

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

**UNITED STATES OF AMERICA**            )  
  )  
  ) **CRIMINAL NO. 12-CR-10044-DPW**  
  )  
**INOCENTE ORLANDO MONTANO**        )

**MOTION FOR LEAVE TO FILE**  
**PRE-SENTENCE REPORT OBJECTIONS LATE**

Defendant, through counsel, respectfully requests that this honorable Court grant him leave to file his objections to the pre-sentence report late. According to the information released by the United States Probation Department at the first disclosure of the draft Presentence Report (“PSR”), the objections were due on November 28, 2012 in anticipation of a December 18, 2012 sentencing date. That December hearing was continued at the request of the parties to January 15, 2013.

At the time that the continuance to January 2013 was requested, the government notified defense counsel informally that it was going to have an expert witness generate a report for the sentencing hearing and that she would be available to testify on the contents of this report. The witness was generally going to comment on the accuracy of various facts, not necessarily related to the offense conduct in this case, but purportedly related to Mr. Montano’s prior involvement in the military and government of El Salvador and a chronology of events in that country’s history. Defense counsel was intending to submit various objections to the PSR related to this recitation of facts which was provided by the government to the United States Probation Department but wanted an opportunity to review the expert’s report prior to that. Defense counsel received said expert’s report on January 2, 2013. After a review of that report, defense counsel is now prepared to submit specific objections related to the government’s factual summary which is incorporated in the PSR.

**INOCENTE ORLANDO MONTANO**  
**By his attorney,**

*/s/ Oscar Cruz, Jr.*

**Oscar Cruz, Jr.**  
**B.B.O. #630813**  
**Federal Defender Office**  
**51 Sleeper Street, 5<sup>th</sup> Floor**  
**Boston, MA 02210**  
**Tel: 617-223-8061**

**CERTIFICATE OF SERVICE**

I, Oscar Cruz, Jr., hereby certify that this document filed through the ECF system will be sent electronically to the registered participant, as identified on the Notice of Electronic Filing (NEF) on January 7, 2013.

*/s/ Oscar Cruz, Jr.*

**Oscar Cruz, Jr.**

**FEDERAL DEFENDER OFFICE**  
DISTRICT OF MASSACHUSETTS  
51 SLEEPER STREET, 5<sup>TH</sup> FLOOR  
**BOSTON, MASSACHUSETTS 02210**

TELEPHONE: 617-223-8061  
FAX: 617-223-8080

January 2, 2013

Christopher Foster, U.S. Probation Officer  
United States District Court  
Suite 1200  
1 Courthouse Way  
Boston, MA 02210

Re: United States v. Inocente Orlando Montano  
Criminal No. 09-10080-DPW

Dear Mr. Foster:

After a review of Mr. Montano's draft Presentence Report ("PSR"), the defendant offers the following objection(s) for your consideration.

¶ 7. There is no appeal waiver in this agreement.

¶¶ 5,8. For purposes of clarification, the defendant submits the following statement regarding the reference in these paragraphs to a violation of the terms of pretrial supervision. Mr. Montano agrees that he was arrested for applying for a Salvadoran passport on April 18, 2012 at the Salvadoran Consulate in Boston, Massachusetts. He was released from custody on the same date. Magistrate Judge Dein was briefed by defense counsel on what had occurred as Mr. Montano was making attempts to renew his Salvadoran passport in an effort to maintain the flow of his military pension benefits to a relative in El Salvador. This was not an attempt on Mr. Montano's part to leave the United States or anything of the like. All of this was explained to Judge Dein and she, being satisfied with such explanation, agreed to release Mr. Montano on April 18, 2012. Further, the Salvadoran Consul himself was present at the hearing on April 18, 2012 to explain these issues to the Court. Lastly, a formal request was made to the Court to allow for Mr. Montano to renew his Salvadoran passport at case docket number

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34. That request was agreed to by the government and Pretrial Services and Mr. Montano was able to do what was necessary at the Salvadoran Consulate to maintain the flow of benefits to his relative.

