-cero cuarenta mil setecientos cuarenta y dos-cero cero uno-cuatro; **NO EXISTE** o **HA EXISTIDO** proceso penal en su contra relacionado a cualquier tipo de delitos en el período comprendido entre los años de **1987 a 1989**.

Y para los usos que el interesado estime conveniente, se extiende la presente en el Juzgado Segundo de Instrucción de la ciudad de Usulután, a los catorce días del mes de febrero del año dos mil trece



[Handwritten signature of Patricia Angelica Bondanza Medina]
Lic. PATRICIA ANGELICA BONDANZA MEDINA
JUEZA SEGUNDO DE INSTRUCCIÓN
USULUTAN.

[Handwritten signature of Rosa Elvira Beltran de Rodriguez]
ROSA ELVIRA BELTRAN DE RODRIGUEZ
SECRETARIA



JUZGADO PRIMERO DE PRIMERA INSTANCIA
SAN FRANCISCO GOTERA, DEPTO DE MORAZAN

BACILIA DEL CARMEN PORTILLO, JUEZA PRIMERO DE PRIMERA INSTANCIA DE SAN FRANCISCO GOTERA, DEPARTAMENTO DE MORAZAN.

HACE CONSTAR: Que se ha buscado minuciosamente en el archivo de este Juzgado, causa penal instruida supuestamente en contra del señor **INOCENTE ORLANDO MONTANO**, y no se ha encontrado causa alguna; asimismo se hace constar que no se ha podido buscar registro de abril de 1982 al mes de abril de 1985, en virtud de que no hay libros de entrada de esos años, por haber sido destruidos por motivos que este Centro judicial fue ocupado en época de la guerra civil por militares, no es posible verificar sobre la existencia del referido proceso.-

Y para los usos que el interesado estime convenientes, se extiende la presente en el Juzgado Primero de Primera Instancia de San Francisco Gotera, departamento de Morazán, a los dieciocho días del mes de febrero de dos mil trece.-



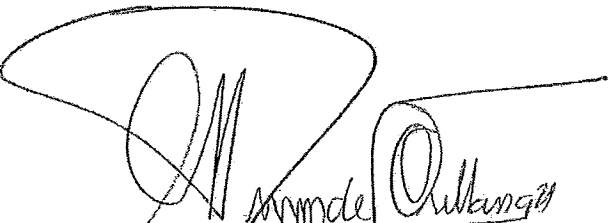

LICDA. BACILIA DEL CARMEN PORTILLO,
JUEZA 1º DE 1º INSTANCIA.-

LA INFRASCrita JUEZA SUPLENTE Y SECRETARIO DEL JUZGADO DE PRIMERA INSTANCIA:

HACEN CONSTAR: Que el Señor **INOCENTE ORLANDO MONTANO**, de setenta años de edad, originario de San Vicente, mismo Departamento, y residente en Residente en Boston, Estado de Massachusetts, de Estados Unidos de Norte América, hijo de Antonio Morales Valladares y María Emilia Montano, quien se identifica por medio de copia de Pasaporte Número A siete cero uno dos siete seis tres cero, respetuosamente informo: que se han revisado minuciosamente los Libros de Entradas Criminales que al efecto lleva este Tribunal, **desde el año mil novecientos ochenta, hasta la fecha;** y no se han encontrado Causas Pendientes ó Fenecidas, por delito o falta alguna, por lo que no existe ninguna Restricción, a nombre del Señor **INOCENTE ORLANDO MONTANO**, para efecto de que resuelva su situación.

Y para ser presentada a las Autoridades Judiciales, de los Estados Unidos de Norte América, es entregada la presente Constancia, al Señor Salvador Orlando Montano Méndez, quien manifestó ser el Hijo del solicitante, quien se Identifica por medio de su Documento Único de Identidad Número cero dos cuatro tres cinco uno cuatro cuatro guion nueve.- Para lo cual extendemos, firmamos y sellamos la presente, en el Juzgado de Primera Instancia del Distrito Judicial de San Sebastián, Departamento de San Vicente, a los veinticinco días del mes de febrero del año dos mil trece.




~~LICDA MISANILLAS REYES CASTILLO DE ORELLANA~~
JUEZA DE PRIMERA INSTANCIA SUPLENTE.

BR. BESSY CECILIA FABIAN FUENTES
SECRETARIO.

CRG.

APENDICE II General Attorney

From: **salvador Orlando Montano** (somontamen@yahoo.com.mx)

Sent: Tue 2/26/13 4:49 PM

To: Oscar_Cruz@fd.org (Oscar_Cruz@fd.org); claudia rivas (crivas28@hotmail.com); Orlando Montano (iomontano42@yahoo.com)

4 attachments

A1-LETTER OF ATTORNEY GENERAL OF THE REPUBLIC.pdf (398.6 KB) , A2-LETTER OF ATTORNEY GENERAL OF THE REPUBLIC_ENGLISH.pdf (430.3 KB) , A3-ATTORNEY GENERAL OF THE REPUBLIC_CREDENTIALS_CONTACT US.pdf (396.2 KB) , A4-ATTORNEY GENERAL OF THE REPUBLIC NOMINATION 1989.pdf (538.1 KB)

Buenas tardes, les envio el APENDICE II con cartas de autoridades de la alta jerarquía de la iglesia, del Fiscal general de la República en el año de 1989, de un representante del sector privado y de la Comisión de negociacion de los acuerdos de paz.

El testimonio de estas personas hace ver 4 aspectos de mucho valor:

- 1.- IOM no es un criminal, ni tiene un pasado de violaciones de los Derechos Humanos
- 2.- IOM no tuvo ninguna participación en el caso de los jesuitas de la UCA
- 3.- IOM no esta vinculado a ninguna estructura de poder
- 4.- IOM si tiene un pasado altruista, respetuoso de la dignidad humana.

Good afternoon, I am sending you, Appendix II with letters of authorities from the high hierarchy of the Church, one of the general Attorney of the Republic of El Salvador, during Jesuite's investigations, one of the representative of the private sector and the Peace Accord's Commission.

The testimony of these people shows 4 aspects of great value:

- 1.- IOM is not a criminal, nor has a past of human rights violations
- 2.- IOM did not have any involvement in the case of the Jesuits of the UCA
- 3.- IOM is not linked to any corrupt structure and with power
- 4.- IOM have an altruistic past, respectful of human dignity.

Salvador Orlando Montano Méndez

MAURICIO EDUARDO COLORADO * ABOGADO Y NOTARIO

Calle Bogotá Número 50
Colonia San Mateo,
San Salvador El Salvador
Teléfono (503) 2223 9831 - (503) 2245 0769
E MAIL : mauricioecolorado@hotmail.com
mauricioecolorado@gmail.com

MAURICIO EDUARDO COLORADO, ex Fiscal General de la República de El Salvador, por la presente hago constar:

Que el día veintisiete de abril de mil novecientos ochenta y nueve, fui electo Fiscal General de la República, como consecuencia del asesinato ocurrido en la persona del Dr. José Roberto García Alvarado, Fiscal General de la República, perpetrado por las fuerzas subversivas que operaban en esa época en El Salvador.

Que tal nombramiento se realizó por la Asamblea Legislativa de El Salvador, para completar el período del funcionario asesinado, período que duró trece meses.


Que al momento de suceder el asesinato de los Sacerdotes Jesuitas en las Instalaciones de la Universidad José Simeon Cañas el día 16 de noviembre de 1989 el suscrito se encontraba en pleno ejercicio del cargo de Fiscal General de la República.

Que durante permanecí en el cargo, en ningún momento se mencionó en las diligencias judiciales relativas al caso referido, ni como autor, cómplice o encubridor de los hechos investigados, al Coronel INOCENTE ORLANDO MONTANO, para ese entonces, Viceministro de Seguridad Pública del gobierno legítimamente constituido.

Que la Fiscalía General de la República es una institución independiente del los Órganos Ejecutivo, Legislativo y Judicial, y goza de plena y absoluta autonomía e independencia en todas sus actuaciones

Que el suscrito, tuvo conocimiento de que el juicio seguido por el crimen de los sacerdotes jesuitas, tuvo su finalización cuando el suscrito ya había dejado el cargo de Fiscal General de la República, con la condena de los autores de dicho crimen, entre los cuales NO SE ENCONTRABA el coronel INOCENTE ORLANDO MONTANO.

Y para los usos que se consideren convenientes, EXTIENDO la PRESENTE CONSTANCIA en San Salvador a los seis días del mes de febrero de dos mil trece.


MAURICIO EDUARDO COLORADO
Abogado y Notario



MAURICIO EDUARDO COLORADO, Ex - Attorney General of the Republic of El Salvador, hereby does include:

That the day 27 of April of thousand nine hundred eighty-nine, I was elected Attorney General of the Republic, as a consequence of the murder occurred in the person of Dr. José Roberto García Alvarado, Prosecutor General of the Republic, perpetrated by subversive forces operating at that time in El Salvador.

That such appointment was made by the Legislative Assembly of El Salvador, to complete the period of the murdered officer, period that lasted 13 months.

That the murder of Jesuit priests in the facilities of the University Jose Simeon Canas November 16, 1989 , happened when the undersigned was in full exercise of the Office of Prosecutor General of the Republic.

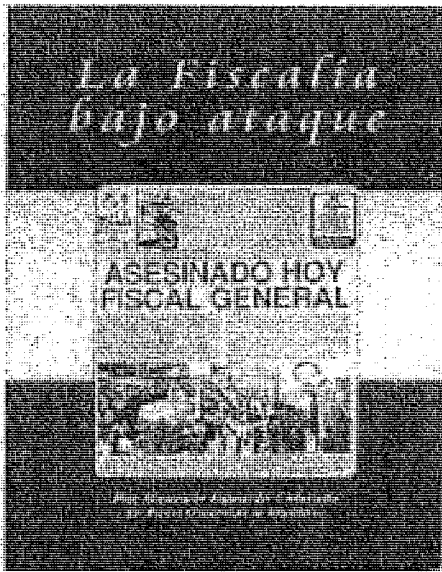
That during stayed in Office, We never mentioned Colonel INOCENTE ORLANDO MONTANO Vice-Minister of Public Security in the proceedings relating to the case concerned, as author, or as accomplice or abettor of the facts under investigation, , The Attorney General of the Republic is an independent institution of the organs of Executive, Legislative and Judicial, and enjoys full and absolute autonomy and independence in all its activities

That the undersigned was informed that the trial for the murder of Jesuit priests had its completion when the undersigned had already left the Office of Prosecutor General of the Republic, with the condemnation of the perpetrators of this crime. Colonel INOCENTE ORLANDO MONTANO was not considered in the sentence.

And for uses that are considered suitable, I extend this CONSTANCY in San Salvador to the six days of the month of February of two thousand thirteen.

MAURICIO EDUARDO COLORADO
Lawyer and public Notary.

Mauricio Eduardo Colorado Morales, is an expert in legal sciences and holds a PhD in labor law. He was appointed ATTORNEY GENERAL OF THE REPUBLIC OF EL SALVADOR on April 28, 1989. He is currently a Law Professor of the University "Dr. José Matías Delgado" and serves as legal adviser for national and international companies and organizations

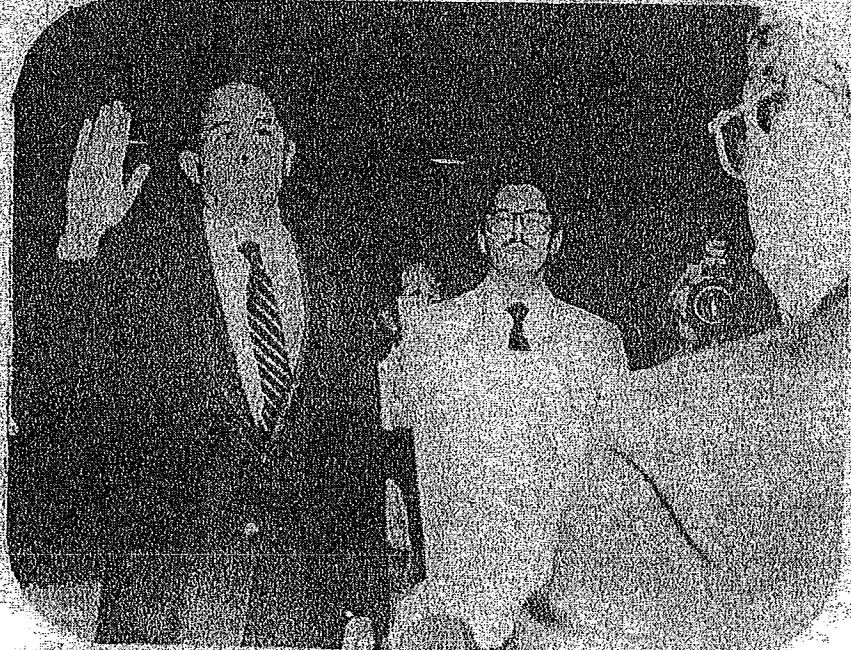


Mauricio E. Colorado, former Attorney General of the republic of El Salvador, is author of "Attorney General's Office under attack". This book is without a doubt a raw revelation of dr. Colorado's detailed story and personal account of the adventures he was forced to face during his term as Attorney general. He also reveals the threatening situations he lived during the time he served as such. He exposed the reality lived during a historic moment of El Salvador where citizens suffered pressure from the fight between the constitutionally elected Government of El Salvador and the FMLN Farabundistas.

Phone: (503) 2223-9831 - (503) 2245-0769
mauricioecolorado@gmail.com

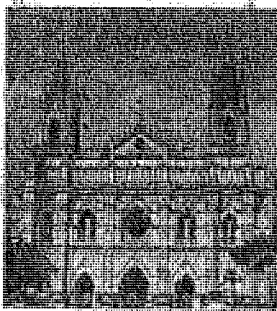
EL MUNDO

Asamblea nombra a Fiscal General



ELIGEN NUEVO FISCAL. En la sesión plenaria de ayer, la Asamblea Legislativa eligió al nuevo Fiscal General de la República, Dr. Mauricio Eduardo Colorado, quien fue juramentado por el Presidente del Congreso, Lic. Ricardo Alvaranga Valdijagua. El Dr. Colorado sustituye al Dr. Roberto García Alvarado, asesinado el 19 de abril. (CM).

(CM). El Dr. Mauricio Colorado desempeña el cargo de Fiscal General durante tres años. El MAC, señaló que "uno de los grandes problemas de los grandes proble-



DIOCESIS DE SANTA ANA
El Salvador, América Central

Casa Episcopal de Santa Ana, 3ª Avenida Norte No.3
Tel./Fax: (503) 2441-0278 • e-mail: diocesissta.ana@integra.com.sv

Santa Ana, 13 de febrero de 2013.

The Honorable Douglas P. Woodlock
United States District Court
District of Massachusetts
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 4110
Boston, MA 02210-3002

Apreciable Sr. Juez Woodlock:

El 5 de mayo de 1987, por disposición de Nuestro Señor, fui nombrado Obispo de Zacatecoluca, después de que el Papa Juan Pablo II erigiera esa Diócesis.

En esos días el cumplimiento de mi misión pastoral enfrentó un ineludible desafío por los vejámenes derivados de la situación bélica que afrontaba el país. Compartimos la pérdida y el dolor, la ira y el temor, el choque y la determinación de un pueblo herido. Reconociendo en Dios la fuente de la existencia de cada hombre, la Diócesis colaboró con la sociedad salvadoreña promoviendo la dignidad inviolable de todo ser humano, cimentando en este principio el valor incondicionado de todo ser humano.

Este esfuerzo requirió la participación de diversos sectores de la sociedad; en esa interrelación recuerdo al Coronel Inocente Orlando Montano, quien tenía el mando de las Unidades Militares del departamento de la Paz.

La apertura del Coronel Montano y los intereses humanitarios comunes nos hicieron sostener largas reuniones de trabajo; valorando que en el constitucional deber de preservar el bien común, proteger a los inocentes y restaurar el orden, las tropas que proceden por exigencia con determinación, deben siempre

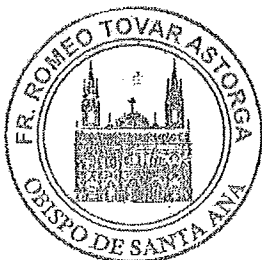
considerar la moderación para actuar justamente y mantener en todo momento un enfoque de respeto a la dignidad humana.

Considero que estos valores fueron inculcados en las tropas bajo el mando del Coronel Montano; procurando que el accionar militar se realizara de acuerdo a principios morales.

Algo que enfatiza la calidad humana del Coronel Montano y que me llamó la atención es que, pese a mantenerse al límite de sus fuerzas por las mismas exigencias del servicio, se diera el tiempo para realizar labor humanitaria. El primero de agosto de 1985, por iniciativa propia, fundó el Hogar Infantil de Zacatecoluca como una institución benéfica, de servicio social y cultural, eminentemente cristiana y apolítica, cuya idea nació al ver muchos niños en estado de orfandad, abandonados, desamparados, y en extrema pobreza. En el año de 1987 recibí este compromiso y lo convertí en un apostolado de la Diócesis de Zacatecoluca.

En estas reflexiones, he querido ofrecer un breve marco moral del Coronel Montano, como un servidor público comprometido con las exigencias de su deber, pero con *la humildad y la bondad* para poner las necesidades e intereses de los demás por encima de los propios, y con *la civilidad y la caridad* para tratar a los demás con respeto y amor.

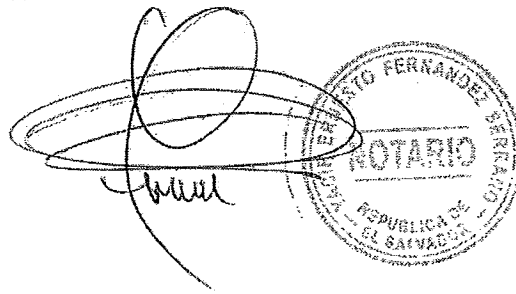
Aprovecho la ocasión para manifestarle, Señor Juez, los sentimientos de mi consideración y fraterna estima en Cristo.



Monseñor Romeo Tovar Astorga, O.F.M.
Obispo de la Diócesis de Santa Ana
República de El Salvador



... FE: Que la firma que calza la anterior constancia es **AUTENTICA** por haber sido puesta de su puño y letra a mí presencia por **MONSEÑOR ROMEO TOVAR ASTORGA**, mayor de edad, Obispo, de este Domicilio, a quien conozco e identifique por medio de su Documento Único de Identidad el cual tuve a la vista. Santa Ana, a los trece días del mes de Febrero de dos mil trece.



The image shows a handwritten signature in black ink, which appears to be 'M. Ferrandé', written over a circular notary seal. The seal is stamped in black ink and contains the following text: 'FERRANDE FERRANDE' at the top, 'NOTARIO' in the center, and 'REPUBLICA DE EL SALVADOR' at the bottom.

Santa Ana, 13 de febrero de 2013.

**The Honorable Douglas P. Woodlock
United States District Court
District of Massachusetts
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 4110
Boston, MA 02210-3002**

Dear Juez Woodlock:

On May 5, 1987, by order of the Almighty our Lord; I was appointed Bishop of Zacatecoluca, at the same time that the Pope Juan Pablo II erected the diocese.

In those days my pastoral mission approaches an inescapable challenge for harassment arising from the war situation. We share the loss and pain, anger and fear, shock and determination of a wounded people. Acknowledging the source of the existence of every man in God, the diocese collaborated with Salvadorian society to promote the inviolable dignity of every human being; cementing this supreme principle, we projected the premises for the construction of a pacified humanity.

This effort required the participation of all sectors of society; in that interrelation I remember Colonel Inocente Orlando Montano, who represented the command of the military units of the salvadoran's Department of La Paz.

Montano Colonel opening and common interests made us hold long meetings; Appreciating that the constitutional duty to preserve the common good, protect the innocent and restore order; demand consider moderation to act justly and maintain an approach of respect for human dignity at all times.

I believe that these assessments were inculcated in the troops under the command of Montano. They acted in accordance with moral principles considering rules of the just war tradition such as immunity for non-combatants, proportionality and intention.

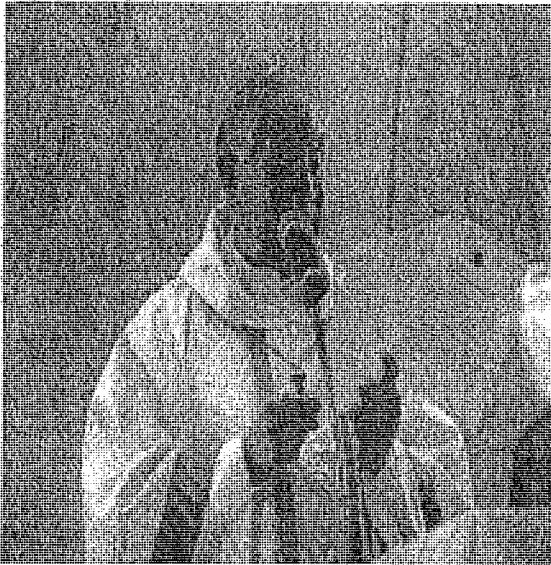
Something that emphasizes the human quality of Inocente Orlando Montano and that caught my attention is while He despite staying at the limit of their strength by the same demands of the service; He gave himself time for altruistic vocation. The first August 1985, on he's own initiative founded the children's home of Zacatecoluca as a charitable institution, to the social and cultural service, eminently Christian and apolitical, whose idea was born to see many children in State of orphans, abandoned, homeless, and in extreme poverty. In the year of 1987, I received this commitment and became it an apostolate in the diocese.

In these reflections, I wanted to offer a brief moral framework of Inocente Orlando Montano; as a public server committed with the requirements of its duty, but with humility and kindness to put the needs and interests of others above his own; and with civility and charity to treat others with respect and love.

I take this opportunity to express to you, Lord judge, the feelings of my consideration and fraternal regard in Christ.

Monseñor Romeo Tovar Astorga
Bishop of Cathedral of Santa Ana, El Salvador.

Monsignor Romeo Tovar Astorga.
Bishop of the Diocese of Santa Ana, El Salvador.



His Excellency **Monsignor Romeo Tovar Astorga**, was born in San Salvador, El Salvador in 1940. Joined the religious family of the younger brothers of the custody spanish, who sent him to complete his training of novitiate, philosophy and theology in Spain, reached with his ordination on July 17, 1968. On May 5, 1987 was appointed Bishop of Zacatecoluca at the same time that the Pope Juan Pablo II erected the diocese. He is currently Bishop of the Cathedral of Santa Ana, El Salvador.

Dirección: Casa Episcopal, 3^a. Av. Norte, No.3, Santa Ana.

Teléfono: (503) 2441-0278, (503) 2441-2855

Fax : (503) 2441-0278

Email : diocesissta.ana@integra.com.sv

San Salvador, 12 de febrero de 2013.

**The Honorable Douglas P. Woodlock
United States District Court
District of Massachusetts
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 4110
Boston, MA 02210-3002**

Distinguido Juez Woodlock:

Externándole un saludo cordial; hago oportuna la ocasión para presentarle nuestra pastoral castrense; la que tiene su origen en el año de 1968 cuando la Santa Sede y el Gobierno de la República de El Salvador firmaron un Convenio para erigir el Vicariato Castrense. El 21 de abril de 1986, el Santo Padre Juan Pablo II elevó los Vicariatos Castrenses a Diócesis, con la Constitución Apostólica "Spirituali Militum Curae"; para una mejor asistencia espiritual del personal Militar y Policial.

Desde su creación, la misión del Obispado Castrense salvadoreño ha sido la de evangelizar a los miembros de la Fuerza Armada de El Salvador, adaptándose a su mentalidad y a sus circunstancias, penetrando en los ambientes en los que la pastoral territorial ordinaria no tiene fácil acceso. En el cumplimiento de esta misión hemos acompañado con la luz del Evangelio a los soldados, quienes son vistos por la Iglesia como "instrumentos de la seguridad" y que contribuyen realmente a la estabilización de la paz. Este compromiso, ha requerido que nuestra presencia sea misionera, itinerante, personal, salvífica y samaritana.

Durante el conflicto interno salvadoreño; correspondió al Ordinariato Militar cooperar leal y abiertamente con la Fuerza Armada salvadoreña en el noble esfuerzo de lograr una sociedad de la reconciliación, la justicia, la paz, y de aquellas aspiraciones que están grabadas en el corazón humano y que responden a la verdad.

Dicho esfuerzo pastoral fue y sigue siendo efectivo gracias en parte, al liderazgo de los Oficiales que integran la institución; quienes con su ejemplo profesional y la aplicación de las virtudes militares guían a las tropas bajo su mando por los senderos del bien. En esta línea de liderazgo identifiqué al Coronel Inocente Orlando Montano; quien durante su desempeño al mando de tropas se distinguió por sus ejemplares virtudes militares, cívicas y sociales y porque en todo momento actuó con profundo respeto de la dignidad humana.

Como Viceministro de la Defensa Nacional, fue miembro del Gabinete de Gobierno que coadyuvo a los esfuerzos de pacificación del país; esfuerzos que culminaron con la firma de los Acuerdos de Paz un 16 de enero de 1992.

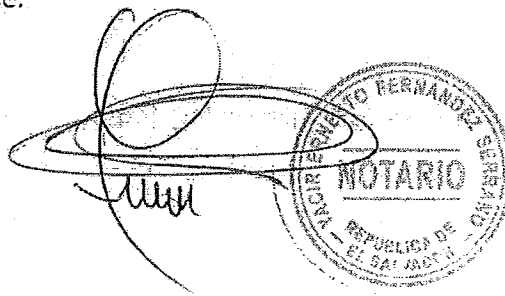
Con base a lo anterior, someto a su elevado criterio las consideraciones pertinentes a favor de Inocente Orlando Montano; pidiendo al Señor nuestro Dios que lo ilumine en su decisión.

Respetuosamente,



Monseñor Fabio Reynaldo Colindres Abarca
Obispo del Ordinariato Militar de El Salvador

... **FE:** Que la firma que calza la anterior constancia es **AUTENTICA** por haber sido puesta de su puño y letra a mi presencia por **MONSEÑOR FABIO REYNALDO COLINDRES ABARCA**, mayor de edad, Obispo, de este Domicilio, a quien conozco e identifique por medio de su Documento Único de Identidad el cual tuve a la vista. San Salvador, a los doce días del mes de Febrero de dos mil trece.



The image shows a handwritten signature in black ink, which appears to be 'Fabio Reynaldo Colindres Abarca'. To the right of the signature is a circular notary seal. The seal contains the text: 'FABIO REYNALDO COLINDRES ABARCA', 'NOTARIO', and 'REPÚBLICA DE EL SALVADOR'.

San Salvador, 12 de febrero de 2013.

