

**A LEGISLATIVE PROPOSAL ENTITLED
THE “BANK ACCOUNT SEIZURE OF
TERRORIST ASSETS (BASTA) ACT”**

HEARING
BEFORE THE
SUBCOMMITTEE ON MONETARY
POLICY AND TRADE
OF THE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS
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A LEGISLATIVE PROPOSAL ENTITLED THE “BANK ACCOUNT SEIZURE OF TERRORIST ASSETS (BASTA) ACT”

Thursday, July 17, 2014

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MONETARY
POLICY AND TRADE,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:45 a.m., in room 2128, Rayburn House Office Building, Hon. Bill Huizenga [vice chairman of the subcommittee] presiding.

Members present: Representatives Huizenga, Posey, Stutzman, Mulvaney, Cotton; and Sewell.

Ex officio present: Representative Hensarling.

Mr. HUIZENG (presiding). The subcommittee will come to order.

Without objection, the Chair is authorized to declare a recess of the subcommittee at any time. Also, without objection, members of the full Financial Services Committee who are not members of this subcommittee may sit on the dais and participate in today's hearing.

And I should make note we did have a Floor update that between 10 and 10:15, we will have our first series of votes today. But it will be a relatively short one, so we are going to try and get through opening statements and get through this first panel. And then, we will reconvene 5 minutes after the final vote on the Floor.

So with that, the Chair now recognizes himself for a brief opening statement.

This committee regularly considers matters of great technical detail, matters that can have a great effect on the world economy or on individual lives. What we don't routinely do is consider shooting wars or Americans who spend years in captivity by Marxist rebels.

Today, we will be discussing those difficult topics and some matters of extraordinary complexity involving ways to fairly compensate victims of these heinous acts.

In early 2003, Keith Stansell, Marc Gonsalves, Tom Howes, and Tom Janis were engaged in a counter-narcotics operation in Colombia under the auspices of the Department of Defense when their plane crash-landed. They were captured by members of the Revolutionary Armed Forces of Colombia (FARC), a violent guerrilla group that has funded itself by kidnapping and narcotics trafficking while in armed conflict in Colombia since the mid-1960s.

The guerrillas executed Tom Janis at the crash site, and the three remaining men were held hostage and tortured for more than 5 years until they and a number of their hostages were rescued by the Colombian military.

Today's hearing will focus on matters related to the execution of courts' judgments against assets of the FARC for actions taken against these American hostages captured in Colombia.

And I have quite a bit more, but in the interest of time, I think I am going to dispense with that. And with that, I don't know that we have anybody on the other side—not yet. So if that is okay, what we will do is recognize Mr. Posey for 3 minutes for an opening statement.

Mr. POSEY. Thank you, Mr. Chairman. I will be brief. I would like to thank Chairman Hensarling for calling this hearing, and I thank you for your support and the committee for the support to grant justice to the victims of narco-terrorism.

The three surviving former FARC hostages, Marc Gonsalves, Keith Stansell, and my constituent, Tom Howes, are here today. We will hear from them in a little while. Unfortunately, the family of Tom Janis, who was executed by FARC, cannot be here today.

These men put themselves in harm's way to provide service to our Nation and were hostages of the FARC for 5½ years, longer than I have been in Congress. They have endured hardships beyond imagination and are American heroes who deserve our respect and our admiration.

Congress gave these men the right to sue FARC captors in Federal court. Congress also passed Section 201 of the Terrorism Risk Insurance Act (TRIA), which gave the victims of terrorism the ability to seize assets of terrorists and their agents.

Unfortunately, TRIA does not currently allow these men to seize assets of FARC-related drug smugglers, money launderers, and gun runners because they are blocked under the Kingpin Act. The Treasury Department has chosen to block FARC assets only under the Kingpin Act even though they would be blocked under other statutes that would allow them to seize assets.

Furthermore, the Treasury Department believes that it is better to use blocked Kingpin assets to negotiate with narco-traffickers than to allow victims of these terrorists to have access to these funds and settle their court-adjudicated claims.

These men have repeatedly asked Treasury to reclassify FARC assets to allow them to seize them, but were either ignored or denied. There is no administrative solution, and legislative action is necessary.

Our staff spent months reaching out to the Administration to get their comments on the bill. They responded one time, and we need massive changes to the bill to address their concerns. It is the smallest change in the law necessary to achieve the objective.

I am therefore glad to have this opportunity to demonstrate how and why we introduce the BASTA Act to remedy this injustice. I thank you, Mr. Chairman, and I yield back.

Mr. HUIZENGA. The gentlemen yields back.

And with that, we are going to move right to our panel. I would like to extend a welcome to our first panel of witnesses: Jennifer Fowler, Deputy Assistant Secretary for Terrorism and Financial

Crimes, U.S. Department of the Treasury; and Marshall Miller, Acting Principal Deputy Assistant Attorney General, U.S. Department of Justice.

You will each be recognized for 5 minutes to give your oral presentation of your testimony. And without objection, your written statements will be made a part of the record. And, of course, in front on you on the table is a series of lights: green; yellow; and red. When it turns red, you will have one minute to sum up. And I will be quick with the gavel today. So once each of you has finished testifying, each member of the committee will have 5 minutes in which to ask questions.

Ms. Fowler, you are now recognized for 5 minutes.

STATEMENT OF JENNIFER L. FOWLER, DEPUTY ASSISTANT SECRETARY FOR TERRORISM AND FINANCIAL CRIMES, U.S. DEPARTMENT OF THE TREASURY

Ms. FOWLER. Thank you, Mr. Chairman, Ranking Member Clay, and members of the subcommittee. I appreciate the opportunity to appear today before you to discuss the proposed bank account seizure of terrorist assets amendment and its potential effects on Treasury's implementation of the Foreign Narcotics Kingpin Designation Act, commonly known as the Kingpin Act.

Before I begin, I want to extend my deepest sympathies and that of the Department of the Treasury, to all victims of violence, from terrorism and all other crimes, and strongly condemn all violent acts by terrorist organizations, including the Revolutionary Armed Forces of Colombia or the FARC.

For nearly 15 years, the Treasury Department has robustly implemented the Kingpin Act to disrupt and dismantle narcotics trafficking organizations like the FARC and deprive them of the resources needed to carry out their violent activities that threaten U.S. and global security.

The Kingpin Act prohibits transactions with foreign narcotics traffickers identified by the President and provides authority for Treasury's Office of Foreign Assets Control, or OFAC, to designate foreign individuals and entities that are acting on behalf of the designated kingpins. This authority allows OFAC to go after the financial and support networks of drug-trafficking organizations, including the money launderers, front companies and transportation and communications firms facilitating their activities, as well as the assets where they store their wealth.

The Kingpin Act is one of the most powerful and effective tools we have to disrupt the financial underpinnings of narcotics trafficking organizations. These sanctions have been used with great success against traffickers in Mexico, such as Los Zetas and the Sinaloa Cartel in Colombia, and throughout Central America.

Particularly in Honduras and Guatemala, the Kingpin Act has a global reach and OFAC has targeted drug traffickers around the world, including in Afghanistan, Lebanon, and Nigeria. Since June 2000, more than 1,600 individuals and entities have been named, pursuant to the Kingpin Act, for their role in international narcotics trafficking. This authority has been enhanced by our robust cooperation with foreign governments and law enforcement who

have often initiated investigations in their own countries, based on our designations.

These foreign investigations sparked by Kingpin Act designations have resulted in numerous seizures and arrests abroad. The seizure by the Honduran government in September 2013 of \$500 million in narcotics-linked assets was done in close coordination with OFAC on a Kingpin designation. It was the largest drug-related asset seizure in Honduran history.

Financial sanctions have been called a civil death by narcotics traffickers themselves, due to their subsequent inability to maintain banking and commercial relationships. These financial sanctions isolate them from the U.S. financial system, and often the financial system in their own country.

In addition, if the traffickers have assets in the United States, these assets are blocked or frozen and access to the assets is controlled by the government. Traffickers must then petition OFAC and demonstrate a change in their behavior for the designation to be lifted and to regain access to those frozen assets. Using access to these frozen assets is an important point of leverage to effect behavioral change by narcotics traffickers.

Since 2000, 200 Kingpin Act designees have come to us to petition for removal. After a thorough investigation, OFAC agreed that 137 of them had demonstrated a credible change in behavior and therefore removed them from the SDN list. In some cases, designated individuals showed proof of credible change by agreeing to cooperate with U.S. or foreign enforcement, by renouncing any rights to foreign assets derived by narcotics trafficking, or by severing their ties to front companies.

The Terrorism Risk Insurance Act of 2002, commonly known as TRIA, allows for a person who has obtained a judgment against a terrorist party to attach any blocked assets of that terrorist party in aid of satisfying such judgment. Currently, the term “blocked assets,” as defined by TRIA, refers only to assets frozen by the United States, pursuant to the Trading with the Enemy Act or the International Emergency Economic Powers Act.

The Kingpin Act, on the other hand, was specifically created to address the separate threat to our country’s international interests posed by the activities of international narcotics traffickers. Amending TRIA’s definition of blocked assets to include property frozen, pursuant to the Kingpin Act, could have potentially negative effects. We expect that, as applied, this amendment could result in the attachment and depletion of blocked assets of non-terrorist-related narcotics traffickers, including those operating in Mexico, Central America, and Colombia. This could limit Treasury’s ability to use these blocked assets as leverage against dangerous groups such as the Sinaloa Cartel, Los Zetas, Los Cachiros, and Colombian criminal gangs involved in the drug trade.

In closing, I want to urge Congress to give careful consideration to the potential impact any amendment to TRIA may have on the targeting of drug-trafficking organizations under the Kingpin Act.

Thank you very much for the opportunity to be here today, and I welcome any questions.

[The prepared statement of Deputy Assistant Secretary Fowler can be found on page 42 of the appendix.]

Mr. HUIZENGA. With that, we now recognize Mr. Miller for 5 minutes.

**STATEMENT OF MARSHALL L. MILLER, ACTING PRINCIPAL
DEPUTY ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE**

Mr. MILLER. Mr. Chairman, distinguished members of the subcommittee, thank you for inviting me to speak at this hearing. The Department of Justice is fully committed to using all of our prosecutorial tools to combat terrorists and narcotics-trafficking organizations. The primary approach employed by the dedicated prosecutors at the Department of Justice is the prosecution of members and associates of such groups for their criminal acts. We also employ our forfeiture authorities to seize assets and we vigorously pursue restitution for crime victims.

The Department works with crime victims on a daily basis to ensure they receive justice for the harms they have suffered. Specifically, the seizure and forfeiture of assets that represent the proceeds of Federal crimes or that were used to facilitate those crimes are covered by the Department of Justice's Asset Forfeiture Program.

The program's primary mission is to use asset forfeiture to enhance public safety and security by ensuring that crime does not pay. To accomplish that mission, the Department forfeits the proceeds of crime or other substitute assets directly from the criminals themselves. Asset forfeiture, thus, takes the profit out of crime, disrupts criminal organizations, lessens their economic influence, and serves as a deterrent to future criminal activity.

In addition, the laws governing asset forfeiture provide pretrial preservation tools to prevent criminal defendants from dissipating crime proceeds, ensuring that such proceeds remain available for forfeiture or restitution.

The Criminal Division's Asset Forfeiture and Money Laundering Section, or AFMLS, spearheads the asset forfeiture program, and more generally, the Department's asset forfeiture and anti-money-laundering enforcement efforts.

Most importantly for today's hearing, AFMLS leads the Department's efforts to return forfeited criminal proceeds to those harmed by crime by through the administration of victim claims. The Department works to ensure that victims of crime are fairly and equitably compensated. The authority to distribute forfeited funds has been entrusted to the Attorney General. This makes sense legally, because once property or funds are forfeited, ownership of the property or funds in question transfers to the government. But it is also sensible, as it allows the government to finalize and execute forfeiture orders fairly without prejudicing the rights of any claimants.

The process by which the Department distributes forfeited assets is known as remission. Under the applicable regulatory framework governing remission, the Department has provided compensation to thousands of victims for a wide variety of crimes, ranging from Ponzi schemes, mail and wire fraud, and health care fraud, to identity theft, intellectual property, and trademark violations.

Since 2001, nearly \$4 billion in forfeited assets has been disbursed to victims by the Department, under the Attorney General's authority. Over \$203 million has been returned to victims so far this year. The remission process is governed by Federal regulations that define a victim as an innocent person who has suffered a pecuniary loss as a direct result of the crime underlying the forfeiture or a related offense. It is important to note that the remission regulations give no preferential treatment to any particular victims. All victims must submit and document their losses with supporting documents.

When the forfeited funds are not sufficient to compensate multiple victims for the entirety of their losses, the funds are generally distributed on a pro rata basis in accordance with each victim's verified pecuniary loss amount.

An important purpose of these regulations is to prevent victims of crime from being doubly harmed, first by the underlying criminal conduct and a second time as resources are dissipated as victims are forced to compete over a limited pot of money. The Department remains steadfast in its commitment to ensuring that forfeiture plays a key role in helping victims recover from the crimes committed against them.

If I might take a brief moment, I would like on behalf of the Department of Justice to express our strong feelings of sympathy, respect, and admiration for the FARC hostage-taking victims, particularly Mr. Howes, Mr. Stansell, and Mr. Gonsalves, who are here today, as well as the families of those who lost their lives during that crime.

Their resolve, tenacity, and dedication to this country in the face of horrific treatment from their FARC captors is truly inspiring, and the Department of Justice will not rest in our efforts to bring their captors to justice.

I would like to again thank the subcommittee for holding this hearing and providing the Department with the opportunity to explain our forfeiture efforts, remission procedures, and commitment to compensating the victims of crime. I am happy to answer any questions that you may have, and I yield back any time that I still have.

[The prepared statement of Mr. Miller can be found on page 66 of the appendix.]

Mr. HUIZENGA. The gentleman yields back. Thank you for doing that. At this time, the Chair yields himself up to 5 minutes for questions. And with that, I will start with you, Mr. Marshall.

So as we were talking about—this is rather technical. Help me understand the technical differences between blocked, frozen, seized, and forfeited assets, and really what the circumstances are; I know you were touching on that.

I want to make sure that as you were talking about the pecuniary damages that have happened, how this has—I am assuming part of this is, how do you quantify monetarily what the damage is? Is that where part of the hang-up is?

Mr. MILLER. Thank you, Mr. Chairman. To begin with the first part of your question, there is a significant difference between blocked and frozen assets on the one hand, and seized and forfeited assets on the other.

And I can let my colleague from the Department of the Treasury speak a little more about frozen and blocked assets, but essentially those are assets that remain under the ownership of the original party whose assets were blocked. They can't access those assets. They can't use those assets, but they remain in their ownership.

Seized or frozen assets mean assets that the Department of Justice has taken action to actually assume ownership of. So when a criminal prosecution is filed and forfeiture allegations are included against particular assets, we, the Department of Justice, get a warrant to seize those assets and then begin the process of actually taking ownership of them.

So when the assets are ultimately forfeited, ownership transfers to the Government of the United States. Those are important tools that we use in criminal cases, the forfeiture authorities, to stop criminals from dissipating those assets during the penance of a criminal prosecution, making sure that those assets are seized, and thus at the end of a criminal prosecution they can be provided to victims through restitution or forfeiture or ultimately forfeited to the United States.

Mr. HUIZENGA. In your testimony, though, you talked about focusing on victims who have suffered "quantifiable pecuniary harm." As the regulations set forth, quantifying nonpecuniary harm is a very difficult process. Is there no way of determining financially what the harm was here?

Mr. MILLER. One way that takes place, Mr. Chairman, is in the restitution process. So in an individual criminal case, there is a—at times, courts can attempt to quantify harms to individuals that aren't the loss of particular funds. So in a nonfraud case for example, when funds are forfeited, the regulations that govern the remission process do require proof of some sort of quantifiable pecuniary harm.

To attempt to quantify a non-pecuniary harm is not called for within the regulations and is, as the Chair recognized, a difficult process, one that could consume significant resources as the Department or some independent body attempts to figure out what dollar figure should attach to nonpecuniary harm and then resolve the differences amongst potentially numerous victims with respect to that harm.

Mr. HUIZENGA. All right. I have a minute-and-a-half left, and we did just have votes called, but we are going to try and get through this.

Ms. Fowler, help me—we have a minute left. Help me understand the decision-making process, if this is blocked under the Kingpin Act as drug trafficker's assets rather than terrorist assets, even though the FARC has been designated a terrorist organization.

Ms. FOWLER. So yes, the FARC is designated as a terrorist organization, but it is also designated by the President as a kingpin under the Kingpin Act.

We have pursued designations of kingpin leadership and other elements of its financial and support network under the Kingpin Act. That is the authority that we use to go after drug trafficking activities globally, as I said in my statement.

We have been focused on depriving the FARC of its money-making capabilities, and that revolves around the drug trade. So, we have focused on our actions against the FARC under the Kingpin Act.

There is also a robust law enforcement cooperation that goes on within the auspices of the Kingpin Act. We rely on information from law enforcement, from our partners domestically to carry out those designations. So that is how we have chosen to sort of dismantle their financial support network.

Mr. HUIZENGA. Okay. My time has expired. With that, the Chair recognizes Mr. Posey for 5 minutes.

Mr. POSEY. Thank you, Mr. Chairman. Ms. Fowler, in your testimony you said—I am assuming that you oppose the legislation we are looking at now?

Ms. FOWLER. We haven't taken a position on the legislation. I am here to be a resource to provide information about potential consequences. But we haven't taken a position yet.

Mr. POSEY. So Treasury doesn't care one way or the other? Is that correct?

Ms. FOWLER. We are still assessing it.

Mr. POSEY. When are you going to finish assessing it? It has been months and months and months. These victims have been looking to you for years to do something. When are you going to come up with an assessment? When are you going to really care one way or the other?

Ms. FOWLER. We have provided—

Mr. POSEY. If you don't have an answer for that, that is okay. In your testimony you said this bill, by allowing these people to be eligible for compensation for being murdered and tortured, "could limit the Treasury's ability to use blocked assets as leverage against dangerous groups such as" and you listed them.

These people have been harmed by dangerous groups. Could you explain to me how letting these guys recover from narcotics dealers and terrorists is going to harm your ability to deal with other narcotics dealers and terrorists?

Ms. FOWLER. So the amendment as drafted, what we would expect its application to include would be assets of non-terrorist-related drug trafficking groups, non-FARC-related groups. So groups like Los Atos and other groups in Central America that are involved in the direct distribution of drugs into the United States.

That application would make assets that are not terrorist-related available to terrorist victims. That is the potential consequence. And as I said in my statement—

Mr. POSEY. Okay. So, if I was just watching this on C-SPAN, I would think Treasury is more interested in protecting the assets of drug runners and terrorists than they are for compensating the victims of those people, and I think that is why it was set up originally under TRIA.

My time is running short here. Mr. Miller, you talk about the variety of crimes that you all have provided—helped recover compensation for victims of Ponzi schemes, mail and wire fraud, health care fraud, identify theft, intellectual property and trademark violations. Since 2001, nearly \$4 billion in forfeit. And those are crimes for which people should be compensated.

But I think above all of those are victims who have been physically tortured and murdered. And I think they should have some priority in this process. You said that the Justice Department won't rest until they bring the perpetrators to justice. And you know, and I know, that you never will.

So I would think the best thing that you could do is endorse at this time trying to get the victims compensated. And I should ask you to begin with, do you oppose this bill?

Mr. MILLER. To begin, Congressman, I think this bill, as currently drafted, really doesn't address Department of Justice equities directly. It is really more in the Department of the Treasury's name.

Mr. POSEY. Do you oppose it or support it?

Mr. MILLER. We defer to the Department of the Treasury as it affects them.

Mr. POSEY. And they don't care one way or the other at this point, and you don't care one way or the other at this point. Is that correct?

Mr. MILLER. I wouldn't put it that way, Congressman. The Department of Justice is, as I said, committed to bringing to justice the captors, and we have had some—

Mr. POSEY. I know you never will, and I think you know in your heart you never will. And I would like to stick to this bill. You said you defer to the Treasury, and they say they really don't care that they haven't had time to possibly analyze this since 2002 and don't know when they are going to be able to finish analyzing it.

We are basically interested in solving problems up here. And nobody has come up with any other better idea to solve the problem. They have only come up with ways or objections or treading water to stop us from solving a problem, which is narcoterrorists murdering and torturing people without any remedy for the victims.

Mr. MILLER. Congressman, as I think you know, we have charged over 15 defendants with these crimes. One of them has pled guilty and is due to be sentenced. At least, it is scheduled for next week. It may get pushed off, as I understand it, but I am not certain about that. But as of now, it is scheduled for next week. An additional defendant was sentenced to 60 years in prison.

So I think we do continue to fight for justice in terms of actual prosecutions of the individuals involved in this offense, and I don't think we view it as something that can never happen. We fight every day to make sure that it does happen.

Mr. POSEY. Why would you want to block us from allowing these people to recover court-awarded damages from narcoterrorists?

Mr. MILLER. I don't think the Department's position is that we look to stop people from obtaining restitution where we can fight to make that happen. We pursue restitution orders for terrorism victims in cases across the country.

Mr. HUIZENGA. The gentleman's time has expired. And in the interest of time, we have about 4 minutes left, I think, to vote. I'm sorry. My eyes are getting bad. I am trying to see the screen; 7 minutes left of voting. And with that, we will recognize Mr. Mulvaney for 5 minutes.

Mr. MULVANEY. Thanks. And I will try and be "un-Southern" and talk fast for a little bit. Ms. Fowler, Mr. Miller, I am going to do

something unusual for a politician, which is admit to you in advance that I don't know that much about what we are dealing with. So I am going to do something rare, and actually ask questions with a desire to simply learn about the topic.

Ms. Fowler, you mentioned during your testimony, and I have it in front of me, that one of the—TRIA added Trading with the Enemy and IEEPA as this fund that victims could get to. And you say in your testimony that you are against adding Kingpin to that because it would limit your ability to use them as leverage. I don't get that. Why was using Trading with the Enemy okay, and IEEPA okay, but Kingpin is not?

Ms. FOWLER. The reality is that Kingpin was in place as law when TRIA was put in place as law. So—

Mr. MULVANEY. Right.

Ms. FOWLER. —I don't know why it wasn't brought in as part of that legislation. It is clearly not part of TRIA. The assets blocked, pursuant to the Kingpin Act, are not available to victims under TRIA. I didn't say in my testimony that we oppose the amendment that is being proposed. We are still assessing it. What I have tried to do is explain what the potential consequences are, if this amendment goes through. And what we have seen is—

Mr. MULVANEY. But you all didn't oppose adding IEEPA and Trading with the Enemy, right?

Ms. FOWLER. I really couldn't speak to what our position was at that point. It was 10 years ago.

Mr. MULVANEY. My notes say that you didn't. So I am trying to figure out the distinction. What is the difference between these two things? Why is it okay to use IEEPA and TRIA, but not Kingpin?

Ms. FOWLER. Under Kingpin—there are a variety of non-terrorist-related narcotics trafficking groups that are targeted under Kingpin.

Mr. MULVANEY. Right.

Ms. FOWLER. They are not involved in terrorist activity. What they are is motivated by profit. They are involved in this dangerous criminal activity that is bringing drugs into the United States. So they are not terrorist groups. The FARC, however, happens to be both a terrorist group and a drug-trafficking organization. So they are blocked under both authorities. What some of the testimony submitted today suggests is that any group that is involved in cocaine trade anywhere should be considered part of the FARC. Under our authorities, there are very clear definitions about who is part of the FARC and who is not. We have groups like Los Zetas, other groups in Honduras and Guatemala that are—

Mr. MULVANEY. You mentioned that. And you say that the proposal could limit Treasury's ability to use these blocked assets as leverage.

Ms. FOWLER. For the assets that we have blocked for terrorist groups, there are many points of leverage that we have under our authorities. One point of leverage is the frozen assets that could be blocked in the United States.

Mr. MULVANEY. Right.

Ms. FOWLER. If you are a drug trafficker motivated by profit, you certainly want to regain access to the assets that are blocked. We have had examples over the years where drug traffickers or people

who are facilitating their financial activities, motivated by profit, are named under Kingpin. They find themselves exposed publicly for what they are doing, involved in criminal activity, supporting drug traffickers. They can't do business in their host countries anymore. They can't do business in the United States. They have no access to their assets. So every point of leverage we have under our authority is a way to convince these drug traffickers to disassociate from those activities—potentially and in many cases—

Mr. MULVANEY. And I don't want to cut you off.

Ms. FOWLER. —typically law enforcement and help us in continuing investigations.

Mr. MULVANEY. But—

Ms. FOWLER. And that has been one of the benefits of this—

Mr. MULVANEY. Right. But I guess my point is that drug traffickers are bad people, terrorists are bad people. It looks as though Treasury was okay with giving up that leverage against terrorists in TRIA, but not on Kingpin. I am trying to get a handle around the disparate impact, not only on, I guess on the law, but on the victims. It is almost like if you are a victim of a terrorist attack, we have systems set up to help people. But if you are a victim of a drug dealer, you are not. And that is what I am trying to get my hands around as to why Treasury sort of makes the distinction between the two. Shouldn't we have consistency across those two things?

Ms. FOWLER. I don't think Treasury is making a distinction. TRIA makes a distinction. It doesn't include Kingpin.

Mr. MULVANEY. Right. By my understanding. And again, I could be wrong, and maybe you weren't there. I certainly wasn't here when TRIA was passed in 2002. But all the history that I have been presented with seems to say that Treasury supported the addition of IEEPA to TRIA. If I am wrong about that, then I am wrong about that.

Ms. FOWLER. I am really—I'm sorry, I can't speak to what our position was on that 10 years ago.

Mr. MULVANEY. All right. Help me—either of you, what have you done to actually help the victims who are here today? I don't have their names and I am sorry. Mr. Howes, Mr. Stansell, Mr. Gonsalves. What have we actually done to try and help these folks?

Mr. MILLER. At the Department of Justice, as I said a few moments ago, we have been working very hard to bring to justice those who perpetrated crimes against the individuals who are here today.

Mr. MULVANEY. Sure. And that helps everybody in the room, right? I am asking you specifically, what have you done to help these folks?

Mr. MILLER. I think going after the people who harmed them and committed crimes against them is an important part, at least from the Department of Justice's perspective, of how we go about helping victims. We think—our core mission is to prosecute the individuals who commit horrific crimes and to bring them to justice. And we stand committed to doing that in this case and in any other case. Through that process, we also pursue restitution. And where we can, we forfeit assets from the individuals who have committed

and the organizations that commit offenses. So that is what we do to try to look out for victims. And we work very hard on—

Mr. MULVANEY. Again, Mr. Miller, I don't know that much about the individual case, but I will ask the question, has restitution been made in this circumstance or not?

Mr. MILLER. I believe that—my understanding is that the individuals who have, so far, been prosecuted had insufficient funds to satisfy, for example, the \$300 judgment that has been entered. But we continue to work very hard to bring to justice those who were involved in the offenses.

Mr. MULVANEY. Thank you.

Mr. HUIZenga. And with that—I have been an inattentive committee chairman. I am trying to figure out our votes here, so we did go a bit over time. But I think we can squeeze one more Member in. Mr. Stutzman from Indiana is recognized for 5 minutes.

Mr. STUTZMAN. Thank you, Mr. Chairman. At this time, I will yield to the gentleman from Florida.

Mr. POSEY. I thank the gentleman for yielding. Just to follow up on Mr. Mulvaney's question, the individuals whom you ultimately convict conveniently never have any assets by the time they are convicted, so they can make no restitution. Bernard Madoff, by the time he basically turned himself in, still had some assets that you were able to help get and give back to some of his victims.

But I am concerned that there seems to be no interest in compensating the victims of narco-terrorism. You have the whole laundry list of white-collar crimes for which you have helped compensate the victims. And I just haven't heard any justification yet.

And I was hoping I would hear it today, if there was, in fact, a fair and realistic justification for not wanting to see the victims of narco-terrorists, people who were in prison for 5½ years, people who were tortured, people who didn't endure the torture and died, and their families. I think some restitution is due there and I see you two, right now, maybe wrongly, but I see you and your agencies for whatever reason, I don't know, standing in the way of seeing justice for the victims.

And I wish you would tell me why that is not true. I have heard you say, well, if we let the victims get the money, then we can't use their assets to maybe stop them from doing something else. Freezing their assets, I think, is probably less beneficial to leveraging against terrorists and narcotics operations, less threatening to them than actually allowing a court-adjudicated access to it for victims that they have victimized. Wouldn't you agree?

Ms. FOWLER. Congressman, we are not opposed to victims having access to assets that are properly available for attachment under TRIA. The issue here is that Kingpin assets are not covered by TRIA.

Mr. POSEY. All right. Repeat that.

Ms. FOWLER. And in the case of the FARC—

Mr. POSEY. Just repeat that, because I didn't hear that very clearly.

Ms. FOWLER. We are not opposed to assets that are properly available for attachment under TRIA being made available to victims. The issue here is the Kingpin Act assets are not covered by TRIA.

Mr. POSEY. And the—

Ms. FOWLER. And in the case of the FARC, there are no assets in the United States that would be available to victims.

Mr. POSEY. The argument is if we don't have access—the argument is there is no good reason not to have them accessible under TRIA and under Kingpin. That is why we are here. We are here, saying, the system that is in place to compensate victims is not working. And we are here to try and fix that. We think people—American citizens, heroes, people who were imprisoned, tortured, murdered, trying to do the right thing for this country to protect the citizens of this country—we think we shouldn't turn a deaf ear. And we think that it appears that we favor sometimes the people who perpetrated the crimes over the the victims. And you say, they are not covered under Kingpin, well, that is why we are here. We are trying to see that they are covered under Kingpin. They should be covered under Kingpin. And nobody is giving me one reason, compelling or even frivolous, why they shouldn't be yet.

Ms. FOWLER. What I am trying to do is explain that the amendment that we are currently discussing, as applied, would go far beyond FARC assets. It would go into other drug-trafficking organizations that have no relation to terrorism, no relation to the FARC, under our authorities. And those assets are a point of leverage that we have. They are one of many points of leverage that we have to try to dismantle those kinds of groups and prevent them from doing the kinds of things that the FARC has done to the victims in this case.

Mr. POSEY. We don't have time. And I am sure you can't tell me the type of assets we are talking about. But I just don't know how anybody could turn a blind eye to compensating the people who have suffered so much for trying to protect the people who work hard and play by the rules in this country to turn a blind eye to that. And I would think that Department of the Treasury and the Department of Justice would be advocating for anything that would help compensate our victims, not standing in the way of anything that would help these people seek a legal remedy that the courts have already ordered to be justified.

Mr. HUIZENGA. The gentleman's time is expiring.

And with that, I would like to thank our panel of witnesses for their testimony today.

I will note that you see a third microphone set up. The State Department was invited 2 weeks ago, but the State Department decided not to show up. And I find that personally very unfortunate. Again, I would like to extend my thanks to our panelists today.

With that, we are going to recess until 5 minutes after this series of votes.

[recess]

Mr. HUIZENGA. The subcommittee will come to order. And I would like to now extend to our second panel a warm welcome.

And again, I was remiss I think, in expressing specifically when I pulled in that first panel, but having learned a little bit about the story, my condolences to the family and the victims and those who have had to live through this.

I had a political science major but a concentration in Latin American history and Latin American politics. And I studied the FARC,

and I have studied a lot of those things, those conflicts that have happened from the Sandinistas on down, and know how nasty those folks are. So again, just to the families and the victims, you are in our thoughts and prayers.

So with that, I would like to extend a welcome to Mr. Tom Howes. And sir, you will be given 5 minutes.

Each of you on the panel, as we talked about before, will be recognized for 5 minutes to give your oral presentation. And without objection, your written statements will be made a part of the record.

And of course, the light that is in front of you on the table will start out green, go to yellow, and then turn red. When your time is up, please suspend. After your presentations, each Member up here will be given 5 minutes, and I understand we may have some other folks on their way as well, to ask questions.