¶ 14, 15. Mr. Montano wishes the Presentence Report to note that the questions referenced in these paragraphs did not appear in the general application for Temporary Protected Status until the form was amended in 2008.

¶ 17, 18. Mr. Montano states that the questions referenced were answered in the negative and that these were true responses. While acting as a member of the Salvadoran military and serving as Vice Minister of Public Security, he never persecuted anyone for the reasons stated or committed any serious crime outside of the United States prior to arriving here in 2001. See attached Exhibit A, official records from El Salvador, Policia Nacional Civil and Ministerio de Justicia y Seguridad Publica, indicating Mr. Montano has no criminal record or record of arrests in his home country.

¶ 24. Objection to Offense Level Computation:

Montano objects to the Probation Department's offense level computation, specifically the conclusion that the counts of conviction are separated into three distinct groups pursuant to USSG §3D1.2(b)(¶ 24), and the resulting conclusion of a Combined Adjusted Offense Level of 17 pursuant to USSG §3D1.4(¶¶ 44, 47).

On three separate dates, Montano is charged with one count each of 18 U.S.C. §1546 (Fraud and Misuse of Visas) and 28 U.S.C. §1621 (perjury) for answers given on Form I-821, Application for Temporary Protected Status. Each §1546/§1621 pair relates to the same statements on Form I-821 on the same date. In addition, each of the six counts of conviction also involve the same statement, specifically that Montano entered the United States on September 30, 2000, when in fact he entered the United States on July 2, 2001.

USSG §3D1.2(b) provides that "[a]ll counts involving substantially the same harm shall be grouped together into a single Group. Counts involve substantially the same harm within the meaning of this rule: . . . (b) When counts involve the same victim and two or more acts or transactions connected by a common criminal objective or constituting part of a common scheme or plan." (Emphasis added).

Despite the fact that the Probation Department recognized that

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each count involved the same victim (the United States) and the same criminal objective (to falsely obtain Temporary Protective Status), it grouped the six counts of conviction into three separate groups by date of offense. ¶ 24.

This interpretation is not supported by USSG §3D1.2 or the guideline commentary. Application Note 2 to USSG §3D1.2 explains that, in cases such as immigration crimes where there are no identifiable victims, the "victim" is considered to be the "societal interest that is harmed" and the counts are to be grouped together "when the societal interests that are harmed are closely related." Rather than distinguishing immigration crimes that have occurred on different dates, the commentary uses an example of immigration crimes that necessarily occurred at different times as an example of counts that should be grouped together:

Where one count, for example, involves unlawfully entering the United States and the other involves possession of fraudulent evidence of citizenship, the counts are grouped together because the societal interests harmed (the interests protected by laws governing immigration) are closely related.

USSG §3D1.2 Application Note 2. In addition, Application Note 4 clarifies that counts with a single criminal objective are grouped together even if they occur at different times:

Subsection (b) provides that counts that are part of a single course of conduct with a single criminal objective and represent essentially one composite harm to the same victim are to be grouped together, even if they constitute legally distinct offenses occurring at different times.

Although Application Note 4 does not give an immigration-related example, it does give an example relevant to fraudulent conduct:

(2) The defendant is conviction of two counts of mail fraud and one count of wire fraud, each in furtherance of a single fraudulent scheme. The counts are to be grouped together, even if the mailings and telephone call occurred on different dates.

Application Note 4 notes an exception to this rule where the offenses "cannot be considered to represent essentially one

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composite harm" and provides an example of a situation where serial offenses should not be considered one composite harm: "(e.g. robbery of the same victim on different occasions involves multiple, separate instances of fear and risk of harm, not one composite harm)." USSG §3D1.2, Application Note 4.