**The Honorable Douglas P. Woodlock
United States District Court
District of Massachusetts
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 4110
Boston, MA 02210-3002**

Dear Judge Woodlock:

Externalizing you a cordial greeting; I do timely occasion to introduce our Chaplaincy; which has its origin in the year of 1968 when the Holy See and the Government of the Republic of El Salvador signed an agreement to build the Castrense Vicariate. On April 21, 1986, the Holy Father Juan Pablo II raised the military vicariates to dioceses, with the Apostolic Constitution "Spirituali Militum Curae"; for a better spiritual assistance of military and police.

Since its inception, the Mission of the Salvadoran military bishopric has been evangelize the members of the armed force of El Salvador, adapt to their mentality and their circumstances, penetrating in the environments in which the ordinary territorial pastoral does not have easy access. In fulfillment of this mission we have accompanied with the light of the Gospel to the soldiers, who are viewed by the Church as "instruments of security" and who really contribute to the stabilization of peace. This commitment has required that our presence had been missionary, traveling, personal, savior and Samaritan.

During the internal conflict in El Salvador; It corresponded to the military ordinariate cooperate fairly and openly with the armed forces in the noble effort of a society of reconciliation, justice and peace, and those aspirations which are recorded in the human heart and respond to the truth.

This pastoral effort was and remains effective thanks in part to the leadership of the officers belonging to the institution; who with their professional example and the application of military virtues guide their troops in good trails. In

this line of leadership, I identified Colonel Inocente Orlando Montano; who during his tenure in command of troops was distinguished for his exemplary military, civic, and social qualities; acting at all times with deep respect for human dignity.

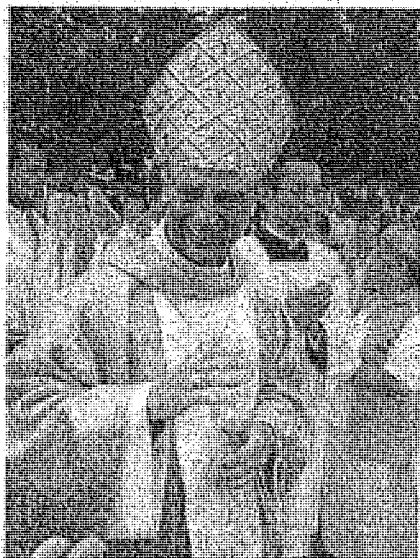
As Vice Minister of the Public Security, he was a member of the Government Cabinet who collaborate with the efforts of pacification of the country; efforts that culminated with the signing of the peace accords on January 16, 1992.

Based on the above, I submit this relevant considerations to your high criteria in favor of Inocente Orlando Montano; asking the Lord our God to enlighten your decision.

Respectfully,

Monsignor Fabio Reynaldo Colindres Abarca
Bishop of the military ordinariate of El Salvador

Monsignor Fabio Reynaldo Colindres Abarca.
Bishop of the Military Ordinariate of El Salvador.



His Excellency **Monsignor Fabio Reynaldo Colindres Abarca** is Vice President of the Episcopal Conference for El Salvador and current Bishop of the Military Ordinariate. On April 29, 2009 he was appointed "Son of El Salvador" by the Legislative Assembly. He is currently a key player for the decline of violence by gangs in El Salvador.

Obispado Castrense.
Phone: (503) 2298-3477

San Pedro Nonualco; 12 de febrero de 2013.

**The Honorable Douglas P. Woodlock
United States District Court
District of Massachusetts
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 4110
Boston, MA 02210-3002**

Apreciable Juez Woodlock:

El conflicto salvadoreño de los años 80's constituyo una de las experiencias más tristes que afronto este país centroamericano; significando un inmensurable costo en vidas humanas y desgastando significativamente la convivencia de la sociedad salvadoreña.

En el marco de esos días difíciles quiero hacer propicia la ocasión para mencionar la labor de hombres y mujeres que con sus acciones y con la convicción del cumplimiento legal de su deber, fueron parte del esfuerzo para procurar días mejores para los salvadoreños.

Específicamente quiero referirme a Inocente Orlando Montano a quien conocí a lo largo de mi desempeño pastoral y de quien reconozco sus cimentadas virtudes humanas, éticas y morales; que lo llevaron a conducirse en el camino del bien durante su desempeño profesional.

Para los que conocemos a Inocente Orlando, podemos dar referencia de su calidad humana, su respeto por la vida y la amistad; valores que lo llevaron a cosechar relaciones perdurables y verdaderas con el pueblo salvadoreño.

Inocente Orlando Montano no es un perseguido de la justicia; sus obras siempre estuvieron a la vista y finalizo su carrera con éxito y con la satisfacción del deber cumplido. Prueba de ello es que tuvo el privilegio de ser elemento clave en el gobierno, que consiguió la pacificación de la sociedad salvadoreña al ser Viceministro de Seguridad Publica.

En mi recuerdo de Inocente Orlando, perdura su sincero acercamiento a las autoridades eclesíásticas en el desempeño de sus funciones profesionales y personales; así mismo su atención a los problemas sociales y económicos de los más humildes.

Resulta ineludible mencionar la obra humana de Montano al fundar el Hogar Infantil de Zacatecoluca; Con anuencia de la Parroquia de Catedral Nuestra Señora de los Pobres, Zacatecoluca ya que el hogar se fundó en la casa Parroquial de Analco cuyo párroco era entonces Mons. Jesús Antonio Carpio Silva quien pese a las exigencias de la guerra que se vivía en aquel momento, se dio el tiempo y la voluntad para ayudar a muchos niños en estado de orfandad, abandonados, desamparados, y en extrema pobreza. Hoy, esta iniciativa de Montano, se ha convertido en un programa que ha replicado a nivel nacional y que pretende brindar un mejor mañana a los niños que en el hogar se encuentran e inculcarles valores sociales y hacerlos personas de bien, a través de la educación.

Hace 21 años, dos visiones en conflicto firmaron la paz y abrieron la puerta al inicio de un nuevo proceso de convivencia en la sociedad salvadoreña. El Acuerdo de Paz de 1992 puso fin a un conflicto amargo y prolongado, acalló las armas, creó una nueva institucionalidad dinamizó el proceso democrático. A la luz de ese logro, resulta importante hacer mención de hombres y mujeres como Inocente Orlando Montano quienes fueron parte de una respuesta genuina a las esperanzas de paz y prosperidad de toda la población salvadoreña.

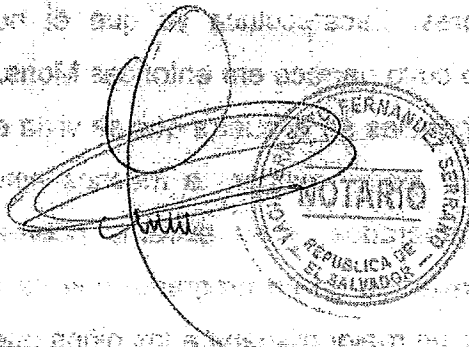


A handwritten signature in black ink, appearing to read "J. Carpio Silva".

Monseñor Jesús Antonio Carpio Silva.
Vicario General de la Diócesis de Zacatecoluca.
Párroco de la Parroquia de San Pedro Nonualco
Departamento de La Paz, El Salvador.

Tel (503) 2334 - 9111

... FE: Que la firma que calza la anterior constancia es **AUTENTICA** por haber sido puesta de su puño y letra a mi presencia por **MONSEÑOR JESÚS ANTONIO CARPIO SILVA**, mayor de edad, Vicario, de este Domicilio, a quien conozco e identifique por medio de su Documento Único de Identidad el cual tuve a la vista. San Pedro Nonualco, Departamento La Paz, a los doce días del mes de Febrero de dos mil trece.



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San Pedro Nonualco; 12 de febrero de 2013.

**The Honorable Douglas P. Woodlock
United States District Court
District of Massachusetts
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 4110
Boston, MA 02210-3002**

Dear Judge Woodlock:

The Salvadoran conflict of 80's years constituted one of the saddest experiences of this Central American country; meaning an immeasurable cost in human lives and significantly eroding the coexistence of Salvadoran society.

Within the framework of those difficult days I make propitious occasion to mention the work of men and women who, with their actions and the conviction of the legal compliance of their duty, were part of the effort to procure better days for Salvadorans.

I would specifically like to refer to Inocente Orlando Montano whom I met along my pastoral performance and who recognize foundationed virtues of human, ethical and moral; that it took him to drive in the path of good for their professional performance.

For those who know Inocente Orlando, we can give reference of his human quality, respect for life and friendship; values that led him to reap true and lasting relationships with the people of El Salvador.

It is completely false, implausible, and malicious to try linking Inocente Orlando with malfeasance, violations of human rights and the most serious in the Commission of the crime of the Jesuit brothers.

Inocente Orlando Montano is not persecuted for Justice; his works were always in sight and He finished his career with success and the satisfaction of fulfilled duty. Proof of this is that He had the privilege of being a key element in the

Government, which got the pacification of Salvadorian society while he was Deputy Minister of Public Security.

In my memory of Inocente Orlando, endures his sincere approach to the ecclesiastical authorities during the performance of his professional and personal responsibilities; Likewise his attention to social and economic problems of the most humble.

It is inevitable to mention human MONTANO's work in founding the children's home of Zacatecoluca; who despite the demands of war that existed at that time, giving the time and the will to help many children in state of orphans, abandoned, homeless, and in extreme poverty. Today, this initiative of MONTANO, has become a program that has replicated at the national level and that aims to provide a better tomorrow to children who are at home and instilling social values and make them better citizens, through education.

21 Years ago, two visions in conflict signed the peace and opened the door to the beginning of a new process of coexistence in Salvadoran society. The 1992 peace agreement ended a bitter and protracted conflict, silenced weapons, created a new institutional and enhanced the democratic process. In the light of that achievement, it is important to make mention of men and women as Inocente Orlando Montano who were part of a genuine response to hopes of peace and prosperity of the entire population of El Salvador.

Monsignor Jesús Antonio Carpio Silva.
Pastor of the parish of San Pedro Nonualco.
Departamento de La Paz, El Salvador.
Tel (503) -----

Monsignor Jesus Antonio Carpio Silva
Bishop of the Military Ordinariate of El Salvador.



Monsignor Jesús Antonio Carpio was in charge of the cathedral Church of Our Lady of the Poor in Zacatecoluca, department of La Paz, El Salvador for 28 years. On July 1987 he was appointed by Archbishop Romeo Tovar, First Bishop of El Salvador, to serve as Vicar for the Diocese of Zacatecoluca, department of la Paz. Appointment which he will continue to serve from his newly assigned Parish in san Pedro Nocualco, department of la Paz El Salvador.

Parroquia de San Pedro Nonualco
Teléfono: (503) 2334-9111
La Paz, El Salvador.

San Salvador ,14 de febrero de 2013.

**The Honorable Douglas P. Woodlock
United States District Court
District of Massachusetts
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 4110
Boston, MA 02210-3002**

Estimado Juez Woodlock:

**LOS EX-MIEMBROS DE LA COMISION GUBERNAMENTAL DE NEGOCIACION
ABAJO FIRMANTES, por la presente hacemos constar:**

Que en el marco del conflicto interno salvadoreño; el 4 de abril de 1990, se celebró una reunión de diálogo en Ginebra, Suiza, donde se firmó un Acuerdo que fijó el conjunto de normas a seguir en el proceso de negociación de la Paz. Estableciéndose la voluntad de ambas partes, Gobierno y FMLN, de alcanzar una solución negociada y política al conflicto bélico.

Que los grandes objetivos del proceso de dialogo - negociación fueron: terminar el conflicto por la vía política; impulsar la democracia del país; garantizar el irrestricto respeto a los Derechos Humanos y reunificar a la sociedad salvadoreña.

Que el 21 de mayo de 1990, en una nueva reunión en Caracas, Venezuela, se estableció la agenda general de negociaciones y los temas que serían sometidos a discusión; creándose dos comisiones negociadoras. De conformidad a mandato del Presidente de la República, la Comisión Gubernamental fue conformada por: David Escobar Galindo, Abelardo Rodríguez, Oscar Santamaría y el militar Mauricio Ernesto Vargas.

Que durante el proceso de dialogo – negociación solo recibíamos directrices del Licenciado Alfredo Félix Cristiani Burkard en su condición de Presidente de la República de El Salvador.

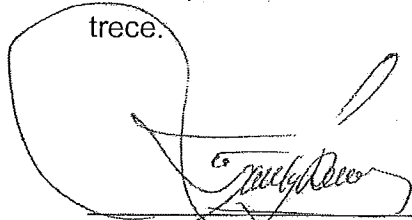
Que durante el desempeño de nuestras funciones, en ningún momento estuvimos sometidos a presión, coacción o amenaza por los miembros del Alto Mando militar.

Que durante el ejercicio de nuestras obligaciones, nunca percibimos acciones de obstrucción hacia nuestro trabajo por parte del Coronel Inocente Orlando Montano; quien se desempeñaba como Viceministro de Seguridad Pública.

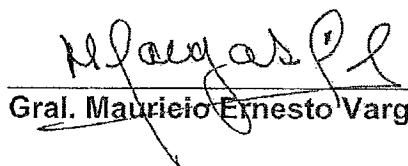
Que el Coronel Inocente Orlando Montano, al igual que los demás miembros del Gabinete de Gobierno del Presidente Alfredo Félix Cristiani Burkard, se unió a los esfuerzos para lograr la pacificación del país y la unificación de la sociedad salvadoreña.

Que el 16 de enero de 1992, se firmó en el Castillo de Chapultepec, México; el texto completo de los Acuerdos de Paz.

Y para los usos que se consideren pertinentes, se EXTIENDE la PRESENTE CONSTANCIA en San Salvador a los catorce días del mes de febrero de dos mil trece.

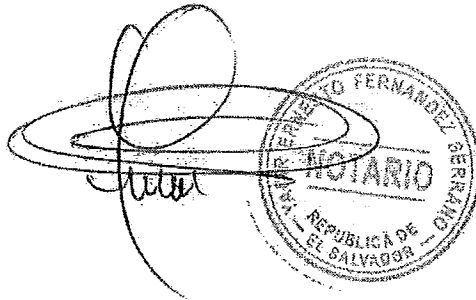


Dr. Oscar Santamaría.



Gral. Mauricio Ernesto Vargas.

... FE: Que las firmas que calzan la anterior constancia son **AUTENTICAS** por haber sido puestas de sus puños y letras a mí presencia por los señores **OSCAR SANTAMARIA Y MAURICIO ERNESTO VARGAS**, mayores de edad, Abogado y Notario y Militar Retirado, de este Domicilio, a quienes conozco e identifique por medio de sus Documentos Único de Identidad los cuales tuve a la vista. San Salvador, a los catorce días del mes de Febrero de dos mil trece.



The image shows a handwritten signature in black ink, which appears to be 'Mauricio', written over a circular notary seal. The seal is embossed and contains the text: 'MAURICIO FERNANDEZ BERRIO', 'NOTARIO', and 'REPUBLICA DE EL SALVADOR'.

29 de febrero

San Salvador, 14 February 2013.

**The Honorable Douglas P. Woodlock
United States District Court
District of Massachusetts
John Joseph Moakley United States Courthouse
One Courthouse Way, Room 4110
Boston, MA 02210-3002**

**THE EX - FORMER MEMBERS OF THE COMMISSION GOVERNMENT OF
NEGOTIATING** undersigned, hereby make include:

Within the framework of the Salvadoran conflict; on April 4, 1990, in a meeting of dialogue in Geneva, Switzerland, were signed the agreements which set the rules to be followed in the negotiation of the peace process. Establishing the will of both sides, Government and FMLN, of achieving a negotiated political solution to the conflict.

That the main objectives of the process of dialogue - negotiations were: end the conflict by political means; promoting democracy in the country; ensure unrestricted respect for human rights and reunifying Salvadorian society.

On May 21, 1990, at a new meeting in Caracas, Venezuela, was established the general agenda of negotiations and the subjects that they would be subjected to discussion; creating two negotiating committees. In accordance with the mandate of the President of the Republic, the governmental Commission was formed by: David Escobar Galindo, Abelardo Rodríguez, Oscar Santamaría and the military Mauricio Ernesto Vargas.

During the process of dialogue – negotiation, we only received guidelines from Licentiate Alfredo Félix Cristiani Burkard in his capacity of President of the Republic of El Salvador.

That during the performance of our duties, at any momento, We were subjected to pressure, coercion or threat by members of the high military command.

During the course of our duties, I never perceive actions of obstruction towards our work by Colonel Inocente Orlando Montano; who served as Deputy Minister of public security.

Còlonel Inocente Orlando Montano, like other members of the Cabinet of Government of the President Alfredo Felix Cristiani Burkard, joined the efforts to achieve peace in the country and the unification of Salvadoran society.

That on 16 January 1992, was signed in the castle of Chapultepec, Mexico; the full text of the peace accords.

And for applications that are considered relevant, will extend this CONSTANCY in San Salvador to fourteen days of the month of February of two thousand thirteen.

Dr. Oscar Santamaría.

Gral. Mauricio Ernesto Vargas.

Dr. Oscar Santamaría

Former member of the Governmental Commission for negotiation of the Peace Accords in El Salvador.



Oscar Santamaría has Jurisprudence doctorate and Social Sciences degree and a postgraduate degree in Labor Law. Between 1989 and 1995 he held a number of important positions in public administration of El Salvador, Has served as as Minister of Justice, Minister of the Presidency of the Republic, and Minister of Foreign Affairs. During that same period, he headed the Governmental Dialogue Commission for the Negotiation of the Peace with the Farabundi Martí National Liberation Front –FMLN (1989-1992) and he was the Minister in charge of the process of Compliance with and Execution of the Peace Agreements by the Government of El Salvador (1992-1995).

In the international forum, he served as Secretary General of the Central American Integration System (SICA), holding that position for four years, from 2000 to 2004. Before that, from 1977 to 1978, he had been Secretary of the Legislation Committee of the Latin American Parliament (PARLATINO), and a member of the Council of Ministers of Foreign Affairs of the Central American Integration System – SICA (1994-1995).

Dr. Santamaría has earned medals of distinction from the governments of El Salvador, Argentina, Chile, and Brazil. He has also worked with business associations and performed various academic functions. Drawing on his experience and expertise, he has lectured both in El Salvador and abroad and has taken part in a dozen or more international meetings.

Phone: (503) 7820-3980

Gen. Mauricio Ernesto Vargas

Former member of the Governmental Commission for negotiation of the Peace Accords in El Salvador.



Retired General Mauricio Ernesto Vargas hold a degree in management and political science studies from Taiwan; He was a member of the Governmental Commission for the Negotiation the Peace Accords. In El Salvador. He also served as Presidential Commissioner for the implementation of the peace agreement of El Salvador. He is an expert in civic - military relations and has been a guest professor/speaker in countries like: Colombia, United States of America, Guatemala and the Philippines

Phone: (503) 7820-3980
Email: mvargas@marejo.com.sv

San Salvador ,14 de febrero de 2013.

A Quién interese:

Presentándole cordialmente muestras de mi respeto y consideración, hago propicia la ocasión para manifestar algunas reflexiones que varios sectores y personas vinculadas a la actividad agropecuaria y agroindustrial han externado sobre Inocente Orlando Montano, a quien conocieron como servidor público en el Gabinete de Gobierno del período 1989 - 1994 y como Oficial de la Fuerza Armada de El Salvador. Dichos productores me han solicitado trasladar a quien interese, lo siguiente:

Como es de conocimiento público, en los años 80's El Salvador afrontaba grandes calamidades derivadas de un conflicto interno que produjo gran cantidad de pérdidas humanas y daños materiales a la infraestructura causando gran impacto a la sociedad salvadoreña y al desarrollo económico y político del país.

Durante ese difícil período de nuestra historia; en un afán de desestabilizar al país, grupos armados ilegales emprendieron una lucha contra los diversos sectores productivos. En estas siniestras acciones fueron asesinados empresarios, industriales y agricultores; además, destruidos medios de transporte público e infraestructura, plantaciones, hatos ganaderos, etc.; a tal punto que todo la actividad productiva se encontraba amenazada por las acciones terroristas.

Como respuesta a esta grave amenaza, los Gobiernos de turno actuaron con determinación cumpliendo con un mandato Constitucional para garantizar el orden público y el respeto a la propiedad privada.

En ese accionar, varios productores han manifestado recordar al Coronel Montano por cumplir e impulsar planes de protección a la población y la propiedad privada en los departamentos de Usulután y La Paz. Además, expresan que considerando su clara preocupación por la falta de seguridad en las labores productivas, Montano procuró en primer lugar garantizar la vida de campesinos, artesanos, obreros y productores empeñados en las actividades productivas y de su propia subsistencia. Así mismo, salvaguardar los medios de producción y la infraestructura del Estado salvadoreño.

Consideran que gracias a este plan, Cooperativas de agricultores y productores de lácteos, Asociaciones de pescadores, Productores de Caña, Productores de café,

Empresas de transporte público y Miles de pequeños agricultores pudieron realizar sus trabajos agrícolas sin ser victimizados.

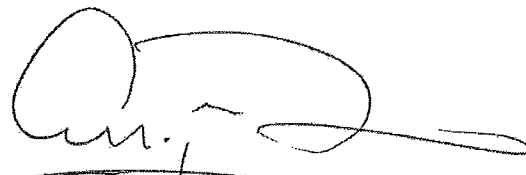
Manifiestan que la decisiva coordinación entre el Gobierno y Sector Privado de la época para dirigir acciones orientadas a preservar las fuentes de trabajo, evitaron mayores impactos del conflicto armado en nuestra sociedad y que en este proceso, el Coronel Montano jugó un papel decisivo en impulsar estas acciones en las región paracentral del país. Inclusive induciendo a miembros de las fuerzas insurgentes a participar en programas de reactivación económica, con la condición que se alejaran del movimiento insurreccional.

También expresan que es de su conocimiento, que en estas acciones productivas la tropa bajo el mando del Coronel Montano se comportó con profesionalismo, en el marco de las Leyes del país.

Por último, los Productores y Agroindustriales que nos han comunicado estas experiencias, manifiestan lo valioso y determinante que fueron las relaciones cívico – militares en esos días difíciles de conflicto armado en el país, convirtiéndose en un testimonio del profesionalismo y liderazgo en el cumplimiento de los planes y misiones que le fueron asignados para la protección del sector productivo.

Sin otro particular, someto estas consideraciones derivadas de personas que por mi medio, han querido externar su opinión.

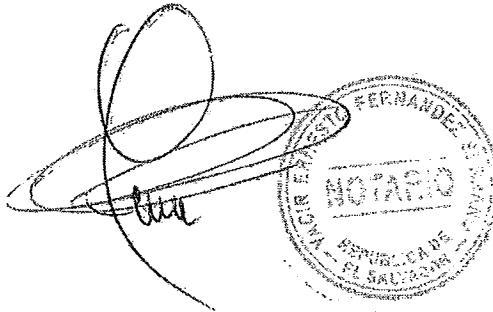
Respetuosamente,



Ing. Luis Felipe Trigueros

Coordinador del Plan de Seguridad
para el Sector Agropecuario.

... **FE:** Que la firma que calza la anterior constancia es **AUTENTICA** por haber sido puesta de su puño y letra a mi presencia por el señor **LUIS FELIPE TRIGUEROS**, mayor de edad, Ingeniero, de este Domicilio, a quien conozco e identifique por medio de su Documento Único de Identidad el cual tuve a la vista. San Salvador, a los catorce días del mes de Febrero de dos mil trece.



The image shows a handwritten signature in black ink, which appears to be 'Luis Felipe Trigueros', written over a circular notary seal. The seal is stamped in black ink and contains the following text: 'FERNANDEZ' at the top, 'NOTARIO' in the center, and 'REPUBLICA DE EL SALVADOR' at the bottom. The seal is partially obscured by the signature.

San Salvador ,14 de febrero de 2013.

To whom interest:

Cordially presenting you signs of my respect and consideration, I made propitious the occasion to express some thoughts that various sectors and persons related to the agricultural and agro-industrial activity have put across about Inocente Orlando Montano, whom he knew as a public servant in the Government Cabinet of the period 1989-1994, and as an officer of the Salvadoran Armed Forces. These producers have requested me to communicate to whom interest, as follows:

As it is public knowledge, over the years, 80's El Salvador faced great calamities arising from an internal conflict that produced a large number of human losses and material damage to infrastructure causing great impact to the Salvadoran society and the economic and political development of the country.

During this difficult period of our history; in an effort to destabilize the country, illegal armed groups launched a struggle against the various productive sectors. In these sinister actions were murdered businessmen, industrialists and farmers; In addition, destroyed public transport and infrastructure, plantations, livestock herds, etc.; to such an extent that all productive activity was threatened by terrorist acts.

In response to this serious threat, Governments acted resolutely fulfilling a constitutional mandate to ensure public order and respect for private property.

In that action, several producers have expressed remind of Colonel Montano who promote protection plans to the population and private property in the departments of La Paz and Usulután. In addition, they express that while his concern about the lack of security in the productive work, Montano tried first to guarantee the life of farmers, artisans, workers and producers engaged in productive activities and their own livelihoods. Likewise, safeguarding the means of production and infrastructure of the Salvadoran State.

They believe that thanks to this Plan, farmers and producers of dairy cooperatives, associations of fishermen, cane growers, producers of coffee, thousands of small farmers and public transport companies could perform their agricultural work without being victimized.

They state that the vital coordination between Government and private Sector of the time to direct actions oriented to preserve job sources; avoided major impacts of armed conflict in our society and in that process, Colonel Montano played a decisive role in in the paracentral region of the country. Even inducing members of the insurgent forces to participate in programs of economic recovery, with the condition of renounce from the insurrectionary movement.

They also express that in these productive actions, the troop under the command of Colonel Montano behaved with professionalism, in the framework of the laws of the country.

Finally, the producers and agribusiness that have communicated us these experiences, manifest the valuable and determining which were the civic - military relations during these difficult days of armed conflict in the country; becoming a testament of the professionalism and leadership in fulfilling the plans and missions that were assigned to soldiers for the protection of the productive sector.

Without other particular, I put these facts under your considerations, derived from people who wanted to express their opinion.

Respectfully,

Ing. Luis Felipe Trigueros
Coordinator of the Security Plan
for the Agricultural Sector.

Luis Felipe Trigueros

Coordinator of The national Plan for Agricultural Safety.