So with that, Mr. Howes, you are recognized for 5 minutes.

STATEMENT OF THOMAS R. HOWES, VICTIM OF INTERNATIONAL TERRORISM

Mr. HOWES. Good morning. My name is Tom Howes. I am a U.S. citizen living in Congressman Posey's district.

I was a copilot flying a Department of Defense counter-narcotic surveillance mission in Colombia when we went down in FARC territory. The FARC executed our pilot, Tom Janis, a former Delta Force member.

I was held hostage for 5½ years, during which time I was tortured, chained, and starved. My fellow hostages, Keith Stansell and Marc Gonsalves, are also here today. We were awarded the Secretary of Defense Medal for the Defense of Freedom for our services and sacrifice to the country.

We sued the FARC under the Anti-Terrorism Act, and in 2010 the Federal court in Tampa awarded us a judgment against the FARC and 80 individual FARC leaders. The FARC itself has no blocked assets in the United States. Foreign terrorist organizations do not open bank accounts in their own name. Instead, they operate through drug trafficking, partner cartels, and their money launderers, the kingpins.

In 1995, President Clinton declared a national emergency of cocaine traffickers centered in Colombia. Blocking narco-trafficker assets in an Executive Order under Congress, the International Emergency Economic Powers Act (IEEPA), which we talked about earlier today.

TRIA authorizes terrorism victim judgment holders to execute on the blocked assets of agencies or instrumentalities of the terrorist party, even though the agency or instrumentality itself is not named in the judgment. TRIA allows us to execute on IEEPA assets, but not assets blocked under the Kingpin Act.

The Kingpin Act of 1999 is modeled on IEEPA and expanded sanctions worldwide, not just on Colombian traffickers under IEEPA. The FARC and its leaders are all designated under the Kingpin Act, not under IEEPA.

Since 2010, the Administration has blocked all narco-trafficking assets under the Kingpin Act instead of IEEPA. In 2013, the 11th

Circuit Court ruled that assets blocked under the Kingpin Act were not included in TRIA's definition of blocked assets.

So we lost the money and it went back to the former FARC money launderer. We made several requests to Justice and Treasury for administrative relief, and all our requests were denied.

The BASTA Act corrects this injustice by adding the Kingpin Act blocked assets to the list of blocked assets under TRIA. It makes no sense that TRIA allows terrorism victims to seize terrorist narco-trafficker assets blocked under one Act of Congress, IEEPA, but not assets blocked on another Act of Congress, the Kingpin Act.

BASTA will have no effect on the government's ability to designate, extradite, convict, and forfeit blocked assets of drug kingpins. In fact, allowing terrorism victims to go after narco-trafficker assets will only increase the Administration's leverage because the blocked parties will want to be delisted as fast as possible.

We have repeatedly asked Treasury to reclassify FARC assets to allow us to seize them, but were either ignored or denied. There is no administrative solution, and legislative action is necessary.

Thank you very much.

[The prepared statement of Mr. Howes can be found on page 45 of the appendix.]

Mr. HUIZENGA. We will now recognize Mr. Doug Farah. And sir, you have 5 minutes as well.

**STATEMENT OF DOUGLAS FARAH, PRESIDENT, IBI
CONSULTANTS LLC**

Mr. FARAH. Mr. Chairman, members of the subcommittee, thank you for this opportunity to testify about FARC in Colombia, the world's premier hybrid terrorist drug trafficking organization.

I have had the privilege of being deeply involved in Colombia since 1989. And over the past quarter of a century, I have lived in Colombia for a number of years, and I visit there regularly.

The FARC, despite ongoing peace talks with the government of President Juan Manuel Santos, remains at the center of a multitude of criminal enterprises and terrorist activities that stretch from Colombia to Argentina and northward to Central America into direct ties with the Mexican drug cartel, primarily the Sinaloa organization. It is involved in the massive laundering of drug money, and recent cases by the Drug Enforcement Administration have shown direct and growing criminal ties between the FARC, Hezbollah, and other terrorist organizations.

The Treasury Department representative earlier pointed out that if we try to tie all the drug trafficking back to the FARC—I would say that if there is one grocery store in the neighborhood, everybody goes there to buy groceries. And the DEA tells us that at least 80 percent of the cocaine consumed in the United States is fabricated by the FARC. So yes, I think you can tie a great deal of the drug trafficking organizations directly to the FARC production.

The FARC is one of only three organizations in the world that is designated by the U.S. Government as both a major drug trafficking organization and an international terrorist entity. The European Union, Canada, and other countries share this assessment. And they have been designated in part initially as a terrorist orga-

nization because of the execution of U.S. citizens, something that is often forgotten.

In 1993 and 1994, in different incidents, they kidnapped 6 U.S. missionaries, and killed them all while in captivity. In March 1999, the FARC abducted three Native American activists and killed them as well, on the spot. And of course, we have the incident that brought us here today with these gentlemen who were serving their country and were taken hostage by the FARC for 5½ years.

In 2001, shortly after the 9/11 attacks, the FARC was designated as a Specially Designated Global Terrorist Organization, which gave expanded power to the government to go after them. And in 2003, they were designated under the Kingpin Act.

Under the protection of the governments of Venezuela, Ecuador, Nicaragua, Bolivia, and El Salvador, the FARC now maintains a robust international infrastructure that is producing and moving thousands of kilos of cocaine and laundering hundreds of millions of dollars. It has emerged as a pioneer hybrid criminal terrorist insurgency.

The FARC is a central part of the revolutionary project that is bringing together armed groups and terrorist organizations under the umbrella of the Bolivarian Revolution with the aid and support of Iran. The U.S. Treasury Department's Office of Foreign Assets Control, which has carried out at least 18 designations of FARC entities, describes the group as a narco-terrorist entity.

There is now a significant body of evidence showing the FARC's operational alliance with Hezbollah and Hezbollah-based allies and other terrorist organizations in the region. A clear example of the breadth of the emerging alliances among criminal and terrorist organizations is Operation Titan, executed by Colombian and U.S. officials in 2008.

They found, after a 2-year investigation, that they were able to dismantle the drug trafficking organization that stretched from Colombia to Panama, Mexico, West Africa, the United States, and the Middle East. The cocaine path used in that massive network was mostly derived from the FARC.

Colombian and U.S. officials say that one of the key money launderers in the structure, Chekry Harb, aka "Taliban" acted as a central go-between among Latin American drug-trafficking organizations selling FARC-produced cocaine, and Middle East radical groups.

There has been little public acknowledgement of the Hezbollah ties to Latin American transnational criminal organizations. But recent indictments based on U.S. DEA cases point to the growing overlap of these groups.

In December 2011, U.S. officials charged Ayman Joumaa, an accused Lebanese drug kingpin and Hezbollah financier, with smuggling tons of FARC-made cocaine to the United States, and laundering hundreds of millions of dollars on behalf of the Zetas cartel in Mexico, while operating in Panama, West Africa, and elsewhere. Joumaa was tied to a broader case of massive money laundering that led to the collapse of the Lebanese Canadian Bank, one of the primary financial institutions used by Hezbollah to finance its worldwide activities.

Other cases include the July 6, 2009, indictment of Jamal Yousef in the U.S. Southern District Court of New York, alleging the defendant, a former Syrian military officer arrested in Honduras, was seeking to sell weapons to the FARC, exchanging those weapons for cocaine, with the weapons coming initially from Hezbollah.

The FARC is an unusual hybrid criminal terrorist organization that is among the largest cocaine producers in the world, deriving an increasing amount of its revenue from relationships with multiple terrorist and criminal organizations. The FARC maintains documented ties to Hezbollah, the ETA Basque separatist movement, armed remnants of the IRA, and various armed groups in Latin America. It has maintained ties to state sponsors of terrorism such as Iran and Muammar Gaddafi when he ruled Libya.

It also maintains well-documented ties to the Sinaloa cartel and into computers when they killed another senior leader of the FARC. They have found photos of Sinaloa cartel leaders sitting around drinking whiskey in parties with senior FARC leadership. There is no doubt that there is a direct link there.

The ideological underpinnings of the FARC are Marxism and deeply anti-American. And the veneer of ideology that formed the basis of the relationship with Chavez and other terrorist organizations is now finally coming to light.

I will leave it there. Thank you very much.

[The prepared statement of Mr. Farah can be found on page 28 of the appendix.]

Mr. HUIZENGA. Thank you. The gentleman's time has expired. You have submitted quite an extensive written testimony as well on that, and I appreciate it.

And with that, we will go to Mr. Steven Perles for 5 minutes.

**STATEMENT OF STEVEN R. PERLES, FOUNDER AND SENIOR
PARTNER, PERLES LAW FIRM, PC**

Mr. PERLES. Good morning, Mr. Chairman. With your permission, I will submit my written testimony for the record. And frankly, carry on from where Mr. Mulvaney left off.

Before I do that, if I might very briefly introduce Mr. Chandler Derbyshire to you. Mr. Derbyshire is my summer intern. His uncle, Captain Vince Smith, was killed in the Beirut Marines barracks bombing. His grandfather, General Keith Smith, was the organizer of what is now known as the Beirut Marines Barracks Bombing litigation, in which we have used TRIA as a vehicle for restraining in excess of \$1.8 billion of Iranian securities positions that were illicitly transiting New York.

I would also like to introduce my son, who is with me. I sent him out to Michigan to get an education. And he served on the staff of Senator Mark Kirk as a Senate Fellow in China Policy, using his Mandarin language fluency to hunt Iranian assets in China for Senator Kirk.

Let me really start where Congressman Mulvaney left off and talk about how the process should work, rather than what everybody else has been talking about today, and that is what is broken and not working. And let me put this in a context of first the Beirut Marine Barracks Bombing matter.

Then-Under Secretary Levy and I discussed the potential for seizing Iranian securities positions in New York that were outside his scope of authority to seize, but for which he had intelligence data. So effectively, we formed a public-private partnership. And under that partnership, we sent the Treasury a subpoena.

The Treasury obtained a protective order from the court system so that the intelligence data would be constrained in its public dissemination. And we used that intelligence data to seize Iranian assets in New York.

As part of that discovery process, we have now obtained in excess of 100,000 pages of material about the movement of Iranian securities positions through the U.S. banking system. The government in turn issued us a subpoena. And we are actually under grand jury subpoena in the southern district in New York. So we turned all of our discovery material over to the U.S. Attorney's Office.

The net effect of this public-private partnership is that the victims get compensated and the government winds up with intelligence data that it didn't otherwise have. That is the way the system should work.

In another case there was a man from Michigan, Jack Armstrong, who was publicly beheaded on Al Jazeera television at the beginning of the Gulf War. We obtained a judgment for the Armstrong family against the government of Syria, the material supporter of Al Qaeda in Iraq at the time of the beheading.

And again, we started this public-private partnership with the Treasury under TRIA where we issued what I would call a friendly subpoena to the Treasury. They turned data over to us. We secured something in excess of \$80 million of Syrian blocked assets in the United States.

And that process is just winding up now. We in turn will take a portion of that money and reinvest it into asset location exercises. And when those exercises are complete, we will voluntarily turn all of that data back over to the government.

Again, you really want to have this public-private partnership where we get data, we start the process, that process brings in data, and we turn it back to the government so that the victim's interests are advanced and the government's interests are advanced.

I see very little merit in this notion that the government's interests are different than the interests of private citizenry. It doesn't have to be that way. That is a cultural gap which exists between the executive and the private bar.

It certainly existed in 2000, when we really started this process for terror victims. And over the last 10 or 15 years, at least in the world of terror victims, a lot of those culture barriers between the private bar and the government have really broken down so that we are in very good shape in terms of going out and assisting each other.

[The prepared statement of Mr. Perles can be found on page 70 of the appendix.]

Mr. HUIZENGA. Okay. The gentleman's time has expired. And with that, I recognize myself for 5 minutes of questioning.

So, Mr. Perles, just to make sure I am understanding you, this PPP that you were talking about, this hybrid public-private partnership that has worked previously is not happening now. Correct?

Mr. PERLES. Not in the case—

Mr. HUIZENGA. In this particular case.

Mr. PERLES. —of FARC and FARC assets.

Mr. HUIZENGA. Why do you believe that it is not? And is that something viable that should be pursued?

Mr. PERLES. I don't make public policy here. I am really a technician. But if you are asking as a policy matter, would I like to see it pursued, yes. I think—

Mr. HUIZENGA. Is there—okay. So let me sharpen it. Is there any reason why we couldn't or shouldn't be doing that in this case?

Mr. PERLES. No. Actually, I would encourage you to do it.

Mr. HUIZENGA. Or encourage Treasury to do that.

Mr. PERLES. Encourage Treasury to do it.

Mr. HUIZENGA. Do you need to have a willing Treasury to be able to do that?

Mr. PERLES. You need either a willing Treasury or a willing Congress.

In the first instance, I would hope that Treasury would do it voluntarily. From what I heard today, the mindset of Treasury is very much like the mindset we saw at the State Department in 1998, 1999, and 2000, which is that they want their blocked assets for other purposes.

Mr. HUIZENGA. Other projects?

Mr. PERLES. Right, other projects. I think in 1998 it was really more the legacy of Jimmy Carter's negotiation of the Algiers Accord facilitating the release of the Tehran hostages. State wanted that money in order to be able to bribe out the release of American diplomats.

I happened to be on the Senate staff at the time that agreement was negotiated. I didn't care for it then and I don't care for it now. I don't think it is an appropriate way for the United States to conduct—

Mr. HUIZENGA. In your opinion, is BASTA a bill that is careful to avoid unintended consequences?

Mr. PERLES. I think it is. I was actually quite flattered when Congressman Posey's office called me and asked me if I would give some pro bono time to reviewing the bill.

I have not gone through the current draft. I have gone through several early iterations of the bill. I think it is very narrowly focused.

I would encourage the committee to seek other people's views. You have to be very careful here not to do anything unintended. As far as I know, the bill does not do anything unintended. I would still seek other people's opinions.

Mr. HUIZENGA. Mr. Howes, again, thank you for being here. And I am sure I could tell just as you were starting to talk about it, this must be very difficult to relive and to talk about. But it is an important story, so thank you for sharing that.

But would you please describe your efforts to receive compensation for your treatment by the FARC and kind of what you have gone through so far?

Mr. HOWES. We have done a number of things. We started out in 2010, 2011. We made three separate requests for crime victim relief for the Justice Department, and everything was denied.

In 2013, we made another 3 separate requests to the Treasury Department to get license to execute on blocked kingpin assets of seven FARC—or the instrument agencies or instrumentalities. One of them was a FARC commander. Everything was again denied.

And we asked the Treasury to re-designate the kingpin—these kingpins under IEEPA. Again, denied. And the LFAC response was—I have it here—that LFAC does not respond to requests to designate individuals or entities pursuant to certain authorities. It was basically ignored or denied, I guess you could say.

And we have also provided copies of all this information, of the Administration's denials here for the record.

Mr. HUIZENGA. Do you believe that there is sufficient evidence that FARC or those commanders and those designated people have assets to be able to go and seize? Or are we going to have to go at them through other drug kingpins who may have assets here as well?

Mr. HOWES. I think for the FARC themselves, it is fairly difficult. As I mentioned earlier, they don't put bank accounts—

Mr. HUIZENGA. Yes.

Mr. HOWES. —and that sort of thing together. It is mostly the agencies and instrumentalities that handle the money for the FARC.

Mr. HUIZENGA. But certain individuals could?

Mr. HOWES. Certainly.

Mr. HUIZENGA. And do you know of any that have or do have those kinds of assets?

Mr. HOWES. As far as the—

Mr. HUIZENGA. Agents' role.

Mr. HOWES. —instrumentalities of the FARC?

Mr. HUIZENGA. Those individuals. Those commanders or—

Mr. HOWES. There were seven that we looked at here. And we were denied on all of them under the Kingpin Act, so yes.

Mr. HUIZENGA. Okay.

My time has expired. The Chair recognizes Mr. Posey for 5 minutes of questioning.

Mr. POSEY. Thank you very much, Mr. Chairman.

The written testimony for today's hearing is compelling. It is lengthy. It is highly detailed, technically perfect as far as I can see. And it really gives a lot of insight into a system that is just not working right and not working as it was intended.

In fairness, I think DOJ should be commended for their ability to track the assets. That is not simple. That is good intel work, hard work. And their persistence in trying to bring many of these criminals to justice has taken many, many years.

It took I guess maybe 11 years to get one of the guys who was responsible for Mr. Howes. And it just took a lot of persistence and I want to commend DOJ for that.

But it is troubling that it appears to me that the Executive Branch would enter into a lawsuit in which they were not originally a party. Is that correct, Mr. Howes? Did you have a lawsuit in the 11th Circuit Court of Appeals, and did the agency inject

itself into the lawsuit at that point? Or had they already been a party to it?

Mr. HOWES. I believe they injected themselves into it.

Mr. POSEY. Yes.

Mr. HOWES. Yes.

Mr. POSEY. Yes. We have a law-abiding American citizen, a victim of narcotics trafficking terrorists, and somebody who has been imprisoned by them, tortured by them, and watched a senior colleague be murdered by them. And he is trying to get justice against the criminals.

And if I read this correctly, the Executive Branch jumped in and challenged the definition of blocked asset, which really kind of was the first big rock thrown into the cause here to stop the process from functioning probably as it intended. Am I reading this correctly?

Mr. HOWES. Yes.

Mr. POSEY. It is a stretch for anyone to wonder why an agency would do that. You know why they would do that? Their logic that well, if we control all their blocked assets, it harms them more than people whom they have harmed getting some of those assets.

I see with blocked assets—if I am a bad guy and you block my assets, at some point, someday I may be able to recover them. Maybe a technicality in the court of law or whatever, transform somehow.

But if people I have harmed are allowed, through the courts, absolutely proper, legal jurisdiction to get those assets, I think that probably hurts the narcotics trafficker and terrorist more than just having his assets blocked. Does that seem like a logical conclusion? Do any of the witnesses disagree with that?

Mr. HOWES. It certainly should. It seems the opposite of having these assets returned to actual drug launderers and drug traffickers.

Mr. POSEY. Yes.

And so the next question is, what happens—what are the different things that happen to blocked assets? Does anybody know? Did they just stay blocked forever until they maybe arrest and convict the guy?

And then what happens to the assets if they are convicted? Maybe—

Mr. HOWES. In one case, and I think we have the record on file, but a percentage of it is returned to the drug trafficker, money launderer, returned to them.

Mr. POSEY. Does the agency keep any of the money? Does anybody know? Mr. Perles?

Mr. PERLES. I can't answer that question with respect to FARC assets because I don't practice in that area.

I think a good example, though, is the case of Libya. Libya saw a whole series of lawsuits marching in its direction, whether it was Lockerbie, which was one of my cases, or Libya's bombing with the La Belle discotheque, which was one of my cases.

And the total reparations paid by Libya to U.S. citizens I suspect was in excess of \$3 billion. Those reparations were paid because Libya understood at the end of the day its blocked assets in the

United States were going to be used to satisfy impending judgments.

When the United States and Libya reached an agreement and those reparations were paid, the United States then released Libya's governmental blocked assets as part of the normalization agreement between the United States and Libya.

Mr. POSEY. Was the entire \$3 billion awarded to victims?

Mr. PERLES. The \$3 billion represented prejudgment settlements between Libya and the U.S. victims, and parties were paid. That is correct.

Mr. POSEY. Okay.

Mr. HUIZENGA. Sorry. The gentleman's time has expired.

But without objection from the panelists, we wanted to do a second round of—

Mr. POSEY. Thank you.

Mr. HUIZENGA. —questioning. I know I have some questions as well. So, if that is all right with our panelists who have time, then all is good on this side as well. So, granting myself 5 minutes here.

Mr. Farah, your testimony says that FARC is “under the protection of the governments of Venezuela, Ecuador, Nicaragua, and Bolivia.” And certainly all of them have had their own issues over the years. How well-documented is that “protection?” Is it well-documented enough to describe these governments as instrumentalities of FARC with assets to go after there or to block?

Mr. FARAH. Thank you. I think that is a really interesting question.

The documentation on Venezuela is overwhelming. And we have, including OFAC designations of very senior Venezuelan officials for both their relationship with the FARC and drug trafficking. At least six of Chavez—when he was alive, Chavez posted his advisors were designated. And they continue to be very powerful in the current administration of Nicolas Maduro.

Bolivia, I think again the evidence is overwhelming. I think you have to understand that to the Bolivarian system, set up by Chavez, which was his goal of creating a united Bolivarian set of nations, the FARC was due to the primary instrument for achieving that.

And he supported very openly the FARC as an armed movement, and called for other armed groups to join an armed insurrection against the democratic countries in the region, and chose to use his oil mine to finance the election of Rafael Correa, Evo Morales, and then Daniel Ortega.

So I think that if you understand the FARC is in their view an instrument of foreign policy, which their support for the groups is I think overwhelming, especially if you look at the documentation that comes from captured FARC documents in the Raul Reyes computer and in the Armando Hahoy computers where you have the internal communication of the FARC discussing in great detail the relationships with Bolivia, with Correa, with Chavez, where they specifically ask President Correa, for example, in Ecuador to move certain commanders from the border area because they were being too aggressive against the FARC.

And they write back and say sure, we will move. Who would you like to see placed there? That is a pretty direct relationship.

Mr. HUIZENGA. But that would need to be proven in court, I would assume.

Mr. FARAH. The court—the documents showing that exists, and actually in that particular case, are a matter of public record and have been published.

Mr. HUIZENGA. Okay.

Mr. Perles, what do you think of this sort of line and—obviously FARC is not a state or a country, per se, which is what your previous lawsuits had been trying to do, correct, tie that in with that sponsorship? And wouldn't permanently attaching funds of FARC instrumentalities be noticeably different for state sponsors somehow? What are your thoughts on this?

Mr. PERLES. I don't see any interference between the kind of litigation that I bring against state sponsors and expanding TRIA—you are asking me, if I understood the question properly, do I see any potential conflict between the kind of litigation that I brought against state sponsors of terrorism and expanding TRIA to include the FARC. And the answer is, I don't see any conflict at all.

The whole notion of TRIA really goes back to an Iranian weapons account that we tried to seize on behalf of the family of Alisa Flatow who was killed in a bus bombing in Israel, Matt Eisenfeld who was killed in a bus bombing in Israel, Sarah Duker who was killed in a bus bombing in Israel, and Father Lawrence Martin Jenco who was taken hostage in Beirut, Lebanon.

This litigation really occurred in the late 1990s. And we heard many of the same objections from the State Department that I listened to this morning.

Congress passed legislation called the Victims Act 2000, which freed up this weapons account or these families. And then went on 2 years later and fixed the problem generically in TRIA.

The U.S. Government has historically taken the position that when an asset is blocked, the mantle of U.S. Governmental immunity protects that asset. So that even if a terrorist state had lost its immunity under the Foreign Sovereign Immunities Act, we still couldn't pierce through to that asset because of U.S. Governmental immunity.

TRIA really fixes that immunity question. I look at TRIA as a congressional waiver of the government's immunity when it holds blocked assets. The same thing would be true for FARC assets.

And if you look at it from that perspective, there is just no potential interference or collision between the enforcement of a judgment against a terrorist state against a blocked terrorist state asset or a judgment against FARC under ATA against a blocked FARC asset.

Mr. HUIZENGA. Thank you. I appreciate that perspective.

And with that, I will grant 5 minutes to Mr. Posey for questioning.

Mr. POSEY. Thank you, Mr. Chairman.

I am still trying to get my arms around why the government would block recovery by an American citizen who has been harmed by a foreign terrorist group. It is still hard to grasp that we would do that.

And we tend to want to look at consent decrees again, how much of the seized assets at the end of the day ever go to the victims, and how much is gobbled up by the Federal agencies.

I have asked DOJ for a list of consent decrees before and they were not forthcoming so they didn't have time to tell me the details. So it will be a while, but eventually we will get them.

And a question for Mr. Howes, what did you do to petition the Treasury to change their designation of FARC assets and FARC agent instrumentality assets from Kingpin to IEEPA so that you can seize assets under TRIA?

Mr. HOWES. We made the request to re-designate the kingpin accounts, but we were turned down.

Mr. POSEY. Okay.

Mr. HOWES. Does that answer your question?

Mr. POSEY. All right. When you go after FARC assets, do you claim that every blocked narco-trafficking asset blocked under Kingpin is subject to seizure? Or are you careful about who you go after?

Mr. HOWES. We are certainly careful who we go after. We go after only blocked assets of the foreign kingpin narco-traffickers which the Federal court determines are agencies or instrumentalities of the FARC.

We don't go after, for example, kingpins who do not traffic in FARC cocaine. We don't go after narcotics traffickers that traffic drugs for the Taliban. So it is specific to instrumentalities and agencies of the FARC.

Mr. POSEY. I read your testimony and it is—it really could be a great mystery novel, a whodunit, because it is really difficult for anyone who reads this to understand why the Federal Government would block you. It is a mystery.

I can't imagine the thought that, again, the Federal Government would have more ability to work against traffickers if they don't let you recover their assets for the crimes they committed. Did they ever give you any logical explanation for that?

Mr. HOWES. No. And again, the court—there was a judgment in our favor by the court. And yet it feels like we are blocked by the Department of Justice and the Treasury. It is a mystery to us.

Mr. POSEY. Mr. Chairman, I am just bedazzled over this whole thing. And I have a lot of questions that I would like to ask the Treasury and DOJ again. Maybe, we could think about bringing them back in here.

Sometimes when we have the government witnesses first, we hear some things that really make a lot less sense after we hear from the second panel of private sector witnesses. And this is another one of those cases.

The testimony and discussion with these gentlemen has generated a significant number of questions that I would like to address to Treasury and DOJ again. And normally, I would just write them a letter and ask for a response, but I have been relatively unsuccessful in getting information in that manner before. And in some instances, it takes 9 months to get an answer to a relatively simple question that I have asked a Federal agency.

So, I would like to have a discussion with you about maybe extending this hearing for another round. I yield back, and I thank you, Mr. Chairman.

Mr. HUIZENGA. The gentleman yields back. And we of course do have an opportunity for you to do some things here on the official side.

But I would like to thank our witnesses for being here today. It has been very illuminating, and I think frustrating, for a number of us to hear your testimony, and some of the answers that we have had are non-answers that we have had to what has been going on from our own government.

And again, Mr. Howes, and to the other gentlemen, we appreciate your perseverance and your willingness to come and join us today, and share this amazing story. And we offer blessings and prayers for the best for each of you as you move forward.

Mr. POSEY. Mr. Chairman, may I add one more comment?

Mr. HUIZENGA. Without objection.

Mr. POSEY. Today, we are talking about an injustice that has been done to one of my constituents and two of his colleagues.

If you could see what is happening in the narcotics trafficking world—I had an occasion to go visit the border at Nogales earlier this year, and I was overwhelmed by the conditions that are there, the narcotics trafficking, the human trafficking, the arms trafficking that is going unabated.

The reality is that it is becoming more and more prevalent in this country. It is permeating us more and more and more every day. And while we just see 5½ years of imprisonment and torture from my constituent in South America today, tomorrow it could be your constituent or any Member's constituent in this country.

If you could see what I have seen about how the narcotics traffickers, the cartels, deal with people who get in their way or don't cooperate with them, it is chilling. It is frightening. And it is a threat to every man, woman, and child in the United States of America.

While we may be talking about justice for three gentlemen today, this could affect any man, woman, or child in the United States of America in the coming years.

And I again want to thank you, applaud you and Mr. Hensarling for addressing this issue to do whatever we can to man up or try and stop the flow of terror that goes with narcotics coming into this country, and saluting the gentlemen who try to do something about it. Thank you.

Thank you, Mr. Chairman.

Mr. HUIZENGA. Thank you. And I appreciate your bringing this to everyone's attention and to light.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

Without objection, this hearing is adjourned.

[Whereupon, at 11:44 a.m., the hearing was adjourned.]

A P P E N D I X

July 17, 2014

Testimony of Douglas Farah

President, IBI Consultants LLC

**Before the House Financial Services
Subcommittee on Monetary Policy and Trade**

**A Legislative Proposal Entitled the 'Bank Account Seizure of
Terrorist Assets (BASTA) Act**

July 17, 2014

2128 Rayburn House Office Building

Chairman Campbell, Ranking Member Clay and members of the committee, thank you for the opportunity to testify here today on the nature of the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia* – FARC), the world's premiere hybrid terrorist/drug trafficking organization. I have been asked to discuss the FARC's relationship to terrorism and drug trafficking.

I have had the privilege of being involved in Colombia since 1989. I was first sent by the *Washington Post* to cover an airliner blown up by the Medellín cartel. Over the past quarter of a century I have lived in Colombia a number of years and visited there regularly, first as a journalist and in recent years as a researcher and a consultant. I have seen the nation teeter on the edge of the abyss in the 1990s, when U.S. officials spoke of the possibility of a FARC victory and Colombia becoming a "narco state" to the present time, when Colombia is a regional model of democracy and economic development.

Yet the FARC, despite engaging in ongoing peace talks with the government of President Juan Manuel Santos, remains at the center of a multitude of criminal enterprises and terrorist activities that stretch from Colombia south to Argentina, and northward to Central America and into direct ties to the Mexican drug cartels, primarily the Sinaloa organization. It is involved in the massive laundering of drug money, and recent cases by the Drug Enforcement Administration (DEA) have shown the direct and growing criminal drug ties of the FARC and Hezbollah.

The FARC is the only organization in the world that is designated by the U.S. government as both a major drug trafficking organization and an international terrorist entity. The United States is not alone in its assessment.

The European Union, Canada and other countries have also designated the FARC a terrorist entity, particularly for the kidnappings and execution of foreign nationals. In addition the FARC has wreaked havoc on Colombia and Colombians.

In its most recent global human rights report covering 2012 the State Department listed the FARC as a "terrorist organization" that has

Committed numerous abuses, including the following: political killings; killings of members of the public security forces and local officials; widespread use of land mines and improvised explosive devices (IEDs); kidnappings and forced disappearances; subornation and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; widespread recruitment and use of child soldiers; attacks against human rights activists; violence against women, including rape and forced abortions.¹

¹ Department of State Country Report on Human Rights Practices for 2013, Bureau of Democracy, Human Rights and Labor, "Colombia," accessed at:
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/#wrapper>

The United States government first named the FARC a "Designated Foreign Terrorist Organization" on October 8, 1997², due in large part to the decision by the organization's general secretariat a few years earlier to target U.S. citizens for kidnapping, particularly evangelical Christian groups that lived and worked in isolated areas. In 1993 the FARC kidnapped three members of the New Tribes Mission, and in 1994 kidnapped two more, as well as a member of Wycliffe Bible Translators. All six were executed while in captivity.

After President Clinton made the designation, the FARC continued to target American citizens where possible. In March 1999 the FARC abducted and kidnapped three Native American activists on an indigenous land and executed them. In February 2003 the FARC shot down an aircraft carrying 4 U.S. citizens, all contractors supporting U.S. and Colombian counter-narcotics efforts. The FARC executed one U.S. citizen and one Colombian and held the other three hostages for more than 5 years, until they were freed in a dramatic Colombian military raid.