The probation department should reject the government's attempt to expand this exception listed in Application Note 4 to Montano's several TPS applications. See Government's Statement of Offense and Relevant Conduct, at 2 fn. 2. The government cites *United States v. Bahena-Guifaro*, 324 F.3d 560 (7<sup>th</sup> Cir. 2003) for the proposition that multiple counts of illegal reentry do not qualify for grouping under the guidelines. In that case the government had argued that the two illegal reentries caused a separate harm and a separate cost to the United States, similar to two prison escapes or two assaults. The district court applied application note 4 and held that the two instances of illegal reentry were akin to two counts of escape from prison, where each is a single and distinct harm. Here, there is no conduct similar to the conduct in *Bahena-Guifaro* that can be said to constitute a separate harm and separate cost to the United States: While *Bahena-Guifaro* analogized multiple illegal reentries to multiple escapes from prison or multiple assaults, it is difficult to expand that analogy to multiple instances of signing the same TPS form. In addition, to defendant's knowledge the *Bahena-Guifaro* line of cases has not been expanded beyond the illegal reentry context to cover other immigration crimes that do not involve illegal reentry.

Nor should the Government's arguments for grouping the three perjury charges relating to the same false statement separately due to the "special instructions" of 2J1.2(d)(1) apply here. That provision states that:

In the case of counts of perjury or subornation of perjury arising from testimony given, or to be given, in *separate proceedings*, do not group the counts together under § 3D1.2.

Application Note 5 clarifies that "separate proceedings" includes different proceedings in the same case or matter (e.g. a grand jury proceeding and a trial, or a trial and a retrial), and proceedings in separate cases or matters (e.g. separate trials for co-defendants), but does not include multiple grand jury proceedings in the same case. 2J1.3, Application Note 5. Here, the perjury is not testimony that was given in a proceeding, but signing a form under 28 U.S.C. §1746. Defendant has found no support for the

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proposition that signing "under the pains and penalties of perjury" pursuant to 28 U.S.C. §1746 is akin to a "proceeding," nor any support for the proposition that certifying that the same false statement is true on multiple annual forms should be considered separate proceedings, similar to the examples given in Application Note 5.

¶ 64. Mr. Montano wishes to add the following statement regarding the last sentence of this paragraph. The Supreme Court of El Salvador has not prosecuted any ex-military officers or former government officials for alleged participation in the Jesuit killings in 1989 after the Peace Accords were signed in 1992 and the amnesty law took effect. In fact, the Supreme Court has rejected requests for extradition for Mr. Montano and other individuals named in an indictment issued by the government of Spain in 2011. See *attached Exhibit B*.

¶ 65. The indictment that issued from Spain is a 2011 document. In this paragraph, it is not accurate to state that "events in Spain" prompted Mr. Montano to come to the United States, gain Temporary Protected Status ("TPS") via fraud, and remain here. It is also inaccurate to state that any military officers or government officials who were alleged to have participated in the execution of the Jesuits in 1989 were threatened with prosecution within El Salvador from 1999-2001. Events occurring in other parts of Central America as described in this paragraph had no bearing on what was taking place in El Salvador after the signing of the Peace Accords in 1992. In fact, other officers who were named along with Mr. Montano as being involved in the Jesuit massacre by the U.N. Truth Commission report never left El Salvador and were never prosecuted. For example, Colonel Juan Orlando Zepeda and General Humberto Larios were allegedly involved with giving the specific order to execute the Jesuits and then to cover up the military's involvement and they never felt the need to leave El Salvador to escape prosecution. Moreover, the amnesty law in El Salvador has not "eroded" in more than a decade as evidenced by the rejection of calls for extradition from Spain by the Salvadoran Supreme Court as recently as May of 2012. See *Exhibit C*, article, May 8, 2012.

¶ 66. It is not accurate to state that "victory in legislative elections by the FMLN, the party that had fought the government during the civil war" prompted Mr. Montano to leave El Salvador for the United States prior to his arrival in 2001. The election referenced in this paragraph took place in *March of 2009*. At that time, Mauricio Funes and running mate Salvador Sanchez Ceren of the Farabundo Marti National Liberation Front were elected to the Presidency/Vice Presidency by the Salvadoran people. This victory

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signaled the end of 20 years of rule by the "ARENA" party which was in control during the Salvadoran civil war. See Exhibit D, NACLA article, March 16, 2009.