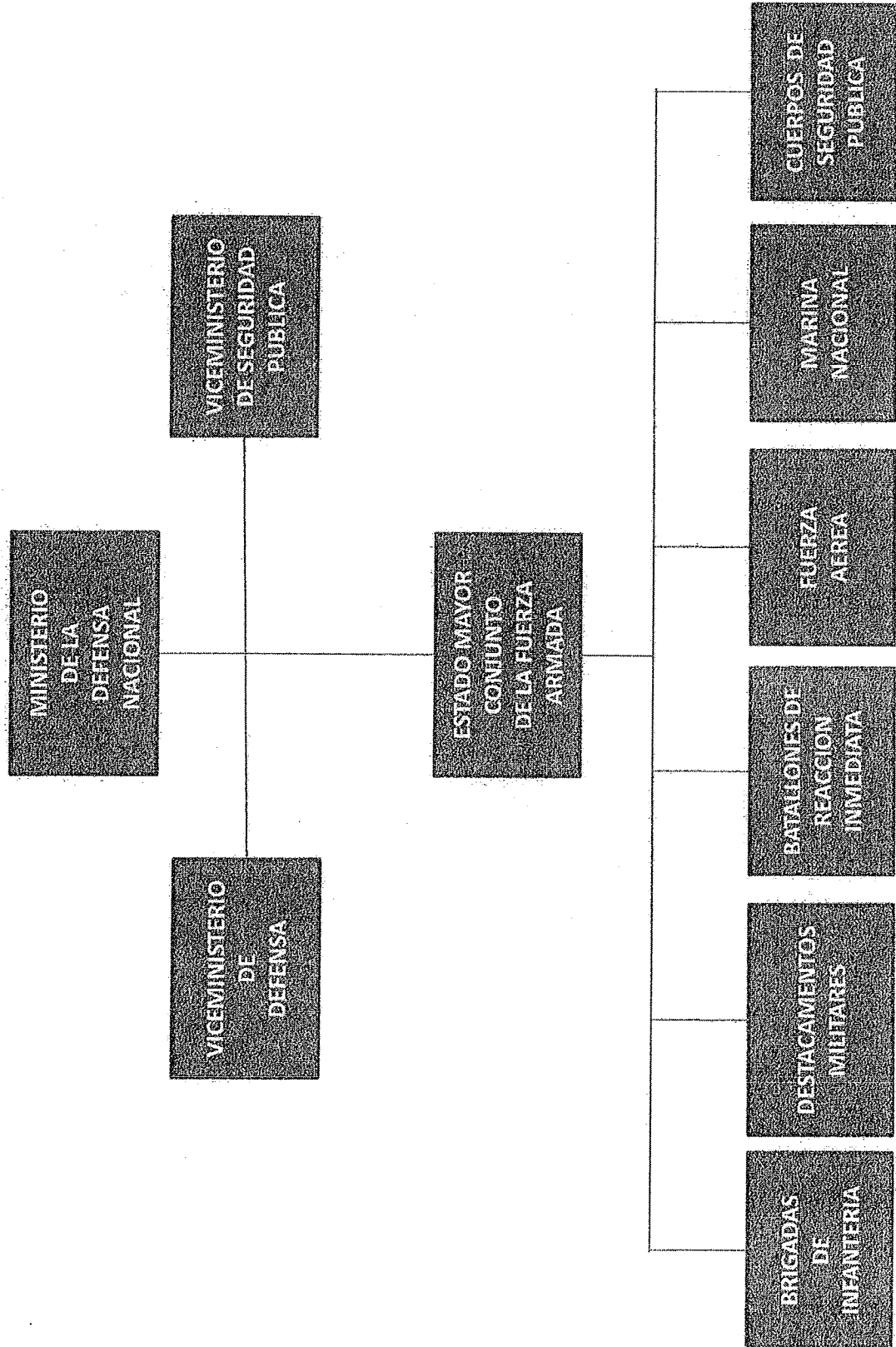
Engineer Luis Felipe Trigueros has served as Director General of Agricultural Economy for the Ministry of Agriculture. Parallel to his service as Coordinator of The national Plan for Agricultural Safety, He serves as currently Executive Director to the Sugar Association of El Salvador.

Asociación Azucarera de El Salvador
103 Avenida Norte y Calle Arturo Ambrogi, No.145, Col. Escalón.
San Salvador, El Salvador, C.A. Teléfono: (503) 2264-1226
FAX: (503) 2263-0361

[APENDICE III]

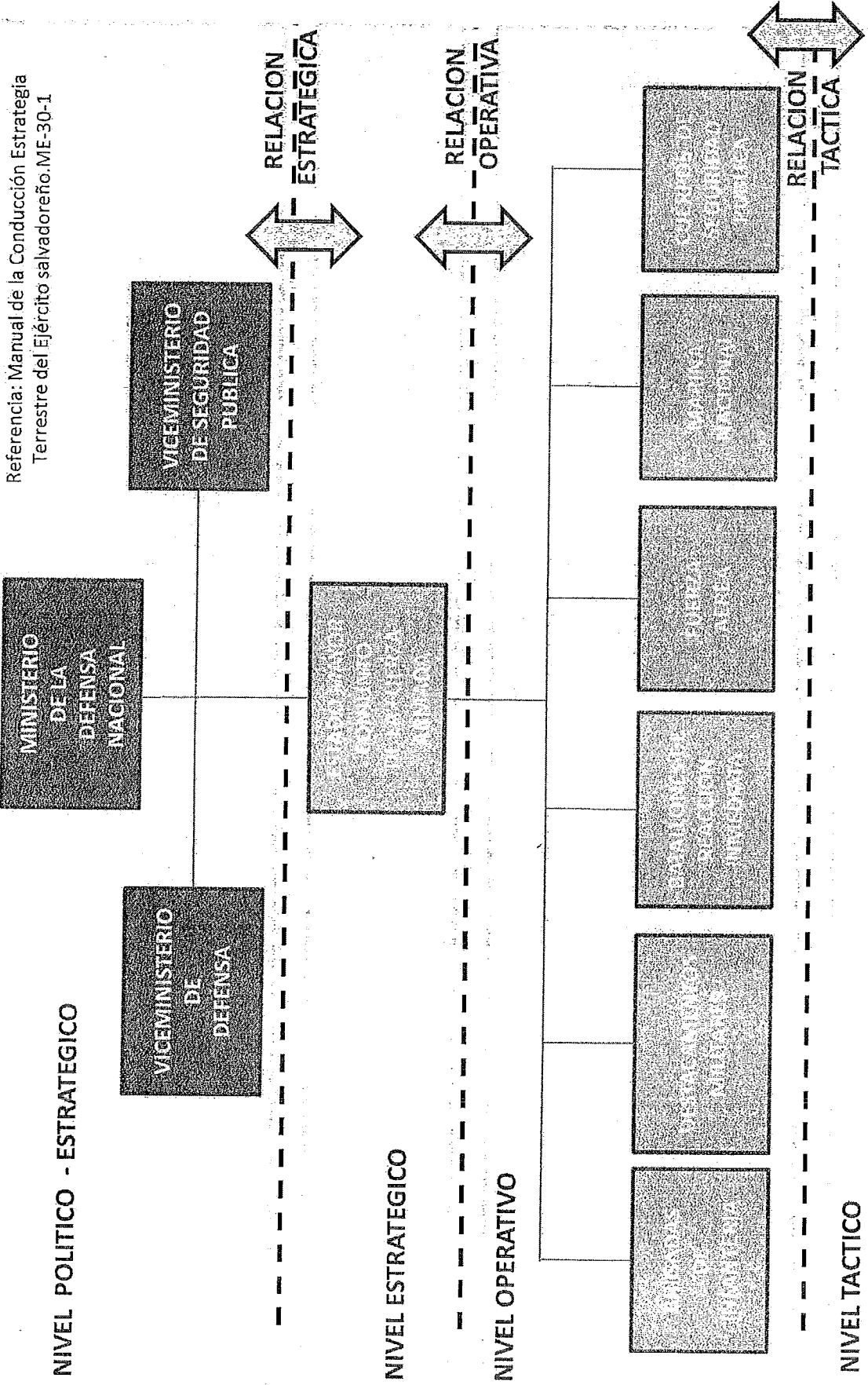
DOC. 1	<p>"Organización de la Fuerza Armada de El Salvador durante los años 80's"</p> <p>" El Salvador armed Force organization during the years 80's"</p>
DOC. 2	<p>"Organización de la Fuerza Armada de El Salvador durante los años 80's y relaciones de mando."</p> <p>" El Salvador armed Force organization during the years 80's and command relationships"</p>
DOC. 3	<p>-Nota del 19 de noviembre de 1989, solicitando ayuda en las investigaciones al Reino de España".</p> <p>-Note on November 19, 1989, asking for help in investigations to the Kingdom of Spain".</p>
DOC. 4	<p>-Nota del 24 de noviembre de 1989 en la que España acepta colaborar en las investigaciones.</p> <p>-Note of November 24, 1989 in which Spain accepts to collaborate in investigations.</p>
DOC. 5	<p>- Nota del 27 de noviembre en la que el Gobierno de El Salvador especifica tipo de ayuda policial</p> <p>-Note on November 27 in which the Government of El Salvador Specifies type of police assistance</p>

ORGANIZACIÓN DE LA FUERZA ARMADA DE EL SALVADOR (FAES) DURANTE LOS AÑOS 80'S



Referencia: Ley Orgánica de la Defensa Nacional. Decreto Ley N° 275 de fecha 22 de agosto de 1961.

ORGANIZACIÓN DE LA FUERZA ARMADA DE EL SALVADOR (FAES) DURANTE LOS AÑOS 80'S Y RELACIONES DE MANDO



MINISTERIO DE RELACIONES EXTERIORES
REPUBLICA DE EL SALVADOR, C.A.

San Salvador, noviembre 19 de 1989

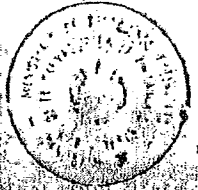


Excelencia:

Tengo el honor de dirigirme a Vuestra Excelencia, en nombre del Señor Presidente de la República, Licenciado Alfredo Cristiani, para que por vuestro digno medio, se haga del conocimiento del Ilustrado Gobierno de España el firme propósito del Gobierno Salvadoreño de realizar una exhaustiva y seria investigación para identificar a los culpables del horrendo crimen cometido en las personas de seis Sacerdotes Jesuitas de la Universidad Centroamericana " JOSE SIMEON CAÑAS " y de dos miembros del personal de servicio de éstos.

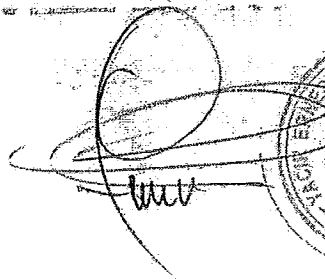
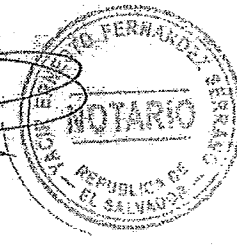
Considerando necesario para el éxito de dicha investigación, contar con los mejores recursos técnico-científico disponibles, respetuosamente solicito por Vuestro medio, al Ilustrado Gobierno de España, la colaboración que consideren necesario prestarnos, en recursos humanos y equipos, para que en coordinación con las autoridades salvadoreñas, se busquen las pruebas necesarias que hagan posible el deseo de mi Gobierno, de las Fuerzas Armadas y de todo el Pueblo salvadoreño, de llevar a los Tribunales de Justicia a quienes resultaren responsables de tan horrendos y repudiables crímenes.

Al agradecer a Vuestra Excelencia su eficaz Intervención en este trascendental asunto, aprovecho la oportunidad para reiterarle las muestras de mi más alta consideración y aprecio.



JOSE MANUEL PACAS CASTRO
MINISTRO DE RELACIONES EXTERIORES

El suscrito Notario CERTIFICA Que el documento anterior
que consta de 01 folios útiles, es copia fiel de
original que he tenido a la vista y en el cual se confrontó
y de conformidad al artículo treinta de la Ley del Ejercicio
Notarial de la Jurisdicción Voluntaria y de otras Diligencias
Demo y sello la presente y cada folio de dicho documento
San Salvador, veinticinco de Febrero de
dos mil trece



El Embajador de España

San Salvador, 24 de noviembre de 1989



Señor Ministro:

Como le anticipé verbalmente, tengo el honor de comunicarle que el Gobierno español ha decidido aceptar la petición de su Departamento de aportación de equipo técnico y personal español en la investigación que se está llevando a cabo para el esclarecimiento del asesinato de seis sacerdotes jesuitas y dos seglares salvadoreños en el recinto de la Universidad Centro Americana "José Simeón Cañas".

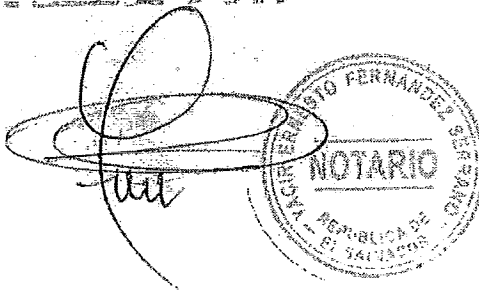
El Ministerio de Asuntos Exteriores me señala la necesidad de concretar más el tipo de asistencia policial solicitado, por lo que entiendo que lo más conveniente es que las Autoridades competentes salvadoreñas elaboren una nota que transmitirá inmediatamente a sus colegas españoles, precisando exactamente el tipo de colaboración que puede aportar mi país en la investigación.

Aprovecho esta ocasión, Señor Ministro, para reiterarle una vez el testimonio de mi más alta consideración.

Francisco Cádiz Deleito

Excmo. Sr. D. José Manuel Paez Castro
Ministro de Relaciones Exteriores
San Salvador

El suscrito Notario CERTIFICA Que el documento anterior que consta de 03 folios útiles, es copia fiel del original que he tenido a la vista y con el cual se confrontó de conformidad al artículo treinta de la Ley del Ejercicio Notarial de la Jurisdicción Voluntaria y de otras Diligencias Ordo y sello la presenta y cada folio de dicho documento San Salvador, VEINTICINCO de FEBRERO de DOS MIL TRECE.



The image shows a handwritten signature in black ink, which appears to be 'Juan'. To the right of the signature is a circular notary seal. The seal contains the text 'NOTARIO' in the center, 'REPUBLICA DE EL SALVADOR' around the bottom inner edge, and 'JUAN FERNANDEZ SERRANO' around the top inner edge.

San Salvador, noviembre 27 de 1989



Señor Embajador:

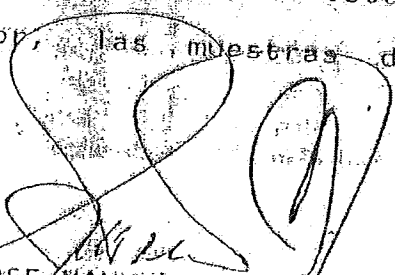
Me es honroso referirme a la atenta comunicación de Vuestra Excelencia de fecha 24 del corriente mes, en la que tuvo la gentileza de comunicarme que el Ilustrado Gobierno de España ha decidido aceptar la petición salvadoreña para que preste su vallosa ayuda, mediante un equipo técnico y personal español, con el fin de esclarecer, de manera eficaz e imparcial, el asesinato de seis sacerdotes Jesuitas y dos seculares ocurrido recientemente.

Como ese Culto Gobierno desea que se concrete más el tipo de asistencia policial requerido, le manifiesto que se necesita un equipo de investigadores, con un jefe experimentado, integrado por especialistas en estudiar la escena del delito, así como en interpretar autopsias realizadas y expertos en huellas dactilares y balística y los investigadores que los funcionarios españoles, en base a su experiencia ante atentados criminales similares, consideren necesario para el esclarecimiento del caso.

Mucho agradecería a Vuestra Excelencia que se dignara comunicar lo anterior a su Gobierno lo antes posible, pues el señor Presidente de la República, y en general el Gobierno salvadoreño, tiene especial interés en que se averigüe hasta sus últimas consecuencias el citado crimen.

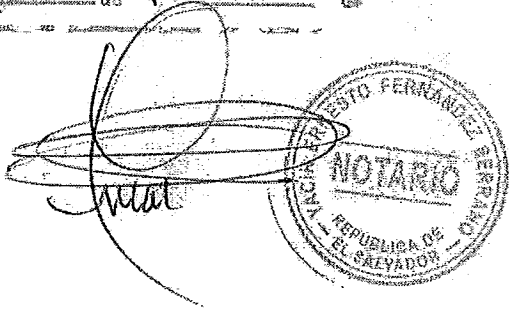
Agradezco anticipadamente al Ilustrado Gobierno español y a Vuestra Excelencia su vallosa cooperación en este sentido.

Reciba, Excelentísimo Señor, las muestras de mi más alta consideración y estima.


JOSE MANUEL PACAS CASTRO
MINISTRO DE RELACIONES EXTERIORES

Excelentísimo Señor Licenciado
Don Francisco Cádiz Deleito,
Embajador Extraordinario y Plenipotenciario
ESPAÑA

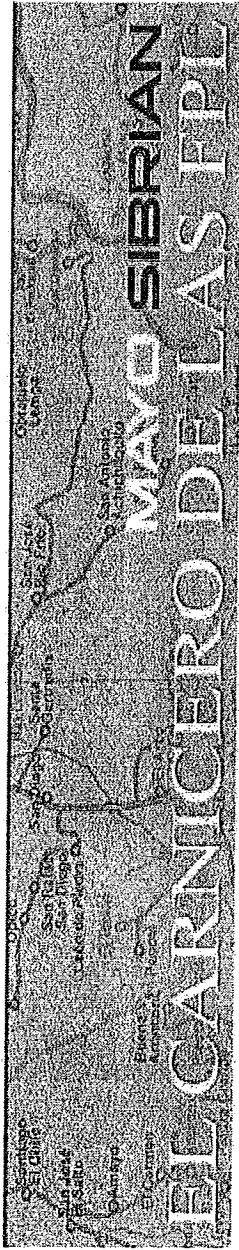
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original que he tenido a la vista y en el cual se confronte
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firmo y sello la presente y cada folio de dicho documento
San Salvador, VEINTICINCO de FEBRERO de
DOS MIL TRECE



The image shows a handwritten signature in black ink, which appears to be 'MMA'. To the right of the signature is a circular notary seal. The seal contains the text 'FERRANDEZ BERROCAL' at the top, 'NOTARIO' in the center, and 'REPUBLICA DE EL SALVADOR' at the bottom.

[APENDICE IV]

<p>NOTE 22</p>	<p>"El Carnicero de las FPL, las locuras del Comandante Mayo Sibrían"; extracto del libro "La grandeza y miseria de una Guerrilla". "The butcher of the FPL, the follies of Commander Mayo Sibrían"; Taken from the book "the greatness and misery of a Guerrilla". http://mayosibrían.blogspot.com/2008/09/las-locuras-de-un-comandante-del-fmln.html</p>
<p>NOTE 45</p>	<p>En la ciudad de Zacatecoluca, en El Departamento de la Paz; se encuentra el Hogar Infantil y Albergue Jardín de Amor, niños/as desamparados y con VIH+ dirigido por hermanas franciscanas de la Inmaculada Concepción.</p> <p>In the city of Zacatecoluca, la Paz Department; is located the children's home and hostel garden of love, for children homeless and HIV +.Directed by Franciscan Sisters of la Inmaculada Concepción.</p> <p>http://hogar-infantil-de-zacatecoluca.globered.com/</p>
<p>NOTE 115</p>	<p>La Policía de Tránsito ARRESTÓ la noche del domingo 2 de mayo de 2010 al DIRECTOR DEL INSTITUTO DE DERECHOS HUMANOS DE LA UNIVERSIDAD CENTROAMERICANA (IDHUCA), BENJAMÍN CUÉLLAR, por conducir en estado de ebriedad.</p> <p>The traffic police arrested the night of Sunday, may 2, 2010 the Director of the Institute of human rights of the Central American University (Idhuca), Benjamín Cuéllar, for driving while intoxicated.</p>
<p>NOTE 125</p>	<p>Ver "Archivarán el caso jesuita en España". See "They filed the Jesuit case in Spain". http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=6888066</p>



The follies of an FMLN Commander

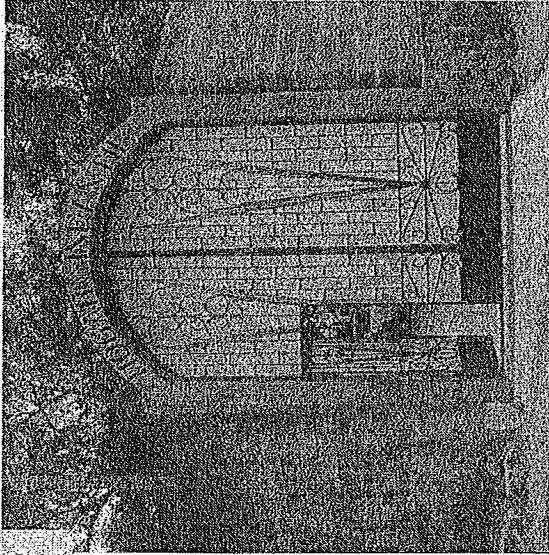
"Come here, I'm going to teach you how to do the revolutionary tasks here. They had taken a platoon of young people whose ages ranged between 12 and 17 years from a camp of Salvadoran refugees who was seated in Honduras, to integrate them to the guerrillas, said to them:-young s done to this side and put them in a row. The kids thought that Mayo would you say a few words of welcome, they were happy and smiling, noticed them the nervousness typical of their age, without Word may took his rifle and said:— Go let me teach, plah, plah, plah, plah. He massacred them all, the children fell to the ground as if they were chicks, without knowing why had killed them the Commander. He fired to bleed cold fifteen children who had arrived, and the companions from the volcano of San Vicente said:-all these monkeys are enemies, and that is why I showed them as it should be done, Oh that be revolutionary until the ultimate consequences,....."

<http://mayosibrian.blogspot.com/>



Hogar Infantil de Zacatecoluca

"...the children's home of Zacatecoluca was founded on August first, 1985, as a charity, service social and cultural, eminently Christian, apolitical, whose idea was born from the Lieutenant Colonel Inocencio Orlando Montano, to see many children in State of orphans, abandoned, homeless, and extreme poverty. In 1987 Monsignor Romero Tobar Astorga made as a Ministry of the diocese. In 1989 at the request of the Bishop, the institution became to be directed by the Franciscan Sisters of the Immaculate Conception, starting from that became a mixed child home. Since then efforts have been made to give the child the best care possible in all aspects that involve a good education, forming citizens able to serve God and society, training them in the recognition of human values orienting them towards a healthy coexistence with peace...."



<http://hogar-infantil-de-zacatecoluca.globered.com/>



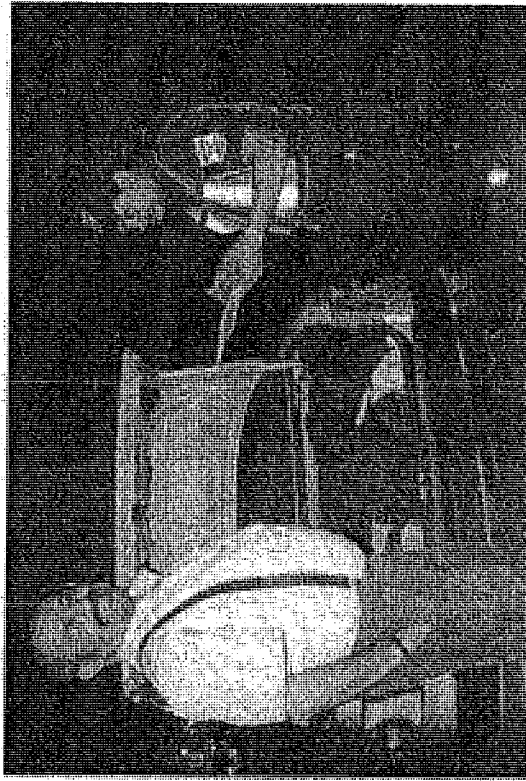
elsalvador.com
PRIMER MEDIO DIGITAL DEL PAÍS

SERVICIOS NOTICIAS OPINIÓN ENTRETENIMIENTO TURISMO SERVICIOS

TEMAS DE ALCOHOL

Cae Benjamín Cuéllar por conducir ebrio

» Sorprendido otra vez manejando pasado de copas.



Compartir:

ENVIAR IMPRIMIR COMENTAR LETRA MÁS GRANDE LETRA MÁS PEQUEÑA

DAVID MARROQUÍN
Lunes, 3 de Mayo de 2010

La Policía de Tránsito arrestó la noche del domingo pasado al director del Instituto de Derechos Humanos de la Universidad Centroamericana (Idhuca), Benjamín Cuéllar, por conducir en estado de ebriedad, según confirmaron fuentes policiales.

The traffic police arrested the night of last Sunday, the director of the human rights Institute of the Universidad Centroamericana (Idhuca), Benjamín Cuéllar, for driving under the influence of alcohol.

The arrest of Cuellar was recorded at 10:00 in the evening in the Izalco street of the residential San Luis, once a transit patrol detected it that it carried out "inappropriate operations". The Police intercepted him and instructed him to stop the vehicle. To intervene it, police observed that Cuellar had symptoms of being drunk, so told him that if I was subjected to the test of alcotest which he agreed without any problem.

The test revealed that Cuellar had 256 milliliters of alcohol in blood, that could mean 15 to 20 beers consumed, according to technicians of the police anti-doping unit.

EL CONDENADO ESTARÁ SUPERVISADO POR EL JUZGADO 10 DE VIGILANCIA PENITENCIARIA Y EJECUCIÓN DE LA PENA

TAMAYO DE LEIRA

Benjamín Cuéllar debe pasar un año sin consumir alcohol

El Juzgado 4° de Paz, en acuerdo con la defensa de Benjamín Cuéllar, director del IDHUCA, acusado de conducción temeraria, impuso reglas conductivas bajo la observación del Juzgado 1° de Vigilancia Penitenciaria y Ejecución de la Pena.

ÚLTIMA ACTUALIZACIÓN: 05 DE MAYO DE 2010 14:41 | POR JESSICA GUZMÁN

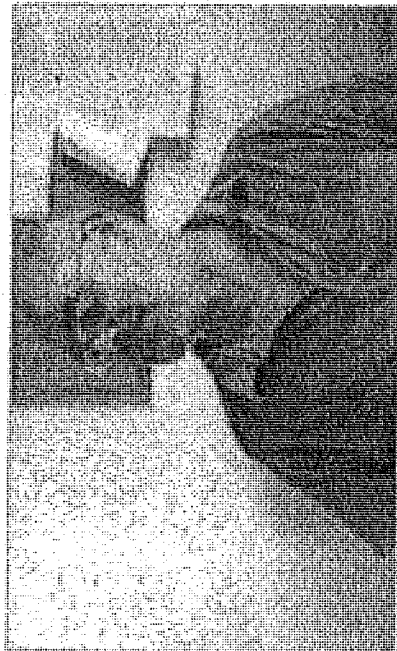


Foto: Salvadoreños en el mundo

Benjamin Cuellar, director del Instituto de Derechos Humanos de la Universidad Centroamericana, José Simeón Cañas, UCA, tendrá que pasar un año sin ingerir bebidas alcohólicas, según lo impuesto por el Juzgado 4° de Paz.

Esa fue la resolución, en la audiencia inicial en contra del imputado, quien fue acusado por manejar en alto estado de ebriedad.