In 2001, shortly after the 9-11 attacks the FARC was re-designated a Specially Designated Global Terrorist Organization, greatly increasing the range of actions the Treasury Department and others could take against the organization.³ The European Union, which has a notoriously difficult time in designating groups as terrorists, would eventually follow suit, listing the FARC as a terrorist entity in 2005.⁴

While certain fronts of the FARC was widely known to be increasing their involvement in the cocaine trade since the early 1990s, the organization was not formally named a significant foreign narcotics trafficking organization until May 2003, under the Kingpin Act.⁵ The Act was passed in 1999, and was designed to "deny significant foreign narcotics traffickers, their related businesses, and their operatives access to the U.S. financial system and to prohibit all trade and transactions between the traffickers and U.S. companies and individuals. The Kingpin Act authorizes the President to take these actions when he determines that a foreign person plays a significant role in international narcotics trafficking."⁶

Under the protection of the governments of Venezuela, Ecuador, Nicaragua and Bolivia -- as well as powerful friends in El Salvador and Panama -- the FARC maintains a robust international infrastructure that is producing and moving thousands of kilos of cocaine and laundering hundreds of millions of dollars. It has emerged as a pioneer hybrid criminal-

² The FARC was among the first organizations designated a foreign terrorist entity, which meant, in the eyes of the U.S. government it had met the criteria of being a threat to U.S. nationals or the national security of the United States. See: <http://www.state.gov/j/ct/rls/other/des/123085.htm>

³ U.S. Treasury Department, Office of Foreign Assets Control, "Treasury Targets Venezuelan Officials Supporting the FARC," September 12, 2008, accessed at: <http://www.treasury.gov/press-center/press-releases/Pages/hp1132.aspx>

⁴ Official Journal of the European Union, Council Decision of Dec. 21, 2005, accessed at: http://europa.eu.int/eur-lex/lex/LexUriServ/site/en/oj/2005/l_340/l_34020051223en00640066.pdf

⁵ <http://www.treasury.gov/press-center/press-releases/Pages/hp1132.aspx>

⁶ "Fact Sheet: Overview of the Foreign Narcotics Kingpin Designation Act," The White House Office of the Press Secretary, accessed at: http://www.whitehouse.gov/the_press_office/Fact-Sheet-Overview-of-the-Foreign-Narcotics-Kingpin-Designation-Act

terrorist insurgency, using drug money to sustain an ideological movement and help like-minded groups.

Over time the ideology has faded and the FARC has become much more of a business enterprise than Marxist insurgency.

U.S Treasury Department's Office of Foreign Assets Control (OFAC) publicly designated three of the late Hugo Chávez's closest advisers and intelligence officials as drug trafficking figures and supporting the FARC, a "narco-terrorist organization." The three main influential in the Maduro government.

OFAC said the three--Hugo Armando Carvajál, director of Venezuelan Military Intelligence; Henry de Jesus Rangél, director of the Venezuelan Directorate of Intelligence and Prevention Services; and Ramón Emilio Rodríguez Chacín, former minister of justice and former minister of interior -- were responsible for "materially supporting the FARC, a narco-terrorist organization."

It specifically accused Carvajál and Rangel of protecting FARC cocaine shipments moving through Venezuela, and said Rodríguez Chacín, who resigned his government position just a few days before the designations, was the "Venezuelan government's main weapons contact for the FARC."⁷

It is worth noting that the designations rather than provoking sanction in the Chávez government, led to rewards. For example in November 2010, Rangel was promoted to the overall commander of the Venezuelan armed forces⁸ and in January 2012 was named defense minister as part of Chávez's promotion of close associates tied to drug trafficking and the FARC.⁹

The current peace talks between the Santos government and the FARC, underway for 18 months Havana, Cuba, have yielded more results than past dialogues, in large part because the FARC is in a significantly weakened state.

Perhaps because of its weakened state, in recent years the FARC has been consistently underestimated as a transnational organization that has significant and long-standing ties to multiple international terrorist and criminal groups.

The FARC is a regional and trans-regional organization. The significant support – logistical, financial and ideological – the group receives from nations and non-state allies in the hemisphere that aid and abet its criminal and terrorist alliances is significant and dangerous. The FARC is a central part of the revolutionary project of bringing together armed groups and terrorist organizations under the umbrella of the Bolivarian Revolution, with the aid

⁷ "Treasury Targets Venezuelan Government Officials Support of the FARC," U.S. Treasury Department Office of Public Affairs, Sept. 12, 2008 accessed at: <http://www.treasury.gov/press-center/press-releases/Pages/hp1132.aspx>.

⁸ "Chávez Shores up Military Support," Stratfor, November 12, 2010.

⁹ "Venezuela: Asume Nuevo Ministro De Defensa Acusado de Narco por EEUU," Agence France Presse, January 17, 2012.

and support of Iran. This is now a deeply criminalized political project with the express and overt intention of hurting the United States.¹⁰

What should worry us, as I have documented and written about extensively, is that the glue that binds these groups is a shared vision of creating a new world order, in which the United States, Europe and Israel are the enemies to be destroyed.

Their common doctrine is one of asymmetrical warfare that explicitly endorses the use of weapons of mass destruction against the perceived enemies.¹¹ This doctrine remains a statement of intention, not a statement of capabilities. Yet a review of Iran's growing presence in the region, the FARC's growing relationship with Hezbollah and other terrorist groups and the ability of these groups to deal extensively with Mexican drug cartels, make that statement of intention a dangerous possibility.

A Brief History of the FARC: The Early Days

The FARC is currently a shell of what it was in late 1990s, when it controlled more than 40 percent of the national territory and had some 20,000 combatants. It is worth briefly reviewing the history of the hemisphere's oldest armed insurgency and its metamorphosis from a motely band of Marxist guerrillas wandering the jungles of Colombia into a prototype hybrid terrorist-criminal organization that was once on the verge of taking power. Current estimates place FARC combat strength at about 7,200, seldom operating units of more than 10 people and largely unable to hold territory.

The FARC grew out of the Liberal Party militias that fought against the Conservative Party in Colombia in the bloody period of the late 1940s and 1950s known as "La Violencia." The negotiated end to the fighting between the two main political parties brought an unprecedented period of political stability to the capital, but several of the militia groups in more remote regions remained active and in control of autonomous regions. In 1964 the FARC formed in one of those regions, was officially formed with an ideology that was a combination of Soviet Marxism and nationalism.¹²

Over time, the FARC and various other insurgent groups grew in different parts of Colombia. These included the Chinese-backed Popular Liberation Army (*Ejército Popular de Liberación-EPL*), the Cuban-back National Liberation Army (*Ejército de Liberación Nacional-ELN*) and the M-19 nationalist movement. The EPL and M-19 movements negotiated peace settlements with the government in the early 1990s, while the ELN remains a fighting force but has lost most of its military strength and political following.

¹⁰ For a more complete view of the aims, goals and strategy of the Bolivarian Revolution and its project to create 21st Century Socialism, see: Douglas Farah, *Transnational Organized Crime, Terrorism, and Criminalized States in Latin America: An Emerging Tier-One National Security Priority* (Carlisle, PA: Strategic Studies Institute, August 2012), <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1117>.

¹¹ Ibid. The doctrine of asymmetrical warfare and the use of WMD is outlined in many writing used by the Bolivarian Revolution, and has been adopted as official military doctrine in Venezuela.

¹² For a brief history of the FARC's development, see: http://www.pbs.org/newshour/bb/latin_america/colombia/players_farc.html

The FARC continued to grow throughout most of its life, reaching a peak of about 18,000 combatants in the 2002 period. Unlike most insurgencies, the original founders of the group until recently lived long lives and retained significant influence. The leaders were more likely to die of old age in the hills than in combat. Jacobo Arenas, the founder of the FARC, died of old age in hills at the age of Colombia in August 1990. His successor and long-time second-in-command, Manuel Marulanda (AKA "Sure-shot") died of a heart attack on March 26, 2008.¹³ Alfonso Cano, who succeeded Marulanda, was killed by the Colombian military on November 4, 2011.¹⁴

The survival of the FARC has been possible in part because the FARC is not as dependent as many other non-state armed groups on external sources of financing, most of which evaporated with the end of the Cold War. Instead, the group established a strong nexus with criminal activity, including drug trafficking, kidnapping and extortion, allowing it to finance itself following the collapse of the Soviet Union and its Marxist bloc.

It was also possible in part because the Colombian government exerted relatively little effort to fight the FARC for more than three decades. And finally, the state support of Colombia's neighbors Venezuela and Ecuador over much of the past decade has given the FARC significant rearguard areas for safe haven, rest, relaxation, resupply and financial activities.

Beginning in the late 1970s and growing in the 1980s, the FARC began to implement what it considered to be legitimate "taxes" on landowners and illicit activities in areas where the group exercised considerable political power. One favorite way of collecting taxes was to kidnap the landowners and hold them for ransom.

This, in turn, led to the formation of paramilitary groups paid for by the large landholders to protect their property and themselves from the FARC and other guerrilla organizations. Over time the paramilitary units, often under the protection of the military, grew into formidable fighting forces and cocaine trafficking structure, and has been deemed by human rights groups to be responsible for the majority of the human rights abuses committed against civilians in Colombia.

The upsurge in the paramilitary violence coincided with a prolonged negotiation period in the 1980s between the government and the FARC, which led to significant hopes that the FARC could be brought into the political process as a legal party. As a result of the negotiations the FARC formed a political party called the Patriotic Union (*Union Patriótica*-UP) and joined the political process while maintaining its armed wing.¹⁵

Despite the UP's legal status the paramilitary forces viewed the organization as a front for the FARC and the drug traffickers viewed the UP as a threat to its activities. As a result, the narco-paramilitary forces carried out a series of massacres against thousands of UP candidates and leaders, including the assassination of its two most promising presidential candidates.

¹³ Hugh O'Shaughnessy, "Manuel Marulanda: Commander of the FARC guerrilla army during four decades of insurgency against the Colombian state," *The Independent* (London), May 26, 2008, accessed at: <http://www.independent.co.uk/news/obituaries/manuel-marulanda-commander-of-the-farc-guerrilla-army-during-four-decades-of-insurgency-against-the-colombian-state-834337.html>

¹⁴ BBC News, "Top FARC rebel leader Alfonso Cano killed in Colombia," November 5, 2011, accessed at: <http://www.bbc.co.uk/news/world-15604456>

¹⁵ http://www.pbs.org/newshour/bb/latin_america/colombia/players_farc.html

As the peace process unraveled, the FARC entered a new phase of working with drug traffickers, protecting coca fields and laboratories and collecting "*gramaje*" or taxes on the products moving through their territory. With the influx of cash, the FARC was able to expand its recruiting, buy new weapons become a much more structured, effective military force. This coincided with the killing or extradition of the leaders of the major drug trafficking organizations in Colombia, leaving the once-mighty cartels fractured, less unified and less able to control who entered the trade.

From Insurgency to Narco-Terrorism and the Edge of Victory

Gradually the FARC moved from an ideological force that protected drug trafficking operations to a more structured criminal enterprise that relied more and more on its own drug trafficking structures, kidnappings and extortion to finance its existence.

As the FARC began to take control of cocaine laboratories, landing strips and international trade in a more active, direct manner, its financial situation improved markedly, and the insurgency used the money to purchase new weapons, recruit more combatants (whom they were able to pay more than a Colombian army soldier), and rapidly consolidate control over many swaths of rural Colombia. Eventually they were able to cut off the main highways among the nation's major cities.

When President Andrés Pastrana agreed in 1999 to peace talks with the FARC and granted them a territory the size of Switzerland as a demilitarized zone, the Colombian government was at its weakest point. In addition to the military defeats, the economy was sinking. Poverty rates had risen dramatically, unemployment was growing, and the economy sank by more than 4 percent in 1999.

The FARC, with some 18,000 combatants and flush with sophisticated new weapons and equipment purchased with money from its burgeoning drug trade, was at its strongest point militarily since it was founded in 1964.

During the three-year negotiations, which ended in February 2002, the FARC significantly strengthened itself and its ties to cocaine trafficking while dragging the talks on with endless and constantly shifting demands.

It also moved to aggressively expand its outreach to other terrorist groups and insurgencies to increase its technical capabilities and establish relationships that endure to this day. In many cases the representatives were invited to spend significant amounts of time in the FARC-controlled peace zone.

Among the more unusual visitors to the FARC territory were a group of Iranian government officials, ostensibly sent to finance a \$12 million *halal* beef slaughterhouse and refrigerated meat storage facility. The project was unusual, to say the least, given the remoteness of the region, the lack of transportation for the meat and general lack of economic rationale for the investment.¹⁶ The plant was never built but it provided the FARC leadership with several months of unmonitored time with the Iranian officials, a relationship that endures to the present time.

¹⁶ Karl Penhaul, "Iranians in Sideshow to Colombia Peace Process," Reuters News Service, December 28, 1999.

Two other terrorist groups that spent a significant amount of time training FARC cadres in a variety of explosives techniques, intelligence methods and kidnapping skills: Basque ETA terrorist and a splinter group of the Irish Republican Army. Their involvement came to light with the arrest of three members of the organizations in 2001. By 2003 the FARC was using techniques from both organizations to set off car bombs and other explosives that took hundreds of lives.¹⁷

Other experts from closer to home also joined the FARC in the jungle safe zone. Among the visitors were Daniel Ortega, the Sandinista leader and current president of Nicaragua; Salvador Sánchez Cerén, the recently elected president of El Salvador and leader of the most hardline Marxist faction of the FMLN in El Salvador; and José Luis Merino, AKA Ramiro Vásquez, a Communist Party leader in El Salvador who later supplied large shipments of sophisticated weapons to the FARC and reportedly taught them urban kidnapping techniques.

Turning the Tide

But the military, given a reprieve, also used the time to reorganize, train, and dramatically improve its capabilities.¹⁸

It became increasingly evident the FARC was using the ceasefire during the peace talks to expand its cocaine trafficking networks as well as acquire new weapons. But other factors were changing the nature of the political and drug-related violence in Colombia that would ultimately set the FARC back on its heels.

Beginning in 1999, the Clinton administration launched Plan Colombia, a multi-year, multi-billion dollar program to tackle drug-related issues in the region. For the first time, significant amounts of aid could be given directly to the Colombian military, whose human rights record was widely recognized as being abysmal, to fight the FARC. The years of carefully trying to segregate counter-drug aid, largely given to the National Police, from small amounts of counterinsurgency aid, given the military, were over.

This evolution would dramatically alter the intertwined conflicts in Colombia. Plan Colombia has increasingly allowed the military to push the FARC to more remote areas and carry out more sophisticated attacks against the rebel group.¹⁹

With the election of Álvaro Uribe in 2002, Colombia's military turnaround began in earnest. Under Uribe's program of "Democratic Security," raw recruits were replaced over time with a highly trained NCO corps; intelligence operations were revamped and enhanced, and significant new Colombia resources were committed to the conflict.

¹⁷ Tim Padgett, "The Next Terror Nexus? Colombia fears the IRA and ETA may be using the country as a base for weapons testing and training," *Time Magazine International*, February 24, 2003.

¹⁸ For an excellent overview of this process, see previous CSIS reports on Colombia, particularly Peter DeShazo, Tanya Primiani, and Phillip McLean, *Back from the Brink: Evaluating Progress in Colombia, 1999-2007* (Washington, DC: CSIS, November 2007), <http://csis.org/files/media/csis/pubs/071112-backfromthebrink-web.pdf>.

¹⁹ The counter-drug and counter-insurgency aid figures come from the Center for International Policy, and its studies of Plan Colombia, accessed here: <http://www.ciponline.org/colombia/aidtable.htm>

Uribe also underscored the important link between democracy and security, stating consistently that the overarching goal was to “reinforce and guarantee the rule of law in all our national territory.” As the government raised taxes and showed results, the businesses and citizens in urban areas became more supportive of the government.

Although Uribe would come under significant and justified criticism from human rights groups for illicitly spying on journalists and political enemies and tolerating human rights abuses in the military,²⁰ he is widely credited with developing the first comprehensive plan—including programs encompassing judicial, infrastructure rehabilitation, education, and medical programs to reestablish government authority in areas where non-state actors had held sway for generations.

Focusing on rapidly accelerating military operations against the FARC and the group’s drug-trafficking infrastructure, Uribe and his military leadership designed a strategy that pushed the guerrillas out of the economically vital middle section of the country and away from cities and important transportation routes.

It also aimed to do away with their leadership by focusing significant resources on High Value Targets. From 2008-2012, for the first time in the conflict, senior FARC commanders were located and eliminated. This was particularly effective in targeting those leaders with direct ties to drug trafficking and massive human rights abuses, as was the case of Jorge Briceño, AKA Mono Jojoy, the commander of the FARC’s Eastern Bloc, killed in 2010 in an aerial bombardment.

Part of the urgency of confronting the FARC was the fact that presidents Hugo Chávez of Venezuela and Rafael Correa of Ecuador were giving significant logistical, financial, and political support to the FARC, allowing FARC to expand its international networks and increase its resources.

Perhaps no action has played as significant role in changing the tide of the conflict in Colombia as the March 1, 2008 killing of Raúl Reyes, the FARC’s second most important commander and chief international liaison. Reyes, whose real name was Luís Edgar Devia Silva, and 25 others, were killed in an aerial bombardment by the Colombian military on a FARC camp just across the Ecuadorian border.

In the immediate aftermath of the attacks, Colombian commandos entered the camp and retrieved documents and computers, including hundreds of gigabytes of data from the personal computer of Reyes containing communications with other members of the FARC 7-person general secretariat, Venezuelan president Chávez, senior Ecuadorian officials, and an outline of the political and economic strategy of the FARC. It is the most significant seizure of primary source documents from the FARC in recent decades, and the first time a member of the FARC general secretariat had been killed in combat in more than 40 years of war.

Reyes’s death was followed by the killing of other high-value FARC targets, as well as a stream of desertions of many mid-level and upper-level commanders, sending the FARC into a downward military and financial spiral from which has never recovered.²¹

²⁰ For a comprehensive look at the positive and negative aspects of the Uribe government, see June S. Beittel, “Colombia: Background, U.S. Relations, and Congressional Interest,” Congressional Research Service, November 28, 2012, <http://www.fas.org/spp/crs/row/RL32250.pdf>.

²¹ For a more complete look at the role of Ecuador and the FARC, see Douglas Farah and Glenn Simpson, *Ecuador at Risk: Drugs, Thugs, Guerrillas and the Citizens Revolution* (Alexandria, VA: International Assessment and Strategy Center, January 2010),

The documents show several alarming developments that had gone largely undetected by U.S. and Colombian intelligence services prior to the attack.

The first is that the long-cordial relationship between the FARC and Chávez had grown from one of friendship to one of allies and business partners, a relationship that endures in the Maduro government. It is clear that that FARC received a large sum of money from Chávez in 2007, although it is unclear if the money is a loan or a gift. There are several references to "300" as an amount the FARC receives, and Colombian authorities have stated unequivocally that the number refers to \$300 million given by Chávez to the FARC. It is also clear that the FARC has Venezuelan government protection for its massive movement of cocaine to Central America and West Africa.

The second insight gleaned was the FARC's extraordinary reach into regional politics, particularly in Ecuador, where the President Correa, whose presidential campaign received hundreds of thousands of dollars directly from the FARC, was willing to change senior military commanders along the border (the area where Reyes was killed) in order to curry favor with the insurgents. The role of Bolivia's President Evo Morales in supporting the FARC also stands out.²²

The third is the FARC's apparent willingness to engage in trafficking of material (uranium) that could be used for a low-grade nuclear bomb. The type and grade of uranium in question indicate the FARC had been the victim of a scam or was planning on perpetrating a scam on an unsuspecting third party.

A fourth major point is the FARC's overt discussion of its involvement in drug trafficking and the need to move cocaine and money associated with the trade they have long claimed to not be involved in.

The fifth is that the FARC has engaged in a deliberate campaign to hide its involvement in some of the worst atrocities, including the assassination of members of congress in 2006.²³

In the wake of the death of Reyes and Ríos by violent means and Marulanda to natural causes in a 30-day span left the FARC reeling, and more blows were to come. On July 15, 2008, the army carried out a dramatic rescue operation that freed 15 of the FARC's highest value hostages. These included former presidential candidate Ingrid Betancourt and three American contractors.²⁴

http://www.strategycenter.net/docLib/20101214_EcuadorFINAL.pdf. For a study of Venezuela's role with the FARC, see Douglas Farah, *Transnational Organized Crime, Terrorism, and Criminalized States in Latin America: An Emerging Tier-One National Security Priority* (Carlisle, PA: Strategic Studies Institute, August 2012).

<http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=1117>.

²² The details and documentation of these relationships see: Douglas Farah, "Into the Abyss: Bolivia Under Evo Morales and the MAS," International Assessment and Strategy Center, 2009; and Farah and Simpson, op cit.

²³ The author worked with U.S. and Colombian officials to analyze the captured Reyes documents, which have now been made public. For more details on the issues raised here see Farah and Farah and Simpson, op cit. The main cache of Reyes documents were compiled into a single document, "The FARC Files: Venezuela, Ecuador and Secret Archives of 'Raúl Reyes,'" A Strategic Dossier, International Institute for Strategic Studies, May 2011.

²⁴ Chris Kraul, "15 Hostages Freed as FARC is Fooled in Cunning Operation," Los Angeles Times, July 3, 2008, accessed at: <http://www.latimes.com/news/nationworld/world/la-fg-hostages3-2008jul03.0.3051652.story>

The Coordinadora Continental Bolivariana

While the bilateral and individual relationships are of tremendous importance to the FARC, the group was also anxious to break out of its broader international isolation. The mechanism devised for this was the *Coordinadora Continental Bolivariana* (The Bolivarian Continental Coordinator-CCB). The concept was to build a broad-based Bolivarian movement across the continent that would appear to be a coalition of progressive forces, when in fact, it would be driven and controlled by the FARC.

According to documents in the Reyes computer, the CCB was born in August 2003, and by December had an anthem, a flag, a newspaper called "Bolivarian Mail," letterhead stationary and a logo. "The CCB is work of the FARC, the Bolivarian Movement composed of the José María Córdoba and Caribbean blocs, a Dec. 7, 2003 the internal document said. The document said "Comrade Alfonso," referring to Alfonso Cano, later the FARC's commander-in-chief, had been informed of each of the steps taken, and that the first executive meeting had been held "in one of our camps" to "lay out the specific tasks and responsibilities for the activities that are currently underway. Among our tasks is the creation of a Bolivarian movement, the establishment of the CCB in each country, etc. This organization has already led protests in Ecuador and Panama."²⁵

The CCB soon established a significant presence across Latin America, attracting the sympathy of numerous leftist political organizations and NGOs, many committed to non-violence. According to a March 11, 2005 report on the CCB's activities in 2004, there were already active groups in Mexico, Dominican Republic, Ecuador, Venezuela, and Chile. International brigades from the Basque region of Spain, Italians, French and Danish were operational. Work was underway in Argentina, Guatemala and Brazil. The number of organizations that were being actively coordinated by the CCB was listed at 63, and there were "political relations" with 45 groups and 25 institutions. The CCB database contained 500 e-mails.²⁶

The CCB leadership went out of its way to hide its FARC affiliation to all but the more select inner circle. "The CCB runs the whole gamut, from respectable groups to useful idiots to terrorist," said one Colombian official studying the CCB. "There is the public face of the CCB, which seems benign, but the inner workings are all FARC, allied with other terrorist organizations that, frankly, we thought had disappeared."

This is borne out in numerous internal documents. In an April 1, 2006 letter from Reyes to "Aleyda," identified by Colombia authorities as Mariana López de la Vega of the Leftist Revolutionary Movement (Movimiento Izquierdista Revolucionaria-MIR) of Chile, the FARC leader states "the CCB is part of movement of masses of the FARC, and as such receives all of our support. However, we are not deluded or confused, and understand that the CCB is

²⁵ Documents provided by Colombian officials, in possession of the Author.

²⁶ March 11, 2005 e-mail from Iván Ríos to Raúl Reyes, provided by Colombia officials, in possession of the Author.

broader than just our cells, as the CCB has a broad roof, which allows us, if we are politically agile, to reach other sectors of society and create more Communist militants."²⁷

A Dec. 31, 2006 letter from Iván Ríos to Raul Reyes, (whom Ríos address as "Dear Foreign Minister") says the FARC support group in Chile "ask for instructions relating to CCB. It seems they are waiting precise orders from you regarding the activity in Santiago."²⁸

Operation Titan, Ayman Joumaa and Ties to Hezbollah

There is now a significant body of evidence showing the FARC's operational alliance with Hezbollah and Hezbollah allies based in Venezuela under the protection of the Maduro government, to which relatively little attention has been paid. A clear example of the breadth of the emerging alliances among criminal and terrorist groups was Operation Titan, executed by Colombian and U.S. officials in 2008. Colombian and U.S. officials, after a 2-year investigation, dismantled a drug trafficking organization that stretched from Colombia to Panama, Mexico, West Africa, the United States, Europe and the Middle East.

Colombian and U.S. officials say that one of the key money launderers in the structure, Chekry Harb, AKA "Taliban" acted as the central go-between among Latin American drug trafficking organizations (DTOs) and Middle Eastern radical groups, primarily Hezbollah. Among the groups participating together in Harb's operation in Colombia were members of the Northern Valley Cartel, right-wing paramilitary groups and the FARC.

This mixture of enemies and competitors working through a shared facilitator, or in loose alliance for mutual benefit, is a pattern that is becoming more common, and one that significantly complicates the ability of law enforcement and intelligence operatives to combat these groups.²⁹

While there has been little public acknowledgement of the Hezbollah ties to Latin American transnational organized crime (TOC) groups, recent indictments based on DEA cases point to the growing overlap of the groups. In December 2011, U.S. officials charged Ayman Joumaa, an accused Lebanese drug kingpin and Hezbollah financier, of smuggling tons of U.S.-bound cocaine and laundering hundreds of millions of dollars with the Zetas cartel of Mexico, while operating in Panama, Colombia, the DRC and elsewhere.

"Ayman Joumaa is one of top guys in the world at what he does: international drug trafficking and money laundering," a U.S. anti-drug official said. "He has interaction with Hezbollah. There's no indication that it's ideological. It's business."³⁰ Joumaa was tied to

²⁷ April 1, 2006 e-mail from Raúl Reyes to Aleyda, provided by Colombia officials, in possession of the Author.

²⁸ Jan. 3, 2007 e-mail to Iván Ríos, provided by Colombia officials, in possession of the Author.

²⁹ While much of Operation remains classified, there has been significant open source reporting, in part because the Colombian government announced the most important arrests. For the most complete look at the case see: Jo Becker, "Investigation into bank reveals links to major South American cartels," International Herald Tribune, December 15, 2011. See also: Chris Kraul and Sebastian Rotella, "Colombian Cocaine Ring Linked to Hezbollah," Los Angeles Times, Oct. 22, 2008; and "Por Lavar Activos de Narcos y Paramilitares, Capturados Integrantes de Organización Internacional," Fiscalía General de la Republica (Colombia), Oct. 21, 2008.

³⁰ Sebastian Rotella, "Government says Hezbollah Profits From U.S. Cocaine Market via Link to Mexican Cartel," ProPublica, December 11, 2011.

broader case of massive money laundering case that led to the collapse of the Lebanese Canadian Bank, one of the primary financial institutions used by Hezbollah to finance its worldwide activities.

Other cases include the July 6, 2009 indictment of Jamal Yousef in the U.S. Southern District of New York alleges that the defendant, a former Syrian military officer arrested in Honduras, sought to sell weapons to the FARC -- weapons he claimed came from Hezbollah and were to be provided by a relative in Mexico.³¹

Such a relationship between non-state and state actors provides numerous benefits to both. In Latin America, for example, the FARC gains access to Venezuelan territory without fear of reprisals; it gains access to Venezuelan identification documents; and, perhaps most importantly, access to routes for exporting cocaine to Europe and the United States -- while using the same routes to import quantities of sophisticated weapons and communications equipment. In return, the Chávez government offers state protection, and reaps rewards in the form of financial benefits for individuals as well as institutions, derived from the cocaine trade.

Conclusions

The FARC is an unusual hybrid criminal/terrorist organization that is among the largest cocaine producers in the world deriving an increasing amount of revenue from its relationships with multiple other terrorist and criminal organizations. The FARC maintains documented ties to Hezbollah, the ETA Basque separatist movement, the armed faction of the IRA and various armed groups in Latin America. It has also maintained ties to state sponsors of terrorism such as Iran and Libya under the rule of Moamar Gaddafi.

While it is important to note that the United States, EU, Canada and other countries have designated the FARC as a terrorist organization, one must recognize that the vast majority of the organization's victims have been the Colombian people, who have suffered for decades from the FARC's executions, kidnappings, extortions, rape, forced conscription, the illegal use of mines and IEDs and other abuses and crimes against humanity.

Almost all of the FARC's ties to terrorist organizations originated through the Venezuelan government after the election of Hugo Chávez in 1998. Using the architecture of the "Bolivarian Revolution" Chávez turned Venezuela into a safe haven for the FARC, Iran, Hezbollah, ETA and others to meet, exchange lessons learned and develop drug trafficking alliances that fund their multiple activities. These activities continue apace even as the FARC engages in peace talks with the Colombian government.

The ideological underpinnings of the FARC are Marxist and deeply anti-U.S., and it is that veneer of ideology that formed the basis of the relationship with Chávez and other terrorist organizations. In addition to the economic ties that bind these groups together is deeply held belief by all involved that the United States is the primary enemy and needs to be destroyed. While this is largely an aspirational goal, rather than a statement of capabilities, it cannot be discounted in understanding the nature of the FARC.

³¹ United States District Court, Southern District of New York, The United States of America v Jamal Yousef, Indictment, July 6, 2009.

Thank you.

Testimony of Deputy Assistant Secretary Jennifer L. Fowler
Hearing entitled
“A Legislative Proposal Entitled the ‘Bank Account Seizure of Terrorist Assets (BASTA) Act’”
House Subcommittee on Monetary Policy and Trade
House Committee on Financial Services
July 17, 2014

INTRODUCTION

Chairman Campbell, Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the proposed Bank Account Seizure of Terrorist Assets (BASTA) Amendment and its potential effects on Treasury’s implementation of the Foreign Narcotics Kingpin Designation Act, commonly known as the “Kingpin Act.” For nearly 15 years, the Treasury Department has robustly implemented the Kingpin Act to disrupt and dismantle narcotics trafficking organizations, such as the Revolutionary Armed Forces of Colombia, also known as the “FARC.” We have worked to undermine their financial and support networks to deprive them of the resources needed to carry out the violent activities that threaten U.S. and global security.

TREASURY IMPLEMENTATION OF THE KINGPIN ACT

On December 3, 1999, the President signed into law the Kingpin Act, which prohibits transactions with, and blocks all property and interests in property subject to U.S. jurisdiction of, foreign narcotics traffickers identified by the President. The Kingpin Act also provides authority for Treasury’s Office of Foreign Assets Control (OFAC) to designate foreign individuals and entities that are owned or controlled by, acting for or on behalf of, the designated kingpins, allowing OFAC to reach the kingpins’ networks of front companies, facilitators, and others who comprise the financial and support networks of drug trafficking organizations. The Kingpin Act is among the most powerful and effective tools we have available to attack the financial underpinnings of narcotics trafficking organizations and the threats they pose to the United States, U.S. interests abroad, and our allies around the world.

Drug traffickers fear the Kingpin Act because the sanctions work. These criminals rely on vast support networks, including money launderers, transportation, logistics, procurement, communications, security and other personnel, to support their nefarious activities. Kingpin Act sanctions enable us not only to protect the integrity of the financial system, but also to strike hard at the heart of the financial operations of illicit actors. Since June 2000, more than 1,600 individuals and entities have been named pursuant to the Kingpin Act for their role in international narcotics trafficking. These designations have resulted in the blocking, or freezing, of numerous assets under U.S. jurisdiction, most commonly bank accounts and wire transfers.

Causing behavioral change is an important goal of the Kingpin Act and the use of targeted sanctions has proven to influence narcotics traffickers’ activities. The effect of financial sanctions on drug traffickers in Colombia has been likened to a “civil death” by narcotics traffickers themselves, due to the inability of designated individuals to maintain their banking and commercial relationships, or to have unfettered access to any assets they hold subject to U.S.

jurisdiction. Persons designated under the Kingpin Act, or any OFAC-administered sanctions programs, appear on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) and all properties in U.S. jurisdiction in which designated persons have an interest are blocked, or "frozen," for as long as they remain designated. Blocking merely immobilizes assets; it does not change the fact that assets are legally the property of a designated person. This differs from forfeiture, in which the government, through civil or criminal processes, actually transfers the original ownership of the asset. Those who wish to regain access to their blocked assets must petition OFAC and demonstrate a change in the behavior that led to their designation in order to be removed from the SDN List.