¶ 73. Please amend the second portion of the sentence as follows: "she was visiting in Massachusetts, she was a homemaker in El Salvador.

¶ 75. The proper spelling of Mr. Montano's brother's name is "Maximiliano".

¶ 76. Please amend the sentence as follows: "23 Richard Street in Saugus, MA, works as a Human Resources Administrator at a candy factory in Cambridge, and is divorced with one daughter." Note: please amend to "Richard Street" where applicable in PSR.

¶ 103. For purposes of clarification, Mr. Montano does not "own" the vehicle described in this paragraph. He is making payments on the car and owes approximately \$30,000.00. See paragraph 106, Community Credit Union (automobile loan).

Sincerely,

/s/Oscar Cruz, Jr.  
Oscar Cruz, Jr.

cc: John Capin, AUSA  
Inocente Orlando Montano



# **EXHIBIT A**

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



DIRECCION GENERAL DE CENTROS PENALES.



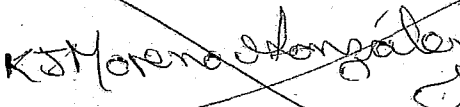
CERTIFICACION DE ANTECEDENTES PENALES

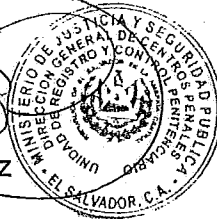
Vista la solicitud de Antecedente Penal No.065751 de fecha: 11 de Diciembre de 2012.  
A nombre de el(a) Señor(a) (rita): INOCENTE ORLANDO MONTANO, con Pasaporte de  
Identidad No.A70127630; hijo (a) ANTONIO MORALES y de EMILIA MONTANO.

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.

  
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



## 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:
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.

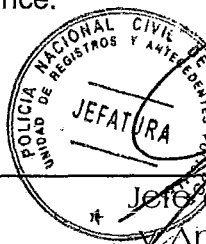
This Apostille only certifies the authenticity of the signature and the capacity of the person who has signed the public document, and, where appropriate, the identity of the seal or stamp which the public document bears.  
This Apostille does not certify the content of the document for which it was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

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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.



Nº 125057

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.



10. Firma

**EXONERADO DE DERECHOS  
CONSULARES**

  
MARIA DIGNA MELGAR ROMERO

# **EXHIBIT B**

[RELEASED IN FULL]

ACTION WHA-00

INFO	LOG-00	EEB-00	AF-00	AID-00	AMAD-00	CIAE-00	INL-00
	DNI-00	DODE-00	DOEE-00	DS-00	EAP-00	EUR-00	UTED-00
	VCI-00	DIAS-00	H-00	TEDE-00	INR-00	IO-00	LAB-01
	L-00	ARMY-00	MOFM-00	MOF-00	VCIE-00	NSAE-00	ISN-00
	NSCE-00	OIC-00	NIMA-00	OPR-00	PA-00	GIWI-00	PRS-00
	P-00	ISNE-00	SP-00	SSO-00	SS-00	STR-00	TRSE-00
	FMP-00	SCRS-00	DSCC-00	PRM-00	DRL-00	G-00	NFAT-00
	SAS-00	FA-00	SWCI-00	PESU-00	/001W		

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R 242229Z MAY 10  
 FM AMEMBASSY SAN SALVADOR  
 TO SECSTATE WASHDC 0804  
 INFO WHA CENTRAL AMERICAN COLLECTIVE  
 USMISSION USUN NEW YORK  
 AMEMBASSY MADRID  
 AMEMBASSY MEXICO

UNCLAS SAN SALVADOR 000201

SENSITIVE  
SIPDIS

[DECONTROLLED]

E.O. 12958: N/A  
 TAGS: PHUM, PGOV, PREL, KJUS, ES, SP  
 SUBJECT: Supreme Court Refuses Jesuit Case Request, Upholds Amnesty Law

1. (SBU) Summary: The Salvadoran Supreme Court affirmed El Salvador's Amnesty Law and rejected a request from a Spanish judge to hand over information regarding the 1989 murder of six Jesuit priests. The decision underlines El Salvador's antipathy for revisiting the quarrels originating from the civil conflict. End summary.

