Truth Behind Bars

Colombian Paramilitary Leaders in U.S. Custody

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International Human Rights Law Clinic
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The International Human Rights Law Clinic (IHRLC) designs and implements innovative human rights projects to advance the struggle for justice on behalf of individuals and marginalized communities through advocacy, research, and policy development. The IHRLC employs an interdisciplinary model that leverages the intellectual capital of the university to provide innovative solutions to emerging human rights issues. The IHRLC develops collaborative partnerships with researchers, scholars, and human rights activists worldwide. Students are integral to all phases of the IHRLC's work and acquire unparalleled experience generating knowledge and employing strategies to address the most urgent human rights issues of our day. For more information, please visit: www.humanrightsclinic.org.

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EXECUTIVE SUMMARY

On May 13, 2008, the U.S. Ambassador to Colombia, William Brownfield, announced the extradition to the United States of fourteen leaders of Colombia's largest paramilitary group, *Autodefensas Unidas de Colombia* (United Self-Defense Forces of Colombia or AUC),[1] to face drug charges.[2] These paramilitary leaders are implicated in terrorizing and killing thousands of innocent civilians. As part of their efforts to seize control of territory and drug routes, paramilitary leaders targeted trade unionists and other members of civil society who they perceived as threats. Ambassador Brownfield pledged that the transfer of these individuals to the United States would not interfere with Colombia's efforts to hold paramilitaries accountable for mass atrocities in Colombia. Thirty former members of the AUC (Defendants) are currently in U.S. custody.

Despite U.S. stated goals, review of available data indicates that the extraditions of paramilitary leaders have had adverse consequences for U.S. foreign policy by undermining rule of law in Colombia. The extraditions have (1) substantially diminished Defendants' cooperation with ongoing human rights and corruption investigations in Colombia; (2) severely curtailed access to remedies for Colombian victims; and (3) undermined U.S. counternarcotics efforts by prompting a ruling by Colombia's Supreme Court to block future extraditions of demobilized paramilitaries to the United States.

The United States should reform its policies and practices regarding criminal prosecutions of extradited Colombian paramilitaries to better support U.S. foreign policy interests by promoting Defendants' cooperation with Colombian law enforcement. Active U.S. support of Colombian accountability measures will (1) strengthen the rule of law in Colombia; (2) address unsolved murders of Colombian trade unionists, an obstacle to securing a U.S.-Colombia free trade agreement; and (3) align U.S. foreign policy with international law.

WE RECOMMEND THAT THE UNITED STATES:

» ***Create an effective and efficient procedure for judicial cooperation.*** The United States should establish a procedure that provides timely, consistent, and reliable access by Colombian prosecutors, judges, and victims to extradited paramilitary commanders. This procedure should also ensure that information obtained by U.S. law enforcement from extradited paramilitaries is shared with Colombian judicial authorities.

» ***Incentivize extradited paramilitary leaders to disclose details about all their crimes and the identities of their accomplices in the military, government and national and foreign businesses.*** The United States should actively encourage extradited leaders to testify about their crimes and allies by conditioning sentence reductions or other benefits achieved through plea-bargaining on effective cooperation. Possible benefits of cooperation should include provision of visas to family members of Defendants under threat in Colombia.

» ***Initiate investigations for torture committed by extradited paramilitary leaders.*** The United States should hold extradited leaders accountable for all their crimes under federal law, including torture, and promote justice for Colombian victims. Torture prosecutions will also provide additional incentives for Defendants to cooperate with Colombian and U.S. authorities.

Colombian Paramilitary Commanders in U.S. Custody

» **Hernán Giraldo Serna** was the commander of several paramilitary blocs and was one of Colombia's top five cocaine traffickers.[3] Giraldo Serna has confessed to murdering several public officials.[4] He is linked to hundreds of murders and is accused of ordering the forced disappearances of four government investigators[5] and raping nineteen women, including girls as young as twelve years old.[6]

» **Carlos Jiménez-Naranjo**, a high-ranking leader of the AUC, was the commander of the 7,000 members of the *Central Bolivar* Bloc.[7] During testimony in Colombia, he admitted to 578 violent crimes, including over 450 murders.[8] More than 16,000 people have registered as victims of crimes committed by his troops.[9] He was involved in the murder of Carlos Castaño, former head of the AUC, and is accused of plotting to kill more than 6,000 demobilized paramilitaries.[10]

» **Salvatore Mancuso Gómez** was "one of the most powerful members of the AUC leadership."[11] Mancuso planned and executed several of Colombia's bloodiest massacres, including the 1997 torture and massacre of fifty residents of the town of Mapiripán.[12] Mancuso has confessed to 477 crimes involving 881 victims, including murders, forced disappearances, forced recruitment of minors and forced displacements.[13]