Since 2000, 218 Kingpin Act designees have petitioned for removal. After thorough investigations, OFAC has agreed that 137 have demonstrated a credible change in behavior and should no longer be designated pursuant to the Kingpin Act, and it has therefore removed them from the SDN List. Examples of credible changes in behavior include instances in which designees have begun to cooperate with U.S. or foreign law enforcement agencies, have renounced their interests in foreign assets derived from narcotics trafficking, and have resigned and disassociated with front companies.

BANK ACCOUNT SEIZURE OF TERRORIST ASSETS (BASTA) AMENDMENT

The Terrorism Risk Insurance Act of 2002, commonly known as "TRIA," allows for a person who has obtained a judgment against a terrorist party to attach any blocked assets of that terrorist party, or blocked assets of any agencies or instrumentalities of that terrorist party, in aid of satisfying such judgment. Currently, the term "blocked assets," as defined by TRIA, refers only to assets frozen by the United States pursuant to the Trading With the Enemy Act, commonly referred to as "TWEA," or the International Emergency Economic Powers Act, commonly referred to as "IEEPA." IEEPA is the primary tool used by the Treasury Department to sanction terrorist organizations and their members, as well as state-sponsors of terrorism Iran, Sudan, and Syria. TWEA is the basis for sanctions targeting Cuba, also a state sponsor of terrorism.

The Kingpin Act, on the other hand, was specifically created to address the separate threat to our country and our national interests posed by the activities of international narcotics traffickers. Accordingly, persons designated pursuant to the Kingpin Act either play a significant role in international narcotics trafficking or support or act on behalf of those who do. Affiliation with terrorist parties is not part of the criteria for designation pursuant to the Kingpin Act.

Amending TRIA's definition of "blocked assets" to include property frozen pursuant to the Kingpin Act could have potentially negative effects. We expect that, as applied, this amendment could result in the attachment and depletion of blocked assets of non-terrorist-related narcotics traffickers, including those operating in Mexico, Central America and Colombia. This could limit Treasury's ability to use these blocked assets as leverage against dangerous groups such as the Sinaloa Cartel, Los Zetas, Los Cachiros, and Colombian criminal gangs, including Oficina de Envigado.

In closing, I want to emphasize Treasury's continued commitment to combatting narcotics trafficking organizations throughout the world, using all authorities at our disposal, including the Kingpin Act. The Treasury Department urges Congress to give careful consideration to the potential impact any amendment to TRIA may have on the targeting of drug trafficking organizations under the Kingpin Act. Thank you very much for the opportunity to be here today. I welcome any questions.

**WRITTEN TESTIMONY OF THOMAS R. HOWES,
FARC NARCO-TERRORISM HOSTAGE VICTIM
TO THE U.S. HOUSE OF REPRESENTATIVES FINANCIAL SERVICES
COMMITTEE, SUBCOMMITTEE ON MONETARY POLICY AND TRADE
IN SUPPORT OF THE JULY 17, 2014 HEARING ON
THE BASTA AMENDMENT TO H.R. 4871**

Thank you for inviting me to testify here today. My name is Tom Howes. I am a U.S. Citizen and a victim of international terrorism. I live in Melbourne, FL. I was held hostage by the FARC for 5 and ½ years where I was tortured, chained and starved. I also endured repeated “mock executions”.

My fellow hostages Keith Stansell and Marc Gonsalves are also present here today. Our captivity began on Feb. 13, 2003. I was the co-pilot flying a U.S. DOD counter-narcotics surveillance flight mission in Colombia when the aircraft went down in a FARC controlled area of the jungle. The FARC executed our pilot, Tom Janis, a former member of Delta Force, by shooting him in the head.

The FARC controls the rural regions of Colombia and the coca. The FARC used the coca fields as navigation points during our many long marches and became angry whenever we stepped on a coca leaf. Our guards were assigned to kill us if there ever was a rescue attempt. The only time our guards left our sides was to guard large shipments of cocaine. The FARC always told us they could increase the cocaine production and shipments or shut off the supply anytime they wanted.

After our rescue, we retained the law firm of Porter & Korvick in Miami Florida to pursue our claims for damages from captivity. In 2010, the U.S. federal court in Tampa awarded us a judgment under the Anti-Terrorism Act against the FARC and 80 individual FARC leaders.

The FARC itself has no blocked assets in the US, never has and likely never will. FTOs simply do not open bank accounts or hold assets in their name. Instead, they operate through cartels, groups, and individual drug traffickers and money launderers – the agencies or instrumentalities of the FARC.

The only U.S. blocked account actually owned by an individual FARC leader is a blocked account of Alonso Olarte Lombana at HSBC with a balance of @ \$30,000. The Executive Branch has refused us a license to execute upon this account even though we have a judgment against him.

The agency or instrumentality FARC drug trafficking partner cartels, and their members, front companies and money launderers - the Kingpins - do hold assets in their name, that is why they get added to OFAC's List.

We are using TRIA § 201 to execute on the blocked assets of these FARC agencies or instrumentalities. TRIA allows post-judgment execution against property of an instrumentality of the judgment-debtor, even if the instrumentality is not itself named in the judgment.

Congress intended for TRIA to deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism.

The SDNT program was authorized by act of Congress – the International Emergency Economic Powers Act (or IEEPA for short) – which gave the President the power to declare the national emergency of Colombian cocaine trafficking in his 1995 Executive Order 12978.

The Executive Branch and the 11th Circuit Court of Appeal have agreed that we can use TRIA to execute on these IEEPA blocked assets.

The Kingpin Act was modeled on IEEPA. Congress intended the Kingpin program to expand the IEEPA SDNT “centered in Colombia” program to apply worldwide.

The FARC and its leaders were all designated under the Kingpin Act.

The last time a narcotics trafficker was designated as an SDNT under IEEPA was July 15, 2010, one month after our judgment was entered. To this day OFAC continues to block traffickers centered in Colombia under the Kingpin Act instead of designating them under IEEPA. Kingpin Act blocked assets are now off limits to victims of terrorism.

In October of 2010, the Executive Branch identified two blocked accounts of OFAC designated FARC money launderers for our post-judgment execution under TRIA. Both of these FARC money launderers were designated under the “Kingpin Act”, but not under IEEPA.

Originally, the Executive Branch agreed to our TRIA executions on these blocked Kingpin assets. It was not until August of 2011 that the Executive Branch flip flopped and challenged the TRIA definition of “blocked asset” with the 11th Circuit Court of Appeals.

Unfortunately, in 2013 the 11th Circuit in *Mercurio* ruled that assets blocked under the Kingpin Act were not specifically included in TRIA’s definition of “blocked assets” even though the Kingpin Act was modeled on and virtually identical to the IEEPA sanctions program.

The BASTA Act corrects this anomaly and makes Congressional intent consistent by adding assets blocked under the Kingpin Act to the definition of blocked assets under TRIA and subject to execution by terrorism victims.

It makes no sense to apply TRIA to narcotics assets blocked under one Act of Congress, the IEEPA statute, but not to narcotics assets blocked under another Act of Congress, the Kingpin Act, especially where the latter was specifically modeled after the former.

It makes no sense for TRIA to reach terrorist organizations like the FARC, but then for the victims to be prevented from executing on blocked assets of FARC leaders merely because the Executive designated them all as Kingpins rather than under IEEPA.

It makes no sense to apply TRIA to traffickers “centered in Colombia” but not to Mexican or Peruvian or other Kingpin traffickers worldwide.

It is improper that the Executive Branch have exclusive control over assets blocked under the Kingpin Act at the expense of terrorism victims.

It is also improper for the Executive Branch to cut deals with FARC trafficking partners which allow them to recover their blocked assets upon delisting at the expense of terrorism victims.

The Executive Branch’s leverage will be enhanced by allowing terrorism victims to execute on blocked Kingpin Act assets. BASTA will have no effect on the government’s ability to designate, extradite, convict and forfeit blocked assets of drug Kingpins.

BASTA will not only protect us as FARC victims, it will also protect the rights of other Americans, including U.S. military, who may be victims of other narco-terrorist organizations like the Taliban, Hezbollah, Hamas or Al Qaeda.

Background:

On February 13, 2003, Keith Stansell, Marc Gonsalves, Tom Janis and myself were engaged in a Department of Defense counter-narcotics operation in Colombia when our surveillance plane crash-landed. We were captured by members of the designated Foreign Terrorist Organization *Fuerzas Armadas Revolucionarias de Colombia* ("FARC"), a violent Marxist guerilla group that is one of the world’s largest narcotraffickers. The guerillas executed Tom Janis at the crash site. Keith, Marc and I were held hostage and tortured for more than five years (1,967 days), until rescued by the Colombian military in a daring raid (Operacion Jaque) on July 2, 2008.

The United States designated the FARC as a Foreign Terrorist Organization and Specially Designated Global Terrorist pursuant to 5 USC § 1189 and IEEPA Executive Order 13224 on October 8, 1997. On May 29, 2003, the FARC was also named a Specially Designated Narcotics Trafficker under the Foreign Narcotics Kingpin Designation Act (Kingpin Act). Many individual FARC members were subsequently designated Specially Designated Narcotics Traffickers under the Kingpin Act. They were not, however, designated under the International Emergency Economic Powers Act (IEEPA) or Specially Designated Global Terrorist program even though they were centered in Colombia.

In 2002, Congress passed the Terrorism Risk Insurance Act (TRIA). Title II of the Act allows the victims of terrorism to recover judgments from the assets of terrorist parties blocked under IEEPA and the Trading With the Enemy Act (TWEA).

The FARC Victims’ ATA Lawsuit and Judgment:

After our July 2, 2008 rescue from FARC captivity, we were returned to Fort Sam Houston in San Antonio, TX for military debriefing and reintegration. At that time I learned that

Tom Janis' widow and children had previously retained the Miami law firm of Porter & Korvick, P.A. and that they were on the ground in Colombia within days of the February 13, 2003 crash to assist in the retrieval of the crashed plane's engine. At Keith Stansell's request, Mr. Porter and Mr. Korvick arrived in San Antonio on July 5, 2008 and briefed us extensively on their investigation to date and the applicable anti-terrorism laws that could be pursued to seek some measure of civil justice for our captivity and torture.

In 2008, Keith Stansell, Marc Gonsalves and myself all decided to retain the Porter & Korvick law firm to represent us in civil litigation to seek compensation for all of our past and future non-economic physical and mental pain and suffering damages arising from our captivity and torture at the hands of the FARC narco-terrorist organization. In 2009, our lawyers filed a civil lawsuit on our behalf, and on behalf of the Tom Janis family, against the FARC and 80 individual FARC leaders.

American terrorist victims have 2 types of lawsuit remedies available to them. Those who are victims of designated state sponsors of terrorism must sue that foreign state under the Foreign Sovereign Immunities Act ("FSIA"), specifically 28 USC 1605A, *Terrorism exception to the jurisdictional immunity of a foreign state*. Those who wish to sue non-state terrorist actors – an individual terrorist(s) or a designated Foreign Terrorist Organization ("FTO") like the FARC or Al Qaeda - must bring their lawsuit under the civil remedy provision in the Anti-Terrorism Act ("ATA") 18 USC § 2333.

Our lawsuit was filed under the civil remedy provision of the ATA. Under the ATA, the action was filed in the Middle District of Florida [Case No. 8:09-cv-2308-RAL-MAP] where myself and Keith Stansell and Jonathan Janis were domiciled. Our lawyers effected personal service on the many FARC defendants that were in various Colombian or U.S. prisons. The district court judge ordered that the FARC itself, and the remaining individual FARC fugitive defendants, be served by publishing a Notice of Action in a Colombian and Venezuelan newspaper for four consecutive weeks.

After defaults were entered, our lawyers then filed extensive legal briefs with the court explaining the basis for our legal standing to file the lawsuit, and confirming the court's subject matter jurisdiction under the ATA, including extra-territorial jurisdiction that was granted by Congress when it enacted the ATA. Thereafter our lawyers proffered extensive damages evidence and legal authorities setting the federal courts legal precedent for hostage damage calculations that dates back to the Iran hostage crisis victims' lawsuits. On June 14, 2010, the district court entered an Order awarding damages to each of the 8 plaintiffs [DE 232] and on June 15, 2010 a Final Judgment [DE 233] was entered against the FARC and the named individual FARC leaders.¹

¹ The 8 plaintiffs are myself, Keith Stansell and Marc Gonsalves (3 hostages all held for 1,967 days of captivity) and Judith Janis (surviving spouse of Tom Janis) and his four children: Christopher, Michael, Greer and Jonathan.

Once the terrorist victim obtains a final judgment against a terrorist party (either an ATA or FSIA judgment), then TRIA §201 provides that “the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment.” The 2d Circuit Court of Appeals and many federal district courts have held that “it is clear beyond cavil” that TRIA authorizes execution on blocked assets of an agency or instrumentality of the terrorist party even though the agency or instrumentality itself is not named in the judgment with the terrorist party. Weinstein v. Islamic Republic of Iran, 609 F.3d 43, 50 (2d Cir. 2010).

Our Lawyers’ Extensive Work:

In addition to the February 2003 trip to Colombia for the crash engine retrieval, our lawyers have made several trips to Colombia requiring armed security. Our lawyers have had many meetings with Colombian police, military and civil aviation officials. They have also personally interviewed 9 former FARC members who had demobilized from the Aurelio Rodriguez front in the Choco region of Panama. That testimony reveals the inner workings of the FARC and how it moves its money from front to front.

Our lawyers have met with Colombian military and members of the rescue team who participated in the July 2, 2008 rescue. Our lawyers have also met with members of the Colombian military who perform counter-intelligence and who enter the FARC undercover as militians to gather information on the FARC. Porter & Korvick has reviewed thousands of pages of captured FARC documents – all on detailed computer spreadsheets and hard drives setting forth the flow of cocaine trafficking proceeds and through which companies the illegal proceeds travel. Porter & Korvick has gathered photographic evidence of ton quantity cocaine seizures where the out of country cartels “joint venture” cargo ships with both FARC cocaine and Mexican cocaine kilos. Porter & Korvick, P.A. is now investigating the cross-ocean links and routes of the FARC and African and Southwest Asia terrorist groups, cartels and DTO’s.

It may be helpful to also understand the process our lawyers have followed to identify the blocked accounts of FARC narcotics-trafficker partner cartels. First they serve a *Tuohy* affidavit with a proposed subpoena on OFAC. The subpoena requests a list of bank names/addresses that filed an annual report that year stating that they were holding assets blocked under the narcotics sanctions programs. Once OFAC confirms that it will respond to the subpoena, an Assistant U.S. Attorney is assigned to OFAC and an agreed protective order is entered in the district court requiring strict confidentiality.

After the Protective Order is entered, OFAC provides our lawyers with a long list of bank names and addresses. There is no breakdown of the identities of the blocked parties or the amount of any blocked party’s assets. Our lawyers must then issue and serve over separate subpoenas on each bank (@ 50 banks listed in response to last subpoena in 2011) requesting the details on each of the reported blocked accounts (blocked party name, account #, type of account, and balance).

After extensive proceedings with the garnishee bank lawyers, eventually our lawyers get these lists of blocked parties. Then our lawyers investigate that blocked party to see the factual

basis for its original OFAC final agency action designating them (ie. member of the Cali Cartel or North Valley Cartel or Sinaloa Cartel money laundering network, etc.). Our lawyers must prove through expert witness testimony that the cartel or drug trafficking organization was or is trafficking FARC supplied coca leaf, paste or cocaine, or laundering FARC cocaine proceeds. Then and only then do our lawyers move for issuance of the TRIA writ of execution/garnishment with our supporting evidence (motion and evidence is always served on DOJ and OFAC).

There are very few blocked assets reported that are pursued, because the vast majority of blocked accounts consist of only a few hundred or a few thousand dollars. But OFAC continues to block new Kingpin Act persons/entities each year and the FARC continues drug trafficking relations with all the major south and Central American cartels and across Africa whose members continue being designated under Kingpin Act.²

Our Expert Witnesses on FARC's Narcotics Trafficking & Money Laundering:

Porter & Korvick, P.A. retained three highly qualified experts on our behalf, including Chris Porter and Col. Luis Miguel Cote, both highly qualified experts with direct experience against the FARC and its various drug trafficking partner cartels and Drug Trafficking Organizations.³

Mr. Porter worked in the field of counter-narcotics and counter-terrorism since 1998. He was personally involved in identifying, tracking, interdicting, and apprehending leaders, members, and drug trafficking partners or agents of the FARC for more than 10 years, and conducted direct combat operations against the FARC and its drug trafficking partners. [DE 311, ¶ 2]. Mr. Porter was a former: active duty United States Army officer in the U.S. Military Group, U.S. Embassy, Bogota Colombia; the Chief of the Rotary Wing Aviation Programs in Colombia used in counter-narcotics aviation programs; the U.S. Department of State Narcotics Affairs Section Operations Advisor to the Colombian National Police involved in direct action operations against the FARC and its drug trafficking partners; managed the Medium Altitude Reconnaissance and Surveillance System in Colombia which oversaw ground and maritime intelligence collection of narco-terrorist FARC and its drug trafficking partners activities; Deputy Program Manager for the Plan Colombia Helicopter Program for the Narcotics Affairs Section, Bureau of International Narcotics and Law Enforcement, U.S. Embassy, Colombia; the primary planner and High Value Target ("HVT") Operations Coordinator for the Narcotics Affairs Section, U.S. Embassy Colombia; and Senior Analyst in the Office of Naval Intelligence Western Hemisphere Counter-Narcotics Division – Colombia focused on the identification of

² There are no significant remaining assets of IEEPA designated SDNTs, and the last SDNT was designated in 2010 shortly after our Judgment was entered. In contrast, over 750 SDNTs have been designated under the Kingpin Act since 2010.

³ Both Mr. Porter and Col. Cote have extensive on the ground experience in Colombia. Our third expert, a retired DEA agent who has not yet testified, has also made several trips to South America meeting with FARC trafficking partner sources and Peruvian law enforcement and prosecutors to gather additional evidence confirming Kingpin trafficking agency or instrumentality partners of the FARC.

narco-terrorism and drug trafficking routes from Colombia, Peru, and Ecuador through Central America and Mexico into the United States.

Mr. Porter's affidavit provides an extensive factual basis supporting his opinions that the NVC is an agency or instrumentality of the FARC, including its "individual members, divisions and networks". [DE 311, ¶¶ 36-63, 133].

Luis Miguel Cote is a Colonel in the Colombian Marine Corps and was recently promoted to the Chief of Staff for the Colombian Marine Corps. He was previously the Chief of the Operations Department of the Colombian Marine Corps. During his career he was assigned to the planning and execution of military operations and the implementation of intelligence and counter-intelligence activities against terrorist groups and the transnational criminal system organized by the FARC. [DE 312]. During Colonel Cote's career, he was: Chief of the Intelligence & Counter-Intelligence Section of the Sixth Riflemen Battalion of the Marine Corps, deployed in the Municipality of Buenaventura (Department of Valle del Cauca – the NVC's stronghold), whose main mission was to fight the drug trafficking cartels particularly that of the Department of Valle del Cauca and its relationship with the FARC Fronts that were carrying out criminal activities in Colombia's Pacific Ocean region; his operations led to seizure of more than 5 tons of cocaine HCL powder, the confiscation of weapons, ammunition and supply materials, as well as the capture of several members of the drug trafficking cartels; the destruction of laboratories used to process cocaine base paste cocaine HCL powder; the seizure of raw materials used to process cocaine; the destruction of clandestine air fields, and the capture of members of the FARC and drug traffickers; Chief of Operations for all Colombian marine corps riverine combat operations, including planning, supervising and coordinating all joint and coordinated combat operations against the FARC and its drug trafficking groups that used Colombia's rivers and navigable tributaries to traffic weapons, ammunition, explosives, general logistic supplies, as well as raw materials used for coca leaf cultivation and cocaine processing and trafficking; Chief of the Intelligence Department of the Marine Corps River Brigade, with duties including the exchange of intelligence information and the execution of joint military operations with U.S. law enforcement agencies such as the DEA and the FBI, Colombian security and investigation agencies such as the National Police, the DAS and the CTI, targeted to fighting the FARC and its drug trafficking and organized crime groups; Commander of the hostage rescue unit that rescued more than sixty (60) persons who had been kidnapped, and captured more than one hundred (100) FARC drug traffickers and terrorists; Commander of the 2nd Counter-Guerrilla Battalion involved with the capture and demobilization of a large number of members of the FARC drug trafficking and terrorist forces and drug trafficking cartels; Chief of Operations of the Colombian Marine Corps, the 2nd largest marine corps in the world after the U.S. Marine Corps. [DE 312, ¶¶ 8-30].

Col. Cote has unique experience into the FARC's relations with the Colombian cartels and drug trafficking organizations:

36. During my more than 24 years of active military service I have interrogated more than 350 FARC members or FARC militia after their capture. I have debriefed more than 300 demobilized FARC members or FARC militia after their

surrender. I have reinserted more than 200 former members of the FARC to conduct intelligence operations against the FARC after their surrender.

37. I have been responsible for the capture of more than 300 FARC members or FARC militia, including several squadron chiefs or commanders, company commanders, commission members, members of urban militias, replacements going to the fronts, among others.

38. I have reviewed numerous military, intelligence and law enforcement reports related to the FARC and its drug trafficking and terrorist activities. I have personally listened to hundreds of hours of real time FARC radio transmissions. I have reviewed and analyzed all types of captured FARC documents and records, including computers, ledgers, buried records, narcotics, cash, weapons and ammunition, and logistic materials in general.

39. As the Chief of Operations of the Colombian Marine Corps I have personally supervised and participated in the planning of combat operations of the marines and naval forces against the FARC, its agents, drug trafficking partners, and other criminal elements who provide support or are otherwise associated with the FARC and its narcotics trafficking and terrorist activities.

[DE 312, ¶¶ 36-39].

Col. Cote's expert witness affidavit [DE 312] also provides an extensive factual basis supporting his opinions that the NVC is an agency or instrumentality of the FARC, including "all of their members, successors, affiliates and financial network supporters." [DE 312, ¶¶ 45-50, 56]. Our experts have already proffered opinions that ALL the major cocaine trafficking cartels in Colombia, Peru, MX, etc meet the definition of agencies or instrumentalities of the FARC, an FTO/SDNTK/SDGT, including, but not limited to, the following:

- Cali Cartel
- Norte Valle Cartel
- Manuel Aguirre Galindo Organization
- Sinaloa Federation
- Los Zetas
- Beltran Leyva Cartel
- Gulf Cartel
- Arellano-Felix Organization
- La Familia Michoacana
- Tijuana Cartel
- Juarez Cartel
- Cartel Pacifico Sur
- Carrillo Fuentes Organization
- Edgar Valdez Villarreal faction,
- Zambada Garcia Organization
- Ochoa Vasco Network
- Ochoa Vasco Colombia/Mexico network
- Cifuentes Villa Organization – Colombia/ Sinaloa, Mexico
- Los Mastrojos

Los Machos
 Amezcua Contreras Organization
 Arriola Marquez Organization
 Fernando Zevallos DTO in Peru

In addition to the cartels themselves, OFAC also designates hundreds of individual cartel leaders, front persons and companies, and members of the cartel or DTO financial or money laundering networks. There are literally hundreds of these individual SDNTKs out there who may someday soon have a blocked account or blocked asset subject to US jurisdiction.

In addition to the Porter and Cote affidavits, before entering Orders determining that a blocked party was an agency or instrumentality of the FARC, and issuing TRIA writs, the district court also reviewed a voluminous appendix of supporting materials. [DE 313, Appendix]. This Appendix contained 73 exhibits consisting of hundreds of pages of evidence.

Multiple district court rulings [MDFL, SDFL and SDNY] that the FSIA definition of “agency or instrumentality of a foreign state” does not apply to terrorists and FTOs:

When Congress passed TRIA in 2002 it did not say “any agency or instrumentality of a foreign state”, it specified that TRIA applied to blocked assets of “any agency or instrumentality of that terrorist party”. TRIA §201(d) defines “terrorist party” as either a terrorist, or a foreign terrorist organization, or a state sponsor of terrorism.

The legislative history of TRIA S. 201 [from the Joint Explanatory Statement of the Committee of Conference on H. Rept. 107-779] clearly states that Sec 201 “authorizes the enforcement of judgments against terrorist organizations” and that “This provision is intended to reach terrorist organizations”. Had Congress intended for TRIA to be limited to agencies or instrumentalities of foreign states it could have said so, but it did not.

The Foreign Sovereign Immunities Act (“FSIA”) (28 USC 1603(b)) defines the term “agency or instrumentality of a foreign state” to mean only an entity that is an organ, or political subdivision of the foreign state, or a state owned entity. [Note: the FSIA does not define the broader term “agency or instrumentality”, nor “agency or instrumentality of a terrorist party”].

Obviously, the FSIA definition has no meaning in the context of a “terrorist party” that is not a foreign state. Congress could not have intended for the FSIA definition – which excludes individuals – to apply to FTOs where it is common knowledge that individuals often act for or on behalf of FTOs. FTOs and individual terrorists do not have political subdivisions, organs, or state owned entities. They can and do act through individual couriers, suicide bombers, smugglers agents, networks, cartels, cells, drug trafficking organizations (DTOs), straw men and front companies, etc. If an ATA judgment creditor of Osama Bin Laden identified a blocked account of his personal courier, clearly TRIA would allow such execution as an agency or instrumentality of the terrorist. The same is true for a judgment creditor of an FTO like the FARC or Al Qaeda who identifies a blocked account of a money launderer of the FTO.

Judge Lazzara of the MDFL recognized that the FSIA definition of “agency or instrumentality of a foreign state” does not apply to a “terrorist party” under TRIA that is an individual terrorist or an FTO. Instead, he looked to the “plain and ordinary meaning” of the words and found them consistent with the existing statutes and OFAC regulations on derivative designations under its counter-narcotics sanctions programs and he set forth a legal standard for determining an agency or instrumentality of the FARC [an FTO/SDGT/SDNTK] in multiple orders and turnover judgments. [Stansell et al. v. FARC, MDFL 8:09-cv-2308]. Judge Huck in the SDFL has also rejected the FSIA definition and adopted Judge Lazzara’s standard. [John Doe v. ELN and FARC, SDFL 1:10-cv-21517].⁴

It is clear, therefore, that Congress intended TRIA to define “terrorist party” to include terrorists and Foreign Terrorist Organizations, and that the standard for determining agency or instrumentality of an individual terrorist, or a designated Foreign Terrorist Organization is different from the standard for determining agency or instrumentality of a foreign state.

Post-judgment steps we have followed under TRIA to execute/garnish on blocked assets [all with full notice to OFAC and DOJ]:

After entry of an ATA final judgment against a terrorist or an FTO, the plaintiff can only proceed against a blocked asset of an agency or instrumentality of that FTO after the district court reviews evidence and makes a finding that the blocked party does in fact meet the standard for an agency or instrumentality of that terrorist party. At that time a writ of execution (a/k/a attachment or garnishment depending on the state where the district court is located) is issued by the court and then the U.S. Marshal serves the writ on the bank holding the blocked asset. In Florida service of the writ of garnishment on the bank is the operative event that perfects a judgment lien against the blocked asset. Thereafter the garnishee answers the writ stating if it is indebted to the blocked party agency or instrumentality, and the amount. The plaintiff then moves for entry of a turnover judgment or turnover order and upon entry the bank (after confirming with OFAC) turns the funds over to the plaintiff.

Throughout the entire TRIA execution process, OFAC is copied on every single pleading related to the blocked asset as per OFAC litigation reporting requirement 31 CFR § 501.605 so the Executive Branch is aware of what is happening, and why, the whole way through execution on a blocked account, starting with the original discovery to OFAC to identify the banks reporting holding the blocked assets. The Assistant U.S. Attorney representing OFAC is also copied on every single pleading after their appearance in the district court.

If the blocked A/I party is unblocked and removed from the SDN list by OFAC before the writ is served on the bank then the plaintiff cannot complete the TRIA execution because

⁴ See also *In re 650 Fifth Ave.*, 2013 WL 2451067 at *5 n.7 (“Section 1603(b) defines ‘agency or instrumentality of a foreign state’ for purposes of FSIA, not agencies or instrumentalities of ‘terrorist parties’-the term used in TRIA § 201); *Samantar v. Yousuf*, 130 S. Ct. 2278, 2286 (2010)(individuals could be an agency or instrumentality if those terms are given their normal meaning of: anyone who acts for or on behalf of).

there was no longer a blocked asset at the time the writ was being served and TRIA only applies to blocked assets as defined.

The district court made the FARC agency or instrumentality determinations using the plain and ordinary meaning of those terms, and finding that these were consistent with the OFAC designation criteria used to designate narcotics traffickers. [DE 323, ¶¶ 11-15]. Both of our experts, Mr. Porter and Col. Cote, in part based their opinions on the district court's standard for determining when an organization, individual, or cartel, or its members, qualifies as an "agency or instrumentality" of the FARC:

11. The Court finds that OFAC's designation authority and criteria under its counter-terrorism and counter-narcotics sanctions programs is derived from statutes,⁵ executive orders⁶ and regulations,⁷ are consistent with the ordinary and plain meaning of the terms agency or instrumentality and further finds that these definitions should be applied to determine that any SDNT or SDNTK with a nexus to the FARC qualifies as an agency or instrumentality of the FARC.

12. Any SDNT or SDNTK person, entity, drug cartel or organization, including all of its individual members, divisions and networks, that is or was ever involved in the cultivation, manufacture, processing, purchase, sale, trafficking, security, storage, shipment or transportation, distribution of FARC coca paste or cocaine, or that assisted the FARC's financial or money laundering network, is an agency or instrumentality of the FARC under the TRIA because it was either:

- (1) materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a specially designated narcotics trafficker [FARC]; and/or
- (2) owned, controlled, or directed by, or acting for or on behalf of, a specially designated narcotics trafficker [FARC]; and/or
- (3) playing a significant role in international narcotics trafficking [related to coca paste or cocaine manufactured or supplied by the FARC].

This includes SDNT and SDNTK cartels, organizations, persons or entities which have ever supplied currency, weapons, ammunition, logistics, transportation, or supplies and/or financial or money laundering services to the FARC or its trafficking partners, directly or indirectly, as consideration for FARC coca paste or cocaine. Similarly, any SDNT or SDNTK person or entity involved with the financial or money laundering network of a drug cartel or organization described above also qualifies as an agency or instrumentality of the FARC under the TRIA.⁸

⁵ 21 U.S.C. § 1904(b).

⁶ Presidential Executive Orders 12978 and 13224.

⁷ 31 C.F.R. § 598.314.

⁸ The TRIA is not limited to the definition of "agency or instrumentality" under the definition applicable to foreign *state sponsors* of terrorism found in the Foreign Sovereign Immunities Act,

13. All specially designated narcotics traffickers who assist and provide financial or technological support for or to, or who provide goods or services in support of, or who act on behalf of the international narcotics trafficking activities of a specially designated narcotics trafficker like the FARC here – a designated FTO - are each an “agency or instrumentality of a terrorist party.” See Ungar v. The Palestinian Authority 304 F. Supp. 2d 232, 241 (D.R.I. 2004)(HLF is an agency or instrumentality of Hamas because it acts “for or on behalf of” Hamas).

[DE 311, ¶ 115; DE 312, ¶¶ 53, 56; DE 314, ¶¶ 11-13].

The United States has not objected to the Court’s standard for determination of an agency or instrumentality of a Foreign Terrorist Organization (“FTO”) prior to issuing or enforcing any of the TRIA writs in this case, nor has the United States done so since.