2. (U) In a decision affirming El Salvador's amnesty law, the Supreme Court May 20 rejected a request from a Spanish judge to hand over information regarding 14 soldiers accused of murdering six Jesuit priests, their housekeeper, and her 16-year-old daughter, in 1989. In rejecting the petition, the court upheld arguments that some of the soldiers have already been tried for the crimes, and that the statute of limitations as well as the Amnesty Law itself prohibited further prosecution. They also noted that the amnesty advances a fundamental national interest. Judge Ulices Guzman said that "It would be a contradiction for the Salvadoran government to cooperate with a foreign state to prosecute Salvadorans who have been exempted from liability," calling it an issue of national sovereignty. A task force will present a report

[REVIEW AUTHORITY: Adolph Eisner, Senior Reviewer]



UNCLASSIFIED U.S. Department of State Case No. F-2010-03417 Doc No. C17520470 Date: 06/28/2012  
on the decision on May 25.

3. (U) According to local press reports, the petition was filed by judge Eloy Velasco Nunez of the Spanish court Audiencia Nacional in October 2009, in response to a complaint filed in May 2009 by the Human Rights Association of Spain (APDHE) and the Center for Justice & Accountability (CJA), based in San Francisco, California. In August 2009, University of Central America rector Jose Maria Tojeira urged reopening these cases, and had pressed the government to annul the 1993 Amnesty Law. (Note: The University of Central America was the site of the Jesuits' murders. End note.) The GOES did not follow through with the suggestion, which in any event could only be carried out by the Legislative Assembly.

4. (SBU) Nine of 15 justices voted to reject the request, with five favoring the petition. Supreme Court President Jaime Belarmino abstained. Voting against were Rosa Maria Fortin, Miguel Trejo, Lolly Claros, Evelyn Nunez, Nestor Castaneda, Ulices Guzman, Rodolfo Gonzalez, Mario Valdivieso, and Mary Luz Regalado. One justice informed DOJ Attache that Belarmino abstained because, soon after joining the court as President, he had agreed to provide the information requested by the Spanish judge without consulting his colleagues.

5. (U) The accused are Generals Humberto Larios, Rene Emilio Ponce, Juan Rafael Bustillo, Juan Orlando Zepeda; Colonels Inocente Orlando Montano and Francisco Fuentes Helena; Lieutenants Carlos Camilo Hernandez Barahona, Jose Ricardo Espinoza Guerra and Gonzalo Guevara Cerritos; Sergeants Antonio Ramiro Avalos Vargas and Thomas Zarpate Castillo; Corporal Angel Perez Vasquez; and soldiers Oscar Mariano Amaya and Jose Alberto Sierra Ascencio.

6. (SBU) Comment: This is an important decision. Though noted in the press, it was not given prominence, and the absence of a heated public response coupled with a dearth of editorial comment indicate general, albeit tepid, support for preserving the Amnesty. Nevertheless, the fact that the Court, which is currently engaged in a bitter internal power struggle that has effectively left it deadlocked, was able to muster a sizeable majority to issue a judgment gives the decision added cachet. The decision reinforces the Amnesty Law as the bedrock of the peace accords that continue to sustain El Salvador's political system.