La defensa propuso la alternativa a la Fiscalía, basándose en el artículo 22 del Código Procesal Penal, en el que se establece que se tomen medidas conductivas en este tipo de faltas.

Cuellar estará supervisado por el Juzgado 1° de Vigilancia Penitenciaria y Ejecución de la Pena, desde el 5 de mayo de 2010 hasta el 5 de mayo de 2011.

Benjamín Cuellar, Director of the Institute of Human Rights of the Universidad Centroamericana, UCA, José Simeón Cañas, will have to go a year without drinking alcohol, according to the sentence of the 4th Court of peace.

elsalvador.com
 EL PRIMER MEDIO DIGITAL SALVADOREÑO

FORNIDA: NOTICIAS, OPINIÓN, ENTREVISTAS, ENTRETENIMIENTO, EMPRESAS, SERVICIOS, COMERCIO

NACIONAL, SUCEOS, INTERNACIONAL, NEGOCIOS, COMERCIO

Archivarán el caso Jesuitas en España

El procedimiento se hará efectivo cuando El Salvador notifique oficialmente a ese país el rechazo a la extradición de los 13 militares

http://www.elsalvador.com/mwedh/nota/nota_completa.asp?idCat=47859&idArt=6888066

Nacional

CSJ niega extradición de militares en caso jesuitas

El abogado Antonio Alberca explicó que el juez español Eloy Velasco al abrir un proceso contra los militares está violando la autonomía del sistema judicial salvadoreño. Foto: EPH / Atsimo

Consejo de la última hora para tratar de cumplir con ley de Acceso a la Información.

Se aclaran condiciones de la FISC para liberar a periodistas.

Wales: litigio

El juez español Eloy Velasco al abrir un proceso contra los militares está violando la autonomía del sistema judicial salvadoreño. Foto: EPH / Atsimo

Spanish lawyer Antonio Alberca, who defends several Salvadoran military accused of the murder of six Jesuits and two collaborators in 1989, said yesterday from Madrid that the case must be filed provisionally.

The Justice of El Salvador has denied the extradition of the 13 defendants claiming by judge Eloy Velasco Nuñez

Windows Live™ Hotmail (0) Messenger (2) SkyDrive | MSN

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F

Hotmail

New | Reply Reply all Forward | Delete Junk Sweep ▾ Mark as ▾ Move to ▾ Cate

Inbox

Folders

- Junk
- Drafts
- Sent
- Deleted (2)**
- Biblia
- Facebook
- Jenny
- Sherwin
- New folder

Quick views

Messenger (2)

Search contacts

- Ana Margarita Saave...
- Nury Munoz
- Sign out of Messenger

- Home
- Contacts
- Calendar



Upgrade coming soon. An upgrade from Hotmail to a new webmail experience is coming soon. Start enjoying it today. Upgrade now

APENDICE V

Back to messages |

Salvador Montanc

2/26/13

To Oscar_Cruz@fd.org...

Reply

1 attachment (4.2 MB)

Hotmail Active View



PART I.pdf
Download (4.2 MB)

Download as zip

DICTAMEN SOBRE CONSECUENCIAS DESDE EL DERECHO INTERNACIONAL EN QUERRELLA PRESENTADA EN ESPAÑA.

El 28 de mayo de 2009, tres abogados penalistas internacionales^[1] sometieron a consideración del Gobierno de la República de El Salvador un Dictamen sobre "las consecuencias desde el Derecho Internacional de la querella presentada en España"; en dicho Documento se cuestiona primeramente la nacionalidad de las víctimas ya que la propia querella admite que la nacionalidad efectiva de las víctimas jesuitas era la salvadoreña^[2]; por otra parte los hechos que dan lugar a la querella ante la Audiencia Nacional, ya fueron en su momento objeto de un proceso penal ante los tribunales salvadoreños^[3]. Así mismo, se manifiesta que hay sobradas evidencias sobre las dudas y reticencias técnicas sobre la práctica de la Audiencia Nacional española de atribuirse el principio de jurisdicción universal prescindiendo de unos mínimos puntos de conexión (como la nacionalidad española de la víctima, por ejemplo) entre el Estado donde se persiguen los hechos y el lugar donde acaecieron (*locus delicti*).

[1] Dr. Prometeo Cerezo de Diego, Dr. Carlos Jiménez Piernas y Dr. José Antonio Tomás Ortiz de la Torre.

[2] Ver pp. 31-32 de la querella.

[3] Ver pp. 52 y 57-59/126 de la querella.

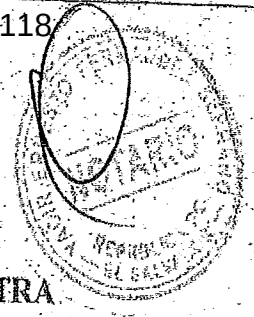
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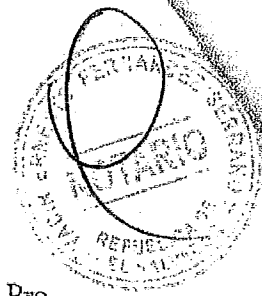
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**DICTAMEN SOBRE LAS CONSECUENCIAS, DESDE EL DERECHO
INTERNACIONAL, DE LA QUERRELLA PRESENTADA EN ESPAÑA CONTRA
CATORCE NACIONALES SALVADOREÑOS**

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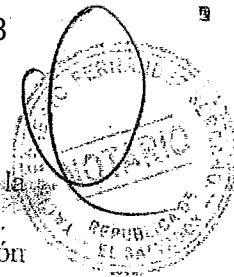
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I. Los hechos

1. El día 13 de noviembre de 2008 las organizaciones no gubernamentales "Asociación Pro Derechos Humanos de España" y el "Center for Justice and Accountability" presentaron en el Juzgado Central de Instrucción Decano de la Audiencia Nacional de España (a partir de ahora AN) una querrela contra varias personas de nacionalidad salvadoreña por considerarlas "responsables criminalmente de crímenes de lesa humanidad y terrorismo o asesinato en el contexto de crímenes contra la humanidad" [y/c].
2. Mediante Auto de 12 de enero de 2009, el Magistrado-Juez del Juzgado Central de Instrucción nº 6 de la AN consideró presentada en forma la querrela, al menos por parte de la "Asociación Pro Derechos Humanos de España", por "presunto delito de asesinatos terroristas" (invocando los artículos 406 en relación con el 174bis del Código Penal español de 1973) y "contra el Derecho de Gentes" (en virtud del artículo 137bis del mismo Código Penal), y la admitió contra catorce nacionales salvadoreños mencionados, con sus nombres y apellidos, en el citado Auto¹, "y cuantos otros resulten vinculados a los hechos objeto de investigación". El Magistrado-Juez no admitió la imputación contra el entonces Presidente de la República de El Salvador, Alfredo Cristiani, "porque además de carecer de base indiciaria suficiente, no se le ha imputado participación en crímenes terroristas o de otra naturaleza de persecución universal, sino un supuesto delito de encubrimiento, por el que, en aplicación del art. 23.4 LOPJ tiene su persecución excluida".

¹ En concreto, se menciona a Humberto Larios, René Emilio Ponce, Juan Rafael Bustillo, Juan Orlando Cepeda, Inocente Orlando Montano, Francisco Elena Fuentes, Carlos Camilo Hernández Barahona, José Ricardo Espinoza Guerra, Gonzalo Guevara Cerritos, Oscar Mariano Amaya Grimaldi, Antonio Ramiro Ávalos Vargas, Ángel Pérez Vásquez, Tomás Zarpate Castillo y José Alberto Sierra Ascensio.



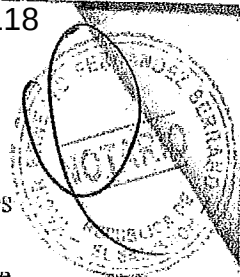
3. El Magistrado-Juez ordenó en el mismo Auto la práctica de ciertas diligencias, como la notificación de la querrela a los querrellados expresamente mencionados; la declaración testifical, entre otros, de Belisario Amadeo Artiga, antiguo Fiscal General de la República de El Salvador, y del Juez salvadoreño Ricardo Zamora²; y, a petición del Ministerio Fiscal ante la Audiencia Nacional, el “testimonio completo de las actuaciones seguidas en el Juzgado Cuarto de lo Penal de San Salvador, relativas a los hechos acaecidos en la UCA el 16 de noviembre de 1989”. Por todo ello, el Magistrado-Juez ordenó “expedir con carácter urgente Comisión Rogatoria a las Autoridades competentes de El Salvador” a los efectos oportunos. Asimismo, se libró Comisión Rogatoria a Estados Unidos a fin de que se practique prueba testifical a William Mccollum, y Erick Auckland en relación con esos hechos.

4. Los hechos objeto de esta querrela son bien conocidos: el asesinato de ocho personas el 16 de noviembre de 1989 en la Universidad Centroamericana “José Simeón Cañas” (UCA), en plena guerra civil, coincidiendo con la ofensiva militar del Frente Farabundo Martí de Liberación Nacional (FMLN) contra la capital del país y mientras se combatía en sus calles³. Las ocho personas asesinadas fueron el sacerdote jesuita salvadoreño Joaquín López y López, su empleada doméstica Julia Elba Ramos y la hija de ésta Celina Mariceth Ramos (ambas también de nacionalidad salvadoreña) y otros cinco padres jesuitas “de origen español y nacionalizados salvadoreños”⁴ (Ignacio Ellacuría Beascochca, Ignacio Martín Baró, Segundo Montes Mozo, Amando López Quintana y Juan Ramón Moreno Pardo).

² Titular del Juzgado Cuarto de lo Penal de San Salvador, a cargo de la instrucción del caso del asesinato de los padres jesuitas (p. 51/126 de la querrela).

³ Ver pp. 29-30/126 de la querrela.

⁴ Según reconoce expresamente la propia querrela: p. 5/126.



5. En efecto, dichos padres jesuitas habían nacido en España y eran por tanto nacionales españoles de origen, pero posteriormente adquirieron la nacionalidad salvadoreña, ya que habían residido (en ocasiones de forma intermitente) en El Salvador desde los años cincuenta, desempeñando entre otros trabajos labores docentes y cargos académicos en la UCA sobre todo desde los años setenta⁵. Es más, la querrella reconoce el pleno ejercicio de sus derechos ciudadanos por parte del Rector de la UCA, el padre Ignacio Ellacuría, al participar en la vida política del país⁶; incluso da detalles sobre una campaña política orquestada en 1986 por sectores de la derecha salvadoreña para retirarle la nacionalidad por involucrarse en política y ser uno de los “cabecillas de los movimientos subversivos”⁷. Así pues, no cabe duda que en el momento de la comisión de los asesinatos, la propia querrella admite que la nacionalidad efectiva de las víctimas era la salvadoreña.

6. Por otra parte, los hechos que dan lugar a la querrella ante la AN ya fueron en su momento objeto de un proceso penal ante los tribunales salvadoreños⁸. Dicho proceso concluyó con la Sentencia de 23 de enero de 1992 por la que el Juez Zamora condenó al Coronel Benavides y al Teniente Mendoza a treinta años de prisión por el delito de asesinato, límite máximo para las penas privativas de libertad en el Código Penal salvadoreño vigente en este caso; los demás acusados fueron únicamente considerados culpables de conspirar para cometer actos de terrorismo, recibiendo todos ellos condenas inferiores a los cinco años⁹. Tras dictarse la citada Sentencia, el Coronel Benavides y el Teniente Mendoza ingresaron en el penal de Santa Ana. El 24 de marzo de 1993 fueron

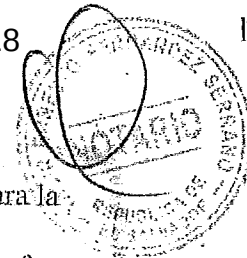
⁵ Ver pp. 23-27/126 de la querrella.

⁶ Ver pp. 31-32/126 de la querrella.

⁷ Ver p. 21/126 de la querrella.

⁸ Ver pp. 52 y 57-59/126 de la querrella.

⁹ Ver pp. 62-63/126 de la querrella.



amnistiados de conformidad con los artículos 1, 2 y 4 de la Ley de Amnistía General para la Consolidación de la Paz¹⁰, siendo liberados el 1 de abril de 1993. Esta Ley de Amnistía fue concebida en términos muy generosos, extendiendo su gracia de manera absoluta e incondicional para poner punto y final a la dolorosa y cruenta guerra civil¹¹, y ha sido validada por los tribunales salvadoreños en cuantos recursos se han presentado contra ella¹². Por último, tras el agotamiento de los recursos internos, el 17 de noviembre de 2003 se presentó una petición ante la Comisión Interamericana de Derechos Humanos para exigir el reconocimiento de la responsabilidad del Estado salvadoreño por falta de la investigación y el enjuiciamiento debidos del crimen perpetrado en la UCA el 16 de noviembre de 1989; dicha petición está pendiente del informe de admisibilidad¹³.

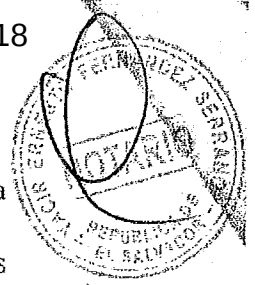
7. No obstante, los querellantes han abierto este otro frente judicial ante la AN de España. Es decir, no en el orden internacional sino en el ordenamiento interno de otro Estado, en un contexto que conviene enseguida conocer. En efecto, un grupo de causas actualmente abiertas en la AN, entre las que se cuenta la aquí citada, responden a la aplicación del principio de jurisdicción universal que se atribuye dicha AN en virtud del artículo 23.4º de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial (LOPJ), una ley interna española. El artículo 23.4º de la LOPJ establece que será competente la jurisdicción española para conocer de los hechos cometidos por españoles y extranjeros fuera del territorio nacional susceptibles de tipificarse, según la ley penal española, como ciertos delitos entre los que incluye sobre todo el genocidio, el terrorismo y cualesquiera otros que deban perseguirse en España en virtud de los

¹⁰ Ver Decreto Legislativo nº 486, de 20 de marzo de 1993, publicado en el *Diario Oficial* nº 56, t. 318, de 22 de marzo del mismo año.

¹¹ Ver pp. 48-49/126 de la querrela.

¹² Ver pp. 64-65/126 de la querrela.

¹³ Ver pp. 65 *in fine*-66/126 de la querrela.



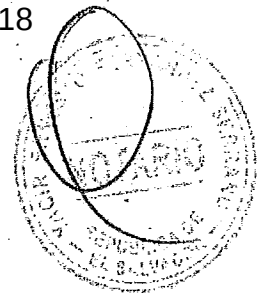
tratados internacionales que la obliguen. Esta competencia judicial penal internacional ha llevado incluso a la AN a atribuirse unilateralmente el conocimiento de presuntos hechos delictivos, tipificados en el ordenamiento interno español, ocurridos entre extranjeros en el extranjero, obviando el tradicional principio de territorialidad de la ley penal. De este modo, la AN se ha transformado por esta vía en una especie de gendarme universal defensor de la justicia material en cualquier lugar del mundo. Todo ello explica la presentación oportunista de esta querrela, que critica el carácter fraudulento del proceso penal llevado a cabo en El Salvador¹⁴, reclamándose la responsabilidad de los “autores intelectuales” del crimen¹⁵; de ahí que la querrela se haya dirigido también contra el propio ex presidente Alfredo Cristiani¹⁶.

8. Tras las gestiones llevadas a cabo por la Embajada de la República de El Salvador ante las autoridades españolas con relación a este asunto, y analizada la información recibida sobre el mismo, se nos solicita fijar la posición jurídica de principio del Gobierno salvadoreño, conforme al Derecho Internacional, a fin de darla a conocer al Gobierno del Reino de España en la ocasión y por el medio que ese Gobierno estime más idóneo. Se entiende, en cuanto a la ocasión, que bien pudiera ser al responder a la comisión rogatoria de la AN. Volveremos sobre este punto más adelante.

¹⁴ Ver p. 57/126 de la querrela.

¹⁵ Ver p. 63 *in fine*/126 de la querrela.

¹⁶ Ver pp. 47-48/126 de la querrela.

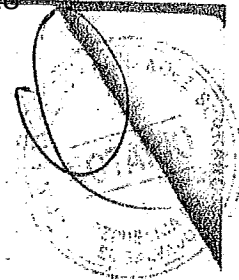


II. Fundamentos de derecho

1. El derecho español y la jurisdicción universal

9. Hay sobradas evidencias sobre las dudas y reticencias técnicas que ha suscitado esta práctica de la AN y sobre el debate jurídico que ha generado dentro de España. Valga recordar, en primer lugar, la “Nota sobre la Jurisdicción de los Tribunales Españoles”, de 2 de octubre de 1997, preparada por la Fiscalía del Tribunal Supremo de España, claramente contraria a la aplicación del principio de jurisdicción universal prescindiendo de unos mínimos puntos de conexión (como la nacionalidad española de la víctima, por ejemplo) entre el Estado donde se persiguen los hechos y el lugar donde acaecieron (*locus delicti*):

“... cabe plantearse la duda de si los delitos denominados de protección universal pueden ser perseguidos por absolutamente cualquier país, cualquiera que sea la nacionalidad del responsable y no importa cuán alejado esté el territorio en el que se comete. Debe constar, cuando menos, algún vínculo o punto de conexión –que no sea el meramente voluntarista- entre el Estado donde se persiguen los hechos y el territorio donde acaecieron. ¿Puede un juez de Montreal (Canadá) entender de los delitos de piratería cometidos en el Mar de Arabia por marinos de las Islas Maldivas, porque la víctima haya acudido a ese Tribunal a formular la denuncia? ¿Puede un Juez de París entender de un delito de prostitución de menores en Sao Paulo (Brasil) porque una asociación internacional haya entendido a dicho Juez competente frente a otros?



Por el momento, el laudable propósito de no dejar impunes crímenes de lesa humanidad no está encomendado a los Jueces nacionales en el ejercicio de una jurisdicción de proyección o alcance internacional que desconozca la exigencia de esos mínimos puntos de conexión a los que aluden los convenios internacionales (país del pabellón, país de la matrícula de la aeronave, localización en el país del presunto responsable).”

10. Ahora bien, la posibilidad de que los tribunales españoles y en particular la AN puedan ejercer su jurisdicción basada en el principio de universalidad contemplado en el artículo 23.4 de la LOPJ viene avalada por la jurisprudencia del Tribunal Constitucional español (a partir de ahora, TC), fundamentalmente por la Sentencia (Sala Segunda), núm. 237/2005, de 26 de septiembre, que admitió el recurso de amparo interpuesto contra la Sentencia del Tribunal Supremo (Sala Segunda), de 25 de febrero de 2003, relativa al llamado caso “Guatemala”, que negaba la jurisdicción española sobre el caso¹⁷. El TC dijo expresamente refiriéndose al artículo 23.4 de la LOPJ que “el precepto legal objeto de la controversia ha sido objeto de pronunciamientos previos por parte de este Tribunal, de los cuales pueden extraerse algunas implicaciones para el enjuiciamiento de las resoluciones impugnadas. Concretamente la STC 21/1997, de 10 de febrero¹⁸, puso de manifiesto que “al establecer la extensión y límites de la jurisdicción de los Juzgados y Tribunales españoles, el art. 23.4 de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, atribuye el conocimiento por

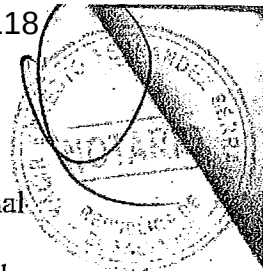
¹⁷ Juzgado Central de Instrucción nº 1 (juez D. Santiago Pedraz), Diligencias previas 331/99, por las que se investiga a diez ex altos cargos del gobierno guatemalteco del presidente Ríos Montt. En este caso, la AN denegó la admisión de la querrela interpuesta por ciudadanos guatemaltecos, entre ellos la señora Rigoberta Menchú, resolviendo el Tribunal Supremo que se investigase únicamente la muerte de cuatro españoles ocurrida en el asalto a la embajada de España en Ciudad de Guatemala, a finales de enero de 1980. Sin embargo, como enseguida veremos, el TC dio la razón a los querellantes.

¹⁸ RJC 1997, 21, fundamento 3.

nuestros órganos judiciales de los hechos cometidos por españoles y extranjeros fuera del territorio nacional cuando los mismos sean susceptibles de tipificación como delitos, según la Ley penal española, en ciertos supuestos... Lo que entraña, pues, que el legislador ha atribuido un alcance universal a la jurisdicción española para conocer de estos concretos delitos, en correspondencia tanto con su gravedad como con su proyección internacional”.

11. Asimismo, en la STC 87/2000, de 27 de marzo¹⁹ el TC manifestó también que “el fundamento último de esta norma atributiva de competencia radica en la universalización de la competencia jurisdiccional de los Estados y sus órganos para el conocimiento de ciertos hechos sobre cuya persecución y enjuiciamiento tienen interés todos los Estados, de forma que su lógica consecuencia es la concurrencia de competencias, o dicho de otro modo, la concurrencia de Estados competentes”. Esta consideración relativa al fundamento de la jurisdicción universal permite al TC entrar directamente a ponderar el alcance constitucional, desde el prisma del derecho a la tutela judicial efectiva, de la resolución de un Auto de la AN, por cuanto el presupuesto teórico de que parte para fundar la ausencia de jurisdicción, el principio de subsidiariedad, parece no ser *prima facie* coincidente con el principio de concurrencia, que el TC ha considerado preferente. Para afirmar por fin que “... la Ley Orgánica del Poder Judicial instaura un principio de jurisdicción universal absoluto, es decir, sin sometimiento a criterios restrictivos de corrección o procedibilidad, y sin ordenación jerárquica alguna con respecto al resto de las reglas de atribución competencial, puesto que, a diferencia del resto de criterios, el de justicia universal se configura a partir de la particular naturaleza de los delitos objeto de persecución”.

¹⁹ RTC 2000, 87, fundamento 4.



12. En fin, la referida Sentencia del TC, niega, en contra de lo afirmado por el Tribunal Supremo en su sentencia recurrida, que “en la costumbre internacional se ha venido restringiendo el alcance del principio de justicia universal”, y afirma el TC que “existen multitud de precedentes en Derecho internacional que avalarían la postura contraria a la seguida por el Tribunal Supremo en la materia...”

13. La referida doctrina constitucional se mantiene en la Sentencia del TC (Sala Segunda), núm. 227/2007, de 22 de octubre²⁰, por la que se estima el recurso de amparo contra la Sentencia de la Sala de lo Penal del Tribunal Supremo, de 18 de marzo de 2005, que declara no haber lugar al recurso de casación interpuesto contra el Auto de la Sala de lo Penal de la AN de 11 de mayo de 2004, desestimatorio del recurso de apelación contra el Auto del Juzgado Central de Instrucción núm. 2, de 20 de noviembre de 2003, por el que no se admitió a trámite la querrela interpuesta por los recurrentes en amparo por delitos de genocidio y torturas (caso “Falun Gong”). Así pues, por encima de las sentencias contradictorias de los tribunales españoles a este respecto, de todo lo expuesto resulta que el TC ha avalado la actividad de los tribunales internos españoles fundada en el principio de universalidad.

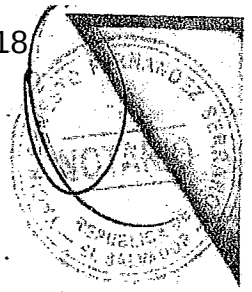
14. También es cierto que los informes del Ministerio Fiscal en los casos de jurisdicción universal son erráticos y no ofrecen una línea de acción coherente respecto de las querellas que se vienen presentando ante la AN, como se aprecia en los casos que afectan a Estados Unidos. Y que, en conjunto y más allá de su repercusión mediática, la práctica de la AN se ha demostrado poco útil porque hasta ahora, de todos los procedimientos abiertos ante la

²⁰ RTC 2007, 227.

Audiencia Nacional en virtud del principio de *universalidad o justicia universal* ninguno ha concluido con juicio oral y la correspondiente sentencia, salvo en los casos de los nacionales argentinos "Cavallo", que fue extraditado desde México, y "Scilingo", que compareció voluntariamente ante el Juzgado Central de Instrucción número 5²¹.

15. Así las cosas, las declaraciones públicas recientes tanto del Fiscal General del Estado como del Presidente del Tribunal Supremo y (al mismo tiempo) del Consejo General del Poder Judicial, órgano supremo de gobierno de los jueces españoles, criticando la jurisdicción universal pura y absoluta aplicada hasta ahora por la AN y avalada por el TC, así como las reacciones enérgicas de algunos Estados afectados (caso de Israel y la República Popular China), han servido de preludio a la esperada reacción del legislador español. A pesar de la posición del TC, que mantiene la existencia de una pretendida "costumbre internacional" que admitiría generalmente la jurisdicción universal, el pleno del Congreso de los Diputados ha decidido poner coto al principio de la jurisdicción universal ilimitada por parte de los tribunales españoles. Tras el acuerdo logrado entre los dos partidos políticos principales y ampliamente mayoritarios en la cámara (Partido Socialista Obrero Español, PSOE, actualmente en el poder, y Partido Popular, PP, en la oposición), la AN verá limitada su jurisdicción en relación a hechos acaecidos en el extranjero tipificados como delitos en el Código Penal español e incluidos dentro del artículo 23. 4 de la tan citada LOPJ. A partir de la reforma que han consensuado ambos partidos, habrá que vincular la jurisdicción universal a los casos en los que haya un punto de conexión con los tribunales españoles; exigir un punto de conexión con la jurisdicción española significa

²¹ Ver J.A. Tomás Ortiz de la Torre, "A vueltas con la competencia judicial penal internacional de los Tribunales de España: el caso "Scilingo", en *Anuario Español de Derecho Internacional Privado*, t. IV (2004), pp. 215-236.

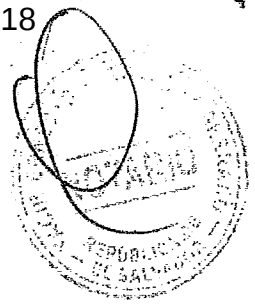


bien la localización de los responsables en España o bien la nacionalidad española de la víctima, estableciendo además el principio de subsidiariedad de la jurisdicción universal.

16. Habrá que esperar para conocer el texto y el alcance normativo definitivos de la reforma que apruebe en su día ambas cámaras (Congreso de los Diputados y Senado). Pero sirve de orientación el texto inicial de reforma de la LOPJ que propuso el Partido Popular (PP): “Para que puedan conocer los tribunales españoles deberá quedar acreditado que sus presuntos responsables se encuentren en España o que existen víctimas de nacionalidad española y, en todo caso, que en el país del lugar donde se cometieron los hechos delictivos o en el seno de un tribunal internacional no se ha iniciado causa penal que suponga una investigación y una persecución efectiva, en su caso, de tales hechos punibles”. Así como el texto finalmente pactado entre ambos partidos, del siguiente tenor: “Sin perjuicio de lo que pudieran disponer los tratados y convenios internacionales suscritos por España, para que puedan conocer los tribunales españoles deberá quedar acreditado que sus presuntos responsables se encuentran en España o que existen víctimas de nacionalidad española o constatarse algún vínculo de conexión relevante con España”²².