In 2010, our lawyers moved to enforce our judgment against a blocked account of Mercurio Internacional, S.A., a Colombian casa de cambio and FARC money launderer (the Mercurio Account). Mercurio Internacional was a Specially Designated Narcotics Trafficker, and the account was blocked by the U.S. Department of Treasury’s Office of Foreign Assets Control (OFAC) under the Kingpin Act [SDNTK]. It was not, however, blocked under IEEPA or TWEA. The district court issued a writ of garnishment against the Mercurio blocked account which was served on the garnishee bank thereby perfecting the lien on the blocked asset.⁹

Mercurio challenged our writ arguing that it was about to be “exonerated” by being removed from the OFAC list, but its own filings demonstrated that the reason for its removal was the changed circumstance of being in liquidation in Colombia. The district court ruled that under the OFAC regulations Mercurio’s subsequent removal from the OFAC list did not defeat our prior perfected judgment lien under TRIA. Mercurio appealed arguing that its removal was both retroactive and an exoneration that should defeat the TRIA execution, and the parties briefed these issues on appeal. At no time did Mercurio or the government ever raise any challenge to the TRIA definition of “blocked asset” until August 2011 when the United States filed a motion for leave to file an Amicus Brief out of time in the Mercurio appeal.

On January 9, 2013, the 11th Circuit ruled that assets blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. 1901 -1908 (“Kingpin Act”) were outside the reach of TRIA, because they were not specifically included in TRIA’s Sec. 201 (d)(2) definition of “blocked assets” (“...under IEEPA ...or TWEA...”), and even though the Kingpin Act was

because state sponsors of terrorism are only one type of specifically defined types of “terrorist party” under the TRIA.

⁹ Mercurio had previously agreed to forfeit to the U.S. one third of its bulk currency seized in an ICE/DEA undercover operation [@\$677,000] in exchange for return of two thirds of the seized funds [@\$1.25 million] that was subsequently blocked when OFAC designated Mercurio as an SDNTK FARC money launderer]. *USA v. €9,145,000 in European currency et al*, SDFL Case No. 08-cv-20368, DE 35.

modeled on and virtually identical to the IEEPA sanctions program, those were separate acts of Congress. Stansell v FARC (Mercurio) et al., 704 F.3d 910 (11th Cir. 2013).

Prior to the 11th Circuit Court of Appeal decision in Mercurio, the district court ruled that TRIA's definition of "blocked asset" ["...under IEEPA..."] included assets blocked under the Kingpin Act because it was modeled on and identical to the IEEPA counter-narcotics sanction program. In its first subpoena response to our lawyers in October 2010, OFAC itself identified 2 FARC money launderers that OFAC had designated as Tier II SDNTKs under the Kingpin Act. In December 2010, our lawyers proceeded with the TRIA post-judgment execution process described above, and throughout this entire process both OFAC and DOJ were served with copies of the motions for issuance of the writ, the bank's answer to the writ, the motion for entry of turnover judgment and the court's turnover judgment under TRIA. Neither OFAC nor DOJ objected to these TRIA executions until long after one had been completed, and long after appellate briefing was completed by the parties in the Mercurio appeal.

Purpose of BASTA is to harmonize anti-terrorism statutes and definitions and clarify the intent of the comprehensive remedy in TRIA, and to eliminate unfair results:

The Bank Account Seizure of Terrorist Assets or BASTA Act **will enhance the ability of U.S. national terrorism victims to enforce judgments against the blocked assets of narco-terrorists and their trafficking partners and financial networks.** The Act harmonizes the laws governing the recovery of terrorist and narco-trafficking assets by including assets blocked under the Foreign Narcotics Kingpin Designation Act (Kingpin Act) in the list of blocked assets already subject to attachment and execution under Section 201 of the Terrorism Risk Insurance Act of 2002 (TRIA). The Act also brings TRIA in conformity with existing federal anti-terrorism civil remedy statutes defining the persons covered, and the operative dates for determining terrorist party status. The BASTA Act is sound public policy that provides justice to the victims of terrorism and further enhances the public-private partnership between private litigants and law-enforcement to deprive financial assets to terrorist and narco-traffickers. The bill is a technical fix to existing U.S Code and authorizes no additional spending or taxes.

Current TRIA Law:

At present, Section 201 of the Terrorism Risk Insurance Act of 2002 ("TRIA"), provides:

TITLE II--TREATMENT OF TERRORIST ASSETS
SEC. 201. SATISFACTION OF JUDGMENTS FROM BLOCKED ASSETS OF
TERRORISTS, TERRORIST ORGANIZATIONS, AND STATE SPONSORS
OF TERRORISM.

(a) IN GENERAL- Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party)

shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

(d) DEFINITIONS- In this section, the following definitions shall apply:

(2) BLOCKED ASSET- The term ' blocked asset' means-

(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)) or under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702); and

Purpose/Explanation of Each BASTA Act Amendment:

(1) Subsection (a) of TRIA is amended by inserting at the end the following:

“For purposes of this section, the blocked assets of a terrorist party are subject to execution or attachment in aid of execution in order to satisfy such judgment regardless of whether the terrorist party ceases to be a terrorist party after such judgment is entered.”

Purpose/Explanation:

The section ensures that blocked assets can be levied against without regard for whether the terrorist party is de-listed, so long as the judgment was granted and a writ of execution served before the de-listing. Subsequent Executive action cannot defeat the execution of a judgment so long as the defendant was a terrorist, terrorist organization or state sponsor of terrorism at the time of the terrorist act and when the judgment was granted.

Congress has already made clear that victims of state sponsors of terrorism can sue so long as the state sponsor was designated at time of the attack and the time of filing suit [28 U.S.C. § 1605A (a)(2)(A)(i)(I)]. Congress has also made clear that with respect to FTOs, removal from the FTO list does not affect any prior action or proceeding [8 USC § 1189(7)]. It would be unjust to allow the Executive Branch to thwart Congressional intent by arguing that the standard under TRIA should be different. This amendment does not deprive the President of a “carrot” because current terrorist parties still have a significant incentive to change their ways: protection against future asset blocking and award under TRIA for future acts (which are, of course, those that the carrot is designed to influence).

If the FARC is someday removed from the FTO list – and therefore ceases to be a “terrorist party” under the TRIA definition – that removal will not affect the blocked assets of its many SDNTK “agency or instrumentality” drug trafficking partners and money launderers who may still be blocked for years to come, and who continue to be newly blocked every year.

The FARC itself has no blocked assets in the US, never has and likely never will. FTOs simply do not open bank accounts or hold assets in their name, they get paid in currency and weapons etc. The agency or instrumentality trafficking partner cartel members, front companies, and money launderers do hold assets in their name, that is precisely why they get added to the OFAC

List. If the agency or instrumentality itself gets removed from the OFAC list before the TRIA post-judgment execution is perfected, then neither TRIA or BASTA will allow the victims to get at that now unblocked asset.

It would be impossible for any narco-terrorist victim to identify and sue the many hundreds (1000+) of the FTO's OFAC designated trafficking partner members and networks at the inception of the Anti-Terrorism Act lawsuit in order to obtain a judgment against 1000+ defendants. Also, the FTOs – like the FARC – continue to traffick after entry of judgment and OFAC continues to designate more agency or instrumentality cartel members after entry of Judgment vs the FTO.

The 2nd Circuit Court of Appeals in Weinstein v. Islamic Republic of Iran, 609 F.3d 43, 50 (2d Cir. 2010) held that: “Accordingly, we find it **clear beyond cavil** that Section 201(a) of the TRIA provides courts with subject matter jurisdiction over post-judgment execution and attachment proceedings against property held in the hands of an instrumentality of the judgment-debtor, **even if the instrumentality is not itself named in the judgment.**” Id. at 50.

We did sue and get a judgment against not only the FARC itself, but also 80 individual FARC leaders who we were able to identify by name [others will surely be discovered in the future as they get arrested or turn themselves in]. Only one FARC leader named in our Judgment - Alonso Olarte Lombana – has a blocked account in the US under the Kingpin Act. It is true that if the FARC and Alonso Olarte Lombana himself were simultaneously delisted by OFAC, we would still have a judgment against him. But with the lifting of the blocking sanction there is no mechanism to prevent Lombana – or any other delisted agency or instrumentality – to simply transfer its assets out of the reach of US courts. This is exactly what Mercurio Internacional, SA [OFAC designated FARC money launderer] did after the Mercurio appeal so that its \$1.25 million left the US and is no longer available for execution if BASTA is enacted into law.

BASTA will ensure that if the FARC, or any other narco-terrorist FTO, is ever delisted, the FTO's victim judgment creditors can still pursue blocked assets of the agency or instrumentality narco-trafficker/money launderer whose assets remain blocked.

Nothing in BASTA protects terrorist victims from OFAC delisting of the agency or instrumentality itself before the TRIA execution attaches. Nothing in BASTA protects terrorist victims from government civil or criminal forfeiture of any blocked asset.

(2) Subparagraph (A) of subsection (d)(2) of TRIA is amended to read as follows:

“(A) any asset seized or frozen by the United States under section 5(b) of the Trading With the Enemy Act (50 U.S.C. App. 5(b)), under sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701; 1702), or under section 805(b) of the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1904).

Purpose/Explanation:

The Kingpin Act, 21 U.S.C.A. § 1901-1908, was enacted pursuant to Congressional findings and

authority arising from the International Emergency Economic Powers Act ("IEEPA") (50 U.S.C. § 1701 et seq.). The Kingpin Act was modeled on IEEPA, and "restates the applicable provisions of the [IEEPA]". H.R. CONF. REP. 106-457, Sec. 806, 810. Congress based the Kingpin Act on the IEEPA counter-narcotics program established by President Clinton's Executive Order 12978 in issued on October 24, 1995. The related regulations are styled the "Foreign Narcotics Kingpin Sanctions Regulations" (31 C.F.R. Part 598). The original counter-narcotics sanctions regulations under IEEPA EO 12978 are found at 31 CFR Part 536.

NOTE: When Congress passed the Kingpin Act, it set forth specific findings and policy in the text of the statute itself:

21 U.S. CODE § 1901 - FINDINGS AND POLICY

(a) Findings

Congress makes the following findings:

- (1) Presidential Decision Directive 42, issued on October 21, 1995, ordered agencies of the executive branch of the United States Government to, inter alia, increase the priority and resources devoted to the direct and immediate threat international crime presents to national security, work more closely with other governments to develop a global response to this threat, and use aggressively and creatively all legal means available to combat international crime.
- (2) Executive Order No. 12978 of October 21, 1995, provides for the use of the authorities in the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.) to target and apply sanctions to four international narcotics traffickers and their organizations that operate from Colombia.
- (3) IEEPA was successfully applied to international narcotics traffickers in Colombia and based on that successful case study, Congress believes similar authorities should be applied worldwide.
- (4) There is a national emergency resulting from the activities of international narcotics traffickers and their organizations that threatens the national security, foreign policy, and economy of the United States.

(b) Policy

It shall be the policy of the United States to apply economic and other financial sanctions to significant foreign narcotics traffickers and their organizations worldwide to protect the national security, foreign policy, and economy of the United States from the threat described in subsection (a)(4) of this section.

OFAC's 2011 Publication "*What You Need to Know About U.S. Sanctions Against Drug Traffickers*" states as follows:

The Kingpin Act blocks all property and interests in property, subject to U.S. jurisdiction, owned or controlled by significant foreign narcotics traffickers as identified by the President. In addition, the Kingpin Act blocks the property and interests in property, subject to U.S. jurisdiction, of foreign persons designated by the Secretary of Treasury, in consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, and the Secretary of State, who are found to be: (1) materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a person designated pursuant to the Kingpin Act; (2) owned,

controlled, or directed by, or acting for or on behalf of, a person designated pursuant to the Kingpin Act; or (3) playing a significant role in international narcotics trafficking.

Significant foreign narcotics traffickers and foreign persons designated by the Secretary of the Treasury are referred to collectively as Specially Designated Narcotics Traffickers. Foreign persons designated under the Kingpin Act are referred to as "[SDNTK]s" on OFAC's listing of "Specially Designated Nationals and Blocked Persons" to differentiate them from the Specially Designated Narcotics Traffickers named under Executive Order 12978

Specially Designated Narcotics Traffickers designated under IEEPA's Executive Order 12978 included the Cali Cartel, North Valley Cartel, the North Coast Cartel and the Ochoa Vasco Network. OFAC uses the **SDNT designation label** for these IEEPA Specially Designated Narcotics Traffickers (no SDNTs have been designated under IEEPA since 2009, but many have been and continue to be removed from the OFAC SDN List).

Specially Designated Narcotics Traffickers designated under the Kingpin Act are referred to using the **"SDNTK" designation label**. Many new SDNTKs have been designated since 2009, and continue to be so designated. The FARC was designated under the Kingpin Act as a "significant foreign narcotics trafficker" [SDNTK] in 2003 by President George W. Bush. Many FARC leaders have also been designated as SDNTKs under the Kingpin Act (none were ever designated under IEEPA EO 12978 even though they operate in Colombia).

The intent, purpose, and criteria for designation of Specially Designated Narcotics Traffickers are the same for the SDNT and SDNTK sanctions programs. In fact, there is substantial overlap in the SDNT and SDNTK sanctions programs and each program uses the same language for designation criteria:

The term *specially designated narcotics trafficker* means:

- (1) Materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a specially designated narcotics trafficker;
- (2) Owned, controlled, or directed by, or acting for or on behalf of, a specially designated narcotics trafficker; or
- (3) Playing a significant role in international narcotics trafficking.

Compare 31 CFR Part 536.312 (SDNT Program) with 31 CFR Part 598.314 (SDNTK Kingpin Act).

When Congress passed TRIA in 2002, it defined the term "blocked asset" as any asset seized or frozen by the U.S. government "under TWEA or IEEPA". TRIA §201(d)(2)(A). Of the more than 30 sanctions programs administered by OFAC, all but one are based on the executive authority derived from either IEEPA or TWEA. These assets fall within the meaning of "blocked assets" as defined by TRIA Section 201 (d)(2)(A) and are therefore subject to attachment by U.S. national victims of terrorism.

The sole exception to this group of blocked assets subject to attachment under Section 201(d)(2)(A) are those blocked under the Kingpin Act. It is difficult to believe that Congress intended Section 201(d)(2)(A) to apply to agencies or instrumentalities of a Foreign Terrorist Organization centered in Colombia, but not to agencies or instrumentalities of that same Foreign Terrorist Organization operating in other parts of the world and that maintain narcotics transshipment corridors in South and Central America, Africa and Europe. This would lead to an absurd result whereby TRIA would apply to a FARC trafficking partner in Colombia [labeled as an IEEPA SDNT or SDGT by OFAC], but not to a FARC trafficking partner or financial network in Central America, like Panama or Mexico in the case of the Sinaloa cartel [who gets labeled as an SDNTK by OFAC], where the criteria for derivative designations are the same.

It is also illogical for TRIA to reach assets blocked under the IEEPA counter-narcotics sanctions program [SDNT], but not to reach assets blocked under the Kingpin Act [SDNTK], especially where Congress expressly modeled the latter sanctions program on the former.

Similarly, Congress clearly did not intend for TRIA to apply to narcotics trafficking agencies or instrumentalities of Al-Qaeda who happen to be designated as an SDGT under E.O. 13224, but not to narcotics trafficking agencies or instrumentalities of Al-Qaeda who happen to be designated by OFAC as an SDNTK under the Kingpin Act.

We secured our ATA final judgment [for the capture, torture, and killing of their family member] against the FARC and multiple individual FARC members including Alonso Olarte Lombana, whom OFAC has identified as a Front Commander for the FARC. Mr. Lombana is not merely some financier or remotely-related FARC entity; he is an actual commander in FARC's guerilla military operations who was clearly "centered in Colombia" [and therefore he could have been designated under IEEPA E.O. 12978]. See *Stansell et al. v. FARC et al.*, M.D. Fla. No. 09-CIV-2308, D.E. 233, 322-1. Nevertheless, the Executive designated Mr. Lombana as an SDNTK, rather than as an SDNT or an SDGT. So even though the Government has formally identified the FARC as a terrorist entity [FTO, SDGT, and a Significant Foreign Narcotics Trafficker under the Kingpin Act], and has also formally identified Mr. Lombana as a front commander in that terrorist organization – that actually caused our damages – his designation was not as a terrorist (SDGT) or an SDNT (narcotics trafficker centered in Colombia), but rather as an SDNTK under the Kingpin Act. Because Lombana was designated under the Kingpin Act, we cannot execute upon Lombana's assets blocked in the U.S., despite having a judgment against him and having perfected a TRIA writ of garnishment on Lombana's blocked bank account. This amendment will allow us to proceed with TRIA execution on a small \$30,000 U.S. blocked account owned by Alonso Olarte Lombana.

The present scope of TRIA's Section 201(d)(2)(A) thwarts terrorism victim judgment holders' efforts to collect from blocked assets of narco-traffickers and their financial networks. The Act, therefore, clarifies Congress' intent that the TRIA "deal comprehensively with the problem of enforcement of judgments rendered on behalf of victims of terrorism in any court of competent jurisdiction by enabling them to satisfy such judgments through the attachment of blocked assets of terrorist parties." H.R. CONF. REP. 107-779, Congressional Record 148 (November 13, 2002) H8728.

The BASTA Act corrects this anomaly and makes Congressional intent consistent by adding assets blocked under the Kingpin Act to the definition of blocked assets under TRIA and subject to execution by terrorism victims.

(3) Subsection (d) of TRIA is amended— (D) by inserting after paragraph (3) the following:

“(4) PERSON.—In subsection (a), the term ‘person’ means a person who, at the time the act of terrorism described in subsection (a) upon which the judgment obtained by the person was committed, was either—

“(A) a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22); or

“(B) a member of the Armed Forces of the United States; or

“(C) otherwise an employee of the Government of the United States, or of an individual performing a contract awarded by the United States Government, acting within the scope of the employee's employment.”

Purpose/Explanation:

The Act harmonizes Section 201 of TRIA with the provisions of the Anti-Terrorism Act (18 USC 2333(a) and 18 USC 2331(2)), as well as the state sponsored terrorism exception to the Foreign Sovereign Immunities Act, 28 U.S.C. 1605A(a)(2)(A)(ii)(I-III). In those statutes, Congress has defined the “persons” entitled to bring suits against terrorist parties, and the Act merely adopts this definition of persons under TRIA.

BASTA will also prevent opening the floodgates to our court system with alien national tort lawsuits from foreign FTO victims all over the world seeking to use TRIA to compete with U.S. national terrorism victims collection efforts on the same pool of blocked assets.

SEC. 3. EFFECTIVE DATE.

The amendments made by this Act apply to any judgment entered before, on, or after the date of the enactment of this Act.

Purpose/Explanation:

The provision protects terrorism victim judgment holders ' rights by clarifying that the Act applies retroactively only to judgments previously entered, and does not supersede any existing statutes of limitations within which to file a lawsuit. Any claim currently barred by the statute of limitations would not be revived, and would remain time barred.

BASTA is not a terror victim compensation fund.

Neither TRIA or the BASTA Act allow a plaintiff judgment creditor of the FARC to go after Iranian assets, or on any blocked assets of the Qadhafi family that may someday be returned to benefit the new Libyan government and people.

The ATA judgment against the FARC can only be satisfied against the blocked assets of the FARC, or blocked assets of a person or entity that a district court determines to be an agency or instrumentality of the FARC.

BASTA does not amend the federal judicial code, and it does not amend the federal criminal code.

BASTA does not impose or expand on the liability of any foreign state, or its officials or employees.

BASTA does not impose or create any new liability for aiders and abettors, or material supporters of terrorist organizations.

BASTA does not expand liability of Chiquita, or any other U.S. multinational corporations, who may operate in areas controlled by terrorist organizations.

BASTA does not change any statute of limitations period, and it does not revive any time barred actions.

BASTA will clarify and remedy incomplete definitions in the original legislation, and will correct an unexpected appellate court interpretation of a definition in the original law.

BASTA's retroactive effect is based on important public policy grounds, and has a legitimate and rational purpose – protecting the original Congressional intent of a “comprehensive remedy” for victims of terrorist organizations.

Retroactive application of this definition will protect our right to enforce several pending writs of execution/garnishment on blocked accounts of Specially Designated Narcotics Traffickers blocked under the Kingpin Act [SDNTK]. The district court has already determined that these SDNTKs are agencies or instrumentalities of the terrorist organization FARC, the writs have been issued by the district court, and served on the garnishee banks by the U.S. Marshal's Service, but any further enforcement or compliance therewith remains stayed in light of the Mercurio decision.

BASTA's retroactive **definition of “person”** – U.S. nationals, U.S. military and certain foreign nationals (i.e. embassy workers/government employees) - harmonizes TRIA with the other prior federal statutory anti-terrorism causes of action (18 USC § 2333 for actions against terrorists and terrorist organizations that are not foreign states; 28 USC §1605A for FSIA actions against state sponsors of terrorism) and is sound public policy. BASTA's retroactive clause harmonizing the definition of “person” will protect the comprehensive remedy for U.S. nationals and military, and still allow an alien judgment holder to apply for OFAC license to execute on a blocked asset. Clearly, Congress did not intend to limit anti-terrorism causes of action to U.S. nationals and U.S. armed forces, without also so limiting the TRIA post-judgment remedy.

BASTA's amendment to TRIA §201(a) will clarify that if the FARC (or other FTO) is **someday removed from the FTO list** such removal will not serve to defeat the terrorism victim's right to enforce their judgment on assets which otherwise remain blocked.

Congress has also made clear that with respect to FTOs, removal from the FTO list does not affect any prior action or proceeding. It would be unjust to allow the Executive Branch to thwart Congressional intent by arguing that the standard under TRIA should be different. This amendment does not deprive the President of a “carrot” because current terrorist parties still have a significant incentive to change their ways: protection against future asset blocking and award under TRIA for future acts (which are, of course, those that the carrot is designed to influence).

The currently proposed retroactivity provision makes good and important public policy for the Legislative Branch. It prevents U.S. nationals from having to compete with non-U.S. nationals for a very limited pool of blocked assets. It will prevent a floodgate of Alien Tort Statute lawsuits in U.S. courts by foreign national victims of FTOs seeking to use TRIA and thereby deplete blocked assets that would otherwise be available to compensate U.S. terrorism victims.

BASTA will clarify and remedy incomplete definitions in the original legislation, and will correct an unexpected appellate court interpretation of the original law.

BASTA’s retroactive effect is based on important public policy grounds, and has several legitimate and rational purposes.



Department of Justice

STATEMENT OF

MARSHALL L. MILLER
ACTING PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE

BEFORE THE

SUBCOMMITTEE ON MONETARY POLICY AND TRADE
COMMITTEE ON FINANCIAL SERVICES
U.S. HOUSE OF REPRESENTATIVES

FOR A HEARING ENTITLED

“A LEGISLATIVE PROPOSAL ENTITLED THE ‘BANK ACCOUNT
SEIZURE OF TERRORIST ASSETS (BASTA) ACT’”

PRESENTED

JULY 17, 2014

Statement of Marshall L. Miller
Acting Principal Deputy Assistant Attorney General, Criminal Division
U.S. Department of Justice
Before the Subcommittee on Monetary Policy and Trade
Committee on Financial Services
U.S. House of Representatives
July 17, 2014

INTRODUCTION

Mr. Chairman, Ranking Member Clay, and distinguished Members of the Subcommittee, thank you for inviting me to speak with you this morning at this hearing regarding potential legislative approaches to the attachment of assets seized or frozen under the Foreign Narcotics Kingpin Designation Act. I am Marshall Miller, Principal Deputy Assistant Attorney General of the Criminal Division of the Department of Justice, and my statement will focus on the current activities of the Department in managing the seizure and forfeiture of assets associated with unlawful activity. The Department works with crime victims on a daily basis to ensure they receive justice for the harms they have suffered. As this Committee considers legislation in this area, the Department stands ready to ensure that any proposal complements, rather than conflicts with the forfeiture and restitution tools that we use to help victims every day.

The seizure and forfeiture of assets that represent the proceeds of federal crimes, or that were used to facilitate those crimes, are covered by the Department of Justice's Asset Forfeiture Program. The Program's primary mission is to use asset forfeiture to enhance public safety and security by ensuring that crime does not pay. To accomplish that mission, the Department forfeits the proceeds of crime, or other substitute assets, directly from the criminals themselves. Asset forfeiture takes the profit out of crime, disrupts criminal organizations, lessens their economic influence, and serves as a deterrent to future criminal activity. In addition, the laws governing asset forfeiture provide pre-trial preservation tools to prevent criminal defendants from dissipating crime proceeds, ensuring that such proceeds remain available for forfeiture or restitution.

The Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS) spearheads the Asset Forfeiture Program and, more generally, the Department's asset forfeiture and anti-money laundering enforcement efforts. Most importantly for today's hearing, AFMLS leads the Department's efforts to return forfeited criminal proceeds to those harmed by crime through the administration of victims' claims.

RETURNING FORFEITED ASSETS TO VICTIMS OF CRIME

The Department works to ensure that victims of crime are fairly and equitably compensated. The authority to distribute forfeited funds to victims has been entrusted to the Attorney General. This makes sense legally because, once property or funds are forfeited, ownership of the property or funds transfers to the government. But it is also sensible, as it allows the government to finalize and execute forfeiture orders equitably, without prejudicing the rights of other claimants.

The process by which the Department distributes forfeited assets is known as “remission.” Under the applicable regulatory framework governing remission, the Department has provided compensation to thousands of victims for a wide variety of crimes, ranging from Ponzi schemes, mail and wire fraud, and health care fraud to identity theft, intellectual property and trademark violations. Since 2001, nearly \$4 billion in forfeited assets have been disbursed to victims by the Department under the Attorney General’s discretionary authority. Over \$203 million has been returned to victims so far this fiscal year.

The remission process is governed by federal regulations that define a victim as an innocent person who has suffered a pecuniary loss as a direct result of the crime underlying the forfeiture or a related offense. It is important to note that the remission regulations give no preferential treatment to any particular victims; all victims must submit and document their losses with supporting documents. When the forfeited funds are not sufficient to compensate multiple victims for the entirety of their losses, the funds are generally distributed on a pro-rata basis, in accordance with each victim’s verified pecuniary loss amount. An important purpose of these regulations is to avoid victims of crime being doubly harmed – first by the underlying criminal conduct, and a second time as resources are dissipated through competition over a limited pot of money.

Compensating victims has long been a top priority of the Department’s Asset Forfeiture Program. In fact, the Department has made strides to provide remission in situations where victims who suffered defined pecuniary losses were denied funds under other avenues for recovery including bankruptcy law or the Securities Investor Protection Act (SIPA), because such laws generally only recognize creditors, rather than the broader class of victims recognized in the remission regulations. For example, in the Bernie Madoff case, the Department anticipates distributing forfeited proceeds to victims who would have been ineligible to obtain recovery in related SIPA civil proceedings. Since the forfeited funds unfortunately do not cover all the victims’ losses, those funds will be distributed on a pro-rata basis.

We should emphasize that as a matter of DOJ policy, victims of crime have priority over forfeited funds – in other words, victims are compensated before law enforcement and before equitable sharing with federal, state and local agencies, or international partners. The

Department remains steadfast in its commitment to ensuring that forfeiture plays a key role in helping victims recover from the crimes committed against them. We do want to note for the benefit of this Committee, however, that the Department's experience in this arena has largely been focused on victims who have suffered quantifiable pecuniary harm, as the regulations set forth. Quantifying non-pecuniary harm is a very difficult process, and we should move cautiously before altering the existing system in a manner that could favor one class of victims, such as judgment creditors, over other victims.

CONCLUSION

In closing, I would like to once again thank this Subcommittee for holding this hearing and providing the Department with the opportunity to explain the Department's forfeiture efforts, remission procedures, and commitment to compensating the victims of crime.

STATEMENT OF
STEVEN R. PERLES
BEFORE THE
HOUSE COMMITTEE ON
FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON MONETARY POLICY AND TRADE
JULY 17, 2014

Chairman Campbell, Ranking Member Clay, and members of the Subcommittee, my name is Steven R. Perles, founder and senior partner in the Perles Law Firm, PC, and I appreciate the opportunity to appear before you to discuss judgment enforcement in civil litigation on behalf of U.S. citizens killed or injured as a result of acts of state-sponsored terrorism. I have represented significant numbers of Americans who were tragically murdered or injured in acts of Iranian, Syrian, Sudanese, Libyan and Palestinian terrorism. What I would like to speak about today is a judgment enforcement which is a story of a public-private partnership and the proper role of the U.S. government in these cases. In my experience, since 1995, these cases achieve their greatest success when the U.S. government empowers the American victims by assisting with evidence, identifying assets of the terrorists or their sponsors and by staying neutral when the sponsors of terrorism attempt to leverage ongoing negotiations with the U.S. government for aid and support in the court cases against them. While an administrative reclassification of assets would be preferable to legislation, I support relief no matter how it arrives for the FARC victims. Allowing the victims of FARC terrorism to pursue the assets of FARC sponsors would promote the goals of TRIA, namely, victim compensation and the deterrence of terrorism.

In 1996, my firm was one of the first to file lawsuits on behalf of American victims of terrorism. We have seen the field of anti-terrorism litigation grow in cases against sovereign states and foundations and corporations that allegedly aided and abetted acts of terrorism. Anti-terrorism civil litigation has always been about deterring those who would materially support terrorism, as terrorists from Abu Nidal to Bin Laden have all relied on someone else to provide their support, be it financial or otherwise. Some of these sponsors are states like the Islamic Republic of Iran and some are private actors, including the international financial institutions that facilitate the movement of funds destined for terrorist entities.

The first successes in anti-terrorism litigation were won against Iran, but only after I brought an ultimately successful case called *Princz v. Federal Republic of Germany* against the Federal Republic of Germany on behalf of all Jewish survivors of the Nazi concentration camp system who held a U.S. passport at the time of their incarceration. Though the underlying facts in *Princz* had nothing to do with terrorism, slaving a U.S. national in Auschwitz and incinerating a U.S. national in a bus bombing give rise to the same sovereign immunity issues. Thus, *Princz* led to my first case against Iran, a notorious state sponsor of terrorism.

In 1995, the Shafaqi faction of the Palestine Islamic Jihad detonated a bomb that destroyed an Israeli bus and killed twenty-year-old Alisa Flatow. At this point in time, victims of terrorism like Alisa and her family had only an administrative remedy. In theory, the State Department could have espoused their claim and demanded compensation from Iran. They did not, and up until this point had never done so. Congress responded to the total lack of remedies for U.S.

terrorism victims in 1996, using then-D.C. Circuit Judge Patricia Wald's dissenting opinion in *Prinz* for guidance, Congress passed a new exception to the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1605(a)(7), for lawsuits "against a foreign state for personal injury or death that was caused by an act of torture, extrajudicial killing, aircraft sabotage, hostage taking." This exception denied sovereign immunity to any foreign state that sponsored a terrorist attack upon U.S. citizens, as long as the state had already been officially recognized as a state sponsor of terrorism by the U.S. Department of State.

Following this amendment, I represented this family in *Flatow v. Islamic Republic of Iran*,¹ the first case against Iran for state sponsorship of terrorism under the FSIA. The *Flatow* case documented the links between the terrorist group that carried out the attack and Iran, which acted as a sponsor for the group through the provision of support and training. In *Flatow*, for the first time, a court found a foreign state liable for its sponsorship of a terrorist group that killed a U.S. citizen and awarded damages of roughly \$229 million. Around the same time, together with my co-counsel Thomas Fay, I brought a case in the United States District Court for the District of Columbia against Iran for its complicity in the 1983 marine barracks bombing in Beirut, Lebanon that caused the death of over 240 servicemen, captioned *Peterson v. Islamic Republic of Iran*. Judge Royce C. Lamberth authored a May 30, 2003 opinion finding Iran liable based upon the clear and convincing evidence linking Iran to the 1983 attack.² Subsequently, Judge Lamberth entered judgment against Iran for the 1983 bombing in excess of \$4 billion.³ We currently are enforcing this judgment on behalf of over 1,200 plaintiffs against Iranian assets worth \$1.9 billion in the United States District Court for the Southern District of New York.⁴ It should be noted that we were greatly aided in this effort by the provision of information under seal by the Department of Treasury, which is an appropriate role of government in these cases. The process by which Treasury cooperates with private victims of terrorism, and its intersection with TRIA, will be discussed in greater detail below.