BLAU

NNNN

ACTION INL-00

INFO	LOG-00	EEB-00	VCI-00	AID-00	A-00	ACQ-00	CA-00
	CCO-00	CG-00	CIAE-00	COME-00	CTME-00	DEAE-00	DINT-00
	DODE-00	DOEE-00	DOTE-00	WHA-00	DS-00	AVC-00	EUR-00
	FAAE-00	FBIE-00	UTED-00	H-00	TEDE-00	INR-00	INSE-00
	IO-00	L-00	MOFM-00	MOF-00	M-00	VCIE-00	NRC-00
	NSAE-00	ISN-00	NSCE-00	OCS-00	OIC-00	OMB-00	PA-00
	PM-00	PRS-00	P-00	SCT-00	ISNE-00	DOHS-00	SP-00
	SSO-00	SS-00	TRSE-00	T-00	USSS-00	IIP-00	PMB-00
	DSCC-00	DRL-00	G-00	SAS-00	FA-00	SWCI-00	SANA-00

/000W

-----D84ED3 031820Z /33

R 031648Z OCT 11  
FM AMEMBASSY SAN SALVADOR  
TO SECSTATE WASHDC 2722  
INFO AMEMBASSY SAN SALVADOR

RELEASED IN PART B7(B),B7(C),B6

UNCLAS SAN SALVADOR 000219

SENSITIVE  
SENSITIVE

DECONTROLLED

E.O. 13526: N/A  
TAGS: PREL, PGOV, KCRM, KJUS, ES  
SUBJECT: Spanish Court Sparks Amnesty Debate

1. (SBU) Summary. A request by a Spanish judge for the extradition of 20 former Salvadoran military officials for their alleged involvement in the 1989 killing of six Jesuit priests, the resulting International Police agency (Interpol) "red notices" requesting their arrest, [redacted]

[redacted] sparked an emotional debate in El Salvador on one of the worst atrocities of the civil war and the application of the Amnesty Law that helped end it. While the controversy largely had abated following a late August Supreme Court decision avoiding action based on legal technicalities, the September 20 issuance of a second Interpol red notice is likely to revive the issue. [redacted]

B6  
B7(B)  
B7(C)

End

Summary

Public Debate Centers on Amnesty Law

2. (U) On May 30, Spanish judge Eloy Valasco Nunez requested the extradition of 20 Salvadoran civil-war era military officials, accusing them of planning and carrying out the 1989 killings of six Jesuit priests (including five Spaniards), their Salvadoran

REVIEW AUTHORITY: Adolph Eisner, Senior Reviewer

UNCLASSIFIED U.S. Department of State Case No. F-2010-03417 Doc No. C17520473 Date: 06/28/2012  
housekeeper and her daughter. On July 26, Interpol issued a "red notice," which requests that the wanted person "be detained with a view to extradition," for 10 of the defendants. These actions sparked extensive and sometimes painful public debate in El Salvador, much of it centered on the 1993 General Amnesty for the Consolidation of Peace law, which was passed one year after the signing of the Peace Accords that ended the 12-year civil war. The Amnesty Law provided broad and unconditional amnesty to all who in any form participated in political crimes, which were defined as "any crime with political purposes or committed as a consequence of the civil war."

3. (U) While some criticize the Amnesty Law for allowing those who committed atrocities on both sides to escape justice, the law is acknowledged by most Salvadorans as a critical factor in healing the wounds of a bitter war and allowing the country to build a lasting peace. Many political leaders and commentators fear acting on the Spanish extradition request in apparent contradiction of the Salvadoran Amnesty Law could launch a "witch hunt" that could re-open old wounds and undermine 20 years of reconciliation. Moreover, many current and former government leaders on both the left and the right were active in the conflict, and a reinterpretation of the Amnesty Law could make them vulnerable to investigation and prosecution.

4. (U) Although there have been calls from some quarters - most notably Human Rights Ombudsman Oscar Luna and the University of Central America (UCA), where the killings took place -- to bring those responsible for the Jesuit murders to justice through the Spanish case, most commentators come down on the side of respecting the Amnesty Law while acknowledging the heinousness of the killings. Factions on the center and right of the political spectrum have strongly defended the inviolability of the Amnesty Law. Even the FMLN - elements of which in the past called for overturning the Amnesty Law -- has been careful to stress the importance of legal process and has alluded to potentially serious repercussions if the accused are extradited to Spain in apparent contradiction of the Amnesty Law. FMLN party head Medardo Gonzalez said August 9 the case was in the hands of the Salvadoran Supreme Court, which should set aside the special interests of political parties or others in making a decision. The FMLN would not "provoke political instability" by weighing in on the Spanish request for extradition, according to Gonzalez.