17. En todo caso, sea cual fuere el texto definitivo, al resultar este beneficioso para las personas acusadas que se encuentren fuera de los criterios de conexión con España, la norma necesariamente habrá de tener efecto retroactivo, con lo que los procedimientos inexorablemente habrán de ser archivados.

²² Ver diario *El País*, 22-5-2009. La tramitación parlamentaria de esta reforma puede consultarse en la página web del Congreso.

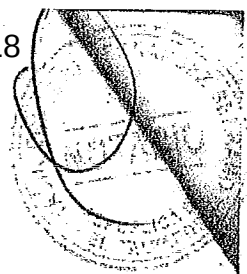


2. Puntos de conexión y nacionalidad de la víctima

18. Parece, a la vista de todo lo dicho, que va a mantenerse en la reforma del artículo 23.4º de la LOPJ el punto de conexión de la nacionalidad española de la víctima. Cobra entonces interés profundizar en el hecho de la naturalización de los cinco jesuitas "de origen español", según dice la querrela. Es indispensable concretar cuál era la nacionalidad de las víctimas en el momento en que se produjeron los hechos, es decir, el 16 de noviembre de 1989.

19. Sin conocer, al presente, la fecha exacta en la que se produjo la naturalización de los cinco sacerdotes jesuitas, cabe precisar que por ese acto pudieron o no perder la nacionalidad española, dependiendo del contenido de la legislación española sobre nacionalidad que estuviese vigente en el momento de la naturalización. No pudieron conservar la nacionalidad española si la naturalización en El Salvador se produjo antes de la entrada en vigor en España de la Ley 51/1982, de 13 de julio que modificó el Código Civil en materia de nacionalidad.

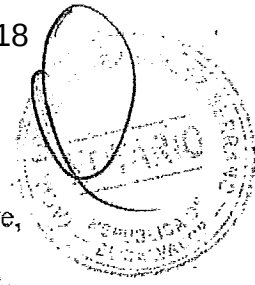
20. En efecto, antes de la Ley de 15 de julio de 1954, es decir, según la primera redacción del Código Civil español (1889), bastaba para perder la nacionalidad española el adquirir, voluntariamente, naturaleza en país extranjero. Con la citada Ley de 15 de julio de 1954, el artículo 22 introdujo una posibilidad de mantener la nacionalidad española: "Perderán la nacionalidad española los que hubieran adquirido voluntariamente otra nacionalidad. Para que la pérdida produzca efectos se requiere tener veintidós años cumplidos o dieciocho y hallarse emancipado; haber residido fuera de España al menos durante tres años



inmediatamente anteriores, y en cuanto a los varones; no estar sujetos al servicio militar en período activo... No obstante..., la adquisición de la nacionalidad de un país iberoamericano... no producirá pérdida de la nacionalidad española cuando así se haya convenido expresamente con el Estado cuya nacionalidad se adquiriera..." El texto citado permaneció inalterado en la reforma introducida por la Ley 14/1975, de 2 de mayo. Ahora bien, es de mencionar que España y El Salvador nunca han celebrado un convenio de doble nacionalidad.

21. En estas circunstancias, una nueva modificación de la regulación de la nacionalidad española por Ley 51/1982, de 13 de julio, vino a dejar en manos del interesado la posibilidad de mantener la nacionalidad española no obstante haber adquirido la de un Estado iberoamericano. Así en el nuevo artículo 23 del Código Civil se disponía que "perderán la nacionalidad española los que hallándose emancipados y residiendo fuera de España con tres años de anterioridad adquieran voluntariamente otra nacionalidad. No la perderán cuando justifiquen ante los Registros Consular o Central que la adquisición de la nacionalidad extranjera se produjo por razón de emigración... La adquisición de la nacionalidad de países iberoamericanos... o de aquellos con los que se concierte un tratado de doble nacionalidad, sólo producirá pérdida de la nacionalidad española de origen cuando el interesado así lo declare expresamente en el Registro Civil una vez emancipado".

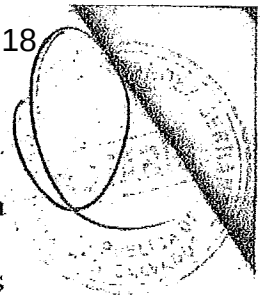
22. Ningún efecto puede ya tener en el caso que nos ocupa la modificación que sufrió el Código Civil en materia de nacionalidad por la Ley 18/1990, de 17 de diciembre, cuyo nuevo artículo 24 determinó: "1. Pierden la nacionalidad española los emancipados que, residiendo habitualmente en el extranjero, adquieran voluntariamente otra nacionalidad...;



2. La pérdida se producirá una vez que transcurran tres años a contar, respectivamente, desde la adquisición de la nacionalidad extranjera o desde la emancipación. La adquisición de la nacionalidad de países iberoamericanos... no es bastante para producir, conforme a este apartado, la pérdida de la nacionalidad española de origen...". Ningún efecto, se subraya, puede ya tener esta nueva normativa porque los sacerdotes jesuitas fueron asesinados antes de la fecha de su entrada en vigor.

23. A la luz de la normativa recién expuesta, los cinco jesuitas "de origen español" sólo pudieron conservar la nacionalidad española al adquirir la salvadoreña si esta adquisición se produjo después de la vigencia de la Ley 51/1982, de 13 de julio, que es la normativa clave, y siempre que cada interesado no hubiese formulado la declaración de querer perderla ante el Registro Civil español. Si la adquisición de la nacionalidad salvadoreña se produjo después de esa fecha y no hubo declaración expresa de intención de perder la nacionalidad española ante dicho Registro, la adquisición de la nacionalidad salvadoreña no produjo por esa sola circunstancia la pérdida de la nacionalidad española de origen. Por lo tanto, dentro de esa franja temporal y sin la referida declaración registral, habría que concluir que a su fallecimiento ostentaban la doble nacionalidad española y salvadoreña. Si la adquisición de la nacionalidad salvadoreña tuvo lugar antes de la precitada Ley 51/1982, de 13 de julio, indudablemente en el momento del fallecimiento poseían exclusivamente la nacionalidad salvadoreña.

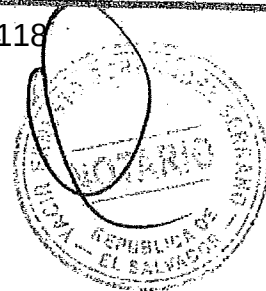
24. En la hipótesis de la doble nacionalidad, cabe no obstante señalar que el vínculo con España no podría ser un vínculo "fuerte", dada la regulación que el Código Civil español establece en su artículo 9.9º respecto de cuál sea la nacionalidad "efectiva" en los supuestos



de doble nacionalidad previstos en la ley española. En este caso, la nacionalidad española no sería la “efectiva”, y las víctimas “de origen español” no estarían sujetas a las leyes españolas sino a las salvadoreñas. En efecto, el artículo 9.9º del citado Código Civil determina que: “...respecto de las situaciones de doble nacionalidad previstas en las leyes españolas se estará a lo que determinen los tratados internacionales, y, si nada estableciesen, será preferida la nacionalidad coincidente con la última residencia habitual y, en su defecto, la última adquirida...”. Por lo tanto, ante la inexistencia de tratado de doble nacionalidad entre España y El Salvador, teniendo las víctimas “de origen español” su residencia habitual en ese Estado, resulta evidente que en materia de estatuto personal las propias leyes españolas las determinaban sujetas a la ley salvadoreña.

25. Por tanto, en caso de doble nacionalidad la ley española se atiene a la regla jurídica internacional de la nacionalidad dominante y efectiva, para cuya determinación habrán de tenerse en cuenta todos los factores relevantes, incluida la residencia habitual, el centro de intereses, la participación en la vida pública y cualesquiera otras pruebas de vinculación con cada uno de los Estados. El Derecho Internacional²³ defiende siempre, en caso de doble nacionalidad, que ha de buscarse la nacionalidad activa, efectiva o de hecho del interesado que se deriva de su actitud personal, domicilio o residencia habitual, lugar de trabajo, etc., que es lo que permite precisar esa nacionalidad dominante o efectiva. Si la regla se aplica al caso de los jesuitas asesinados “de origen español”, es evidente que el vínculo real o auténtico lo mantenían con la República de El Salvador, y su nacionalidad efectiva no era otra que la salvadoreña.

²³ Evitamos la cita tediosa de la jurisprudencia internacional y arbitral, por otra parte bien conocida, en apoyo de esta regla.



3. El Derecho Internacional aplicable

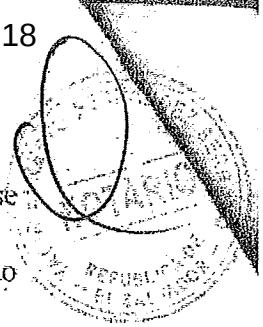
26. Es bien sabido que las relaciones entre Estados soberanos quedan sometidas al Derecho Internacional (a partir de ahora, DI), de superior jerarquía sobre los derechos internos, como establece el artículo 27 del Convenio de Viena de 1969 sobre el derecho de los tratados, declarando una norma del DI general que obliga tanto a España como a El Salvador, cuando dispone que una "parte no podrá invocar las disposiciones de su derecho interno como justificación del incumplimiento de un tratado". Por tanto, se trata de saber si el DI avala de alguna manera la práctica de la AN que aquí nos ocupa. Por ahora, se prescinde de cualquier otra consideración sobre el derecho interno español al no considerarlo pertinente en esta fase del dictamen²⁴.

27. En primer lugar, no nos consta que exista ningún tratado o norma convencional particular que prorrogue en ningún caso la jurisdicción salvadoreña en favor de los órganos jurisdiccionales penales españoles. No existe, a este respecto, ninguna regla permisiva de Derecho Internacional particular que vincule a la República de El Salvador y al Reino de España.

28. En concreto, el Tratado de Extradición en vigor entre El Salvador y España, de 10 de marzo de 1997²⁵, no ofrece una solución para este asunto porque sus artículos 5, 6 y 7 impiden absolutamente cualquier posible extradición a España de los nacionales salvadoreños

²⁴ A pesar de las interrogantes que plantea, por ejemplo, la calificación de los hechos sucedidos el 16 de noviembre de 1989 en San Salvador conforme a los tipos del Código Penal español de 1973, en pleno régimen franquista, amén de considerar y tratar a las fuerzas armadas de El Salvador como una banda terrorista.

²⁵ BOE de 13 de febrero de 1998.



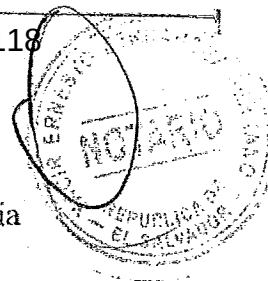
querellados por razones muy plausibles que interesa recoger. Su artículo 5 prevé que se deniegue obligatoriamente la extradición si la persona para la que se solicita está siendo juzgada o lo ha sido ya por la comisión del mismo delito, o bien está libre de procesamiento o castigo por cualquier motivo, incluida la prescripción de la pena o de la acción penal; su artículo 6 admite además denegar la extradición de nacionales; y su artículo 7 permite la denegación facultativa de la extradición por ciertas causas, como la comisión total o parcial del presunto delito en el territorio de la parte requerida.

29. En este sentido y en relación con los hechos que son objeto de la querrela, se han llevado a cabo en El Salvador cuantos procedimientos judiciales y en particular penales ha exigido la aplicación de su derecho interno, completados con leyes aprobadas por su poder legislativo, entre otras la Ley de Amnistía General para la Consolidación de la Paz, de 20 de marzo de 1993. A la vista de esas actuaciones judiciales y en aplicación del principio *non bis in idem*, se considera improcedente e inaceptable, conforme al DI, la apertura de cualquier otro procedimiento penal en España que pretenda reabrir ese asunto y entrar a valorar la conducta seguida por sus poderes judicial y legislativo²⁶.

30. Del mismo modo, El Salvador y España celebraron en 1997 un Convenio de Cooperación Judicial en Materia Penal, vigente a partir del 1 de septiembre de 1998²⁷. En su virtud, siempre en “observancia de las normas constitucionales, legales y administrativas de sus Estados, así como el respeto a los principios de Derecho Internacional, en especial de soberanía, integridad

²⁶ De hecho, se subraya que el art. 23.5º de la LOPJ prevé que será de aplicación a los delitos de protección universal lo dispuesto en su art. 23.2º.c): la jurisdicción española evitará conocer de los hechos cuando el delincuente haya sido absuelto, indultado o penado en el extranjero, o, en este último caso, haya cumplido condena; lo que constituye una proyección a nivel internacional del principio de “res iudicata”.

²⁷ BOE de 31 de julio de 1998.

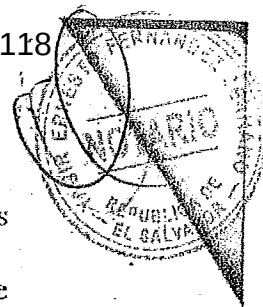


territorial y no intervención...”, acordaron mecanismos de cooperación judicial y asistencia mutua en procesos penales. Su artículo 3 fija que la asistencia comprenderá, entre otros actos, la recepción y producción o la práctica de pruebas (letra b) y la “entrega de documentos y otros objetos de prueba” (letra h). Estas prescripciones parecen cubrir la Comisión Rogatoria ordenada por el Magistrado-Juez de la AN. Conforme al artículo 4 del citado Convenio, las autoridades facultadas para tener comunicación directa y evacuar las solicitudes de asistencia son el Ministerio de Justicia por parte de España y la Corte Suprema de Justicia por parte de El Salvador. Cabe suponer, pues, que la Comisión Rogatoria deberá ser comunicada a la Corte Suprema de El Salvador. Ahora bien, conforme al artículo 6 del mismo Convenio, la parte requerida podrá negar la asistencia, informando de inmediato a la autoridad de la otra parte (según el artículo 10.3°), cuando se den entre otras las siguientes condiciones, que dejan un amplio margen discrecional a El Salvador dentro siempre del más estricto respeto al Convenio:

“... ”

- c. La persona en relación con la cual se solicita la medida haya sido absuelta o haya cumplido su condena en la Parte Requerida por el delito mencionado en la solicitud o ésta se haya extinguido.
- d. El cumplimiento de la solicitud sea contrario a la seguridad, al orden público o a otros intereses esenciales de la Parte Requerida.
- e) La solicitud de asistencia sea contraria al ordenamiento jurídico de la Parte Requerida o no se ajuste a las disposiciones de este Convenio...”

31. En segundo lugar y en cuanto al DI general, el principio de jurisdicción universal que España se atribuye por obra del artículo 23.4° de la mencionada LOPJ, constituye una clara

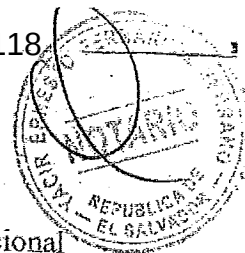


violación del principio de igualdad soberana proclamado en el artículo 2.1º de la Carta de las Naciones Unidas, declarado y desarrollado progresivamente en la Resolución 2625 (XXV) de la Asamblea General de las Naciones Unidas, de 24 de octubre de 1970, que contiene los principios básicos del Derecho Internacional contemporáneo. Merece la pena recordar qué valor normativo posee, en el DI contemporáneo, el principio²⁸ de la igualdad soberana para apreciar mejor sus consecuencias para el presente caso. Puede anticiparse que se trata de un principio consuetudinario fundamental del ordenamiento jurídico contemporáneo, según prueban tanto la práctica (en particular la práctica institucional de la Organización de las Naciones Unidas) como la jurisprudencia internacional²⁹.

32. El origen de dicho principio se encuentra en los principios formulados en el art. 2 de la Carta, que fija las obligaciones principales a que se somete la conducta de los órganos y de los miembros de las Naciones Unidas con el fin de propiciar y fortalecer la paz y seguridad internacionales; su párrafo primero establece en concreto que la “Organización está basada en el principio de la igualdad soberana de todos sus miembros”. La llamada guerra fría impidió el desarrollo de esos principios contenidos en el art. 2 de la Carta hasta la aprobación solemne, por consenso y tras un largo proceso de negociación en el seno de un Comité Especial, de la Res. 2625 (XXV) de la AG, de 24 de octubre de 1970. La Res.

²⁸ Los principios son, según la Corte Internacional de Justicia (a partir de ahora, Corte o CIJ), “des règles du droit international pour lesquelles l'appellation de principes peut être justifiée en raison de leur caractère plus général et plus fondamental”: *Délimitation de la frontière maritime dans la région du golfe du Maine (Canada/États-Unis d'Amérique)*, arrêt du 12 octobre 1984 (fond), CIJ, Rec. 1984, para. 79.

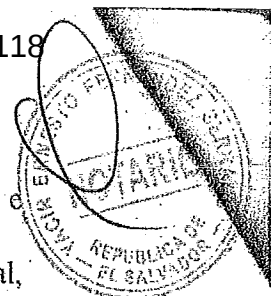
²⁹ Así lo ha confirmado recientemente la Comisión de Derecho Internacional (CDI) al ocuparse del tema de “La fragmentación del Derecho Internacional: dificultades derivadas de la diversificación y expansión del Derecho Internacional”: Doc. NU Suplemento nº 10 (A/61/10), pp. 462 y ss., donde se llega a afirmar que “las obligaciones de la Carta pueden prevalecer también sobre las normas del derecho internacional consuetudinario que sean incompatibles con ellas” (p. 462), y “que la propia Carta de las Naciones Unidas tiene un carácter especial a causa de la naturaleza fundamental de algunas de sus normas, en particular sus Propósitos y Principios y su aceptación universal” (pp. 462-463).



incluye como Anexo la "Declaración sobre los principios de Derecho Internacional referentes a las relaciones de amistad y a la cooperación entre los Estados de conformidad con la Carta de las Naciones Unidas", dentro de cuyas disposiciones generales afirma, en su apartado 3, que:

"Los principios de la Carta incorporados en la presente Declaración constituyen principios básicos de Derecho Internacional y, por consiguiente, insta a todos los Estados a que se guíen por estos principios en su comportamiento internacional y a que desarrollen sus relaciones mutuas sobre la base de su estricto cumplimiento."

33. La Res. 2625 declara y desarrolla progresivamente cierto número de principios ya recogidos en la Carta, que son por tanto comunes a ambas. Tales principios expresan valores jurídicos y reglas de organización indispensables que, por su contenido normativo consuetudinario, ocupan una posición central en el ordenamiento y constituyen no sólo el marco normativo general del DI contemporáneo sino su principal seña de identidad. Entre ellos se encuentra y destaca el principio de igualdad soberana, sin duda el menos novedoso de todos, porque se limita a reflejar como un espejo la estructura interestatal y descentralizada de la sociedad internacional. La Res. 2625, al declarar dicho principio, mantiene el mismo enunciado que el art. 2.1º de la Carta ("El principio de la igualdad soberana de los Estados") y lo dota del siguiente contenido sustantivo, que reproducimos en parte por su valor clarificador:



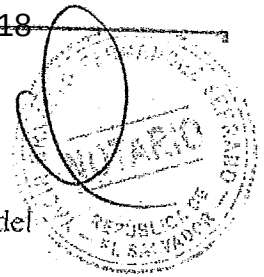
“Todos los Estados gozan de igualdad soberana. Tienen iguales derechos e iguales deberes y son por igual miembros de la comunidad internacional, pese a las diferencias de orden económico, social, político o de otra índole.

En particular, la igualdad soberana comprende los elementos siguientes:

- a) Los Estados son iguales jurídicamente;
- b) Cada Estado goza de los derechos inherentes a la plena soberanía;
- c) Cada Estado tiene el deber de respetar la personalidad de los demás Estados;
- d) La integridad territorial y la independencia política del Estado son inviolables; (...)”

34. A la vista de estos elementos, hay que concluir que la soberanía plena y exclusiva y sus derechos inherentes, la integridad territorial e independencia política y la igualdad formal representan bien el estatuto jurídico del Estado en el ordenamiento internacional contemporáneo, un estatuto jurídico muy perdurable y consistente³⁰. Es habitual, además, que el principio llamado genéricamente de la igualdad soberana de los Estados pueda enunciarse también, reducido a su esencia, como el principio que defiende la soberanía e integridad territorial del Estado.

³⁰ Porque la definición de estos elementos se remonta mucho tiempo atrás, como avala la jurisprudencia internacional. Ver e.g. *Island of Palmas Case (Netherlands/United States of America)*, Award of 4 April 1928, R.S.A., vol. II, p. 838: “Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. The development of the national organisation of States during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations.” Y *Détroit de Corfou (Royaume-Uni c. Albanie)*, arrêt du 9 avril 1949 (fond), CIJ, Rec. 1949, p. 35: “Entre États indépendants, le respect de la souveraineté territoriale est l’une des bases essentielles des rapports internationaux.”

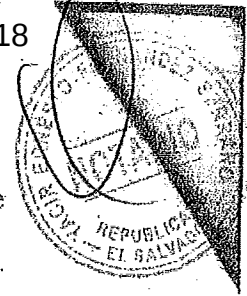


35. Para interpretar y aplicar este principio hay que acudir a la disposición general del apartado 2 de la Res. 2625, que declara que todos los principios enumerados en la misma “están relacionados entre sí y cada uno de ellos debe interpretarse en el contexto de los restantes.” Esa disposición es muy oportuna. Porque la Res. 2625 contiene varias e importantes referencias al citado principio, tanto en el Preámbulo como en la parte dispositiva. En el Preámbulo, la AG reafirma, “de conformidad con la Carta, la importancia básica de la igualdad soberana”; y se muestra convencida “de que todo intento de quebrantar parcial o totalmente la unidad nacional y la integridad territorial de un Estado o país o su independencia política es incompatible con los propósitos y principios de la Carta”.

36. En cuanto a la parte dispositiva, encontramos referencias explícitas al principio de igualdad soberana en otros dos principios vecinos y estrechamente relacionados con éste³¹. A saber, en el principio que prohíbe el recurso a la amenaza o al uso de la fuerza, o mediante cualquier otra forma incompatible con los propósitos de las Naciones Unidas, contra la integridad territorial o la independencia política de cualquier Estado; este principio subraya el valor de la integridad territorial del Estado como un medio o instrumento utilísimo para preservar la paz y la seguridad internacionales, y ha sido reconocido y avalado por la CIJ en su jurisprudencia³². También en otro principio, el de no

³¹ *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique)*, arrêt du 27 juin 1986 (fond): CIJ, Rec. 1986, para. 212 (cita) y ss.: “La Cour doit maintenant traiter du principe du respect de la souveraineté des États, qui en droit international est étroitement lié à celui de la prohibition de l'emploi de la force et à celui de non-intervention.”

³² *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique)*, arrêt du 27 juin 1986 (fond): CIJ, Rec. 1986, para. 187-191 (“les représentants des États le mentionnent souvent comme étant non seulement un principe de droit international coutumier, mais encore un principe fondamental ou essentiel de ce droit”: para. 190). *Conséquences juridiques de l'édification d'un mur dans le Territoire palestinien occupé, avis consultatif du 9 juillet 2004*: CIJ, Rec. 2004, para. 74-75 y 87.

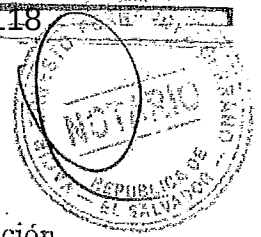


intervención, no recogido expresamente en la Carta pero desarrollado en la Res. 2625, que lo formula como sigue:

“Ningún Estado o grupo de Estados tiene derecho de intervenir directa o indirectamente, y sea cual fuere el motivo, en los asuntos internos o externos de cualquier otro. Por lo tanto, no solamente la intervención armada, sino también cualesquiera otras formas de injerencia o de amenaza atentatoria de la personalidad del Estado, o de los elementos políticos, económicos y culturales que lo constituyen, son violaciones del Derecho Internacional.”

37. La CIJ tuvo la oportunidad de precisar este principio en su sentencia de 27 de junio de 1986 en el *Affaire des activités militaires et paramilitaires au Nicaragua et contre celui-ci*, sin duda el *leading case* de estos tres principios básicos del DI contemporáneo. Para la Corte, el principio consuetudinario fundamental de no intervención contaba con una práctica constante y bien establecida, que defendía el derecho de todo Estado a conducir sus asuntos sin injerencia externa directa o indirecta, y lo presentaba como un corolario del principio de soberanía del Estado³³. La Corte insistió en advertir que los tres principios, el de soberanía y los de prohibición del uso de la fuerza y no intervención, se superponían inevitablemente hasta cierto punto, ya que diversos actos atribuidos al gobierno

³³ *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique)*, arrêt du 27 juin 1986 (fond): CIJ, Rec. 1986, para. 202 y ss. y 242: “On a pu d’ailleurs présenter ce principe comme un corollaire du principe d’égalité souveraine des États” (para. 202).



norteamericano (como el minado de puertos nicaragüenses) incurrían en una violación simultánea de todos ellos³⁴, tal y como la parte dispositiva del fallo puso de manifiesto³⁵.

38. La Res. 2625 se inscribe en una práctica de la Organización sustancialmente coherente con su contenido. Valga recordar, a título ejemplar, las Resoluciones de la AG citadas en su Preámbulo u otras resoluciones previas, como la Res. 2131 (XX)³⁶, de 21 de diciembre de 1965, o la Res. 2160 (XXI)³⁷, de 30 de noviembre de 1966. Así como otras Resoluciones posteriores, declarativas de principios, muy en particular la Res. 50/6, de 9 de noviembre de 1995, que contiene la "Declaración con motivo del cincuentenario de las Naciones Unidas", que por supuesto reafirma, veinticinco años después, los principios enunciados en 1970.

39. Así las cosas, cualquier norma que entre en conflicto con el artículo 103 de la Carta de las Naciones Unidas, será inaplicable como resultado de ese conflicto y en toda la amplitud de ese conflicto³⁸. Ello nos evita entrar en debates estériles acerca de la trascendencia en el DI contemporáneo del régimen especial o autónomo que hoy constituye el DI de los derechos humanos. En cualquier caso, estará siempre subordinado a la Carta y a sus Principios, tal y como han sido desarrollados desde 1970.

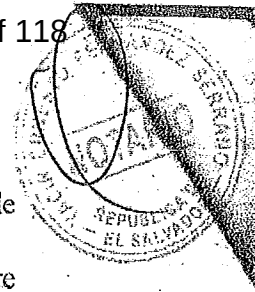
³⁴ *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique)*, arrêt du 27 juin 1986 (fond): CIJ, Rec. 1986, para. 251.