At times, the U.S. government has been a strong supporter of anti-terrorism litigation, and the State Department has been able to play a constructive role in the past. In 2008, there were a number of cases in U.S. courts progressing against Libya to provide compensation for its sensational acts of terrorism against U.S. citizens in 1980s and 1990s, including the survivors of the 1986 LaBelle Discothèque bombing. Libya, anxious to reestablish relations with the United States, was unable to make much progress as State Department officials and members of Congress blocked rapprochement until the claims were satisfied. The primary cases that drove the agreement with Libya forward were the Lockerbie Pan Am 103 bombing and the LaBelle discothèque bombing case. In August 2008, the governments of Libya and the U.S. reached an agreement where Libya agreed to pay the U.S. \$1.5 billion in settlement of all outstanding claims.⁵ Though many victims were dissatisfied with this result and felt the U.S. government made a politically expedient settlement at the expense of fair compensation of all victims and survivors of Libyan terrorism, the level of U.S. government participation in the vindication of private causes of action was unique. While it may have been preferable to see more done on

¹ 999 F. Supp. 1 (D.D.C. 1998).

² *Peterson v. Islamic Republic of Iran*, 264 F. Supp. 2d 46 (D.D.C. 2003).

³ *Peterson v. Islamic Republic of Iran*, 515 F. Supp. 2d 25 (D.D.C. 2007).

⁴ *Peterson v. Islamic Republic of Iran*, CA 10-4518 (KBF), 2013 U.S. Dist. LEXIS 40470 (S.D.N.Y. Feb. 28, 2013).

⁵ Libyan Claims Resolution Act, Pub. L. No. 110-301, 122 Stat. 2999 (2008).

behalf of victims, U.S. government support for the Libyan cases was vital to their eventual settlement. The resolution of the Libya cases in 2008-10 for Libya's past acts of state sponsorship of terrorism illustrates how advocates for victims of state sponsorship of terrorism can provide ammunition to the State Department in its advancement of U.S. policy and how the two can work together to achieve their goals. Such a public-private partnership does not happen often because of the absence of an institutional voice for victims of terrorism at the State Department. Moreover, it should be noted that the administrative settlement of claims against Libya, technically called an espousal, was only possible because of the leverage exerted by billions of dollars in private claims authorized by the *Flatow* amendment. Under the U.S. espousal, U.S. injury victims received a minimum payment of \$3,000,000 each. Under a similar process in Germany, a country lacking the kind of private judicial remedies afforded by the *Flatow* amendment, injury victims received approximately \$300,000 each.

In addition, other organs of the Executive Branch have played an instrumental role in several Foreign Sovereign Immunities Act (FSIA) cases against the Islamic Republic of Iran and the Syrian Arab Republic. In some cases preexisting administrative discretion allows for quick flexible cooperation from the Executive Branch. Under subpoena, the Office of Foreign Asset Control at Department of Treasury has provided information regarding the location of frozen assets of Iran or Syria to U.S. victims of terrorism as judgment creditors. In two of my cases, this has led to compensation for my clients and I must thank the Department of Treasury for acting in a thoroughly cooperative and professional manner. In *Gates v. Syrian Arab Republic*, I along with my co-counsel, John Salter and former governor of Georgia, Roy Barnes, represent two families who each lost a family member in 2004 to horrific Syrian state-sponsored beheadings carried out by Al Qaeda in Iraq. DC federal court awarded a final judgment for \$412,909,857, which we sustained against a Syrian appeal. Under subpoena and a protective order from the Court, the Department of Treasury cooperated quickly and efficiently to provide a list of Syrian assets which had been blocked under the operative Syrian sanctions regime. Using TRIA as a statutory enforcement mechanism, my clients then successfully restrained and won an award in excess of \$80,000,000 in Syrian assets in Illinois, which was recently confirmed on appeal.⁶ In *Peterson v. Islamic Republic of Iran*, along with co-counsel, I won an award of \$2,656,944,877 against the Islamic Republic of Iran for the death of over two hundred and forty United States servicemen and injury to hundreds more, as a result of the Iranian state-sponsored terrorism bombing at the Beirut Marine barracks in 1983. Again, under subpoena and protective order from the Court, the Department of Treasury cooperated quickly and efficiently to provide a list of Iranian assets which had been blocked under the operative Iranian sanctions regime. As mentioned above, using TRIA as a statutory enforcement mechanism, my clients then successfully restrained and won an award against of nearly \$1.9B in Iranian assets in New York City, which was recently confirmed on appeal.⁷

Executive discretion once aided the victims of terrorism in the *650 5th Avenue* case in the United States District Court for the Southern District of New York.⁸ For years, several groups of terrorism victims have worked hand-in-hand with U.S. federal prosecutors in a civil forfeiture case against the office tower at 650 Fifth Avenue, which belongs to groups which have allegedly

⁶ *Gates v. Syrian Arab Republic*, 2014 U.S. App. LEXIS 11811 (7th Cir. Ill. June 18, 2014).

⁷ *Peterson v. Islamic Republic of Iran*, 2014 U.S. App. LEXIS 13038 (2d Cir. N.Y. July 9, 2014).

⁸ *In re: 650 Fifth Avenue and Related Properties*, CA 08-10934 (KBF).

money laundered for Iran and violated U.S.-Iran sanctions. As a result of this cooperation, the U.S. government plans to sell the building and turn over the proceeds to the families of those victims of Iranian terrorism who have worked with the government. This cooperation runs both ways. Whenever legally permissible, I have provided information to U.S. government agencies to assist in their legal efforts against terrorists and their supporters.

Now that you have a few concrete examples of how the public-private partnership has contributed to real-world aid for terror victims and staggering costs for sponsors of terrorism, I would like to provide you with a step-by-step breakdown of how such cooperation comes to be, and the role that TRIA plays.

First, a victim of terrorism or their family, must obtain a valid final judgment against the relevant state sponsor of terrorism and a 28 U.S.C. § 1610(c) order. To do this, the victim must initiate civil litigation in the U.S. pursuant to 28 U.S.C. § 1605A, which developed from the 1995 *Flatow* amendment. The plaintiff in a *Flatow* amendment case must first serve a copy of the lawsuit (translated into the foreign language) on the defendant foreign sovereign and then prove that their harm was the result of an act of terrorism sponsored by a country listed on the State Department's State Sponsors of Terrorism list. The claimant or victim must be a U.S. citizen or alternatively, the victim must have been a foreign national killed or injured in service to the U.S. (e.g. a foreign State Department employee, or a non-citizen member of the U.S. armed forces). After proving these elements and winning a judgment, the claimant must serve a copy of the final judgment and then wait for a sufficient period for that State to respond (usually sixty days). After the required notice period has passed, the judge issues a § 1610(c) order which allows the claimant to begin enforcing the court judgment.

After a judgment is issued TRIA may be applicable. For TRIA to apply, an asset of the terror sponsor must be blocked (almost always for reasons independent of the civil litigation). For this to happen the President must issue a blocking order describing a specific category of financial assets. Because State sponsors of terror are often subject to sanctions they are frequent targets for presidential blocking orders. Next, financial institutions receive and process those blocking orders, blocking and segregating any assets they hold which meet the President's description. Any financial institution taking action under the blocking order must notify the Department of the Treasury within ten days of doing so. Rather than collect the assets, the Treasury simply maintains a database of blocked assets, which remain segregated within their original financial institutions.

Lastly, the judgment must be enforced. Since the sponsors of terrorism are often already subject to U.S. sanctions, their financial transactions are carried out in a clandestine manner in the U.S. In addition, only the assets of the State itself may be attached, not the assets of private citizens. Thus, enforcement of these judgments is much more about asset location than judicial proceedings to attach those assets. There are several ways to go about locating assets of terrorism sponsors. One way is to hire professional "asset hunters" such as forensic accountants. Another way is enlist the cooperation of the Department of Treasury in searching its blocked asset database.

To get information from the Treasury database, the claimant must first issue a subpoena to OFAC pursuant to their ongoing civil litigation against the state sponsor of terrorism. If OFAC believes the subpoena is sufficiently specific, it will respond. This process is usually iterative, as OFAC and the claimant gradually narrow down the scope of the subpoena. OFAC will not release raw data (i.e. the full database or any unfiltered subsection thereof) or any information that will interfere with an ongoing OFAC investigation. Moreover, OFAC will only release the requested information under seal, and before doing so OFAC will file a motion for a protective order with the judge presiding over the trial. Once issued, the protective order acts as a guarantee of criminal penalties if the attorney misuses the information, i.e. breaks the seal.

Once the information released by OFAC helps the claimant locate a blocked asset of the state sponsor, that claimant must initiate enforcement proceedings in federal district court in the jurisdiction where the asset is located. All enforcement proceedings in the federal court system, terrorism-related or otherwise, are governed by state law, so the procedures vary from state-to-state. Moreover, given the courts' tendency towards public dissemination of judicial opinions, the OFAC data does eventually become public.

When *Flatow v. Islamic Republic of Iran* was decided, this public-private partnership did not exist. All terror victims had to go find assets through a conventional asset search. Moreover, when they eventually did find assets without the assistance of the U.S. government, the Treasury took the position that the immunity of the U.S. itself protected assets that had been blocked, and that the exceptions to the FSIA, such as the *Flatow* amendment, were therefore irrelevant. TRIA fixed this problem, and so I tend to think of it as a legislative waiver of U.S. sovereign immunity. In contemporary practice, TRIA lets us get at the assets that Treasury discloses pursuant to subpoena.

This brings us to the issue at hand. I am inherently sympathetic to the plight of FARC terrorism victims and would like to see their judgment enforced. That said, when modifying legislation with such a direct effect on complex litigation, you must be conservative and careful. I see no structural impediment to administratively fixing this problem. The Administration should be provided a reasonable opportunity to timely correct this failure before the law is changed; it should be given the chance to simply re-designate FARC assets from drug kingpin assets to terrorism assets, thereby bringing them within the scope of the current TRIA language. In addition, the Administration's technical comments should also be solicited. As a parallel example, the *Flatow* amendment only became necessary when Congress became convinced that the executive could not or would not offer a viable remedy for terror victims. When amending this sort of legislation, the highest order of business should be to do no harm by unintended consequence. On the other hand, over-cautiousness should not be allowed to impede the enforcement of legitimate grievances against terrorist states.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

KEITH STANSELL, CASE NO.:
MARC GONSALVES, 8:09-CV-2308-T26-LAZZARA/MAP
THOMAS HOWES, and
JUDITH G. JANIS, CHRISTOPHER T. JANIS,
GREER C. JANIS, MICHAEL I. JANIS,
and JONATHAN N. JANIS

Plaintiffs,

v.

REVOLUTIONARY ARMED FORCES
OF COLOMBIA (FARC), et al.,

Defendants.

AFFIDAVIT

STATE OF FLORIDA)
)ss.
COUNTY OF MANATEE)

BEFORE ME, the undersigned authority, personally appeared Keith Stansell, who after being duly sworn, deposes and says:

1. My name is Keith Stansell, and I make this affidavit based upon personal knowledge:
2. On February 13, 2003 I was a civilian employed by California Microwave a unit of Northrop Grumman performing a counter-narcotics surveillance flight mission in Colombia South America when the aircraft in which I was a crewmember went down in the jungle. I was not part of any military or armed force. We were flying in a civilian Cessna 208B Caravan FAA registration N1116G. This was a commercial aircraft and not a military aircraft and not equipped with weapons systems and bore no markings of any U.S. or Colombian military force or organization. Shortly after the crash landing, I was captured by the FARC. I was 38 years old when I was taken hostage and 43 years old when I regained my freedom.
3. I was tortured, chained, starved, denied my liberty, and forced at gun point against my will to march throughout Colombia and other areas for more than 5 years. Our captors, the terrorist group FARC, made it clear to us that they would never release us and would kill us

if there ever was a rescue attempt. The FARC assigned at least one of its members at all times to be physically near us with orders to execute us if there was a rescue attempt. The FARC guards explained it to us clearly many times. We heard helicopters overhead dozens of times during and each and every time that we heard helicopters, we experienced the guards preparing to shoot us by chambering rounds into their weapons and by physically positioning themselves to fire upon us. We were always surrounded by guards in such a manner to be easily shot. I believed that I would be killed dozens of times. There was a daily threat of execution that I lived with for 1,967 days.

4. I was terrorized by the FARC every day while being held against my will. Several examples of this terrorism follow:

(i) I was forced to march after the crash for 21 days more than 16-18 hours with broken ribs, herniated discs, and internal stomach and uncontrolled and unrestrained bowel movements. I was unable to eat for the first 12 days of this initial march. These long multi-day marches occurred frequently.

(ii) I marched with bleeding feet and with the pads on the balls of my feet worn to the bone. The boots I was forced to wear had the toe section cut-out and I lost 7 of my 10 toenails.

(iii) During captivity I experienced many medical problems. Because I had no toe sections in my boots, I was stabbed in my toes with plant spines – long needle-like thorns. A FARC guard forcibly cut the spines out with no medicine or anesthetic.

(iv) My hip became infected during captivity due to the administration of a spoiled medicine for a jungle infirmity. The baseball sized cyst rotted and burst covering me and my pants with pus as though I had been swimming in a pool. The FARC cut the cyst out with a scalpel and no pain medication.

(v) I was forced into isolation and could not speak with anyone for the first 8 months where I almost lost my voice because I did not use my vocal cords.

(vi) I was chained with a 5 meter long truck chain and large lock for the last two years of captivity. I marched, ate, bathed, worked, defecated, and slept in this chain.

(viii) I was forced onto the ground and searched many times.

(ix) The FARC execution squad came to us one night when helicopters flew overhead and the guards came to me and openly threatened to kill me.

(x) FARC guards would walk behind me holding the length of my chain and place a loaded rifle in my back to control me.

(xi) I was held in a cage covered in human feces on a piece of plastic watching ticks crawl across the ground to bite me.

(xii) One night while being held in a cage, we heard helicopters overhead. The execution group moved up to the edge of the cage and began to discuss how they were going to kill us. I went to the group and in the dark of the jungle, asked that they shoot us cleanly and not spray us with gunfire inflicting non lethal wounds.

5. The FARC and its members worked at concealing there whereabouts, identities, and movements from the United States' and Colombia's military, police, courts, and citizens and other law enforcements groups and agencies. The FARC moved us continuously and hid us deep in the Colombian jungle. The FARC kept us segregated from others during most of our captivity and did not want the local campesinos to see us. The FARC used alias names and deliberately isolated us from any contact with the outside world.

6. We received no communications from anyone the first year of captivity. We learned later that our families had sent messages through the embassy, but these were never delivered. Three years into captivity we received small radios where we could sometimes hear messages from our families broadcast from radio stations.

7. The FARC First Front commander alias "Cesar" who held us two years before our rescue stated to us that "the FARC produced, distributed, and controlled all of the cocaine going into the United States and he could shut off - like a switch - the flow of cocaine to the U.S. anytime the FARC wanted." Cesar told us that no person or entity operated in areas frequented by the FARC without paying the FARC. FARC guerillas explained to us that the FARC collected money from businesses that paid an operating tax to the FARC and the FARC redistributed those illegal monies throughout the FARC and its various Fronts. The FARC admitted to us that the monies collected from businesses were used to support our captivity for years. Our captors explained to us that their financial and other support to maintain our captivity came from the Secretariat. Illegal monies from the cocaine production, distribution and sales also supported us during our captivity. The uniforms we wore were made in Venezuela and had markings from Venezuela.

8. I saw the FARC carry bags full of pesos. The money was carried and brought into and out of Front areas by special guides and collectors who operated above the Front level with the Secretariat, Estado Mayor, and Bloc. The FARC guards told us that they maintained buried caches of collected money, weapons, and ammunition and that they maintained these caches for years after the money was collected from businesses throughout FARC areas. I witnessed the FARC changing out weapons and ammunition which were purchased in other FARC areas from where we were being held hostage and then redistributed into our Front so that our captors had the equipment needed to maintain us. Because of our status as important hostages and the fact that our locations were a closely held secret, the Secretariat directed support collected from all areas of the FARC into the Fronts holding us hostage.

9. I remained a hostage of the FARC and captive for 1,967 days. We were rescued on July 2, 2008.

10. During my captivity I heard that the FARC had ordered the murder of Tom Janis. Tom Janis was the pilot of Cessna N1116G and also a civilian employed California Microwave a unit of Northrop Grumman. Tom Janis was not a member of an armed force or military force.

11. My trauma and injuries by reason of the FARC's acts of international terrorism and by those who provided support to the FARC are permanent and continuing. With each day and through life's daily events I discover the permanent nature of my injuries. For example:

- (i) I have premature deterioration of discs in my spine from marching like a skeleton with a fifty pound pack and meters of chain around neck.
- (ii) I have ongoing and continuing digestive problems.
- (iii) The balls of my feet are sensitive and painful and the skin/fat pads are worn thin.
- (iv) I have permanent scars around my neck and shoulders from being in chains.
- (v) I have permanent scars on my neck, crotch and legs from a type of flesh eating virus.
- (vi) I underwent a special CDC treatment for the flesh eating virus including months of IV drugs.
- (vii) I have permanent pain in my right torso from being forced to march with broken ribs and no medical care.
- (viii) I have a knot under my skin on my right hip where the cyst described above burst and was cut out.

12. My captivity had a deep impact on my family. I missed my two older children's teenage years and all of those unique one-time events. I missed the birth of my twin sons. I missed more than five years of family memories and holidays, and I missed the time just spent with family. I arrived home to find my father and mother taking care of my family and my dad overwhelmed at 80 years old from the stress of my captivity. He had failing health and has passed away from cancer.

13. I remain in physical pain daily. I still am discovering the deep emotional scars that five and a half years of captivity and isolation have caused, and I suffer daily managing this psychological pain. My reaction to life's stressors varies every day and with every life experience. Each day reveals new traumas associated with my time in chains.

FURTHER, AFFIANT SAYETH NAUGHT.



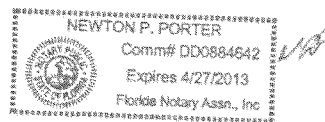
KEITH STANSELL, Affiant

SWORN TO AND SUBSCRIBED before me this 11th day of May, 2010
by Keith Stansell, who is known to me to be the person signing said document.



NOTARY PUBLIC, STATE OF
FLORIDA, AT LARGE

My commission expires:
☒ Personally known
☐ Produced Identification



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

KEITH STANSELL, CASE NO.:
MARC GONSALVES, 8:09-CV-2308-T26-LAZZARA/MAP
THOMAS HOWES, and
JUDITH G. JANIS, CHRISTOPHER T. JANIS,
GREER C. JANIS, MICHAEL I. JANIS,
and JONATHAN N. JANIS

Plaintiffs,

v.

REVOLUTIONARY ARMED FORCES
OF COLOMBIA (FARC), et al.,

Defendants.

AFFIDAVIT

STATE OF CONNECTICUT)
)ss.
COUNTY OF TOLLAND)

BEFORE ME, the undersigned authority, personally appeared Marc Gonsalves, who after being duly sworn, deposes and says:

1. My name is Marc Gonsalves, and I am making this affidavit based upon my own personal knowledge.
2. On February 13, 2003 I was a civilian employed by California Microwave a unit of Northrop Grumman performing a counter-narcotics surveillance flight mission in Colombia South America when the aircraft in which I was a crewmember went down in the jungle. I was not part of any military or armed force. We were flying in a civilian Cessna 208B Caravan FAA registration N1116G. This was a commercial aircraft and not a military aircraft and not equipped with weapons systems and bore no markings of any U.S. or Colombian military force or organization. Shortly after the crash landing, I was captured by the FARC.
3. I was tortured, chained, starved, denied my liberty, and forced at gun point against my will to march throughout Colombia and other areas for more than 5 years. Our captors, the terrorist group FARC, made it clear to us that they would never release us and would kill us if there ever was a rescue attempt. The FARC assigned at least one of its members at all times to be physically near us with orders to execute us if there was a

rescue attempt. More than 50 times when we heard helicopters over head, we believed the FARC would kill us.

4. The FARC are terrorists and each and every day committed horrible acts against us for more than five and a half years. Some examples are listed below, but these are only examples and not meant to limit or describe everything that occurred to me:

(i) The FARC tortured me by forcing me to carry heavy weight on my back, for many hundreds of miles, which resulted in injuries to both of my knees, my shoulders and my back. On several occasions these injuries prevented me from being able to walk. All of these injuries continue to molest me to this day. These forced marches always took place in the most rugged and barely navigable terrain. On one occasion I was forced to cross a deep stone gully on an improvised fallen tree "bridge". The bridge appeared very unsafe to cross, and I did not want to continue but was forced to cross at gun point. As always, I was forced to carry approximately 55 lbs in an improvised back pack, and under the weight of my own body and the backpack, the bridge gave way and broke as I was half way across. I fell over four meters to the rocky bottom of the gully, on impact I received a severe blow to my head and right side of my body, which resulted in a concussion and extreme pain and swelling on my face, right arm and right leg. I remained unconscious for a short moment, but despite the concussion, and the fact that I was unable to move my right arm, I was forced to carry the heavy backpack approximately 15 miles through rugged terrain the very next day and everyday there after for approximately three months. I continue to experience head-aches and pain in my right shoulder from this injury.

(ii) The FARC forced me to live in an unsheltered amazonian environment with little or no protection from disease carrying insects and animals. These conditions were always unsanitary and unhealthy, which resulted in me contracting hepatitis, malaria, various viral infections, and various internal and flesh eating parasites. The only drinking water available to me was often collected by myself, from muddy stagnant puddles on the floor of the jungle, resulting in constant digestive illnesses. Food that was provided to me was often badly prepared, or rotten.

(iii) The FARC forced me into solitary confinement for approximately six months. During this period they prohibited me from all communication or contact with any human being, including my companions Keith Stansell and Tom Howes. Despite the efforts of my family and friends to send me written communication and verbal communication, the FARC rejected all communication from the free world. They also refused to allow me to hear any radio broadcasts, or to know anything about my situation, or any current events. I was denied all access and knowledge of the outside world.

(iv) During my forced captivity my body weight dropped by 57 pounds, due to constant denial of food. On many occasions, the FARC used starvation as a tool of torture and punishment.

(v) From the moment the FARC took me hostage, I was in need of medical assistance. Despite my constant requests for medicine and medical attention, I never received any competent medical attention. However, the FARC, against my will, subjected me to their own home grown and sadistic remedies, which often increased my pain and suffering. On one occasion I was infected with a disease called Leishmaniasis, also known as jungle leprosy because of its similarities with leprosy in that it will continue to rot the flesh away until treated. The FARC denied my requests for treatment of this infection, until the open sore on my arm had become large and in grave condition. I was finally given treatment through a series of daily injections. I was very concerned when I noticed the FARC re-using needles, and requested clean or new needles be used for the treatment. However, the FARC rejected my request, and continued treating my Leishmaniasis infections with dirty needles, which resulted in my contracting hepatitis. I became gravely ill. I was unable to stand up, my skin and eyes turned yellow, I was unable to eat, and my urine turned red like blood. I again requested medical attention and was denied. In order to keep me as a living hostage, which the FARC considers of more value, the FARC attempted to treat my illness, but for several weeks were unable to determine the proper drug to administer, which resulted in me receiving unknown drugs which caused me even more pain and suffering. I later became infected with malaria, and was again unable to stand-up, or eat. Additionally, I was struck by extreme migraine headaches, which made every second of that illness unbearable. I aggressively requested treatment, but was verbally reprimanded and humiliated and denied assistance of any kind. I was very close to the point of death when medicine was finally administered.

(vi) The FARC held me at gun point, 24 hours a day for 1,967 days. I was threatened with death on at-least 25 different occasions. I was threatened that I would be killed if I attempted to escape, if a rescue was attempted, and also if any harm came to the FARC guerillas being held in American prisons, I would suffer the same fate. Every time helicopters were flying in the area, I was surrounded by armed guerillas who were mandated to shoot me when given the order. I lived under 24 hour armed guard surveillance, with guard shift changes every two hours. During the guard exchange, the incoming guards would chamber a fresh round in their assault rifles in order to be prepared to shoot me without hesitation when desired. To this day I am haunted by the sound of those chambering rounds.

(vii) The FARC subjected me to constant public and private humiliation. The FARC would often torture me by prohibiting me from relieving my bowels or bladder. I was forced to request permission to relieve myself, and if permission was granted, I was accompanied and watched closely as I did relieve myself. The FARC often took opportunity to attempt to humiliate me if I requested to relieve myself too often or if it took too long.

(viii) The FARC constantly locked me into tight enclosures such as wooden boxes, small improvised building structures, barb wire cages, or small fenced in areas. They also maintained be bound with a choking noose chord around my neck, and with heavy gauge steel chains around my neck. They often locked me to trees, or posts. For approximately two years they bound me with a 15 foot heavy chain by my neck, to the

neck of my companion Keith Stansell. We remained bound in this fashion 24 hours a day. On one occasion my companions Tom Howes, Keith Stansell and I, were locked in a small barb wire cage for six months. We were forced to urinate and defecate in the cage. On another occasion, my companions and I were locked into a small improvised structure which was located on a waste pile. The odor was nauseating, and the structure itself was only approximately 4.5 feet high, which prevented me from being able to stand up straight. On another occasion, after a fellow hostage successfully escaped from the FARC, I was tortured as a punishment, by being forced into a very small space with my fellow hostages and several large drums containing gasoline, and was covered with thick gauge black plastic. The plastic was then sealed in order to prevent any fresh air from entering the space, forcing me to breathe heavy gasoline fumes.

5. The FARC and its members deliberately and intentionally concealed themselves from the United States' and Colombia's military, police, courts, and citizens and other law enforcements groups and agencies. Its members used alias names. The FARC moved us continuously and hid us deep in the Colombian jungle.

6. The FARC First Front commander alias "Cesar" who held us the two years before our rescue told us that "the FARC grows and controls all of the cocaine going into the United States and he could shut off the flow of cocaine to the U.S. anytime." Cesar told us that the monies the FARC received from non-Colombian businesses operating in Colombia which were collected and then distributed from many areas to his Front were enough to maintain our captivity for decades.

7. I saw the FARC carry bags full of pesos. The same individual I saw with the pesos also informed me that he had carried for the FARC a bag with forty thousand dollars in U.S. currency. Other guerillas which I had built a relationship of confidence with informed me that the FARC had buried caches of money it maintained for years to support our captivity, buy the weapons, ammunition, food or "economy" as the FARC referred to provisioning, and our clothes and boots. I saw the FARC transfer money between fronts moving between different geographic areas of Colombia.

8. I remained a hostage of the FARC and captive for 1,967 days. We were rescued on July 2, 2008.

9. I heard from a FARC member after I was abducted that she had ordered the murder of Tom Janis. Tom Janis was the pilot of Cessna N1116G and also civilian employed California Microwave a unit of Northrop Grumman. Tom Janis was not a member of an armed forces or military force.

10. My trauma and injuries by reason of the FARC's acts of international terrorism and by those who provided support to the FARC are permanent and continuing. With each day and through life's daily events I discover the permanent nature of my injuries. For example, there are days that I:

- (i) Suffer physical pain in my knees, legs, back, and shoulders.
- (ii) Experience frequent migraine headaches.
- (iii) Have frequent nightmares which prevent me from receiving adequate sleep.
- (iv) I suffer from various "triggers" such as sounds, smells and persons which induce extreme anxiety and nervousness, as if I was once again being held against my will in the jungle.
- (v) My short term memory has been dramatically reduced since my abduction, resulting in frequent difficulties in day to day life.

11. My captivity has severely damaged my family relations. My marriage was destroyed by my captivity, and has ended in divorce. I no longer live with my children, who have all passed from youth to young adults while I was abducted by the FARC. Because of this I lost the ability to actively influence their development and raise them while I was in captivity. My mother (Jo Rosano) has suffered financially due to large expenses incurred in her attempt to globally publicize my abduction in hopes of raising awareness of my situation in Colombia. All of my family has been traumatized by this event. And I have forever lost invaluable time with them, which can never be replaced.

FURTHER, AFFIANT SAYETH NAUGHT.


MARC GONSALVES, Affiant

SWORN TO AND SUBSCRIBED before me this 4 day of June, 2010 by Marc Gonsalves, who is known to me to be the person signing said document.


NOTARY PUBLIC, STATE OF
CONNECTICUT, AT LARGE

My commission expires: 9/30/2011
☒ Personally known
☒ Produced Identification

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

KEITH STANSELL, CASE NO.:
MARC GONSALVES, 8:09-CV-2308-T26-LAZZARA/MAP
THOMAS HOWES, and
JUDITH G. JANIS, CHRISTOPHER T. JANIS,
GREER C. JANIS, MICHAEL I. JANIS,
and JONATHAN N. JANIS

Plaintiffs,

v.

REVOLUTIONARY ARMED FORCES
OF COLOMBIA (FARC), et al.,

Defendants.

AFFIDAVIT

STATE OF FLORIDA)
)ss.
COUNTY OF BREVARD)

BEFORE ME, the undersigned authority, personally appeared Thomas Howes, who after being duly sworn, deposes and says:

1. My name is Thomas Howes, and I make this affidavit based on personal knowledge.
2. On February 13, 2003 I was a civilian employed by California Microwave a unit of Northrop Grumman, performing a counter-narcotics surveillance flight mission in Colombia South America when the aircraft in which I was a pilot went down in the jungle. I was not part of any military or armed force. We were flying in a civilian Cessna 208B Caravan FAA registration N1116G. This was a commercial aircraft and not a military aircraft and not equipped with weapons systems and had no markings of any U.S. or Colombian military force or organization. Shortly after the crash landing, I was captured by the FARC. I was 49 years old when I was taken hostage. I was 54 years old when I was rescued.
3. I was tortured, chained, starved, denied my liberty, and forced at gun point against my will to march throughout large sections of Colombia for more than 5 years. Our captors, the terrorist group FARC, made it clear to us that they would kill us if there ever was a rescue attempt and they did not have ample time to move us. The FARC assigned at least one of its members at all times to be

physically near us with orders to execute us if there was a rescue attempt. Many times when I heard helicopters over head, I believed the FARC would kill us.

4. I was victimized by the FARC daily and routinely endured:

(i) Forced marches day and night while the skin wore off my feet, I was hungry, exhausted, and feared for my life. I was left to sleep on a wet rock, soaked to the skin and had to hug a fellow hostage to stay warm and avoid freezing in a cold mountain drizzle.

(ii) Being held in conditions in which I suffered from fly larva that grew under my skin and had to be killed with cigarette nicotine and squeezed from my flesh. I had this 4 times. I also suffered skin rotting disease called leishmaniasis along with long term diarrhea and skin rashes.

(iii) Being held for as long as 2 years isolated from the world in crude jungle concentration camp conditions. For months we were held in deplorable muddy conditions in a small barbed wire pen on the slope of a mountain.

(iv) Starvation during long marches to the point that I became emaciated and looked like a stick figure where it was difficult to keep warm due to a lack of calories.

(v) No medicine or intentionally withholding of medicine. The FARC withheld my blood pressure medicine and withheld a leishmaniasis medicine telling me that they did not care if I died.

(vi) A pistol being pointed at my head, chest, crotch, foot, and arm. A rifle being pointed at me and dry fired – pulling the trigger with no ammunition – to simulate an execution.

(vii) Threats to kill civilians if they laid eyes on us (the three Americans) and the actual killing of civilians who saw us. This happened when we accidentally came face to face with a family of 5. We later heard on the radio that the FARC murdered a family of 5 on the same river during that same time period.

(viii) Being chained to another person or a tree for months.

(ix) Punishment by way of additional chain being added and padlocked to me during a march where I was already suffering hunger and exhaustion.

5. The FARC and its members went to substantial effort to conceal themselves from the United States' and Colombia's military, police, courts, and citizens and other law enforcements groups and agencies. Its members used alias names. The FARC moved us continuously and hid us deep in the Colombian jungle. When military forces moved into the area the FARC marched us away. These marches were extremely difficult due to severe pain, exhaustion, and hunger along with the constant threat of death. The marches lasted for months.