5. (U) Once the Court issued its August 24 decision avoiding action on possible extradition on legal technicalities, many commentators and political leaders made statements respecting the Court's decision. President Mauricio Funes -- who while the Court was deliberating had noted the matter was in the hands of the judiciary, not the executive branch -- made a statement August 25

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urging that the Court's opinion be "respected and heeded." The influential Archbishop of San Salvador, Jose Luis Escobar Alas, spoke for many Salvadorans the same day when he said "the amnesty law... with all its defects and limitations may be the best path to reconciliation."

6. (SBU) Public discussion of the Jesuits case diminished following the Court's decision. [REDACTED]

[REDACTED] The September 20 red notice naming five additional former military officials for their alleged complicity in the 1989 murders has renewed interest in the Jesuits case, though it has not attracted the same level of attention as the initial Interpol requests. To date, the five have not been detained or turned themselves in to military or civilian officials, and the Supreme Court says it is evaluating the latest red notice.

B6  
B7(B)  
B7(C)

Background: Court Avoids Controversy

7. (U) Shortly after the first Interpol red notice was issued July 26, nine of the suspects still residing in El Salvador turned themselves in to military officials voluntarily, but technically were not under arrest. Several filed habeas corpus petitions to halt further action toward an arrest, but the Salvadoran Supreme Court ruled in mid-August the habeas corpus petitions had no standing based on procedural issues, including the Court's view that their arrest technically had not been ordered.

8. (SBU) On August 24, the Court ruled that neither the Interpol red notice nor the request from the Spanish judge constituted a formal extradition request, and that therefore the issue was closed. The decision avoided the potentially controversial topics of extradition and the applicability of the Amnesty Law. In defending their decision, members of the Court emphasized that the Interpol red notice merely required that the suspects be located, not arrested; that only they had the authority to act on extraditions; and that proper government-to-government channels must be followed in requesting extraditions. In the early morning hours following the Court's ruling, the former military officials left the military compound where they had been staying and returned to their normal lives.

Comment

9. (SBU) The Spanish judge's extradition request hit an emotional nerve in El Salvador as it forced debate over two of the most sensitive episodes of the Civil War: the murders of Jesuits priests at the height of the war and the general amnesty that helped end it. By focusing on legal technicalities, the Salvadoran

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Supreme Court avoided addressing the potentially divisive issue of extradition for crimes committed during the war and the validity of the Amnesty Law. The new red notice will again require the Court to address sensitive issues. In general, public opinion supports the continued application of the Amnesty Law.



B6  
B7(B)  
B7(C)

APONTE

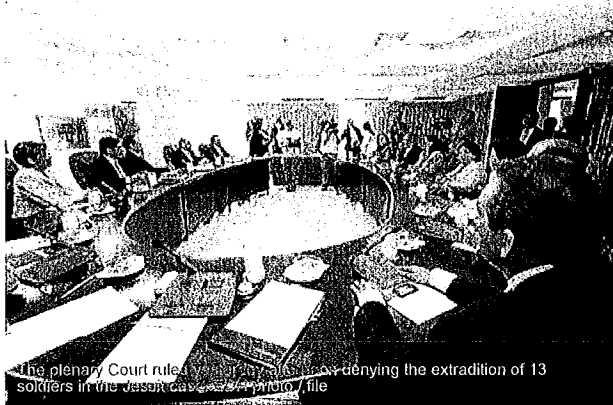
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# **EXHIBIT C**



## CSJ denies extradition of Jesuit military in case

Nine of 15 judges voted in favor, three withdrew, and the rest did not vote



ÓSCAR IRAHETA DIANA ESCALANTE SUCESOS@ELDIARIODEHOY.COM  
Tuesday, May 8, 2012

The Supreme Court yesterday denied the extradition toward Spain's 13 Salvadoran soldiers prosecuted for the murder of six Jesuits and two employees committed on 16 November 1989, in El Salvador.