³⁵ *Activités militaires et paramilitaires au Nicaragua et contre celui-ci (Nicaragua c. États-Unis d'Amérique)*, arrêt du 27 juin 1986 (fond): CIJ, Rec. 1986, para. 292, apartado 6).

³⁶ "Declaración sobre la inadmisibilidad de la intervención en los asuntos internos de los Estados y protección de su independencia y soberanía".

³⁷ "Observancia estricta de la prohibición de recurrir a la amenaza o al uso de la fuerza en las relaciones internacionales y del derecho de los pueblos a la libre determinación".

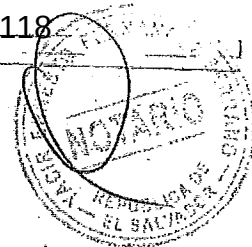
³⁸ Otra vez CDI, Doc. NU Suplemento n° 10 (A/61/10), p. 465.



40. Sentado esto, se entiende que, sin contar con el previo consentimiento de la República de El Salvador, la jurisdicción atribuida por una ley interna a los tribunales españoles sobre hechos ocurridos en su territorio y sobre personas de su nacionalidad, así como para fiscalizar y pronunciarse sobre procedimientos y actos judiciales de órganos salvadoreños, supone una flagrante violación al menos de los dos principios del Derecho Internacional general recién citados, el de igualdad soberana y el de no intervención. En el estado actual del Derecho Internacional, no es posible afirmar unilateralmente el principio de justicia criminal universal sin el consentimiento del Estado del *locus delicti*, propiamente competente en razón del principio de territorialidad.

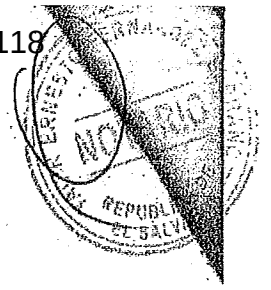
41. En virtud de los dos principios básicos tan citados, España está obligada de conformidad con el DI a respetar y por tanto a no interferir en los procedimientos judiciales desarrollados de conformidad con la legislación procesal y penal salvadoreña, dirigidos a enjuiciar a los responsables de delitos en territorio salvadoreño, siendo sus autores y víctimas nacionales de El Salvador. Los tribunales españoles no son competentes para juzgar la legalidad o validez de la Ley de Amnistía General aprobada en 1993 por el Parlamento salvadoreño, democráticamente elegido por la población de este Estado centroamericano. Desde luego y en virtud de los mismos principios, los tribunales salvadoreños tampoco se considerarán competentes para juzgar la legalidad o la validez de la Ley de Amnistía dictada en España en 1977, dirigida a eximir de toda responsabilidad a los autores de crímenes cometidos durante el franquismo.

42. No es conforme con el DI en vigor, y así lo corrobora el Derecho comparado y las últimas reformas legislativas habidas en Europa, que cada Estado se auto conceda, a través



de sus tribunales internos, la competencia para juzgar la legislación y la jurisprudencia emanada por el resto de Estados en el ámbito de la persecución penal de los delitos que se cometan en su territorio, por y contra sus propios nacionales. La legislación española, en concreto el art. 23.4 de la Ley Orgánica del Poder Judicial de 1985, según ha sido interpretada por el TC de España (Sentencia 237/2005), permite un ejercicio absolutamente desmesurado y abusivo de la competencia penal de los tribunales españoles que resulta claramente contrario al DI. Desde luego, si los tribunales de los 192 Estados miembros de la Organización de las Naciones Unidas aplicaran los mismos criterios, podríamos encontrarnos con una auténtica situación de anarquía en el ejercicio de la competencia penal universal, lo que daría lugar a infinidad de conflictos diplomáticos, y en su caso jurisdiccionales, entre los Estados.

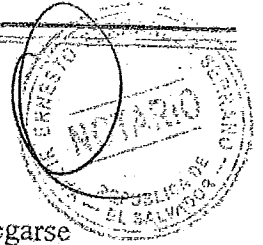
43. La República de El Salvador no es parte en el Estatuto de la Corte Penal Internacional, firmado en Roma el 17 de julio de 1998 y en vigor desde el 1 de julio del año 2002. Pero son de interés para este asunto las lógicas precauciones con que dicho Estatuto tipifica los crímenes más graves de trascendencia para la comunidad internacional en su conjunto sobre los que tendrá competencia la Corte (artículos 5 y siguientes); así como su competencia temporal, limitada a los crímenes cometidos tras la entrada en vigor del Estatuto; sin olvidar, naturalmente, la condición de que la competencia de la Corte alcanza sólo a los Estados parte en el Estatuto (artículo 12). Todas estas salvaguardias contrastan sobremanera con la práctica de la AN española, inadmisibile conforme al DI. Dicha práctica representa judicializar unilateralmente, de forma atemporal y arbitraria, al margen del ordenamiento internacional, el control de las presuntas violaciones en cualquier otro Estado de ciertos derechos humanos llamados de protección universal. Ello pone en riesgo la estabilidad de las relaciones



diplomáticas de España con los Estados afectados por dicha práctica, ya que la conducta de la AN, al margen de la consabida división de poderes, se atribuye al Estado español y éste ha de responder internacionalmente por ella.

44. En el mismo sentido, merece la pena recordar la Reciente Recomendación del Comité de Derechos Humanos de Naciones Unidas a España, hecha pública en su sesión celebrada en la Oficina de las Naciones Unidas en Ginebra en octubre de 2008, donde se señala respecto de la Amnistía dictada en España en 1977, que “la amnistía relacionada con graves violaciones de derechos humanos está en contradicción con las disposiciones del Convenio”, y recomienda “la abolición de la Ley de Amnistía de 1977 y que tome medidas legislativas que garanticen la no aplicabilidad de limitaciones legales a los crímenes contra la humanidad por la jurisdicción nacional”. Pero España ha aceptado previamente la competencia de los mecanismos de control institucional previstos en el Pacto de Derechos Civiles y Políticos de Nueva York, de 1966, que se encargan como es bien sabido de estudiar y decidir sobre la conformidad con el DI de la legislación y jurisprudencia internas de los Estados parte.

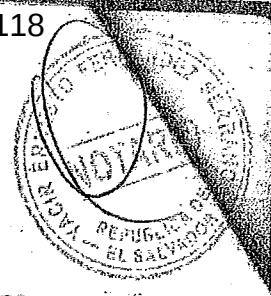
45. En fin, ante este tipo de actuaciones judiciales unilaterales absolutamente desmesuradas y abusivas, cabe por supuesto acudir a los procedimientos jurisdiccionales de solución de controversias previstos por el ordenamiento internacional. De hecho, ya se han planteado los primeros asuntos ante la CII, en los que se cuestiona jurídicamente el alcance de la competencia penal universal de los tribunales internos. En particular, está pendiente de resolución ante la Corte el caso referido a *Ciertos procedimientos penales iniciados en Francia*, que enfrenta a la República Democrática del Congo contra Francia. En la



demanda presentada el 11 de abril de 2003 por la República del Congo, además de alegarse la inmunidad penal de los jefes de Estado extranjeros, se aduce también que Francia viola el principio de la igualdad soberana de los Estados, al atribuirse unilateralmente una competencia universal en el ámbito penal respecto de presuntos delitos cometidos en el Estado africano por y contra sus propios nacionales³⁹.

46. Por último, causa mucha perplejidad que, en un momento crucial del proceso de consolidación democrática en la República de El Salvador, coincidiendo precisamente con un cambio de Administración tras unas elecciones intachables que han permitido la alternancia partidaria pacífica en la Presidencia de dicha República, la AN española interfiera en dicho proceso abriendo la posibilidad de revisar leyes y sentencias salvadoreñas que pusieron punto final a una cruenta y larga guerra civil. Lo que cabe esperar de un Estado amigo como España, que colaboró en el proceso de paz que cerró ese conflicto interno y con una experiencia histórica por desgracia similar a la sufrida hace muy poco tiempo por el pueblo salvadoreño, es un cuidado y trato idóneos con las circunstancias por las que pasa la República de El Salvador.

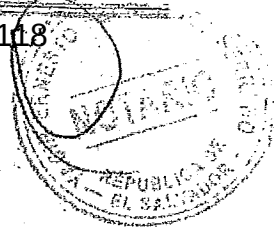
³⁹ "Violation du principe selon lequel un Etat ne peut, au mépris du principe de l'égalité souveraine entre tous les Membres de l'Organisation des Nations Unies, proclamé par l'article 2, paragraphe 1 de la Charte des Nations Unies, exercer son pouvoir sur le territoire d'un autre Etat, en s'attribuant unilatéralement une compétence universelle en matière pénale et en s'arrogeant le pouvoir de faire poursuivre et juger le ministre de l'intérieur d'un Etat étranger à raison de prétendues infractions qu'il aurait commises à l'occasion de l'exercice de ses attributions relatives au maintien de l'ordre public dans son pays": *Requête Introductive d'instance. Certaines procédures pénales engagées en France (République du Congo c. France)*. Se puede consultar en la página web de la Corte.



4. Recomendaciones finales

47. A la vista de todo lo expuesto, a continuación se proponen unas recomendaciones finales, que parten de un fundamento, a saber: de conformidad con el DI en vigor, la postura jurídica que mantiene España en el ámbito de la jurisdiccional penal universal debe ser rechazada desde un Estado democrático y de derecho, comprometido con el respeto de los derechos humanos, como es El Salvador. Un Estado que en las dos últimas décadas ha llevado a cabo un enorme esfuerzo político y económico para recuperarse de doce años de guerra civil. Por tanto:

- A) El DI en vigor no obliga a El Salvador a hacer efectiva la Comisión Rogatoria expedida por el Magistrado-Juez del Juzgado Central de Instrucción n. 6 de la AN. La autoridad competente de El Salvador, muy probablemente la Corte Suprema de Justicia, previa consulta con el Ministerio de Relaciones Exteriores, debe rechazar su cumplimiento, y se debe solicitar a las autoridades de terceros Estados que tampoco cumplan los requerimientos formulados por el mencionado Magistrado-Juez.
- B) Las autoridades de El Salvador deben llevar a cabo consultas con sus homólogas de España y, si éstas son infructuosas en cuanto a contar con su leal colaboración en este asunto, deben protestar formalmente ante el Gobierno español por el ejercicio absolutamente desmesurado y abusivo de la jurisdicción penal universal por parte de los tribunales españoles respecto de delitos cometidos en El Salvador por y contra nacionales salvadoreños.
- C) De continuar las actuaciones de los tribunales españoles, El Salvador debería acudir ante los mecanismos de solución de controversias previstos por el DI,



y en particular a la Corte Internacional de Justicia, siguiendo así los precedentes que ya existen al respecto.

D) Por razones estratégicas, se recomienda por último considerar la posibilidad de ratificar el Estatuto de la Corte Penal Internacional. De este modo, El Salvador demostraría que considera que la CPI es la vía más idónea --y siempre complementaria de los tribunales del Estado territorial-- para garantizar la aplicación del DI penal, frente a las arbitrariedades a las que puede dar lugar el uso unilateral, desmesurado y abusivo de la jurisdicción penal universal⁴⁰.

48. Este es nuestro dictamen, que sometemos a la consideración del ilustre Gobierno de la República de El Salvador, por conducto del Ministerio de Relaciones Exteriores.

En Madrid, a 28 de mayo de 2009.

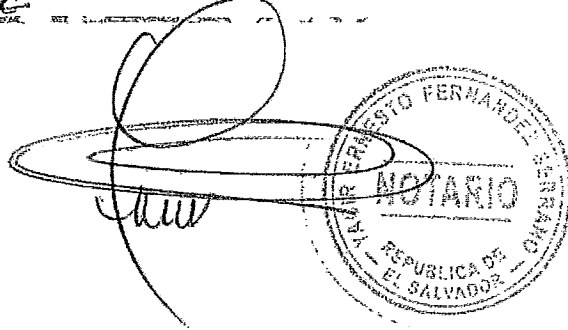
Fdo. Dr. Prometeo Cerezo de Diego

Fdo. Dr. Carlos Jiménez Piernas

Fdo. Dr. José Antonio Tomás Ortiz de la Torre

⁴⁰ Se debe recordar a este respecto, que según el artículo 11 del Estatuto de Roma: "1. La Corte tendrá competencia únicamente respecto de crímenes cometidos después de la entrada en vigor del presente Estatuto".

El suscrito Notario CERTIFICA: Que el documento anterior que consta de VEINTAY UNO folios áttas, es copia fiel del original que he tenido a la vista y con el cual se confrontó y es conforme al artículo treinta de la Ley del Ejercicio Notarial de la Jurisdicción Voluntaria y de otras Diligencias Armo y sello la presente y cada folio de dicho documento San Salvador, VEINTICINCO de FEBRERO de DOS MIL TRECE



The image shows a handwritten signature in black ink, which appears to be 'Juan', written over a circular notary seal. The seal is stamped in black ink and contains the following text: 'FERNANDO FERNANDEZ SERRANO' at the top, 'NOTARIO' in the center, and 'REPUBLICA DE EL SALVADOR' at the bottom.

EXHIBIT C

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES ATTORNEY
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

VS.

Case No.

JOHN DOE.

Federal Grand Jury
U.S. Courthouse
1 Courthouse Way
Boston, Massachusetts

Wednesday,
January 18, 2012

APPEARANCE: JOHN A. CAPIN
Assistant U.S. Attorney

WITNESS: CLAUDIA RIVAS

ORIGINAL

I N D E X

<u>WITNESS</u>		<u>PAGE</u>
Claudia Rivas		
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<u>EXHIBITS</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
7	Immunity order	4

CLAUDIA RIVAS - 01/18/12

3

P R O C E E D I N G S

(12:15 p.m.)

CLAUDIA RIVAS, Sworn

EXAMINATION

BY MR. CAPIN:

Q Would you please tell the Grand Jury your name,
and spell your first and last names?

A Claudia Rivas, C-L-A-U-D-I-A R-I-V-A-S.

MR. CAPIN: Ms. Rivas, before we start the
question and answer period, I'm going to inform you of
certain rights that you have as a witness in front of the
Grand Jury and tell you about what this proceeding is about.
Now you've been in this room once before, correct, or before
the Grand Jury?

THE WITNESS: Yes.

MR. CAPIN: And you understand that this is a
Grand Jury that is investigating possible violations of
federal law involving perjury and immigration fraud?

THE WITNESS: I do.

MR. CAPIN: And you understand that -- Am I
correct in stating that you previously appeared before this
Grand Jury -- before a Grand Jury and declined to answer
certain questions based on your right against self-
incrimination?

THE WITNESS: That's correct.

CLAUDIA RIVAS - 01/18/12

4

1 MR. CAPIN: And you understand that the Court has
2 issued what's called commonly an immunity order, and you've
3 reviewed a copy of that order with your attorney, correct?

4 THE WITNESS: Yes.

5 MR. CAPIN: And you understand that you no longer
6 have any basis under the Fifth Amendment to assert a
7 privilege against self-incrimination because nothing you say
8 in this room can be used against you?

9 THE WITNESS: Yes.

10 MR. CAPIN: I'm going to go ahead and just mark as
11 an exhibit, if I may, the immunity order itself. It will
12 be -- are we up to six?

13 GRAND JUROR: Seven.

14 MR. CAPIN: So this will be marked Exhibit 7.

15 (Grand Jury Exhibit 7 marked.)

16 MR. CAPIN: And just take a look at those two
17 pages and just tell me, is that what you reviewed with your
18 lawyer?

19 THE WITNESS: Yes.

20 MR. CAPIN: And the answer is yes?

21 THE WITNESS: Yes.

22 MR. CAPIN: Now you're blessed with being soft-
23 spoken. But the consequence of that is that the Court
24 Reporter's job is harder. There's a microphone in front of
25 you. I would ask, if you would, to speak up and make sure

1 that all your answers are actually verbal, as opposed to
2 shakes of your head. Okay?

3 THE WITNESS: Okay.

4 MR. CAPIN: So the order that you just read says
5 among other things, and you understand this, that although
6 no testimony you provide may be used against you in a
7 criminal case, you can still be prosecuted for perjury or
8 providing false statements?

9 THE WITNESS: I understand.

10 MR. CAPIN: And you understand that you're under
11 oath, and any false statement about a material fact in this
12 room would constitute a federal crime, namely, perjury?

13 THE WITNESS: I understand.

14 BY MR. CAPIN:

15 Q I'm going to start by asking if you know a man
16 named Inocente Orlando Montano?

17 A I do.

18 Q How do you know him?

19 A He is my uncle.

20 Q How long have you known him?

21 A Since I remember. My recollection goes back to
22 when I was seven, probably.

23 Q Have you ever lived with him?

24 A Yes.

25 Q When did you live with him?

CLAUDIA RIVAS - 01/18/12

6

1 A In El Salvador, I lived with him for about three
2 months before my house was being -- It was occupied by the
3 tenant that was occupying it. And here in the United
4 States, we lived on and off, I want to say a good period of
5 maybe a year.

6 Q A year?

7 A Yeah.

8 Q What year was that?

9 A 2001, I believe. And we moved, actually, to
10 Malden. So it could be less than a year; it could be more
11 than a year. I just can't remember exactly.

12 Q Well, it might be helpful if we step back a little
13 bit, and you give us a little bit about your biographical
14 background. Where do you currently live?

15 A I live in Saugus.

16 Q How long have you lived there?

17 A Six years; over six years now.

18 Q So since about 2006 or so?

19 A 2005.

20 Q And where did you live before Saugus?

21 A Malden.

22 Q How long did you live there?

23 A Just a few months because I was coming back from
24 Chelsea. I had moved in with my mother in Malden. So I was
25 coming from Chelsea, and I was there for three months in

1 Malden.

2 Q And before Malden, you lived in Chelsea?

3 A Yes.

4 Q How long were you in Chelsea?

5 A About a year.

6 Q So we're still in the mid-2000s, 2004 or so?

7 A That was 2004, that's correct.

8 Q And before Chelsea, where did you live?

9 A I lived in Malden.

10 Q How did you live at that particular address?

11 A That was a long time, actually. It was the same
12 house, on and off. I don't know if I -- You don't mind that
13 I do my counting?

14 Q No, please take your time.

15 A So about three years, I believe.

16 Q So from about 2001?

17 A Yes.

18 Q Is that the house where Mr. Montano lived with
19 you?

20 A Yes.

21 Q Okay, let's go back. Let's take a chronology from
22 the other side. So where were you born?

23 A El Salvador.

24 Q What year were you born?

25 A 1972.

CLAUDIA RIVAS - 01/18/12

8

1 Q How long did you live in El Salvador?

2 A Well, to come here steady, you mean, afterwards?

3 Q Well, what do you mean by that?

4 A Because when I was nine, I came into the United
5 States because my mother came here after her separation.

6 Q So that would have been about '81 or so?

7 A Yeah, '81.

8 Q So your mother came to the United States?

9 A Yes.

10 Q Was there a civil war going on in El Salvador at
11 that time?

12 A Yes.

13 Q That started in about '79, correct?

14 A I think so.

15 MR. CAPIN: One thing I neglected to say when I
16 was going over your rights, you understand that you have a
17 right to -- Your attorney cannot be present in this room.
18 But you, at any point, want to take a break and talk to your
19 attorney, you can do that, correct?

20 THE WITNESS: Um-hmm. Yes.

21 MR. CAPIN: And your attorney is Mr. Duggan, who
22 is standing right -- he's sitting in the hallway outside
23 this door, correct?

24 THE WITNESS: Yes.

25 MR. CAPIN: And also, I typically say this, and I

1 think it goes without saying. If at any point I ask a
2 question, and you don't understand the question, rather than
3 guess at what I'm getting at, tell me you don't understand,
4 and I'll rephrase it.

5 THE WITNESS: Okay.

6 BY MR. CAPIN:

7 Q So you were born in El Salvador; you lived there
8 until '81?

9 A '81.

10 Q And you moved here. Have you been living here
11 since you were nine without interruption?

12 A No.

13 Q You've gone back and forth to El Salvador?

14 A Yes.

15 Q Describe your travel back and forth until you
16 reached adulthood?

17 A When I moved here -- Well, when I came here when I
18 was nine, my grandmother came along, I guess a few months
19 after, if I remember right. But she wouldn't stay here
20 because of the weather. The cold was just getting to her,
21 and she wanted to go back to El Salvador, and she wouldn't
22 go back without me because I was raised by my grandmother.
23 So my mother decided that it was good that I go back. And
24 in any event, I was going to have my father's support over
25 there.

1 So I went back and went to live with my father.
2 But I was going back and forth with my mother to never lose
3 contact with her, and I would typically come on vacation, or
4 she would go down to El Salvador until 1999, when I decided
5 to come here for good to stay because my mother was having
6 some health issues.

7 Q Now at that point, you were a teenager; you were
8 about 17 or so?

9 A 1999? No, I was 27. I'm not that young.

10 Q I'm off by a decade again. A bad habit of mine
11 today.

12 A Yes, I wish I was.

13 Q So you came at age 27, and you've lived here since
14 then?

15 A Yes.

16 Q Did you naturalize? Are you currently a U.S.
17 citizen?

18 A Yes.

19 Q When did you naturalize?

20 A 2003, I believe.

21 Q And when you came in '99, where did you live?

22 A With mother. We lived in Everett.

23 Q What was the address in Everett?

24 A Two Meter Road, Everett, Mass.

25 Q How long did you live there?

1 A I think we lived there maybe two years. She had
2 been living there before. But me there, I think it was
3 about two years..

4 Q What caused you to leave the 2 Meter Road
5 residence?

6 A It was a studio apartment, so --

7 Q Enough said. So you moved out on your own, or you
8 moved out with your mother?

9 A No, we moved with my mother. We got a bigger
10 apartment.

11 Q To the best of your memory, month and date that
12 you moved -- month and year, rather?

13 A I can't remember the exact month, but it was -- we
14 lived there about two years. About two years, I think.

15 Q So sometime in 2001?

16 A I think so, yes. I believe it was 2001.

17 Q Was it the beginning of 2001, or was it later in
18 2001?

19 A I think it was late 2001.

20 Q So if I understand correctly then until -- You
21 moved to this country at age 27? I'm just trying to get the
22 chrono right.

23 A Yes.

24 Q That's 1999. You live at the Meter Road residence
25 with your mother until late 2001, in a studio apartment?

1 A Yes.

2 Q At that point, you and your mother move somewhere
3 else?

4 A Yes.

5 Q Where did you move in late 2001?

6 A I think that was the 168 Oliver or the 170 Oliver.
7 It was one house that had two apartments, and we at one
8 point, lived on the third floor, and the other one on the
9 first floor. But I can't remember.

10 Q And the two floors had different numbers, 168 and
11 170?

12 A Exactly.

13 Q So sometime in late 2001, you moved to ---

14 A I think it was the 168.

15 Q But it was the Oliver Street address?

16 A Yes.

17 Q And what town is that in?

18 A Malden.

19 Q So in late 2001, you moved to the Oliver Street
20 address in Malden. How long did you live there, and how big
21 was that apartment?

22 A That was a two-bedroom apartment. Actually, it
23 was a three -- no, two-bedroom apartment, but we turned one
24 of the rooms into a third bedroom, which I believe that was
25 the dining room area. So we moved there, and that's the

1 year that my uncle actually came along with us.

2 Q Did he occupy one of those, either one of the two
3 bedrooms or the converted dining room bedroom?

4 A Yes.

5 Q Where did you live after that?

6 A That's when I moved to Chelsea, after I had my
7 first child. So my son was born in 2003, June of 2003. And
8 I moved to Chelsea March of 2004. Yeah, now I'm getting it
9 right, 2004, because then my other son was born in December
10 of 2004.

11 Q So you have an almost 18-year-old?

12 A Well, no. I have ---

13 Q Oh, eight-year-old.

14 A An eight-year-old.

15 Q I'm doing it again. I was going to say, wow, how
16 did you manage that.

17 A Eight and a half, my oldest one, and a seven-year-
18 old.

19 Q My mission today apparently is to make it clear
20 that lawyers cannot add or subtract. Okay, so how many kids
21 do you have?

22 A Two.

23 Q So you have an eight and a half year old?

24 A Son. I have two sons, and the other one is even.
25 He just turned seven.

1 Q So in June of 2003, you moved, after the birth of
2 your first child to ---

3 A No, in March of the following year. So he was
4 born in 2003. And in March of 2004, or February, I believe,
5 I moved to Chelsea.

6 Q Now you said that your uncle came -- this is Mr.
7 Montano -- came to live with you at some point in 2001,
8 after you moved out of the studio, correct?

9 A Yes.

10 Q Do you know where he was living prior to that?

11 A He stayed for a few days with us at the Meter Road
12 address. But my recollection is that he went to South
13 Carolina for some months. And when he came back, there was
14 no way that we were all going to fit in that studio.

15 Q To the best of your memory, when did he arrive at
16 your residence, the Meter Road residence, and when did he go
17 to South Carolina?

18 A I can't remember the exact dates when he went, but
19 I remember that sometime during the summer of 2001, he was
20 with us at the Meter Road. And he left a few -- I want to
21 say a few months, maybe a couple of months afterwards to go
22 to South Carolina. And I can't really remember how long he
23 stayed over there, but --

24 Q Where was he before the summer of 2001?

25 A Before the summer? He was in El Salvador.

1 Q Were you in contact with him during the summer?
2 Have you, during the course of your lifetime, stayed in
3 regular contact with him?

4 A After I came initially here, I lost touch with him
5 because I really didn't -- I was more worried about what my
6 situation, work situation was going to be here.

7 Q But to the best of your knowledge, he came here
8 from El Salvador sometime, at earliest, in the summer of
9 2001?

10 A The summer of 2001, yes.

11 Q And what's your basis for believing that he was in
12 South Carolina at some point?

13 A I think that's what -- That's what he told us he
14 was going to.

15 Q Did he tell you where he was going in South
16 Carolina?

17 A He has a sister, a half-sister in South Carolina.

18 Q What's her name?

19 A Anna Martinez.

20 Q Is she currently in South Carolina?

21 A Yes.

22 Q Do you know what town she's in?

23 A Summerville, S-U.

24 Q S-U?

25 A S-U, not S-O-M.

1 Q Is that S-U-double M?
2 A Yes.
3 Q You don't happen to know her address?
4 A My goodness.
5 Q Or her phone number?
6 A I don't know her phone number.
7 Q Or even the road name?
8 A 206 White Boulevard.
9 Q 206 White Boulevard?
10 A Yes.
11 Q Now to your knowledge, did Montano -- you believe
12 he was -- he came to this country from El Salvador sometime
13 in the summer of 2001?
14 A Um-hmm.
15 Q To your knowledge, did he, at some point, leave
16 the country after that?
17 A No.
18 Q You have no knowledge of that?
19 A To the best of my knowledge, he has not left ever
20 since.
21 Q Do you know, one way or the other, whether he was
22 traveling out of the country in the summer of 2001?
23 A The summer of 2001?
24 Q Like in July, for example?
25 A Well, that's the time that he came here.