6. We were only allowed to hear radio messages from families of hostages occasionally. There were periods of time during our captivity that we were not allowed to speak with any other hostage or with each other. As months passed with communication to anyone prohibited our voices became hoarse from lack of speaking.

7. FARC members described pulling a second guard duty to guard tons of cocaine hidden nearby.

8. A FARC member told me about a FARC house that was literally filled with money from extortion and narcotics activity. This money was used for supporting the FARC and maintaining our captivity.

9. I remained a hostage of the FARC and captive for 1,967 days. We were rescued on July 2, 2008.

10. I heard from a FARC leader after we were captured that she had murdered Tom Janis. Tom Janis was the pilot of Cessna N1116G and also civilian employed California Microwave a unit of Northrop Grumman. Tom Janis was not a member of an armed forces or military force at the time of the crash.

11. My trauma and injuries by reason of the FARC's acts of international terrorism and by those who provided support to the FARC are permanent and continuing. With each day and through life's daily events I discover the permanent nature of my injuries.

(i) I am consumed with stress. I worry about how this will affect my relationships and professional career. For the entire 5 year and 5 month period of captivity I suffered a continuing mental anguish, not knowing how long I would be held for or if I would even survive the ordeal. I was fearful about the effects on my family due to my kidnapping and possible death.

(ii) I do not yet know the long term medical effects of eating rotten meat and food tainted with gasoline and being served food in containers previously used for agricultural chemical storage.

(iii) I have been living years with intestinal parasites.

(iv) My eyesight deteriorated due to malnutrition.

(v) I suffer from a constant sore throat and esophagus erosion caused by captivity.

(vi) I have continuing leg cramps caused by multi month gun point marches.

(vii) I have constant pain in my knees, ankles and neck.

13. My captivity had and continues to have a deep impact on my family. My youngest boy did not have his dad for half of his early childhood. The impact of my captivity on him causes me deep

sadness and emotional trauma. My 5 year and 5 months captivity caused my marriage to break-up. I will never resurrect my marriage and recover the time lost with my family and my boys. I have emotional scars from being held hostage for life. I was the youngest son in my family. My father was very close to me and never hid his love from me. My father died while I was held by the FARC. I know he was tortured in his last days by my kidnapping.

FURTHER, AFFIANT SAYETH NAUGHT.

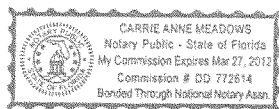
TH
THOMAS HOWES, Affiant

SWORN TO AND SUBSCRIBED before me this 19th day of May, 2010 by Thomas Howes, who is known to me to be the person signing said document.

Carrie Anne Meadows
NOTARY PUBLIC, STATE OF FLORIDA, AT LARGE

My commission expires: 03-27-2012

 Personally Known X Produced Identification
RAL H200-830-53-2440



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

KEITH STANSELL, CASE NO.:
MARC GONSALVES, 8:09-CV-2308-T26-LAZZARA/MAP
THOMAS HOWES, and
JUDITH G. JANIS, CHRISTOPHER T. JANIS,
GREER C. JANIS, MICHAEL I. JANIS,
and JONATHAN N. JANIS

Plaintiffs,
v.

REVOLUTIONARY ARMED FORCES
OF COLOMBIA (FARC), et al.,

Defendants.

AFFIDAVIT

STATE OF ALABAMA)
)ss.
COUNTY OF MONTGOMERY)

BEFORE ME, the undersigned authority, personally appeared, who after being duly sworn, deposes and says:

1. My name is Judith Janis, and I am personally familiar with the contents of this affidavit.
2. I am the surviving spouse of Thomas J. Janis who was killed on February 13, 2003 in Colombia by a member of the designated foreign terrorist organization Revolutionary Armed Forces of Colombia "(FARC)". Tom was born on November 23, 1946 and was fifty-six years old when he was murdered.
3. We were married on December 31, 1968 in Chicago, Illinois and received our Clerk's Certificate of Marriage Cook County, Illinois on January 6, 1969. We were married continuously for thirty three years when he was killed on February 13, 2003. I have not remarried.
4. I was born on June 18, 1948 and was fifty two years old when Tom died.
5. We had four children together, Christopher (dob 9/3/72 now 37), Greer (dob 8/21/73 now 36), Michael (dob 6/30/77 now 32), and Jonathan (dob 6/26/79 now 30).

6. Tom was drafted into the U.S. Army in 1966 and served continuously for over thirty two years on active duty until 1998 when he retired as a Chief Warrant Officer 5 ("CW5"). Tom was an army aviator rated in both fixed and rotary wing aircraft. Tom served as the Fixed Wing Commander for the U.S. Army's elite Delta Force for over eleven and held that position when he retired from the military in 1998.

7. Tom also held Federal Aviation Administration ("FAA") commercial flight certificates and was a civilian employed by California Microwave a unit of Northrop Grumman, as a pilot when he was killed in Colombia on February 13, 2003.

8. Tom and I met when I was 16 years old and we were together from that day on. Even when he was drafted into the Army in 1966 I wrote hundreds of letters to him and looked forward to each phone call and leave. Tommy was, and is, the love of my life. We raised four children together. We moved wherever the Army sent us, and made many plans to retire.

9. Our plans for retirement included where we would enjoy our home in Alabama, and see our children as often as possible. We also planned to travel, just the two of us. Life in Alabama was going to be our second honeymoon.

10. Even though Tom flew in Colombia, we were never apart more than 10 days. We even called this our "10 day plan" he would come home for two weeks and then I would fly to Colombia to be with him for 10 days. The day Tom was murdered, he took me to the airport in Bogota and I flew home on a Delta Airlines flight. I remember his wonderful smile, our parting kiss, and him saying, "see you in 10 days honey girl." When I got back home there were two voicemails from Northrop Grumman. I called and was told that there had been a crash, two were dead and three missing. My life, and that of my children changed forever February 13, 2003.

11. My memories of Tommy are endless. The first time I saw him, and knew this was the man I would one day marry. Which seems strange, as at that point I didn't even know his name. I remember what a wonderful husband he was. He was fun and loving, always having a positive outlook. He was truly happy – each and every day. He was a great father, who loved each of his children in his own special way. I remember the tender love we shared, his sweet kisses. Always knowing that no matter what life would bring we would get through it together. I remember the pride I felt being his wife and the pride I had in him. He loved his family, his country, and life itself.

12. Tom had a close and loving relationship with each of our children. Christopher, our first son, learned at his father's knee. My memories are of Tom teaching him to do various things, and Chris looking up at his dad thinking daddy could fix anything. Christopher also followed in Tom's footsteps and joined the U.S. Army to go through flight school. He is now a CW4 with 16 years of active duty service. Our daughter Greer has always been a child with a mind of her own and is artistic. Tom helped her organize her plays and acting and was her best fan and guide.

Michael, is the most like his father. They had a very close relationship. We often called Mike – T.J. for Tom Junior. Michael is also in the Army as a CW2 and is now flying the Blackhawk in Korea. Jonathan, our baby boy, was a delight for Tom. Tommy had a special relationship with Jonathan as the baby. As the last child, Tom took unique pleasure in the everyday things when Jonathan was growing up. Tom used to love to take the children water skiing or to the water park and played as hard as the kids did.

13. Tommy loved racquetball, tennis, running and just about every sport. He was in excellent physical condition and was a natural athlete. When Tom was selected for Delta, he began woodworking, something we would do together, and spent years enjoying. He loved to ski, both water and snow. He also enjoyed biking and hiking. The man loved the outdoors, fishing, and camping or just sitting by a lake enjoying nature. Tom's personality was that of a positive happy man. He always had a smile and a story to tell. He pushed himself to excel, and wanted the very best from both himself and those around him. I know he loved flying and that made his life even that much more meaningful. I can count on one hand the times that he was sick or felt down in any way. He was an example to both his family and friends of how life could be lived with happiness and joy. And Tom did have a true joy of life.

14. Tommy was in excellent health. He remained about the same weight throughout our marriage. I believe he was in better shape the day he was murdered than as a 20 year old. Each and every day he did some form of training. And because he was so very fit he could keep up with his children and the younger men in his units.

15. I saw Tommy for the last time the day he was murdered. We said our goodbyes at the airport in Colombia. He said he would see me in 10 days and that he loved me. I replay our last week together often and can never forget the love I have lost. Everything was just right during that visit and I do believe that that last week together was a gift from God.

16. I flew home to Alabama the day Tommy was murdered to find two voicemails from his company. I was told that there was a crash, two were dead, and three missing. They did not know who the dead were. And 36 hours later the president of the company flew to Alabama to tell me my husband was one of the dead. At that moment life as I had known it was changed forever. There were moments when I forgot to breathe. I find it difficult to put into words what the loss of my lover, best friend, father of my children, and the true love of my life has meant. I really didn't believe that life could go on. Only now, the other part of me is missing and I hate that. The love of my life is gone forever. There will never be another Thomas Janis, he was one of a kind. And I was blessed to be his wife for 32 years. I have not and do not intend to remarry.

17. Initially I was only told that Tom died a violent death, that he was shot. There was discussion from the Federal Bureau of Investigation ("FBI") immediately afterward that a hostile group may have killed Tom, but no one could confirm that a member of the FARC actually killed Tom. I worked continuously through the FBI and Department of State to determine who killed Tom. I always believed that Keith Stansell, Tom Howes, and Marc Gonsalves would make it out alive and hoped that they could tell me what

actually happened to Tom and who killed him. In August 2008, when Keith, Tom, and Marc were rescued they told me that they had heard from the FARC during their captivity that someone in the FARC ordered Tom shot. Finally, in August 2009, the FBI briefed me that they had interviewed a FARC member who admitted to actually killing Tom – he was the actual shooter. Before this time, I did not know that the FARC actually killed Tom. The FARC and this terrorist Jose Armando Cadena Cabrera using an alias name “Bronco” concealed their whereabouts from me, my family, and the authorities.

18. Tommy is buried in Arlington National Cemetery. There were at least four generals at Arlington for Tommy. So many people, friends and co-workers from years before attended. General Cody gave me the flag. Tom served under him in Delta when General Cody was a major. At the time of Tom’s death General Cody was a 4 star general and head of the Army. I hope somehow Tommy was able to see all those who came and paid tribute to him. Since his murder there have been many honors given. He has a building named after him. He is on the Wall of Heros. But I believe the best tribute is that people remember him with love and respect.

19. I think of Tommy every single day. My grief continues today seven years after his death. The pain associated with Tom’s death and the loss is present every day and more pronounced on those special days when families are supposed to be together like holidays, birthdays, and gatherings.

FURTHER, AFFIANT SAYETH NAUGHT.


JUDITH JANIS, Affiant

SWORN TO AND SUBSCRIBED before me this 7th day of May, 2010 by Judith Janis, who is known to me to be the person signing said document.

Michael E. Simmons
NOTARY PUBLIC, STATE OF ALABAMA, AT LARGE

My commission expires: 09-07-2010
 Personally Known X Produced Identification

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

KEITH STANSELL, CASE NO.:
MARC GONSALVES, 8:09-CV-2308-T26-LAZZARA/MAP
THOMAS HOWES, and
JUDITH G. JANIS, CHRISTOPHER T. JANIS,
GREER C. JANIS, MICHAEL I. JANIS,
and JONATHAN N. JANIS

Plaintiffs,

v.

REVOLUTIONARY ARMED FORCES
OF COLOMBIA (FARC), et al.,

Defendants.

AFFIDAVIT

STATE OF TEXAS)
)ss.
COUNTY OF BELL)

BEFORE ME, the undersigned authority, personally appeared, who after being duly sworn, deposes and says:

1. My name is Christopher Janis, and I am personally familiar with the contents of this affidavit.
2. I am the surviving son of Thomas J. Janis who was killed on February 13, 2003.
3. I was born on September 3, 1972 and was thirty years old when my dad died. I am a Chief Warrant Officer Four ("CW4") on active duty with the United States Army stationed at Ft. Rucker, Alabama. I am on flight status and have held the positions of an Instructor pilot, Tactical Operations Officer and am currently the Chief for the Aviation Warrant Officer Advance Course for the entire U.S. Army.
4. I had a close and loving relationship with my father growing up, when I first joined the U.S. Military, when I was married, and when I started my family. I always remember my father as a very positive, motivating and loving figure. I never saw him negative or act in a way to indicate he was not enjoying what he was doing. From his work ethic to family life things were always good when dad came home. I loved being in the garage working with him in Virginia. I have so many memories now with my

assignment back to Ft. Rucker, AL. This was the first place that I lived when I was brought home from Mobile, AL. Some of the best memories of my father are from our second assignment to Ft. Rucker. I remember living at 17 Endl Avenue when I was between the ages of 13-15 years old. Dad bought a ski boat and we would go to Lake Tolacco on post at least 3 days a week during the summer. He taught all of us kids how to water ski. I was his driver when it was his turn to ski. He had the crazy idea to use his surf board and the boat to surf on Lake Tolacco. He was ahead of his time and we had no idea. This was before wake boards and he was "boat surfing" on this lake with his surf board. I remember him teaching me how to drive a manual transmission next to our house on 17 Endl. He would put me on his lap as a younger child and steer as he did the pedals so I was pretty good at that part. I remember being so mad at myself for learning how to operate the clutch as fast as I thought I should that I wanted to just quit. I told him that I would only drive automatics for the rest of my life. He did not get mad or upset at me, he got me back into the drivers seat and we stayed out on that abandoned parking lot until I was comfortable shifting, I could parallel park and even got good at starting on an incline. I remember him taking me to the town of Ozark to take my learners permit exam when I turned 15. I passed with flying colors but remember being so scared driving home on the back roads to our house on post. I have always remembered that first drive with him on public roads. It was a good thing he had the patience to teach me how to drive a stick because about 2 months later he received orders to move to Newport News, VA. We had two vehicles and my mother just had back surgery and could not drive. Dad drove our Buick and pulled our ski boat and I drove his new, manual transmission Isuzu Trooper with my 14 year old sister up front and mother lying in the back on an air mattress pulling a trailer with his motorcycle on it. We made it without any problems.

5. There are so many special memories of my dad. For example, I remember him being so proud of me in High School when I joined the JROTC my sophomore year. With his help and inspiration, I rose to the highest position in the cadet rank, the Battalion Commander my senior year of High School. I remember having a special bond of being a military man in his eyes. This bond continued with my joining the military. I can still remember how proud he was at my flight school graduation in 1996. I gave these same wings to my brother when he graduated from flight school in October 2009 just after my third tour in Iraq. My last memory of my father was early in 2003. My unit received deployment orders to Kuwait to prepare for movement into Iraq. Dad came to my house in Savannah, Georgia. He drove his truck. Dad, my wife Jeannie and I went out to Mary's Steakhouse and enjoyed a wonderful dinner. It would be our last meal together. He spent the night. I remember him not sleeping well that night because I was not sleeping well either. We woke up early, I kissed my wife good bye and got into his truck. We spoke a little of how proud he was of me and gave me some advice as I was departing to go to war. My last visual memory of my father was through the window of his door as he drove away with me standing with my bags at our assembly point. I had a strange feeling at that moment and to this day when I want to see my dad, I freeze that image of him in his truck window waving to me with a smile on his face. Every time I deploy I think of this first deployment memory. The holidays will never be the same. I still run into people that knew my father. The last time was on Thanksgiving Day, 2008 in

Kirkuk Iraq. A very good friend of his was working as a contractor and I recognized him so for two weeks I had a new good friend 3000 miles from home. It is difficult and emotional when I meet people who knew my father because everyone loved him.

6. I joined the Army to follow in dad's footsteps and became a U.S. Army aviator because he seemed to make it look easy. I remember the stories of some of the places that he had served in and it seemed glamorous to me. Growing up I would play with two of his awards he received from previous units that he was it. My favorite toy growing up was a model of a UH-1 helicopter he had. It looked so real. I would fly that thing around the house all day, landing and taking off until right before he would come home then I would put it back. I don't know if he ever knew how much I liked that little helicopter. I will never be able to tell him.

7. I last saw my dad at Wright Army Airfield on Fort Stewart as he was driving away and I was going to Iraq in January 2003. I was so looking to talking to him about my soon to be combat experiences and some way thought that this was another way that we would come together. We both would have served our country in war and to me; this seemed to bring me closer to stand next to him in manhood. I still wish I could talk to him about some of my experiences and feelings especially from my last two deployments. I know he lost friends of his and although we both now have experienced these feelings, I don't have him here for me to talk to.

8. I was woken up in Kuwait by my First Sergeant on 14 February 2003. I remember it for two reasons. The first is because I had gotten a small pox shot about two days earlier and I was so sick. I had not left our tent in two days. He woke me up and said that I had a Red Cross message. I thought he was mistaken. He told me that dad's plane had crashed and "two people were dead and three were missing". I didn't believe him because my father was an excellent pilot and had dealt with emergencies before and nothing could happen to him. I was in total disbelief. We went to the Battalion TOC and the commander moved me to the front of a long line of people waiting to call home. I sat down and called my wife in Savannah. She told me exactly what my First Sergeant told me and that I needed to come home immediately. I packed a bag and my unit drove me to Kuwait city to get a commercial plane ticket home. It took a full day to get back to Atlanta International Airport and I called my wife again. I will never forget the second when I heard of the news of my father. I was in concourse B on a pay phone and my wife told me that my father had been shot execution style in his head. It felt like someone stabbed me in the heart. I immediately lost my breath, I could not hear anything and my heart was pounding in my chest. I could feel every beat and I became weak in the knees and just broke down crying right there in the airport. I travel to and through the Atlanta Airport a lot in the military and I will always hate that airport because it is where I lost my father.

9. My father is buried in Arlington National Cemetery and I am very glad I was able to come home from Iraq for that. I think Arlington National Cemetery is beautiful, noble, and sacred ground. My first trip to Arlington Cemetery was with my father when we lived in Virginia about 5-6 years prior to his death. He has a wonderful view of the Pentagon and the Washington Monument. I have stopped by Arlington twice since the

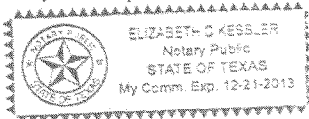
funeral. I try to go out of my way to travel to Washington so I can stop by Arlington. I will bring my children and my two grandchildren there. It is a shame that he never had the opportunity to meet his great granddaughter and great grandson. I think I was still suffering from jet lag or grief because I don't remember all of the people that attended the funeral service. There were so many people. I was not able to stay home very long and had to go back to my unit in Kuwait. In some respect, my first deployment to Iraq allowed me to put the painful memories and thoughts to the back of my mind to focus on my job. Sometimes, though I think I just it delayed the onset of the grief and sadness.

10. I think of my dad more now than ever. My grief and loss continues today seven years after his death. I think about retiring in a few years and all of the opportunities I no longer have to go fishing, work in the garage or even hang out and play pool on his pool table. He was getting very involved with wood working and when I go over to my mother's house and into the garage, his tools are still there. She will not go out there any more. I think he knew how much I loved and respected him. I try to live my life so he is still proud to call me his son. I feel he is watching me and I want him to continue to be proud of me, my family and our accomplishments. They are not as easy or as rewarding without him to be here to enjoy them with me but I look forward to the day when we are together again. I am so proud and will always love my father, Thomas John Janis.

FURTHER, AFFIANT SAYETH NAUGHT.


CHRISTOPHER JANIS, Affiant

SWORN TO AND SUBSCRIBED before me this 8 day of May, 2010 by Christopher Janis, who is known to me to be the person signing said document.




NOTARY PUBLIC, STATE OF TEXAS, AT LARGE

My commission expires: 12-21-2013

☐ Personally known
☒ Produced Identification

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

KEITH STANSELL, CASE NO.:
MARC GONSALVES, 8:09-CV-2308-T26-LAZZARA/MAP
THOMAS HOWES, and
JUDITH G. JANIS, CHRISTOPHER T. JANIS,
GREER C. JANIS, MICHAEL I. JANIS,
and JONATHAN N. JANIS

Plaintiffs,

v.

REVOLUTIONARY ARMED FORCES
OF COLOMBIA (FARC), et al.,

Defendants.

AFFIDAVIT

STATE OF VIRGINIA)
)ss.
COUNTY OF PRINCESS ANNE)

BEFORE ME, the undersigned authority, personally appeared, who after being duly sworn, deposes and says:

1. My name is Greer Janis, and I am personally familiar with the contents of this affidavit.
2. I am the surviving daughter of Thomas J. Janis who was killed on February 13, 2003.
3. I was born on August 21, 1973 and was twenty nine years old when my dad died.
4. I had a close and loving relationship with my father.

I used to be able to come to my dad with anything I needed to talk about. I left my parents house at age eighteen when I went off to school and began my journey into adulthood. I used to love to come back to visit my dad and to ask him his advice about life, career choices and important decisions. I came to visit as frequently as I could, and I enjoyed each visit because I knew that I was coming to a place of acceptance, tolerance

and love. I felt lucky that I found a school close to home because that meant that I was within the “bubble” of my dad’s protection – and that made me feel safe.

As a young child I remember how excited I became when mom told us that dad was coming back from one of his jobs assignments. The quality of life in the house seemed to increase and he always brought laughter and fun with him whatever he did. I miss his “Yeah buddy” and his “What’s next?!” bring it on attitude. His favorite saying was, “How’s your P.M.A.?” and I always knew with him around my “Positive Mental Attitude” would be terrific! His love of life and his verve for adventure were contagious. He taught me to embrace life through his example.

High school, always an exciting and frightening time in a child’s life, was made easier through dad’s accessibility and advice. He let me make my own mistakes. He knew that preaching was not going to make me into a choirgirl. He knew who I was and he knew that I had a strong head...and he saw my good heart. He knew that not every decision I made was going to be the right one; but he was there to pick up the pieces when I fell. He was also there when I succeeded...and I miss that. I miss my dad clapping and cheering and being my biggest fan.

I entered adulthood knowing that my dad had given me a strong foundation. *He* was my foundation and I have built my life from that foundation of support, love and encouragement. My dad always set expectations for me and I have always tried to reach those expectations. His goals for me taught me to have goals for myself. He used to tell stories of his life when he was young and that came from a poor background. His stories taught me to value the life he provided for my mom, my brothers and me. I was, and am, so proud of him for becoming the man he became.

5. There are so many special memories of my dad, for example

My dad was always into health and fitness. He used to run every day and he loved to do Tae Bo and other fitness routines. We called him “Tae Bo Tom”! When my brothers and I were younger, my dad came home with an enormous rope. He put that rope up at every duty station where he was assigned and I remember scurrying up that rope to the sounds of his encouragement. Of course, he out did us all as he climbed up using just his hands! I had so much fun biking, and then running, alongside him. We used to have great talks during those special, bonding times when it was just him and me.

My dad is my hero. He embodies qualities that draw people to him. It was amazing at his wake and his funeral to have so many people come up to me and tell how my father saved their lives and how much they loved him. It was amazing – but not surprising. I always knew that my dad was a modest hero. He didn’t crave the limelight. He only wanted to do what was right. But his charm and his smile and his vibrant zeal for life made him a superstar to me and many, many other people. My dad is my hero.

7. Where were you and how did you receive notice about your dad’s death. Who notified you. What did you do.

My father was murdered the day before Valentine’s Day...and my heart was broken. Every Valentine’s Day is a dark day for me as I relive the horror of hearing from a phone call from my mom that dad’s plane had been out of contact with the tower for

two hours. I relive the anxiety and trepidation of not knowing what had happened, and was happening, to my dad. It was days before we knew that my dad had been executed. Executed in the jungle far away from home. My mom had just left Bogota that morning. She used to fly to Bogota and visit him when he was working. My heart bleeds for my mother because I know that he was, and still is, the love of her life. I wept when she told me that her last view of him was his "smiling face waving good-bye at the airport" as she headed home. It was only hours after she arrived home when she got the phone call that changed all our lives forever.

The first Christmas without my dad was solemn and sad. We all tried to have Christmas cheer; but the reality was, dad was gone and he was never coming back. We spent the time together telling stories about dad and honoring his memory through hanging out in his "hanger" – the enormous garage he always craved and never got a chance to enjoy in retirement.

The most heart-breaking time that first Christmas "holiday" was New Year's Eve. That was my mom and dad's wedding anniversary. They would always have homemade shrimp scampi and celebrate each other and the voyage they had made through life together. Dad loved to be surrounded by all his children on New Year's Eve. It was always a special time for us to be together as a family and to remember the year that past and make plans for the coming year. There weren't any plans to be made for 2004.

6. Where were you when you last saw your dad and what did you say to each other.

The last time I saw my father was a trip to my brother Christopher's house. The whole family had gotten together to see Chris' new house and to enjoy a reunion. My father gave me a gift of a beautiful emerald ring. He knew my tastes and it is in a simple style. It was unexpected and that made it even more meaningful for me. We had a wonderful time and the trip created some funny family anecdotes, as well. One great story is how my dad and all my brothers were trying to remove a hundred-foot tree from Chris' yard. My dad must have been sitting in that tree for 3 hours while they attempted to mastermind a plan for its removal. Of course, my mom and I just sat back and enjoyed the show! One of the activities my dad enjoyed was going to Flea Markets and we spent an interesting afternoon going through the different stalls. He always made everything fun. Even something as simple as looking for "treasure".

8. My father is buried in Arlington National Cemetery

My father is buried in Arlington ceremony - a proper resting place for an American patriot. People came in from all over the country and the globe to honor my dad. I was proud to see the love and respect that my dad had engendered in people's lives. The speeches were touching and it was amazing to see tears in the eyes of Army veterans as they mourned with my family. I felt the sound of twenty-one gun salute ricochet through my heart and, when Taps began to play, I saw my brothers trying to be stoic and I held my mom as we buried my dad.

9. I think of my dad every day. My grief and loss continues today seven years after his death.

I think of my dad every day. He was near retirement and I was looking forward to him and my mom having more time to come and to visit. There are situations in my life that I want to discuss with dad or things I see or hear that I think he might get a kick out of - then I remember that I can't share moments in my life with him any more because he was stolen away from me and my family. He is not going to be there when I finish my Master's Degree. He wasn't there when I received my teaching certification. He is not going to be on family trips and vacations. There won't be any more ski trips. There won't be any more bonfires where we all sit late into the night and tell stories about each other and reminisce and laugh. There won't be any more water skiing or fishing or hiking or racquetball. There won't be any more dad in my life - except for my memories.

I feel pain every day of my life because my dad was ripped away from me and my family and I suffer every day because of his death. My dad was an intrinsic part of my life and I miss his humor, steadfastness and guidance. I was devastated by his death and continue to grieve his passing. He was the rock in our family and was the man I looked up to the most. I will never get to spend time with him again and that is like a dagger through my heart every day. My future is dimmer because of his absence. I have so many dreams that I wanted him to see me fulfill. His death has made a hole in my life and it will never be filled. I continue to grieve and suffer because of my father's murder and will continue to grieve and suffer my entire life.

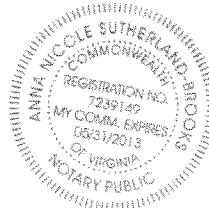
FURTHER, AFFIANT SAYETH NAUGHT.


GREER JANIS, Affiant

SWORN TO AND SUBSCRIBED before me this 17 day of May,
2010 by Greer Janis, who is known to me to be the person signing said document.


NOTARY PUBLIC, STATE OF
VIRGINIA, AT LARGE

My commission expires: 5/31/2013
☒ Personally known
☒ Produced Identification



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

KEITH STANSELL, CASE NO.:
MARC GONSALVES, 8:09-CV-2308-T26-LAZZARA/MAP
THOMAS HOWES, and
JUDITH G. JANIS, CHRISTOPHER T. JANIS,
GREER C. JANIS, MICHAEL I. JANIS,
and JONATHAN N. JANIS

Plaintiffs,

v.

REVOLUTIONARY ARMED FORCES
OF COLOMBIA (FARC), et al.,

Defendants.

AFFIDAVIT

BEFORE ME, the undersigned authority, personally appeared, who after being duly sworn, deposes and says:

1. My name is Michael Janis, and I am personally familiar with the contents of this affidavit.
2. I am the surviving son of Thomas J. Janis who was killed on February 13, 2003.
3. I was born on June 30, 1977 and was twenty five years old when my dad died. I am a Chief Warrant Officer Two ("CW2") on active duty overseas with the United States Army stationed in the Republic of Korea. I am on flight status as a helicopter pilot.
4. I had a close and loving relationship with my father growing up, when I joined the U.S. Army and when I was married.

My father used to tell me that every day you make a choice. You can either choose to be happy, or choose to be sad. You can let something affect your emotions or you can choose to control your response to the situation. And although this was wonderful advice, I find it next to impossible to choose to avoid the pain and emptiness his murder brought to my family.

Tom Janis was more than a father to me; he was a very close friend and sounding board for ideas of where I wanted to go in life. As a child he set the example for the man I hoped to become. Every moment that he was not involved with work he would spend it

with my mother, his three sons and his daughter. We truly lived in the happiest of homes. In high school my father would talk with me about the possibility of me joining the military as well and how that would instill a deeper sense of discipline and selflessness to serve a cause greater than oneself.

I would often think of the days in the future, when I would finally be able to sit down with my father and talk about life; man to man, father to son. My father was my hero. He placed others before himself, he loved with all of his heart, he never asked for anything in return for his help and he was looking forward to one day being a Grandfather.

5. There are so many special memories of my dad, for example

Having my father at every graduation of my military career. However, at my flight school graduation there was such an overwhelming emptiness and sadness because he had been killed and could not be there. Every birthday, Father's Day, anniversary of his death reminds me of what could have been if he had not been murdered.

It's bittersweet, but I look like and have many of the same mannerisms of my deceased father. Sweet, because of the pride it instills in me to be following in such an amazing man's footsteps, yet bitter when I see the sadness in my mother's eyes when she stops and reminds me of how much I remind her of him.

My father served his country in Army Aviation for 32 years and he made many friends along the way, and I have met several people who knew or worked with him in the past. Many of them know of how he was killed, yet many do not. And, I have had to tell the story of my father's death countless times over the past several years. And it never gets easier. I always have the familiar lump in the back of throat and I have to look away to avoid crying in front of someone I barely know.

Every father's day, I go through a box of his things. I look at the mementos from a well-lived life and I feel sad. I feel sad because he had so much more life to live. So many more milestones, and moments with his children that we are all missing.

6. I joined the army to make a difference and make the world a better, safer place like my father.

His favorite song was, "What a Wonderful World," by Louis Armstrong. And that's why he lived and worked the way he did. He knew how precious this life and world are and he set the example for others to follow.

7. The last time I saw my father, the whole family was visiting my older brother Chris at his house in Savannah. He had several trees in his back yard that he needed to remove and we were all there to help Chris out. After several hours of

back-breaking work, and sweating we were winding down for the evening. However we had chosen to dispose of many of the small branches with a fire. Throughout the day the fire had grown larger and it would take hours for it to extinguish. As tired as we all were, and knowing how the flames were not yet small enough to retire for the evening, my father stayed out by that fire all night to make sure that nothing bad happened. That was my father's way, to watch over other's as they slept peacefully so that no harm would come to them.

8. The worst day of my life was the day I read a headline on the Internet that changed my life and all of the lives of the people I love. It was several hours after we had news that my father's plane had to make an emergency landing in Colombia. We had called for more information, but there was none to be shared. So, like many people I went to the Internet to learn whatever I could. My wife, Malorie, and I took turns scouring CNN's website for any updates and we had even enlisted the help of friends and neighbors to keep an eye out for any news.

I was answering the front door when I heard my wife scream. A scream that I knew the moment I heard it that she had read something terrible. On CNN's website was news of two bodies being found by the wreckage of the plane. My father's name was on the monitor, but it wasn't. They had listed him as Janis Thomas, not Thomas Janis. I felt sick, confused and scared for my mother who still had not received word of his death. I had to keep this information to myself for several more hours before my mother could get the official word.

It wasn't until writing this down that I realized just how utterly devastating that was for me. I honestly try not to think of the worst moments of this tragedy because we all had to be strong for our mother who was absolutely in shock.