### NOTES RELATED

Bertrand Galindo Funes and Assembly must abide by errors

The decision was taken during the full Court after four months of discussing the topic. Nine of 15 judges forming the session voted in favour, three were not present and the other remaining disagreed, as reported by the magistrate Ulises de el Dios Guzmán.

The magistrate explained that the central argument of the decision was "probable Jesuit killings occurred on a date prior to the reform of article 28 of the Constitution and before the reform that took place in 2000, the text of the aforementioned article did not allow the extradition of Salvadorans in any case", said the judge.

He said that article 15 of the Constitution says that people should be judged with pre-existing laws to the facts and therefore had to implement article 28 of the Magna Carta.

"The main constitutional rule that determines the attribution eventually extradite impossible us extradite those required," said the professional.

Second benefit for the military

In August of last year, the judges of the CSJ rejected the first request of capturing them and decided to not stop the military since red single Interpol diffusion provided for localization purposes.

After the failure of the judges, the judge of magistrate of the national audience of Spain, Eloy Velasco Nuñez, last may ordered another new capture via diplomatic last January.

The judge indicted the exmilitares eight offences of murder by terrorists and a crime against humanity against the right of the people, according to the request made by Velasco.

The 13 military included in the extradition request are Rafael Humberto Larios, former Minister of defence; Juan Rafael Bustillo Antonio Ramiro Avalos Vargas, Tomás Zarpate Castillo, Francisco Elena Fuentes, Juan Orlando Zepeda Guillermo Alfredo Benavides.

In addition Joaquín Arnoldo Cerna, Óscar Alberto León, Carlos Mauricio Guzmán, José Ricardo Espinoza, Gonzalo Guevara Cerritos and Óscar Mariano Guzmán, according to official documents in the possession of the Court.

# **EXHIBIT D**





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### FMLN WINS PRESIDENCY

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Mar 16 2009 CISPES

Mauricio Funes and running mate Salvador Sánchez Cerén of the leftist Farabundo Martí National Liberation Front (FMLN) declared their electoral victory to the Salvadoran people at 9:30 last night, signaling the end of 20 years of rule by the conservative Nationalist Republican Alliance (ARENA). The essence of Funes' campaign slogan, "hope is born," could be felt throughout the country yesterday, with massive voter turnout reported from the metropolis of San Salvador to rural villages in the outlying departments.

With ARENA candidate Rodrigo Ávila conceding defeat late Sunday night, Funes becomes the first leftist head of state in El Salvador's history. The FMLN entered electoral politics in 1994, having signed Peace Accords two years earlier to end a 12-year civil war with the U.S.-backed Salvadoran government.

Over 60 representatives of the U.S.-based Committee in Solidarity with the People of El Salvador (CISPES) served as accredited international observers for the historic vote. Observers reported an energized and hopeful electorate arriving at the polls on election day, but also noted obstacles to a truly transparent electoral process put in place by the governing ARENA party.

Multiple reports of foreigners covertly bussed in and housed in government buildings on the night before the election were made to international observers, including those affiliated with the Organization of American States (OAS). Observers also investigated reports of vote-buying and falsified voter cards.

International observers representing various delegations plan to release their findings to the media and to El Salvador's Supreme Electoral Tribunal (TSE) throughout the coming week. President-elect Funes has vowed to improve the electoral system once in office by addressing unresolved problems highlighted by a 2008 OAS audit and providing for absentee voting by Salvadorans living in other countries.

Rare among observer missions, CISPES delegates, spread through different municipalities of the country, were stationed at single polling places for the entirety of election day. Observers witnessed the entire voting process, from the set-up of the voting tables and opening of the voting centers all the way until the last vote was tallied.

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