1 Q I see. I see. Thank you. So your memory is that
2 he came here in the summer of 2001?

3 A Yes.

4 Q And at some point thereafter, went to South
5 Carolina?

6 A Yes.

7 Q When he came here, do you know how he entered the
8 country and where he entered the country?

9 A He came on a plane. I don't know. I can't
10 remember whether he entered in Miami. I can't remember. I
11 don't know.

12 Q Well, whatever you know about how he came here is
13 based on what you told ---

14 A Well, I remember I picked him up at the airport.
15 So I assumed if he -- I'm sorry, if he came through the
16 airport, it's because he had a visa.

17 Q Okay. To the best of your knowledge, he entered
18 by air in the summer of 2001?

19 A Um-hmm.

20 Q And you personally picked him up at Logan Airport?

21 A Yes, along with my mother.

22 Q Do you remember, was it before or after the 4th of
23 July?

24 A I can't remember.

25 Q Then to the best of your knowledge, earlier in

1 2001, for example, in February of 2001, he would have been
2 still in El Salvador?

3 A I believe so.

4 Q And to the best of your knowledge, in 2000,
5 throughout 2000, he would have been in El Salvador?

6 A Yes.

7 Q Do you know Mr. Montano was occupied while he
8 lived in El Salvador during his adult life?

9 A When I came to the United States, he had already
10 retired back in '99. But before that, he was in the
11 Salvadoran military.

12 Q And in fact, when you came in '99, he had just
13 retired from a fairly high rank in the military, correct?

14 A Yes.

15 Q He was the -- What was his rank?

16 A To the best of my knowledge, he was Vice Minister
17 of Public Safety in El Salvador.

18 Q And that was, in essence, approximately the third
19 person from the top in the upper echelons of the military
20 government at the time, correct?

21 A I think that was -- fell under the Ministry of
22 Defense. And I think they had, because of the issues that
23 were going in the city -- and this is based on my readings
24 about how they created the two separate departments or
25 agencies -- is that they needed something specific for

1 Public Safety, and a Vice Ministry of Defense that would
2 work along with the Ministry of Defense.

3 Q Do you happen to know who the Vice Minister of
4 Defense when your uncle was the Vice Minister for Public
5 Safety?

6 A I can't remember who was -- the Vice Minister of
7 Defense, correct?

8 Q I'm going to show you just some exhibits in the
9 proceeding. I'm going to zoom in a little bit first. Now
10 you recognize the person that I'm zooming on now, or trying
11 to zoom on now. Do you recognize that person right there in
12 the middle?

13 A Yeah, that's my uncle.

14 Q That's your uncle; that's Mr. Montano, correct?

15 A Yes.

16 Q Do you recognize the writing on this paper, whose
17 handwriting that is?

18 A It seems to be my uncle's handwriting.

19 Q Your uncle, Inocente Montano?

20 A My uncle, Inocente Montano.

21 Q And whoever wrote this has identified this person
22 here as the Vice Minister of Defense, correct, last name
23 Zapeda?

24 A Whoever wrote it is identifying.

25 Q Do you know, based on your knowledge of Salvadoran

1 history or politics, can you identify these people?

2 A I can identify my uncle, and I can identify the
3 first person on the row.

4 Q This one here?

5 A Yes.

6 Q Who's he?

7 A He is Colonel Emilio Ponce.

8 Q What was his role in the late '90s?

9 A I can't remember what his function was. I can't.
10 But I know him because he was -- like my family knew him
11 before they even went into the military.

12 Q So your uncle and Ponce, were they friends, to
13 your knowledge?

14 A Yes.

15 Q Do you recognize either of the other two? This
16 gentleman here, Number 2 is identified as the Minister of
17 Defense, and it looks like Larios is his last name. Do you
18 recognize him?

19 A Well, I don't recognize him, and I can't identify
20 him as him being Colonel Larios because I have no
21 recollection of his face attached to his name.

22 Q And the same answer with the regard to the person
23 on the far right, Zapeda?

24 A I can't. I can't.

25 Q Now tell us a little bit about your educational

1 background, please?

2 A Most of my education, if not all my education I
3 received in El Salvador, middle school -- elementary school,
4 middle school, high school. I did study here for two years.
5 I did my fourth grade and my sophomore year here. And
6 that's why you can hear English coming out of my mouth. And
7 then because I was going back and forth, I finished my law
8 degree in El Salvador. It was a five-year degree.

9 Q When did you get your law degree?

10 A 1997.

11 Q So that would have been about two years before you
12 came here and stayed, correct?

13 A Um-hmm.

14 Q After 1997, did you hold -- Tell us your
15 employment background since '97, or since '99, let's say?

16 A Since '99? When I initially came here, I worked
17 as -- for a temp agency doing waitstaff or banquet services.
18 That was Snelling Personnel. Then they placed me with a
19 manufacturing company called Barry Controls as a
20 receptionist, and I worked there for, I think it was a year
21 or over a year, and that was 2000, or most of 2000, yes.
22 After that, I applied for, it wasn't going to be a stead
23 job; it was going to be just a four-month job at a law firm,
24 Mageletta & McCarthy. And I stayed with them from January
25 of 2000 until August of 2000.

1 Q What was the firm called?

2 A Mageletta & McCarthy.

3 Q Can you spell that for us, please?

4 A M-A-G-E-L-E-T-T-A and McCarthy.

5 Q Common spelling?

6 A Yes.

7 Q Where are they located?

8 A I think they moved to 138 Portland Street in
9 Boston.

10 Q Do they still exist?

11 A Yes.

12 Q Who was your supervisor there?

13 A Carlos Mageletta.

14 Q And you were there from January through August of
15 2000?

16 A That is correct.

17 Q What was your job?

18 A I was an assistant, helping him with -- During
19 that time, there was an immigration benefit passed, and he
20 needed help with filling out what's called labor
21 certification to be presented with the Department of Labor.

22 Q Is Mr. Mageletta primarily an immigration
23 attorney?

24 A He is.

25 Q So did he train you on whatever you know about

1 immigration law?

2 A Mainly employment-based applications. But I had
3 to do other things when needed.

4 Q So describe what you did during that eight-month
5 period working for Mageletta & McCarthy?

6 A Basically, and mainly what I did for him during
7 that time was to sit down with clients; gather their
8 personal information; and fill out the information in order
9 to present documentation to the Department of Labor.

10 Q What types of clients did he have?

11 A You mean nationality-wise?

12 Q I mean, like, you know, were they people seeking
13 employment? Was it all employment-based, or was there some
14 that was tourism?

15 A The vast majority. Out of 300 cases, I think 290
16 would have been employment-based applications. But they had
17 family-based petitions, as well, which I did in the system,
18 too.

19 Q So am I correct in understanding that an
20 employment-based application is somebody who lives abroad;
21 is a foreign national, and he comes to this country seeking
22 to do a specific job?

23 A Well, this was people living in here already,
24 which the government had allowed for them to apply for an
25 immigration benefit if they found an employer that was

1 willing and capable of sponsoring them for an immigrant
2 visa.

3 Q When you say people living here would apply for an
4 immigration benefit, what types of benefits were you
5 familiar with?

6 A Well, specifically for this law, is they were
7 here, and they were working for somebody who was going to
8 sponsor them to remain at their employment position.

9 Q So are these people who had entered -- How had
10 they entered? Talking about sort of the typical case; how
11 would that person enter the country, in what capacity?
12 Tourist?

13 A Either way. Even -- And this was a common joke
14 with the clients is, you know, how did you enter the
15 country. And they will say, "pillo Mexico," which was, you
16 know -- or they will say swimming. So illegally.

17 Q What was the first part of that you said before
18 you said Mexico?

19 A Pillo Mexico.

20 Q Pillo?

21 A There were a lot of Brazilians.

22 Q Oh, through Mexico?

23 A Yes, through Mexico. So I guess the benefit was
24 that, even if they had entered without inspection, they were
25 not required to leave the country in order to adjust their

1 status. They would have to pay a fine. So that basically
2 opened the door for a lot of people that were already
3 holding employment in the United States, and that couldn't,
4 you know, adjust their status because they had entered the
5 country illegally.

6 Q Are you familiar with a benefit called Temporary
7 Protected Status?

8 A Yes.

9 Q We'll call it TPS for today's purposes. When did
10 you first become familiar with TPS?

11 A Working at Carlos Mageletta, he -- although I
12 wasn't involved in working with those cases directly because
13 he had another person, there was a benefit open for
14 Salvadorans.

15 Q Now do you know when that benefit first became
16 available to Salvadorans?

17 A 2001, I believe. It was after the earthquakes in
18 El Salvador.

19 Q So sometime -- Does it refresh your memory if I
20 suggest to you that it was sometime in late winter, like
21 February or March of 2001?

22 A Yes.

23 Q When were the earthquakes?

24 A I believe -- There were two earthquakes. The one
25 that I exactly remember is the one on February 13, 2001, I

1 believe. I can't remember the other one.

2 Q So after that, TPS, the TPS benefit was extended
3 to citizens of El Salvador; is that correct?

4 A Yes.

5 Q Did Mageletta & McCarthy process those types of
6 applications, that is, applications for TPS?

7 A They did.

8 Q Did they process applications for TPS for citizens
9 of countries other than El Salvador?

10 A I believe there was one for Honduras in place at
11 that time. That's the only one I remember.

12 Q Did you personally prepare any TPS applications in
13 your capacity as an employee at Mageletta & McCarthy?

14 A No.

15 Q Because you were doing primarily employment-based
16 stuff?

17 A All of my work was for employment-based
18 applications.

19 Q Where did you go to -- Did you go to work
20 somewhere else after August of 2000?

21 A Yes. I went to work for Corey Cutler, and that
22 was after the 9/11 events.

23 Q What's Corey Cutler?

24 A He's a -- My goodness. He's an everything
25 attorney.

1 Q So he's an attorney?

2 A Personal injury, immigration, probate, everything.

3 Q Where's his office?

4 A I don't know if he's still there, but I think --
5 oh, my goodness, in Boston, Franklin Street.

6 Q So at the time you worked for him -- How long did
7 you work for him?

8 A Just a few months. I worked for him from October
9 of 2001 until February of 2001.

10 Q October 2001 until February 2002, you mean?

11 A Yes. I'm sorry, 2002.

12 Q Did you do immigration work for Corey Cutler?

13 A Yes.

14 Q What types of work?

15 A He had -- He didn't have that many immigration
16 cases at the time, but he had a few H1B1 Petitions.

17 Q Are those employment-type petitions?

18 A Employment-type petitions. And he had, I believe,
19 a few family-based petitions.

20 Q In your capacity as an employee of either McCarthy
21 Mageletta or working for Corey Cutler, did you receive
22 training on what benefits are available and how to fill out
23 forms, and the like?

24 A Yes.

25 Q What kind of training?

1 A Well, I had to know, first, which type of
2 information we needed to ask the client because that's the
3 information that was going to be put into the forms. And
4 that was basically it, and to learn the software where we're
5 going to upload the forms.

6 Q So you worked for about, so like four months for
7 Mr. Cutler?

8 A Um-hmm.

9 Q Did you go to work somewhere else after that?

10 A Yes. I went to work for another law firm, Sherwin
11 L. Kantrovitz, and I worked for him from February of 2002
12 until October of 2006.

13 Q And where is Kantrovitz's office?

14 A 11 Beacon Street in Boston, 4th Floor.

15 Q Is he still there, to your knowledge?

16 A Yes.

17 Q What kind of work did you do for that law firm?

18 A Just personal injury protection claims against
19 insurance companies for people involved in car accidents.

20 Q Specifically, what kind of work were you doing?

21 A I was a legal assistant there, assisting other
22 attorneys; being the main contact with insurance companies.
23 They advertise; they actually market their services to
24 Spanish-speaking clients. So the majority of their clients
25 are Hispanics. So I will be the liaison.

1 Q So in that capacity, were you filling out various
2 forms required for the processing or prosecution or defense
3 of civil lawsuits?

4 A I was never involved in the litigation part. It
5 was solely an administrative process.

6 Q So that involved dealing with the clients,
7 correct?

8 A Deal with the clients, and submitting what's
9 called -- and that's the one form that's universal in
10 personal injury cases, which is the Personal Injury
11 Application Form.

12 Q What is that?

13 A It's a form where you basically tell the insurance
14 companies facts of the accident if you were injured, and
15 general information about you.

16 Q Was the Kantrovitz law firm then representing
17 people claiming injury, and submitting their claims to the
18 insurance company?

19 A Yes.

20 Q Did you do any immigration work during that
21 period?

22 A Kantrovitz does not practice immigration.

23 Q How about after October of '06; where did you go
24 to work then?

25 A I went to work with my current employer, which is

1 an accounting firm called, when I started working with them,
2 Tofias, PC. And we were acquired by a national firm, and
3 we're now Cbiz Tofias Mayer Hoffmann McCann, New England
4 Division.

5 Q I'm sure the Court Reporter got that. Would you
6 say that again and spell it, just so the record is clear,
7 all kidding aside?

8 A Okay.

9 Q It was called Tofias, T-O-F-I-A-S?

10 A That's correct, PC.

11 Q PC?

12 A Yes.

13 Q Then it became?

14 A Cbiz, that's C-B-I-Z, T-O-F-I-A-S, Mayer Hoffman
15 McCann.

16 Q Mayer?

17 A Hoffman --

18 Q Comma, Hoffman?

19 A Mayer, just Mayer; Hoffman, H-O-F-F-M-A-N; McCann,
20 M-C-C-A-N-N comma PC.

21 Q And I assume Mayer is M-A-Y-E-R?

22 A Yes.

23 Q What kind of work do you do for the company I'll
24 just call Tofias?

25 A I'm an executive assistant, supporting the

1 individual that is in -- that manages all the employment
2 benefit plan audits.

3 Q So just break that down for me. What does that
4 entail?

5 A Well, retirement plans of not publicly-held
6 companies are required to be audited if their assets are of
7 a certain amount. So the person that I work for is the
8 leader of the audits that are conducted on plans that
9 require audits and retain us to be their auditors.

10 Q So day to day, what are you doing?

11 A Everything.

12 Q Just give us a few examples?

13 A You know, there's a lot of clerical tasks
14 involved: scanning, typing, creating letters, writing
15 emails, copying; just general administrative work.

16 Q Now you prepared certain TPS forms on behalf of
17 Mr. Montano, correct?

18 A Yes.

19 Q Have you prepared TPS forms on anybody else?

20 A Yes.

21 Q How many people?

22 A I can't remember exactly how many, but I'd ---

23 Q Approximately?

24 A --- I'd say approximately seven or eight maybe.

25 Q What was your relationship to these people?

1 A Well, my uncle and his wife. So they're related
2 to me by blood. And then one of my mother's cousins, her
3 husband and their daughter are related somehow. We call
4 aunt and uncle. And then people that will tell others that
5 I knew how to fill these out.

6 Q Did you do it for a fee?

7 A In some cases, I did.

8 Q So if it was a family member, am I correct in
9 assuming you didn't charge them?

10 A Yes.

11 Q But if it was somebody who came to you sort of by
12 word of mouth, you charged them?

13 A Yes.

14 Q So I'm going to just review a few, if I may, a few
15 TPS forms. First of all, you told us that your uncle came
16 to this country; you picked him up at the airport sometime
17 in 2001?

18 A Yes.

19 Q How long after that did you fill out his first --
20 did you assist him with his first TPS application,
21 approximately?

22 A 2003.

23 Q Since 2003, have you assisted him in preparation
24 of additional TPS forms?

25 A Yes.

1 Q This isn't a test, so I'll ask you, to the best of
2 your memory, how many forms have you helped him with?

3 A I can tell you exactly how many.

4 Q Okay.

5 A Five in total.

6 Q Can you tell us exactly what years?

7 A My first one was 2003. The second one was in
8 2005. The third one was 2006, 2008, and 2010.

9 Q So let's -- I'm going to show you the most recent
10 one that you just mentioned, which is 2010. Actually, why
11 don't I just -- I'll hand it to you first, and take as much
12 as time as you need; just flip through it and make sure that
13 you recognize that. And just for the record, that is marked
14 as Grand Jury Exhibit Number 6.

15 Did you play a role in filling this out with your
16 uncle?

17 A Since 2003.

18 Q So I'll start on this document, the last page of
19 Exhibit 6. Do you recognize the parts that are captioned
20 Interpreter Statement and Preparer Statement?

21 A Yes.

22 Q Do you recognize there's a signature in both boxes
23 underneath, at the bottom of those sections next to the name
24 Claudia J. Rivas. Do you recognize that signature?

25 A That's my signature.

1 Q So am I correctly reading that the first signature
2 on that page reads, "Language used: Spanish," correct?

3 A Yes.

4 Q "I certify that I included English and the above-
5 mentioned language. I further certify that I have read each
6 and every question and instruction on this form, as well as
7 the answer to each question to this applicant in the above-
8 mentioned" -- we'll look at the form itself. I'm going to
9 put the form in front of you because sometimes on the
10 overhead, it's hard -- "in the above-mentioned language, and
11 the applicant has understood each and every instruction and
12 question on the form, as well as the answer to each
13 question." Did I read that correctly?

14 A Yes.

15 Q And you signed that, and dated it 8/27/2010,
16 correct?

17 A Yes.

18 Q Then you further signed it as the preparer,
19 stating that I -- I'll start over again -- "I declare that I
20 prepared this petition at the request of the above person,
21 and it is based on all the information of which I have
22 knowledge," and it's signed. The box "yes" is checked under
23 the words, "Attorney or representative in the event of
24 requested evidence RFD in the USCIS contacted by fax or
25 email." And you said yes, and you signed your name,

1 correct?

2 A Yes.

3 Q What is USCIS?

4 A United States Citizenship and Immigration
5 Services.

6 Q And that's the part of, sort of the section of the
7 Department of Homeland Security that determines whether or
8 not to grant benefits such as TPS, correct?

9 A That's correct.

10 Q So you understood when you signed that that
11 somebody at USCIS would be looking at the answers as part of
12 a determination of whether, in this instance, Mr. Montano
13 received a benefit?

14 A Yes.

15 Q Am I correct in understanding that you understood,
16 based on your prior experience in preparing immigration
17 documents, that the accuracy of the information you put on
18 those documents was -- Let me start the question again.

19 Am I correct in understanding that based on your
20 prior experience in preparing immigration documents for at
21 least two documents, that you understood that it was
22 important to be accurate when providing information to
23 USCIS?

24 A Yes.

25 Q Because you knew that questions in these forms

1 tended to be material to the determination by USCIS?

2 A Yes.

3 Q And you understand when I say material, it means
4 it matters to the outcome or to the manner in which the
5 application is processed, correct?

6 A Yes.

7 Q And that a different answer to any of these
8 questions might open up a line of inquiry that otherwise
9 USCIS didn't look into because of the answer put on the
10 document?

11 A Yes.

12 Q So going back to the beginning then, having
13 certified that you read each and every one of the questions
14 to Mr. Montano, would that include confirming all the
15 information on the first page under the section called --
16 captioned, "Information about you"?

17 A Can you repeat it, repeat the question because I
18 want to ---

19 Q No, I'm glad you asked because I want you to
20 understand perfectly. So I'm correct in understand that you
21 certified that you read each and every question on this form
22 to Inocente Montano, correct?

23 A I did certify it.

24 Q Did you in fact read it to him?

25 A No.

1 Q Did you, at any point in processing TPS
2 applications for him, read him the questions on the form?

3 A Not all the questions.

4 Q So for example, where it says here that his date
5 of birth is 7/4/42, how did you know that?

6 A We checked information -- or we prepared the
7 information to, you know, what they had for facts; you know,
8 just make sure that this is the right date of birth. So we
9 just checked is this your date of birth or this is your
10 name. But I didn't sit down with him and ask name, last
11 name every time.

12 Q But let's focus on the first time you did this.
13 The first time you did this, am I correct in assuming you
14 didn't ask him his name because you knew his name?

15 A No. And the first time I read it -- Sorry. The
16 first time I did it, what I did is, I took the last
17 application that he had, or the one prior to it, and
18 transferred the information to it.

19 Q So you're saying that somebody -- Do you know who
20 prepared the first application before you became involved?

21 A I don't.

22 Q But you had an application in your possession?

23 A Yes.

24 Q Something to compare it to?

25 A Yes.

1 Q So you're saying that when you certified ---

2 A There was nobody signed as a preparer on that
3 form, but there was a form.

4 Q Do you know, one way or the other, whether Mr.
5 Montano prepared it himself?

6 A I don't know, one way or the other.

7 Q Where did you get the form?

8 A He gave it to me.

9 Q So if I understand correctly, the first time you
10 filled out one of these TPS applications for Inocente
11 Montano was sometime in 2003?

12 A Yes.

13 Q And at that time, prior to you filling out the
14 form, Montano himself gave you a form which was an earlier
15 TPS application?

16 A Yes.

17 Q And that application didn't have anybody indicated
18 on it as preparer?

19 A No.

20 Q So to the best of your knowledge ---

21 A He could have filled it out.

22 Q Now when you put all this information down, did
23 you stop and ask yourself why it says date of entry
24 9/30/2000 when you personally picked him up at the airport
25 in the summer of 2001?

1 A I had already talked to him about that.

2 Q Tell us about that conversation?

3 A I told him that the date of entrance had to be
4 truthful because that is what basically gave him the
5 benefit. The qualification or the criteria for the TPS was
6 nationals of El Salvador that had been here prior or
7 before -- or prior or on February 13, 2001.

8 Q How is it you remember that date off the top of
9 your head?

10 A We have to know it in case people called the
11 office for a TPS application.

12 Q So was this when you were working at Mageletta &
13 McCarthy, you had to know it?

14 A Yeah, we had to know it, not because I worked
15 directly with clients, but because of people that could have
16 called. That was the one question we had to ask.

17 Q So it was well-known to you as of the time you
18 were working at Mageletta & McCarthy that February 13, 2001
19 was an important date for TPS for El Salvadorans, correct?

20 A Yes.

21 Q Because you knew that if somebody entered after
22 that, they would be ineligible?

23 A That's correct.

24 Q So tell us about the conversation with Mr. Montano
25 about using the date of entry of 9/30/2000?

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40

1 A What I told him is that there is information that
2 is crossed with -- or within the government, and that they
3 could easily obtain his entry record and know that he didn't
4 enter on that day through, I don't know, McAllen, Texas in a
5 manner of EWI, which is ---

6 Q Which is what?

7 A Enter without inspection.

8 Q So you told him, in essence -- Did you suggest to
9 him that you knew for a fact that it was incorrect that he
10 had entered in September of 2001 through Texas without
11 inspection?

12 A Yes, I knew that it was not correct.

13 Q And you told him that's not correct?

14 A Yes.

15 Q And what did he say?

16 A He said he had to use it; he had to stay here.

17 Q Did he say why?

18 A He was going through a really hard financial
19 situation in El Salvador before he came here, and it is to
20 my knowledge that the reason why he came here was because of
21 his financial crisis. They had lost -- Him and his family
22 had lost almost everything to bad investments down in El
23 Salvador. So the situation was not the best for him, and he
24 had already retired from the military.

25 Q He was receiving a pension, correct?

1 A Yes, which basically was used to assist his
2 daughter, who had no work and three kids.

3 Q Did his economic situation improve when he came to
4 this country?

5 A Well, he was able to pay a lot of debt with the
6 work that he did here because ever since he's been here,
7 he's worked.

8 Q When did he start working?

9 A Well, when he went to South Carolina.

10 Q What was he doing there?

11 A Construction, I think.

12 Q So your understanding was that he came here for
13 economic reasons?

14 A Um-hmm.

15 Q When he told you that he had to use this date, you
16 understood that was because if he told the truth -- he
17 understood that if he told the truth, he wouldn't get the
18 benefit?

19 A That's correct. And he needed the benefit to have
20 a work permit because TPS comes along with a most wanted
21 work authorization.

22 Q And at the timing of the first application, were
23 you at Mageletta & McCarthy?

24 A 2003? No.

25 Q Where were you?

1 A I was working with Sherwin Kantrovitz.

2 Q So you were at Kantrovitz. So at that point, you
3 had already worked -- that was the third firm you had worked
4 aet?

5 A Yes.

6 Q You worked at Mageletta, and then Corey Cutler,
7 and then Kantrovitz?

8 A Um-hmm.

9 Q And you had already, on many occasions, submitted
10 forms to USCIS, not this exact form, but other forms for
11 Immigration?

12 A Yes.

13 Q And you had functioned as a preparer and certified
14 the accuracy of what you were submitting?

15 A Yes.

16 Q Did it concern you on this one that you signed,
17 you certified to the U.S. government that this was accurate,
18 when you in fact knew that at least this one thing is a lie?

19 A It did concern me because I didn't know what the
20 outcome was going to be. And I think the only -- It's not
21 that I think; I know the only reason why I did it was out of
22 wanting to help them because their situation was really
23 tough.

24 Q So your desire to help him was stronger than your
25 desire to tell the truth in a document where you had

1 certified you were telling the truth?

2 A I didn't think about any consequences back then.

3 Q But it's fair to say that you did it because you
4 were trying to help him?

5 A Yes.

6 Q And your most important -- your focus at that
7 point was making sure he stayed in the country?

8 A Yes.

9 Q And making sure he didn't get in trouble with the
10 government?

11 A He had already done two applications before then.

12 Q But you didn't certify on other one of his
13 applications the accuracy of things that you knew to be
14 incorrect, right?

15 A No, I didn't. But when I filled this out -- if
16 you don't mind, if I can add something?

17 Q No, please.

18 A When I filled this one out, I knew the
19 information, when he gave me the prior form, that the
20 information pertaining his entry was not correct.

21 Q But you nonetheless certified that it was correct
22 because you wanted to make sure he got to stay in the
23 country?

24 A Yes.

25 Q And you didn't want him to get in trouble with the

1 government?

2 A Yes.

3 Q On this particular form then -- And actually, that
4 false statement is actually repeated as the very first
5 eligibility criteria, right? You knew that this was -- that
6 if you put the true date here, that that would basically
7 mean he didn't get TPS?

8 A Yes.

9 Q And I'm going to ask you about, you've previously
10 spoken on two occasions, correct, with law enforcement
11 agents concerning your preparation of this form?

12 A Yes.

13 Q And I'm going to ask you specifically about 2g, 2r
14 and 2t. So let's take them in reverse order. 2t, now I'll
15 read that to you. It says, "Have you ever received any type
16 of military, paramilitary or weapons training." Now do you
17 remember when this question first started appearing on the
18 TPS form?

19 A I know it started in 2008.

20 Q So of the forms that you filled out for Mr.
21 Montano, the only two that had that particular question were
22 the 2008 and the 2010, correct?

23 A That's correct.

24 Q And am I correct in understanding that that early
25 model you had, the very first one you were looking at when

1 you basically copied down the answers from the earlier form,
2 didn't include that question?