9. My father is buried in Arlington National Cemetery.

They say that parents should not have to bury their children; it's not the natural order of things. Well that's how I felt about burying my father. He was in fantastic shape (he could run circles around us,) he was looking forward for another family visit and he still had boxes of stuff he had ordered on the Internet delivered to my parent's house for weeks after his death.

The ceremony was somber, hopeful and ultimately respectful. The outpouring of support and concern from the hundreds of people in attendance was overwhelming. It was much appreciated, but for me and the family, we had to try to put our lives back to some sense of normalcy after everyone said their goodbyes and paid their respects. I still don't think I have found my peace with his death, and I pray for it every single day.

10. I think of my dad every day. My pain at his loss continues daily seven years after his death.

My father's death created such a darkness and emptiness in my life that I truly believe that it led to my divorce from my high school sweetheart. A fifteen year relationship that couldn't survive me holding on to an idea of a future that is now gone because of my father's murder.

There is so much that I want to share with my father. I wish I could see him in dreams, but I've only been able to see him a handful of times since the murder. The subconscious protects us from the pain we've experienced and my father's death has been the most traumatic, painful, life-altering event I have ever experienced.

I stay strong because people count on me to do the work that my father once did. But I would be lying if I could say with a straight face that life is ok for me. The FARC killed a large part of me as well when they killed my father.

FURTHER, AFFIANT SAYETH NAUGHT.

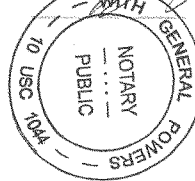

MICHAEL JANIS, Affiant

SWORN TO AND SUBSCRIBED before me this 19th day of May, 2010 by Michael Janis, who is known to me to be the person signing said document.


NOTARY PUBLIC

My commission expires:

☐ Personally known
☒ Produced Identification *Milkyway D*



UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

KEITH STANSELL, CASE NO.:
MARC GONSALVES, 8:09-CV-2308-T26-LAZZARA/MAP
THOMAS HOWES, and
JUDITH G. JANIS, CHRISTOPHER T. JANIS,
GREER C. JANIS, MICHAEL I. JANIS,
and JONATHAN N. JANIS

Plaintiffs,
v.

REVOLUTIONARY ARMED FORCES
OF COLOMBIA (FARC), et al.,

Defendants.

AFFIDAVIT

STATE OF VIRGINIA)
)ss.
COUNTY OF RICHMOND)

BEFORE ME, the undersigned authority, personally appeared, who after being duly sworn, deposes and says:

1. My name is Jonathan Janis, and I am personally familiar with the contents of this affidavit.
2. I am the surviving son of Thomas J. Janis who was killed on February 13, 2003.
3. I was born on June 26, 1979 and was twenty three years old when my dad died.
4. I had a close and loving relationship with my father. Being the youngest I often would go head to head with my father, but as I matured I realized it was because we were so much alike in knowing that each of us knew best. As a family we were very tight-knit and shared dinner nightly at 1730 followed by homework for two hours. It was these hours I treasure most. My Dad, the all-American hero, helping me with my assigned work, spending time making sure I knew I was loved.

During college his help turned to pride as he supported me with bigger and bigger projects, attending events in which I was involved, and my graduation. My family absolutely helped me to achieve more, and with his death I have a clear deficit.

I am lucky though that I did have such a close connection to him, many of my contemporaries don't seek out a relationship with their parents, whereas we had weekly one on ones; every Sunday in fact. No matter if he was in Columbia, Alabama, or elsewhere we would make the effort to stay involved in one another's life.

I look forward to having my own family and being the Dad to my kids that he was to us. I know he would have made the perfect Grandpa.

5. There are so many special memories of my Dad, one such example was at my senior choir concert. My Dad came alone as my Mom had a prior Hail and Farewell obligation. Near the end of the concert the seniors bring their families on stage while the underclassmen circle the auditorium. Together we sing "I'll Carry You In My Heart". Granted the song was saccharine and full of cliché, but my Dad actually started to tear up. Seeing my rock get tender I follow suit and for three-fourths of the song we just hugged and cried. This was the kind of man Tom Janis was; straight shooting, fair, and abundant in his love. He was the kind of guy you wanted to be around because he demonstrated and shared his positive attitude.

The loss of my father has greatly affected all of us but I can only speak for myself when I say that holy days are tough with that empty place-setting. He was a hard-act to follow alive, and his death makes that only more clear every November 23rd.

6. I am lucky that our final conversation was a happy one. It was during one of our Sunday phone calls. It may seem silly but I remember with pride him telling me that he was wearing the sweater I had bought for his birthday, and that he thought it might have been the nicest sweater he'd ever had. He asked me about work and we were excited that both he and my Mother would be visiting me in Florida for a Valentines week mini-vacation.

7. That made the news I received unfathomable that his plane had gone down but there wasn't definitive word about anyone's whereabouts. I just knew he was fine because we had hotel reservations and theme park tickets. Less than two days later I learned he was shot in the head and killed. This news was told to me by a resident assistant at Walt Disney World where I was interning. It's ironic that a holiday all about love at a place all about make-believe was the backdrop for the saddest day of my life.

8. My father is buried in Arlington National Cemetery. The site is poignant when the apparently endless rows of headstones offer a chilling reminder that so many men and women have died serving our great country. As the 3 volleys of shots exploded for the salute I thought my heart would crack. Holding my Mom, his grief-stricken widow, and my brother's shoulders we wept.

9. I think of my dad every day. My grief and loss continues today seven years after his death. Two years after the funeral I still had his cell-phone number programmed into my mobile phone, not willing to delete it. I wear his watch and wedding band as a daily

reminder. I frequently get compliments on both of them and enjoy sharing stories about my father.

I am lucky to live without much regret, but I do have sadness that I no longer have my sounding board when I'm faced with my future. I miss his motivational talks and tenderness. It stinks that my future children won't know the great man I had as a mentor.

Retirement was all about his tinkering and his wood shop. He had toyed with the notion of a frame shop where I'd do the matting and he'd make the frame. Pipe dream or not, it will now never happen. My parent's growing old together is no longer an option.

I miss my Dad, cherish his memory, and will not get over his loss.

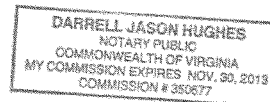
FURTHER, AFFIANT SAYETH NAUGHT.


JONATHAN JANIS, Affiant

SWORN TO AND SUBSCRIBED before me this 12 day of May,
2010 by Jonathan Janis, who is known to me to be the person signing said document.


NOTARY PUBLIC, STATE OF
VIRGINIA, AT LARGE

My commission expires:
☐ Personally known
☒ Produced Identification





U.S. Department of Justice

*United States Attorney
Southern District of New York*

The Silvio J. Mollo Building

*One Saint Andrew's Plaza
New York, New York 10007*

May 27, 2010

Newt Porter, Esq.
Tony Korvick, Esq.
Porter & Korvick, P.A.
9655 South Dixie Highway, Suite 2008
Miami, FL 33156
nporter@porterandkorvick.com
tkorvick@porterandkorvick.com

Re: *United States v. Jorge Enrique Rodriguez Mendieta, a/k/a "Ivan Vargas,"
Gerardo Aguilar Ramirez, a/k/a "Cesar," Erminso Cuevas Cabrera, a/k/a
"Mincho," and Juan Jose Martinez Vega, a/k/a "Chiguero," 04-446 (TFH)*

Dear Messrs. Porter and Korvick:

This letter responds to your April 16, 2010 letter with respect to the above-referenced Indictment charging 50 leaders of the Revolutionary Armed Forces of Colombia (the "FARC"), including defendants Jorge Enrique Rodriguez Mendieta, a/k/a "Ivan Vargas," Gerardo Aguilar Ramirez, a/k/a "Cesar," Erminso Cuevas Cabrera, a/k/a "Mincho," and Juan Jose Martinez Vega, a/k/a "Chiguero," with conspiring to send cocaine to the United States (the "FARC Leaders Indictment"). This response is limited to your request to be considered "crime victims" under the Crime Victims Rights Act, 18 U.S.C. § 3771, with respect to the charges in FARC Leaders Indictment.

The FARC Leaders Indictment. The FARC Leaders Indictment charges the defendants in a single count with conspiring to import into the United States five kilograms and more of cocaine, and conspiring to manufacture and distribute five kilograms and more of cocaine knowing and intending that they would be imported into the United States, in violation of Title 21, United States Code, Section 963. According to the indictment, the FARC is a highly hierarchical organization, comprising of 12,000 to 20,000 members, led by a seven member Secretariat and a 27 member Central General Staff, or Estado Mayor, which is responsible for setting the cocaine policies of the FARC. The FARC financed themselves through cocaine manufacturing and distribution. The FARC Leaders Indictment also contains numerous overt acts, including kidnapping allegations.

Kidnaping Allegations. The FARC Leaders Indictment specifically alleges that:

35. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in Colombia and elsewhere:

a. Throughout the conspiracy, the FARC leadership participated in a series of meetings during which they established FARC cocaine and cocaine paste manufacturing and distribution policies and directed the members of the FARC to implement these policies. For example:

....
(vi). In or about late 2001 or early 2002, in Colombia, . . . Jorge Enrique Rodriguez Mendieta, a/k/a "Ivan Vargas," . . . Gerardo Aguillar Ramirez, a/k/a "Cesar," the defendants . . . participated in a FARC leadership meeting in which they voted unanimously in favor of the following cocaine and cocaine paste-related policies, among others. . . to encourage the kidnapping of United States citizens in order to, among other things, deter the United States from supporting eradication efforts.

f. In or about 2000, Rodrigo Londono Echeverry, a/k/a "Timochenko," a/k/a "Timoleon Jimenez," Felix Antonio Munoz Lascarro, a/k/a "Jose Lisandro Lascarro," a/k/a "Pastor Alape," the defendants, and others, addressed FARC members in the Magdalena Medio Bloc, and that the Secretariat of the FARC had ordered them to: (1) retake coca-producing territory; (2) attempt to shoot down fumigation aircraft; (3) increase coca production; and (4) kidnap United States citizens if the opportunity arose.

o. On or about February 14, 2003, Carlos Alberto Garcia, a/k/a "Herimides Buitrago," a/k/a "Oscar Montero," a/k/a "Paiza," the defendant, authorized a member of the TFMC to shoot down what he believed to be an aircraft that was conducting coca eradication.

(Ind. ¶ 35(a)(vi), (f), (o)(emphasis added)). The February 2003 shoot-down allegation in the indictment refers to the shooting down of the aircraft in which your clients Keith Stansell, Marc Gonsalves and Tom Howes were traveling. The indictment does not specifically refer to the FARC's holding of your clients hostage. However, the Government's proof of the foregoing allegations would have specifically included proof of what happened to your clients.

Offenses of Extradition. In March 2006, when the FARC Leaders Indictment was unsealed, three defendants were already in the custody of Colombian authorities. Pursuant to requests for extradition by the United States, Rodriguez Mendieta, who had been arrested in Colombia in October 2004, was extradited in November 2007 to face charges in the FARC Leaders Indictment. Cuevas Cabrera, who had been arrested in Colombia in December 2004, was extradited in December 2007 to face charges

in the same case. And Martinez Vega, who had been arrested in Venezuela in February 2005, was extradited in April 2008. Aguilar Ramirez was arrested in Colombia in July 2008, during the operation that effected the rescue of Stansell, Gonsalves, Howes and others. He was extradited in July 2009, but solely with respect to the narcotics charges in the FARC Leaders Indictment: Colombia expressly denied extradition on the hostage-taking charges pending in *United States v. Aguilar Ramirez*, 07-248 (RCL).

Your Clients' Status Under the CVRA. The CVRA defines a "crime victim" as "a person directly and proximately harmed as a result of the commission of a Federal offense." 18 U.S.C. § 3771(e). Applying that definition, courts have held that to qualify under the statute, a person must have been harmed directly and proximately by conduct underlying an element of the defendant's offense. As a general rule, although narcotics conspirators can cause untold harm in the execution of a narcotics conspiracy, identification of specific victims is not an element of the offense. Indeed, the burden such a requirement would place on narcotics investigations and prosecutions would substantially impede the Government's ability to use this relatively simple charge to target and incapacitate some of the most dangerous criminals in the world, such as the defendants in this case. *See generally In re McNulty*, 597 F.3d 344 (6th Cir. 2010); *In re Galvis*, 564 F.3d 170 (2d Cir. 2009); *In re Antrobus*, 519 F.3d 1123 (10th Cir. 2008). Here, the defendants' offense is a narcotics conspiracy, which has two elements: (i) an agreement between two or more persons, the objects of which were (a) to import at least five kilograms of cocaine into the United States, and (b) to manufacture or distribute at least five kilograms of cocaine, knowing or intending that they would be imported into the United States; and (ii) the defendant knowingly joined the conspiracy. The defendants' conduct underlying these two elements does not include hostage-taking. As sympathetic as the Government is to the tragic ordeal the FARC inflicted on your clients, they do not meet the legal definition of a "crime victim" under the CVRA.

Further, while the Government can (and in the case of your clients is willing to) unilaterally provide certain of the benefits of the CVRA to persons affected by an offense, even if they are not statutory "victims," the Government cannot unilaterally agree to a matter that would increase the sentence—*i.e.*, via an order of restitution—imposed on a defendant. Instead, the facts necessary to support a restitution order for your clients would have to be admitted by the defendants or established by a plea of guilty or a jury verdict. That has not happened in this case.

Further Information. Although not legally required, the Government nonetheless is willing to confer with you and your clients about the FARC Leaders Indictment and to facilitate their participation in the sentencing process, should the Court choose to hear from them in its discretion. *See* 18 U.S.C. § 3661 ("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."). We are also pleased to respond to your various requests for information and consultation in the case as follows.

Porter & Korvick, P.A.
May 27, 2010

Page 4

Current Status of Prosecutions. On December 16, 2009, Rodriguez Mendieta pleaded guilty to conspiring to import multi-kilogram quantities of cocaine into the United States and distributing multi-kilogram quantities of cocaine knowing they would be sent to the United States, as charged in Count One of the FARC Leaders Indictment. On March 19, 2010, the Honorable Thomas F. Hogan sentenced him to 244 months' imprisonment. Also on December 16, 2009, Aguilar Ramirez pleaded guilty to Count One of the FARC Leaders Indictment. On April 13, 2010, after a two-months jury trial in the District of Columbia, defendants Cuevas Cabrera and Martinez Vega were convicted of participating in a conspiracy to import cocaine into the United States. No proof of the hostage taking came in during this trial. Judge Hogan is scheduled to sentence Cuevas Cabrera and Martinez Vega on July 21, 2010, at 10:00 a.m.

In response to your question about reward money, none of these four defendants is receiving reward money from the United States.

With respect to Aguilar Ramirez, Judge Hogan has scheduled sentencing for June 7, 2010, at 10:00 a.m. Aguilar Ramirez will be sentenced based upon his plea of guilty to conspiring to import cocaine into the United States. As you requested, we are providing you the plea documents filed in connection with Aguilar Ramirez's plea proceeding. (Exhibit A is Aguilar Ramirez's plea agreement; Exhibit B is the supporting statement of facts.) Please advise us whether your clients plan to make or file a statement in connection with Aguilar Ramirez's sentencing. We would like to advise the Court of that fact as soon as possible.

Finally, you indicate that you would like to depose Aguilar Ramirez in connection with your pending civil action for damages against the FARC, and request that we "offer some form of immunity" to Aguilar Ramirez to allow him to provide testimony without relinquishing his privilege against self-incrimination. After careful consideration of your request, we cannot offer Aguilar Ramirez any immunity nor any sentencing benefit in exchange for his willingness to testify or otherwise cooperate in your civil case.

Please do not hesitate to contact us if you have any further requests for information about the FARC Leaders case.

Very truly yours,

PREET BHARARA
United States Attorney

By: s/ Pablo Quiñones
Pablo Quiñones
Randall W. Jackson
Assistant United States Attorneys
(212) 637-2487/1029

Porter & Korvick, P.A.
May 27, 2010

Page 5

cc: Via e-mail w/o enclosures
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U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

SEP 23 2010

Newt Porter, Esq.
Tony Korvick, Esq.
Porter and Korvick, P.A.
9655 South Dixie Highway, Suite 208
Miami, FL 33156

Dear Mr. Porter and Mr. Korvick:

Thank you for your letter, dated August 12, 2010, to Assistant Attorney General Lanny A. Breuer, regarding the use of forfeited funds to satisfy or compromise your clients' claims against the Revolutionary Armed Forces of Colombia (FARC). Please allow me to express, on behalf of myself and the Criminal Division, my sincere appreciation for the sacrifices made for the United States by Tom Janis, Keith Stansell, Tom Howes, Marc Gonsalves, and their families.


Forfeiture has become an important tool for federal prosecutors in depriving drug traffickers and terrorists of the sources of funding for their crimes. The Attorney General, acting through the Asset Forfeiture and Money Laundering Section (AFMLS), has discretion to return forfeited funds to innocent owners and victims of the crimes underlying the forfeiture through a process called "remission." In order to qualify for remission as a victim, a person must establish, among other things, that he or she suffered a pecuniary loss as a direct result of an offense that was the underlying basis for the criminal, civil, or administrative forfeiture of specific property. 28 C.F.R. § 9.8(a). Remission is not available as to property that has been forfeited in connection with offenses that did not directly cause a pecuniary loss to the petitioner. 28 C.F.R. § 9.8(a)(1).

Because forfeited funds are not available as a general source of compensation for crime victims, a request for remission must include, among other things: 1) a description of the specific forfeited property from which remission is sought; 2) the name and docket number of the criminal or civil forfeiture action associated with the forfeited property; and 3) an explanation of how the petitioner incurred a pecuniary loss of a specific amount as a direct result of the offense underlying the forfeiture of the property, or a related offense. See 28 C.F.R. §§ 9.4(c); 9.8(a)(1). Such information, along with supporting documents, must be submitted to the United States Attorney for the district in which the forfeiture occurred. 28 C.F.R. § 9.4(e). Please note also that forfeited funds may not be used to compensate physical injuries or other non-pecuniary harms arising from an offense. 28 C.F.R. § 9.8(a)(1), (c).

Your letter also requests that the Attorney General use his discretion to directly transfer seized assets, funds, or currency prior to final forfeiture to satisfy or compromise your clients' claims. Decisions regarding termination of forfeiture proceedings and the direct transfer of seized assets to crime victims are typically made by the prosecuting Assistant United States Attorney in the context of a particular criminal case, and do not generally involve the Attorney General or AFMLS.

I hope this information proves useful in providing assistance to your clients. As you may be aware, the Department of Justice Office for Victims of Crime provides financial assistance to victims of certain designated terrorist events, through its Office of International Terrorism Victim Expense Reimbursement Program. Information on that program is attached for your convenience.

Please do not hesitate to contact me if I may be of any further assistance in this or any other matter.

Sincerely,

 Jennifer Shasky Calvery
 Chief
 Asset Forfeiture and
 Money Laundering Section

cc: Lanny Breuer
 Assistant Attorney General

Heather Cartwright
 Director, Office of Justice for Overseas Terrorism

David S. Kris
 Assistant Attorney General, National Security Division

Stuart A. Levey
 Treasury Undersecretary for Terrorism and Financial Intelligence

Michael J. Mullaney
 Chief, Counterterrorism Section

James Dinan
 Executive Director, Organized Crime and Drug Enforcement Task Force

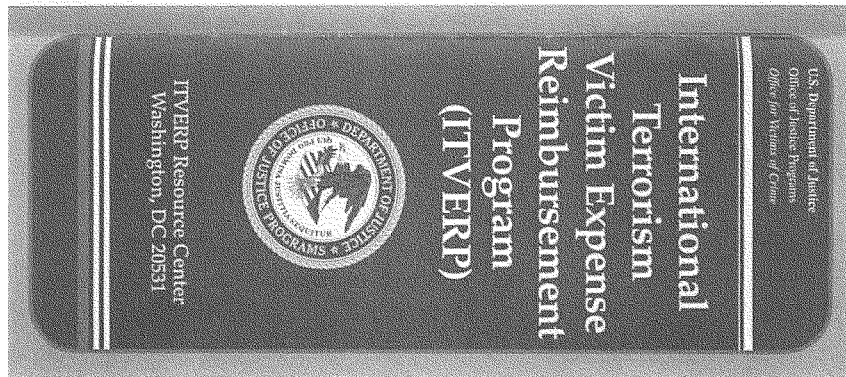
Andrew Szubin
 Director, Office of Foreign Assets Control



U.S. Department of Justice
Office of Justice Programs
Office for Victims of Crime
Washington, DC 20531
Official Business
Penalty for Private Use \$300



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Office for Victims of Crime (OVC)

As part of the U.S. Department of Justice, Office of Justice Programs, OVC promotes justice and healing for all victims of crime by:

- Administering federal funds to support victim services.
- Providing training for diverse professionals who work with victims.
- Developing projects to enhance victims' rights and services.
- Undertaking public education and advocacy activities on behalf of crime victims.

OVC works with international, federal, tribal, state, local, and military victim assistance and criminal justice agencies and other professional organizations to promote fundamental rights and comprehensive services for crime victims.

International Terrorism Victim Expense Reimbursement Program (ITVERP)

ITVERP was authorized by Congress to reimburse eligible direct victims of acts of international terrorism that occur outside the United States for expenses associated with that victimization.

Who is eligible for reimbursement?

- U.S. Nationals
 - U.S. Government officers and employees
- The law requires that the victim must have suffered direct physical or emotional injury

or death as a result of an act of international terrorism occurring abroad. If the victim is a minor, incompetent, incapacitated, or is killed, then a spouse, parent, child, sibling, or legally designated representative of the victim may receive expense reimbursement on behalf of the victim, 42 U.S.C. 10603c(a)(3).

What expenses are eligible for reimbursement?

Claimants may seek reimbursement for eligible victims of international terrorism for expenses associated directly with that victimization, such as:

- Medical expenses (up to \$50,000).
- Mental health care costs (up to \$5,000).
- Property loss, repair, and replacement costs (up to \$10,000).
- Funeral and burial costs (up to \$25,000).
- Miscellaneous expenses (up to \$15,000).

What costs are excluded from reimbursement?

- Attorneys' fees and legal expenses
- Pain and suffering
- Loss of enjoyment of life or of consortium
- Lost wages

Types of Applications

Itemized: An itemized application allows eligible claimants to be reimbursed for actual expenses associated with their victimization.

Claimants must submit their application with an *original signature, original receipts*, and complete and accurate information regarding all known and potential collateral financial sources which are or may be available to offset expenses incurred by the claimant.

Interim emergency: An interim emergency application may be filed to assist claimants with immediate costs if the OVC Director determines that such payment is necessary to avoid or mitigate substantial hardship that may result from delaying expense reimbursement until complete and final consideration of an application.

Supplemental: A supplemental application may be filed if additional costs arise, or if original costs were excluded from the first application.

Deadlines for Filing a Claim

For acts occurring between October 23, 1983, and December 20, 1988, the deadline is January 28, 2011.

For acts occurring between December 21, 1988, and October 6, 2006, the deadline is October 6, 2009.

For all acts occurring after October 6, 2006, the deadline is 3 years from the date of the act of international terrorism.

Waiver: Any unsatisfied monetary judgment in favor of an ITVERP claimant against a foreign government in a suit arising from the terrorism incident will be considered a collateral source under the ITVERP program, and the ITVERP reimbursement will be reduced accordingly, unless claimants agree to not sue the United States government for satisfaction of that judgment by signing and dating the waiver in the ITVERP application.



U.S. Department of Justice

Criminal Division

Washington, D.C. 20530

DEC 01 2011

Newt Porter, Esq.
Tony Korvick, Esq.
Porter and Korvick, P.A.
9655 South Dixie Highway, Suite 208
Miami, FL 33156

Re: *United States v. Jaime Dib Mor-Saab*, No. 8:08-cr-199 (M.D. Fla.)

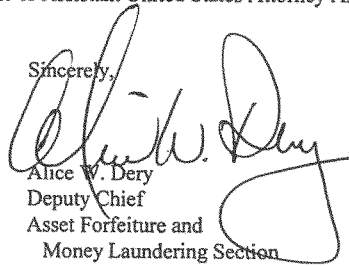
Dear Msrs. Porter and Korvick:

This responds to your letter, dated November 8, 2011, to Chief Jennifer Shasky of the Asset Forfeiture and Money Laundering Section (AFMLS) and Assistant United States Attorney Anita Cream requesting that AFMLS authorize the deposit of a portion of the funds obtained from Banco Santander International ("BSI") into the Court's registry pending a determination by the Court regarding the disposition of such funds.

I have been advised that the District Court entered a final order of forfeiture of the funds obtained from BSI on July 20, 2011. The Government does not anticipate any further litigation regarding the ownership of the forfeited funds. As noted in a prior letter to your firm, a person claiming an ownership interest in forfeited property or who incurred a pecuniary loss as a direct result of the crime underlying the forfeiture may request the Attorney General to exercise his discretion to grant remission of forfeited funds pursuant to 28 C.F.R. part 9.

Please do not hesitate to contact me or Assistant United States Attorney Anita Cream if we may be of further assistance.

Sincerely,



Alice W. Dery
Deputy Chief
Asset Forfeiture and
Money Laundering Section

cc: Anita Cream
Assistant United States Attorney



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Case No. FNK-2013-299796-1

Porter & Korvick, PA
Pinecrest Professional Building
9655 South Dixie Highway, Suite 208
Miami, FL 33156
Attn: Newt Porter, Esq.

Dear Mr. Porter:

This responds to your correspondence dated January 14, 2013, January 31, 2013, and February 11, 2013 (the "Application"), to the Office of Foreign Assets Control ("OFAC"), on behalf of Keith Stansell, Tom Howes, Marc Gonsalves, and Judith Janis (the "Clients"), requesting specific licenses authorizing the post-judgment execution on certain assets blocked pursuant to the Foreign Narcotics Kingpin Designation Act, 21 U.S.C. §§ 1901-1908, 8 U.S.C. § 1182 (the "Kingpin Act"). According to the Application, your Clients seek:

- (i) a retroactive specific license authorizing the prior post-judgment execution on the blocked assets of Jose Ricuarte Diaz Herrera at Wells Fargo Bank, totaling \$2,006,878.84 (the "Diaz Herrera Account");
- (ii) a retroactive license authorizing execution on the formerly blocked assets of Mercurio Internacional, SA ("Mercurio"), at Bank of America, totaling \$1,286,296.26 (the "Mercurio Account");
- (iii) a specific license authorizing execution on the blocked assets of Alonso Olarte Lombana at HSBC, totaling \$19,794.80 (the "Lombana Account");
- (iv) a specific license authorizing execution on the blocked assets of Benedicto Romero Barrera and Oscar Lopez Cadavid at SunTrust Bank, totaling \$216,637.92 (the "Barrera-Cadavid Accounts");
- (v) a specific license authorizing the post-judgment execution on the blocked assets of Fernando Zevallos, Aero Continente S.A., Aero Continente, Milagros & Sara Zevallos, Blisssey Panama, Inc., and Bellesom Enterprises, Inc. (the "Zevallos Accounts");
- (vi) a specific license authorizing the post-judgment execution on the blocked assets of OK Coffee International SA (the "OK Coffee Assets"), part of the Cifuentes Villa Organization; and
- (vii) a specific license authorizing the post-judgment execution on the blocked assets of Nueva Industria de Ganadera (the "Nueva Industria Assets"), part of the Beltran Leyva TCO.

The Application notes that Jose Ricuarte Diaz Herrera, Alonso Olarte Lombana, Benedicto Romero Barrera, and Oscar Lopez Cadavid, Fernando Zevallos, Aero Continente S.A., Aero Continente, Milagros & Sara Zevallos, Blissey Panama, Inc., Bellesom Enterprises, Inc., OK Coffee International SA, the Cifuentes Villa Organization, Nueva Industria de Ganadera, and the Beltran Leyva TCO (the "SDNTKs") have all been designated by OFAC under the Kingpin Act.

The Application states that your Clients obtained an Anti-Terrorism Act final judgment against the FARC and 80 of its members in June 2010. Subsequently, your Clients moved for issuance of a writ of garnishment pursuant to the Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297, 116 Stat. 2322) ("TRIA") to Wells Fargo Bank, which disbursed the assets in the Diaz Herrera Account to your Clients. According to the Application, your Clients also moved for issuance of TRIA writs of garnishment for the assets in the Barrera-Cadavid Accounts, the Mercurio Account, and certain of the Zevallos Accounts; Mercurio subsequently filed a Notice of Appeal, citing OFAC's decision to remove Mercurio from its List of Specially Designated Nationals and Blocked Persons ("SDN List"), which resulted in the unblocking of its assets. On January 9, 2013, the 11th Circuit Court of Appeals issued its opinion in *Keith Stansell, et al. v. Mercurio International S.A.*, No. 8:09-cv-02308-RAL-MAP (11th Cir. Jan. 9, 2013), holding that assets blocked pursuant to the Kingpin Act are not subject to attachment under TRIA. The Application states that Jose Ricuarte Diaz Herrera subsequently filed a motion to dissolve the completed writ of garnishment for the Diaz Herrera Account, to vacate the judgment thereon, and to recover the assets disbursed to your Clients.¹

As you know, pursuant to the Kingpin Act and the Foreign Narcotics Kingpin Sanctions Regulations, 31 C.F.R. Part 598 (the "Regulations"), all property and interests in property within the United States, or within the possession or control of any U.S. person, which are owned or controlled by an Specially Designated Narcotics Trafficker ("SDNTK") are blocked. Regulations, § 598.202. The Kingpin Act also prohibits any transaction or dealing by a U.S. person, or within the United States, in property or interests in property of an SDNTK, Regulations, § 598.203(a). Blocked property is defined as any account or property, subject to section 598.202 of the Kingpin Act, held in the name of an SDNTK, or in which an SDNTK has an interest. Regulations, § 598.301.

We address the licensing requests contained in your application in turn below.

With respect to the Diaz Herrera Account, please be advised that, under the circumstances described in the Application, it would not be consistent with current OFAC licensing policy to retroactively authorize transactions prohibited by the Kingpin Act, including the unblocking of blocked property. Accordingly, your request for a specific license authorizing the prior post-judgment execution on the Diaz Herrera Account is hereby denied.

With respect to the formerly blocked Mercurio Account, please note that no license is required for your Clients to pursue attachment of the account. It would not be consistent with current OFAC licensing policy to authorize transactions that are not prohibited by the Kingpin Act, including to retroactively authorize execution on property that is not blocked. Accordingly, your request for a specific license authorizing execution on the formerly blocked Mercurio Account is hereby denied.

With respect to the Lombana Account, the Barrera-Cadavid Accounts, the Zevallos Accounts, the OK Coffee Assets, and the Nueva Industria Assets (collectively, the "Blocked Property"), it appears

¹ We understand that the district court has denied this motion.

that the writs of garnishment previously issued by the court with respect to the Blocked Property were issued pursuant to TRIA, which the 11th Circuit has now held does not authorize the attachment of assets blocked pursuant to the Kingpin Act. Because the 11th Circuit's decision calls into question the validity of these writs of garnishment, it would be premature for OFAC to act on your Application with respect to the Blocked Property at this time. Accordingly, your request for a specific license to authorize execution on the Blocked Property is hereby denied. Should the court determine that the Blocked Property is subject to execution in satisfaction of your Clients' judgment pursuant to a source of law other than TRIA, OFAC would consider licensing the unblocking of the Blocked Property at that time. Please note that no license from OFAC is required to seek such a determination from the court.

In addition to the licensing matters addressed above, the Application requests that the identified SDNTKs be further designated pursuant to Executive Order 13224 of September 23, 2001, "Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism," and the Global Terrorism Sanctions Regulations, 31 C.F.R. Part 594. Please be advised that OFAC does not respond to requests to designate individuals or entities pursuant to certain authorities.

If you have any additional questions, you may refer to the OFAC website at www.treasury.gov/ofac or call our office at (202) 622-2480.

Sincerely,



Mar. 19, 2013

Andrea Gacki
Assistant Director for Licensing
Office of Foreign Assets Control

Date