3 A No.

4 Q So in checking that box no -- Did you put that
5 check mark in that box?

6 A Yes.

7 Q In checking that box no, what if any conversation
8 did you have with Montano?

9 A None.

10 Q So at the time you checked that no, it was 2010,
11 correct?

12 A Yes.

13 Q And you knew that he had not only been -- you knew
14 that he had been a cadet in the Salvadoran military in the
15 1960s, correct?

16 A I don't know when he was a cadet, but I know that
17 he was in the military.

18 Q And you knew that he went to basically El
19 Salvador's equivalent of West Point?

20 A Yes.

21 Q And you knew that he had served through -- he had
22 led a number of battalions through the '70s, correct?

23 A I think he did lead them because ---

24 Q And you knew that, actually, in the '80s, he was
25 elevated to almost the highest position in the military

1 government, correct?

2 A Yes.

3 Q And you knew that he served in that position, and
4 in other -- and he also served in combat positions, correct?

5 A Yes.

6 Q And you knew he served in those combat positions
7 during times, including a very bloody civil war, correct?

8 A Yes.

9 Q That went on for 12 years, right?

10 A Yes.

11 Q So knowing all that, how could you possibly answer
12 no to the question, 'have you ever received any type of
13 military training'?

14 A Because I didn't even know the question had been
15 added to these forms, the 2008 and the 2010.

16 Q But did you not read the question when you checked
17 the box? Was this form done on computer or typewriter?

18 A No, computer.

19 Q Does the computer, for question 2t, default to no,
20 so if you don't do anything, it's just no?

21 A No. None of the questions do.

22 Q You had to put in no?

23 A Yes.

24 Q So how is it you chose to put no in that
25 particular box?

1 A I went straight with my mouse no, no, no because I
2 knew that those questions pertained to the eligibility of
3 the person to obtain the benefit. So if one of those
4 questions was marked yes, then he wouldn't get the benefit.

5 Q Now do you know that he's actually subsequently
6 admitted that he himself lied about that question?

7 A I don't know that.

8 Q Now, your signature is at the very end, correct?

9 A Yes.

10 Q And above your signature, there is a
11 certification. And you recognize that certification was
12 signed on the same day that you signed it, right?

13 A Yes.

14 Q By Mr. Montano himself, correct?

15 A Yes.

16 Q And the signature in the lower left-hand of the
17 certification on the second to last page of this document is
18 Montano's signature?

19 A Yes.

20 Q And that reads, "I certify, under the penalty of
21 perjury, under the laws of the United States of America,
22 that the foregoing is true and correct; copies of documents
23 submitted are exact photocopies of unaltered original
24 documents, and I understand that I may be required to submit
25 original documents to USCIS at a later date." Did I read

1 that correctly?

2 A Yes.

3 Q Then it has an authorization for release of
4 additional information if need be, correct?

5 A Um-hmm.

6 Q So did you have any conversation with Montano
7 about the fact that he was certified, under the pains and --
8 under the penalty of perjury that all the foregoing
9 information was correct?

10 A I had no conversations to that effect with him.

11 Q When you had this conversation about the fact that
12 you knew he was lying about his date of entry, did you not
13 tell him that when signing this, he was signing under oath?

14 A What I told him is, if he was lying about the
15 date, and they found out that it was not the right date, he
16 could be deported. That was my conversation with him.

17 Q Did you tell him that he could also be charged
18 with perjury because he was signing under the pains of
19 perjury?

20 A I didn't tell him because I -- I have to be
21 truthful here. I didn't know that this was done this way,
22 you know.

23 Q Do you recall, during your first conversation with
24 law enforcement agents when they were looking for your uncle
25 talking about this form?

1 A They asked me if I knew what this form was.

2 Q Do you remember being asked whether you had
3 assisted him in preparing the form?

4 A Yes, they asked me if I had assisted, and my
5 answer was yes.

6 Q And do you remember telling them that you had gone
7 through this form, and had read each and every question to
8 Mr. Montano, and reported the answers as he gave them to
9 you?

10 A My recollection was that I was the preparer of the
11 forms, but I never went into any details of what I had done
12 reading each one of the forms to him.

13 Q So you have no recollection of saying that you
14 read each and every question to him?

15 A No. That I had assisted him. And the extent of
16 my answer was, yes, I filled out this form for him, and my
17 name is there. How could I say no?

18 Q Right, you can't say no because your name is right
19 there?

20 A Exactly. But I did not ---

21 Q But my question is, specifically, you know, did
22 you tell Special Agent Thomas Brian Andersen, or any other
23 agent of the U.S. government that, in filling out these
24 forms, you went through each and every question with
25 Montano, and recorded the answers as he gave them to you?

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1 A I don't recollect telling him that I read each one
2 of the questions to him. I don't.

3 Q Do you remember what you said -- what if anything
4 you said to the agents when they served you the subpoena to
5 come to this proceeding?

6 A Yes. I had a conversation with Agent Andersen.
7 It was an off record conversation. That's how I started my
8 line because I was surprised that they were giving me the
9 subpoena, and continuing with the possibility of an
10 indictment against my uncle. And I asked them why they were
11 doing this. And I said, I need to tell you something off
12 the record. And my specific words to him were, if there's
13 somebody guilty of doing something wrong, it's me because I
14 never read the questions to him, and that's why he's in this
15 big mess.

16 Q Now, how had you determined that he was in this
17 what you call this big mess before you received your Grand
18 Jury subpoena?

19 A They had already come and looked for him at my
20 house. Although I asked them if they had a warrant, they
21 said no. But the following day, he was arrested and placed
22 under the jurisdiction of the Department of Homeland
23 Security, and placed a bracelet. And then after that, there
24 was a criminal case open against him. So that's a messy
25 situation.

1 Q At what point in that chronology did you have this
2 conversation with Brian Andersen when you said, you know,
3 'if anybody's guilty, it's me because I didn't fill in the
4 form'? Was it before or after the arrest?

5 A After the arrest.

6 Q Was it before or after he was charged criminally?

7 A He had already been charged criminally, I believe,
8 yeah.

9 Q Are you sure?

10 A I believe so because I can't -- and this is -- I
11 want to get my answer straight. I had already moved into my
12 new office in Boston. And I can't remember when the
13 subpoena was served on me, the first one. So maybe he had
14 not been arraigned criminally. I can't remember. But we
15 knew this was going to be a messy situation since he had
16 already received paperwork from the Immigration Service
17 telling him that he was going to be deported.

18 Q Telling him that he was going to lose his TPS
19 status?

20 A They had already withdrawn the application.

21 Q So you know that he already -- basically, he was
22 out of status because he had lost TPS?

23 A That's correct.

24 Q When you had this conversation with Andersen, had
25 you seen any kind of criminal -- any kind of complaint or

1 other document describing any crime he was accused of
2 committing?

3 A Not any document. Well, just the paperwork that
4 he received from the Immigration Service. But he had
5 already -- There was HOIA process, actually, because he had
6 an attorney already appointed for the criminal case. So,
7 yes, it was already.

8 Q And at that point, did you have any conversations
9 with your uncle, Mr. Montano about what this was all about?

10 A About the subpoena.

11 Q Tell us about that conversation?

12 A I told him that I had been called to testify in
13 front of the Grand Jury because they wanted to get my input
14 on what my role was when submitting the forms with my
15 signature.

16 Q And what did he say to you?

17 A He said that he had to let the process go along.

18 Q Did you have any discussion about any of the
19 particular questions on this form?

20 A Yes. I talked about those questions, and I did
21 tell him that those questions were never -- and because this
22 is when I went to read, and I should have said this before.
23 I didn't even know that this question had appeared on 2008
24 until all this happened because I went to read back the
25 copies of the applications, and I saw that the questions had

1 appeared until 2008. So I didn't even know that ---

2 Q Where did you have copies of the applications?

3 A The ones that my uncle had. He saved copies for
4 his records.

5 Q And you read all eight that you prepared?

6 A All eight? I never prepared eight.

7 Q All five you prepared?

8 A I read the once since I started preparing it.

9 Q Why not the earlier ones?

10 A There was no copies available on that -- I mean,
11 on the copies that I was reading. I was very interested in
12 knowing my involvement.

13 Q So your uncle saved the ones you prepared, but
14 didn't save the earlier ones?

15 A I don't know if he has them, and he didn't show
16 them me. I don't know. This was after the fact.

17 Q How is it he came to show you any of them?

18 A Well, you know, everybody saves his own records.
19 And every time I was filling out an application for him, I
20 will give him a copy for him to keep.

21 Q But he also had at least one if not more TPS
22 applications from before you started filling them out?

23 A I think so. I think he still has them. But the
24 ones that I went looking for are the ones that I filled out.
25 So I can't tell you whether the other ones were there or

1 not.

2 Q And why is that?

3 A I don't know.

4 Q Why did you go looking for them?

5 A Because I wanted to see about those questions,
6 when they started appearing. When we met with the agents,
7 they had informed him that he filled out those questions
8 answering no, the Immigration officer. So after my uncle
9 was released with the bracelet, he -- you know, we discussed
10 about his conversations with the agents, and that's the
11 things that they told him, 'you filled these applications
12 saying that you didn't have any military training.'

13 Q Is it your testimony that you first learned that
14 you checked no in that box for 2t after, years after
15 submitting this form?

16 A Yes.

17 Q And the same with regard to the 2008 form?

18 A Yes.

19 Q Because on both forms, you answered no to the
20 question, "have you received any type of military,
21 paramilitary or weapons training," correct?

22 A Yes. Because my knowledge about incorrect
23 information on the form was only to the date of entrance.

24 Q So you knew that wasn't correct?

25 A Yes.

1 Q You knew that, and you discussed that with him?

2 A Yes.

3 Q So you knew that he knew it was incorrect?

4 A Yes.

5 Q And you knew that he knew that it mattered, and
6 that he viewed it as necessary to lie in order to get the
7 benefit?

8 A Yes.

9 Q With regard to question 2s, the one above that,
10 "Have you ever assisted or participated" -- no, we're going
11 to skip that one; strike that.

12 Go to Question 2r up here, "Have you ever been a
13 member of, assisted in, or participated in any group, unit
14 or organization of any kind in which you or other persons
15 used any type of weapon against any person or threatened to
16 do so." Now did I read that correctly?

17 A I think so.

18 Q Now you understand that a truthful answer to that
19 question would have to be yes, correct?

20 A Can you read that again?

21 Q I'll put it right in front of you. So read
22 question 2r to yourself, please.

23 A Well, as far as my understanding, it doesn't
24 necessarily have to be yes because the way I read this
25 question is if you threaten -- and this is what strikes from

1 this question to me, is if you ever threaten to use a weapon
2 against somebody. To my knowledge, he ---

3 Q Let's look at it together. So it says, "Have you
4 ever been a member of an organization of any kind in which
5 you or other persons used any type of weapon against any
6 person," all right. Forget what's after the "or." Do you
7 understand in civil war, people use weapons against each
8 other, correct?

9 A Yes, but ---

10 Q And you understand that he was a member of -- he
11 was actually the third in command of the Salvadoran military
12 during the civil war, correct?

13 A Yes.

14 Q So his job was to oversee people using weapons
15 against other people, correct?

16 A Yes.

17 Q So explain to me now how that -- how a truthful
18 answer to that could be no?

19 A Because you can't jump the other ones.

20 Q Which other ones?

21 A You know, the other -- a member of a group, unit,
22 because that to me sounds like it's a non-legal unit or
23 group.

24 Q So you're saying that you read that question to me
25 the correct answer is no because even though he was in the

1 military, he wasn't part of a group or a unit or
2 organization; is that what you're saying?

3 A Well, it's not that. What I'm saying is that if
4 you -- at least to me, you read the whole question. So I
5 didn't stop to think, okay, the Salvadoran military is part
6 of an organization. So, yeah, this has to be answered yes.
7 I had to answer no on all of them. I told you that before.

8 Q You answered no because you had to -- you were
9 prepared to say whatever you had to on this form to make
10 sure he got the benefit?

11 A Exactly.

12 Q Whether it was true or not?

13 A Yes.

14 Q With regard to Question 2r, "Have you ever been a
15 member of" -- Oop, we just did that one, sorry. 2q, "Have
16 you ever served in" -- at the very bottom here -- "been a
17 member of, assisted in, or participated in any military
18 unit, paramilitary unit, police unit, defense unit" -- I'm
19 sorry, "self-defense unit, vigilante unit, rebel group,
20 guerilla group, militia or insurgent organization."

21 Now, you're trained as a lawyer, right?

22 A I'm not trained as a lawyer. I have a law degree
23 in El Salvador.

24 Q You have a law degree?

25 A In El Salvador.

1 Q In El Salvador. But there is a word for "or" in
2 Spanish, correct?

3 A Yes.

4 Q What is that word?

5 A "o".

6 Q And there's a word for "and," right?

7 A Yes.

8 Q What's that word?

9 A "e".

10 Q So you understand that, in either English or
11 Spanish, this is a list of things, and if the answer to any
12 one of them is yes, then that should be yes, correct?

13 A Yes.

14 Q So you understand that a truthful answer to
15 Question 2q would, of course, be yes, right?

16 A Yes.

17 Q Because he in fact was a member of the military?

18 A Yes.

19 Q But it's your testimony that with regard to this
20 question here, 2r, you didn't know that also says "or
21 participated in any group or organization," somehow the fact
22 that it's a group, unit or organization means that a
23 truthful answer to that for Mr. Montano could possibly be
24 no?

25 A I was going to answer no to all those questions.

1 Q Regardless of whether it was true.

2 MR. CAPIN: Just a few more questions. I'm sorry,
3 ladies and gentlemen. I promised a 1:00 lunch, and I
4 realize it's very late. We'll take two or three more
5 minutes.

6 BY MR. CAPIN:

7 Q When you first were contacted by law enforcement,
8 where was your uncle?

9 A He was going to South Carolina.

10 Q How was he getting there?

11 A Driving.

12 Q Who was driving?

13 A A cousin.

14 Q What's the cousin's name?

15 A Antonio Martinez.

16 Q Where does he live?

17 A I'm sorry, Manuel Antonio Martinez. I don't know
18 his address.

19 Q What city and town does -- what city and state
20 does he live in?

21 A Medford, Mass.

22 Q Do you know where -- why Mr. Martinez was driving
23 Mr. Montano to South Carolina?

24 A Because he's related to my aunt. So he knows
25 exactly how to get there. He's related to my aunt that he

1 had gone to first.

2 Q But what was -- To the extent you know, what was
3 Mr. Martinez's interest in going to South Carolina?

4 A To bring my uncle down there.

5 Q Your uncle had a car, correct?

6 A Yes.

7 Q That he owned?

8 A Yes.

9 Q Registered in his name?

10 A Yes.

11 Q With a Massachusetts license plate?

12 A Yes.

13 Q And he has a Mass. license?

14 A Yes.

15 Q Why did your uncle not drive himself to South
16 Carolina?

17 A The car is not in good condition. I mean, you can
18 send anyone to check it. It's not going to go beyond the
19 state border line.

20 Q When your uncle went to South Carolina, where did
21 he leave his car?

22 A At my house.

23 Q Where was he living at the time?

24 A Everett, Mass.

25 Q And you were in Saugus?

1 A Yes.

2 Q Was he living in Everett with his wife?

3 A Yes.

4 Q Did he always leave his car at your house, or did
5 he start that at some point?

6 A He left it there because parking where they live
7 on the street they live, it's not good. It's kind of
8 congested there. And they only get one parking spot from
9 the owner of their house. So he decided to leave it there
10 so there weren't going to be any ticket issues.

11 Q What did he tell you of his plans to go to South
12 Carolina?

13 A Well, we discussed this a lot, because I was
14 involved in that conversation. He received a call sometime
15 in June from a news man from El Salvador from a newspaper
16 called El Faro. And he called him basically just trying to
17 get an interview with him. And he told him that he was
18 going to be in Massachusetts sometime in July, and that he
19 wanted to meet with him.

20 Now we don't know how he got his number; we don't
21 know how he knew about, you know, his whereabouts. And this
22 came out of news being reported in El Salvador about a case
23 where my uncle is involved in Spain, an indictment that was
24 issued by the Spanish government for some allegations of
25 things that happened in El Salvador.

1 Q You're talking about the Spanish government
2 indicted your uncle last summer, in the summer of 2011, in
3 connection with the murder of several priests, correct?

4 A Yes.

5 Q And also in connection with the murder of the
6 priests' housekeeper and the housekeeper's daughter?

7 A Yes.

8 Q Did you have a conversation with your uncle about
9 that indictment?

10 A No -- Oh, yes, I'm sorry. I did have a
11 conversation with him because I told him that the newspapers
12 were looking for him to get, you know, his input about what
13 they were doing in El Salvador because the Spanish
14 government had already done -- or requested some military
15 members, or past military members to be extradited to El
16 Salvador. So what I told him is that the newspapers were
17 now looking for him to get an interview from him, and that
18 it was just going to be bad.

19 Q Who said it was going to be bad?

20 A Well, because once you get the media on you, they
21 don't leave you alone.

22 Q But did you say to him it's going to be bad, or
23 did he say to you it's going to be bad?

24 A No, I said to him it's going to be bad with all
25 these people coming to you for interviews.

1 Q Why would it be bad?

2 A They never go away, the press.

3 Q How do you know? What's your experience with the
4 press?

5 A We've experienced it with him.

6 Q But ---

7 A Oh, you mean from El Salvador?

8 Q Before this?

9 A Oh, before this? Oh, in El Salvador, once the
10 press hangs onto something, they don't let go, and this is
11 based on someone who's lived there.

12 Q Did you or your family have personal experience
13 with being ---

14 A No, but we know people that have.

15 Q People in connection with ---

16 A No, people that had, I don't know, somebody who
17 had a death in their family and wanted to know, you know,
18 the details about the death in the family, or whatever it
19 was. So this has a political taint, to my knowledge. And
20 once they grab something that has a political taint, it was
21 even worse. So I told him that he shouldn't talk to any
22 press because the case in Spain has not resolved. And this
23 was my advice to him, just to keep him away from, you know,
24 the media circus.

25 And this happened sometime in maybe May or June of

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1 this -- of last year, I'm sorry. And after that, in July, I
2 believe, The Boston Globe came over looking for him, or a
3 reporter from The Boston Globe came over to his house
4 looking for him. So I told him that this what the -- Oh,
5 and after that phone conversation with my uncle, the
6 newspaper in El Salvador issued a report saying that they
7 had found my uncle living here for the past ten years, and
8 he was here, I don't know, just free, walking free while
9 there was an indictment against him in Spain. So after
10 that, The Boston Globe reporter came looking for him at the
11 house, and he wasn't there.

12 Q At whose house?

13 A My uncle's house.

14 Q How did you learn about it?

15 A Because he told us that somebody had come over.

16 And in fact, Mr. Andersen ---

17 Q What exactly did he say?

18 A He said, "There was somebody that left a message
19 for me at the house." And that was later confirmed by Agent
20 Andersen who said The Boston Globe report that came out
21 shortly after that visit, they couldn't get in contact with
22 him generated another note on The Globe.

23 Q Did you see The Globe piece?

24 A Yes. And they were basically talking about,
25 again, my uncle living in Massachusetts, and being here

1 although he had that case in Spain, you know, the indictment
2 against him in Spain.

3 Q And at that point, did your uncle make a decision
4 to leave Massachusetts?

5 A Yes. I told him that the news was not going to
6 stop until they could either talk to him or get something
7 with him, sit down or whatever, and that it was just going
8 to be a circus. And there were several news reporters
9 coming over to the house after that Boston Globe note was
10 published. I mean, there were several. They were even
11 talking to neighbors. It was not a pleasant situation.

12 So he stayed at my house for a few days before
13 that. And then I told him, well, you know, South Carolina
14 is the place for you to stay until, you know, this just
15 calms down because right now, they're not going to leave you
16 alone.

17 Q Didn't you tell Agent Andersen when you first
18 spoke to him that your uncle was on his way to Mexico at the
19 time?

20 A No, I never told them he was on his way to Mexico.
21 And I think his recollection, or even saying Mexico in that
22 conversation was when my mother said -- They were looking
23 for my uncle to question him. They didn't show up with a
24 warrant for his arrest. They didn't tell me that they
25 wanted to arrest him. They told me that they wanted to have

1 a conversation with him. And based on, because of The
2 Boston Globe report, they had to move fast. So I guess the
3 report had come out two days before they came to my house,
4 or a day before they came to my house.

5 And my mother asked him, you know, if you're going
6 to -- you know, what's going to happen to him. And he
7 confirmed that he was most likely going to be deported.

8 Q What's your mother's name?

9 A Nora Montano. And she says, 'Well, if you're
10 going to deport him, and he, let's say he was going to
11 Mexico right now, why wouldn't you let him go if you're
12 going to end up deporting him.' So that was the Mexico part
13 that he says that I told him.

14 Q Were you present for this conversation?

15 A Yes. And in fact, he ---

16 Q What was your understanding of why your mother
17 would suggest he was going to Mexico?

18 A And I have to go back to that. In fact, Mr.
19 Andersen was not even in the room when that happened. It
20 was only another officer. His name was Jeff. I have to
21 give you the whole detail, because ---

22 Q Oh, please.

23 A --- I remember exactly what the conversation was
24 with them. And my uncle was not going to Mexico. My uncle
25 had not left Massachusetts to go to Mexico. And I even told

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1 Mr. Andersen the day they came to my house that I didn't
2 even know where they were exactly at the time because they
3 wanted to know exactly where he is right now. I said I
4 don't know where he is. But I called him to come back. If
5 he had gone -- If he was on his way to Mexico, and I could
6 be seeing everything that was happening, I probably wouldn't
7 have called. But he was not trying to leave this country.
8 So the comment that my mother ---

9 Q So if he had gone to Mexico, you wouldn't have
10 called because you would have wanted him to get out of the
11 country?

12 A No. What I'm saying is, if that would have been
13 the case -- and I don't even know how it would have been
14 reacted because what I told my uncle when I called him to
15 turn back -- They wanted him to come right away. And the
16 way they presented it to me was it's not going to be nice if
17 we send a bunch of agents looking for him.

18 My uncle is 69; had cancer bladder; walks with a
19 cane. He's not a teenager who is going to jump a fence
20 running from enforcement officers or law enforcement
21 officers.

22 Q So a moment ago, you said if you had known if in
23 fact he was going to Mexico, you simply wouldn't have said
24 anything?

25 A That is just exemplify that it was never -- that

1 was never the intention, okay.

2 Q But when you said, 'if he was going to Mexico, I
3 wouldn't have said anything,' what did you mean by that?

4 A I'm not trying to say that I would have assisted
5 him to leave the country. What I'm saying is that
6 conversation, or what Mr. Andersen says that I told him ---

7 Q How do you know what Mr. Andersen says?

8 A You just told me. You said, 'you told Officer
9 Andersen that he was going to Mexico.'

10 Q I asked you whether you told Agent Andersen.

11 A I didn't. I said I did not.

12 Q So that's your only basis of knowledge; you
13 haven't discussed it with anybody else?

14 A About what? He wasn't even present. I never ---

15 Q Have you discussed with anybody else what Brian
16 Andersen's memory is of a conversation with you or your
17 mother?

18 A No, because he wasn't even in the room when my
19 mother said those words.

20 Q Here's my question. Have you discussed with
21 anybody out of this room what Mr. Andersen's room about any
22 conversation he had with you or your mother?

23 A No, I haven't discussed it because I didn't even
24 know that he was -- well, I don't know if he said it. I
25 don't know if that's just the question that you asked me.

1 Q You're saying that the first you heard of any
2 suggestion that Brian Andersen remembers a conversation
3 about your uncle reporting he was going to Mexico was today,
4 a few minutes ago?

5 A No. I was very surprised that a comment made by
6 my mother the way that it was, was actually in the papers
7 because the papers published that my uncle was arrested
8 while to flee the United States through Mexico. And that's
9 in the newspapers, and that is not correct.

10 Q Did you discuss -- What paper was that in?

11 A I can't remember which one.

12 Q Did you discuss that with your mother?

13 A Yes. And I told her, how can a comment that she
14 threw out to the air was taken in that way. Mr. Andersen
15 wasn't even present in the room.

16 Q When what?

17 A When my mother said that. So if you ---

18 Q Said what?

19 A The comment that I just told you.

20 Q Repeat it, please?

21 A The comment was, "We knew that my uncle, the
22 outcome was going to be deportation for him." So my mother
23 came out -- They were only talking to me. My mother was in
24 the kitchen fixing things, looking after my sons because
25 they were there, already back from school. And she said,

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1 'If you're going to deport him, what if he was going to
2 Mexico? Wouldn't you let him go? He's going to be
3 deported, anyways.' But that doesn't mean ---

4 Q Did you ever talk to -- Let me interrupt you
5 there. Did you ever talk to your mother about why on earth
6 she would say such a thing?

7 A I don't know why she said it. You can't control
8 mother's thoughts.

9 Q Clearly not; wouldn't want to try. So what was
10 your -- Your understanding was that your uncle was going to
11 South Carolina?

12 A Yes.

13 Q Had he discussed it with his sister in South
14 Carolina, to your knowledge?

15 A Yes.

16 Q What was he going to do in South Carolina?

17 A Stay there for a few days, weeks. I don't know
18 how long. We had not discussed the length of time.

19 Q And why?

20 A Because the press was coming to his house
21 constantly. It had been over the days after that Boston
22 Globe report.

23 MR. CAPIN: Now I'm going to ask you, with the
24 Grand Jury's permission, to step outside for a minute while
25 I confer with them. Would you just mind stepping outside

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1 the door, and closing the door after you go?

2 (Whereupon, at 1:37 p.m., the witness exits the
3 room.)

4 (Whereupon, at 1:38 p.m., the witness returns to
5 the room.)

6 MR. CAPIN: Mr. Foreperson, I have no more
7 questions for this witness. May she be dismissed?

8 GRAND JUROR: Yes.

9 MR. CAPIN: Thank you.

10 (Whereupon, at 1:38 p.m., on Wednesday, January
11 18, 2012, the witness was excused.)

CERTIFICATE OF REPORTER

This is to certify that the attached proceeding
before: A FEDERAL GRAND JURY

in the Matter of:

UNITED STATES OF AMERICA

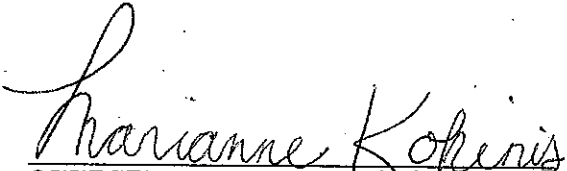
VS.

JOHN DOE

Place: Boston, Massachusetts

Date: January 18, 2012

were held as herein appears, and that this is the original
transcript thereof.


OFFICIAL REPORTER (Signature)
Marianne C. Kokinis