» **Diego Murillo Bejarano** served as the "de facto leader" of the AUC.[14] He has confessed to involvement in several massacres and has implicated Colombian security forces in human rights atrocities.[15] Over 11,300 individuals have registered as victims of his troops.[16] In January 2008, a Colombian court convicted him of forcibly disappearing at least sixty-seven residents of the provincial capital, Medellín, including children as young as thirteen years old.[17]

» **Guillermo Pérez Alzate** was the commander of the approximately 700 combatants of the *Libertadores del Sur* Bloc which operated in the coca-growing zones.[18] He has confessed to 120 murders[19] and admitted to forcibly recruiting minors.[20] Approximately 1,660 individuals have registered as victims of his troops.[21]

» **Rodrigo Tovar Pupo** was the commander of the 4,500 members of the AUC's *Norte* Bloc.[22] Government investigators have linked his troops to 768 forced disappearances and 200 massacres.[23] He has confessed to over 600 crimes, including forcibly disappearing seven government investigators and killing forty fishermen.[24] Tovar-Pupo oversaw a campaign to exterminate union leaders in Northern Colombia.[25]

» **Ramiro Vanoy Ramirez** was the commander of the 2,700 fighters of the *Mineros* Bloc.[26] He has confessed to participating in 235 homicides and was accused of several murders, kidnappings, and forced recruitment of minors by Colombian prosecutors.[27] Approximately 3,522 people have registered as victims of his troops.[28]

» **Hebert Veloza García** commanded the AUC *Calima* and *Bananero* Blocs, responsible for over 1,200 victims.[29] Veloza confessed to ordering massacres, personally killing more than 100 people, and participating in thousands of other crimes including forced displacements.[30]

Introduction

On May 13, 2008, the U.S. Ambassador to Colombia, William Brownfield, announced the extradition to the United States of fourteen leaders of Colombia's largest paramilitary group *Autodefensas Unidas de Colombia* (United Self-Defense Forces of Colombia, AUC)[31] to face drug charges.[32] In total, thirty former paramilitaries (Defendants), including most of the AUC's top commanders,[33] are in U.S. custody in Florida, New York, Texas, Virginia, and Washington D.C.[34] The AUC, formed from paramilitary groups created in the 1980s to fight left-wing guerillas, has become a powerful network of Colombian drug traffickers and warlords. Over the last thirty years, AUC members are alleged to have massacred, forcibly disappeared, tortured, and raped thousands of civilians.[35] By 2002, at the height of paramilitary violence in Colombia, the United States estimated that the group carried out approximately seventy percent of the killings and forced disappearances in that country.[36]

At a press conference announcing the May 2008 extraditions, Ambassador Brownfield pledged that the transfer of Defendants to the United States would not interfere with Colombia's efforts to hold paramilitaries accountable for their crimes in Colombia. The United States will "facilitate all access, all of the information, and all of the opportunities to the [Colombian] victims, the victims' representatives and to the [Colombian] prosecutors,"[37] stated the ambassador. Three years earlier, in 2005, Colombia's Congress approved Law 975, also known as the "Justice and Peace Law," which offered leniency and public benefits to paramilitary members in exchange for an agreement to disarm, forfeit assets, and tell the truth about human rights abuses they committed.[38] All of the extradited AUC leaders were participants in the Justice and Peace program, and had begun to disclose details about their crimes and the identities of their accomplices. They gave details about AUC responsibility for crimes against civilians as well as its role in rigging Colombian elections.[39] Defendants' disclosures created an opportunity to dismantle paramilitary networks by prompting domestic investigations into AUC crimes and the criminal investigation of elected officials.

However, since their extraditions, the paramilitary leaders' cooperation with Colombian investigators effectively has ceased. Logistical difficulties have been compounded by the absence of a written agreement between the U.S. and Colombia to coordinate judicial cooperation. Colombian prosecutors and judges face limited access to Defendants in U.S. custody. U.S. prosecutors also have rejected the efforts of Colombian victims to intervene in U.S. prosecutions to compel AUC Defendants to divulge information about their crimes.[40]

Further, the plea agreements that the Department of Justice (DOJ) has reached with thirteen of the extradited Defendants do not contain incentives for Defendants to cooperate with Colombian law enforcement or to reveal the details of their human rights crimes.[41] Eight Defendants have been sentenced to terms ranging from four to thirty-one years for drug-related crimes.[42] The potential for AUC Defendants to help obtain convictions of corrupt Colombian politicians, dismantle drug trafficking networks, and reform the Colombian military is diminishing.

In light of these developments, the International Human Rights Law Clinic (IHRLC) evaluated the consequences of extradition of the AUC leaders from the perspective of U.S. foreign policy interests. The specific goals of this report are:

(1) To identify the impact of extraditions on Colombia's on-going human rights and corruption investigations;
(2) To evaluate U.S. foreign policy interests in promoting the cooperation of extradited Colombian paramilitaries with Colombian law enforcement; and
(3) To make policy recommendations to better utilize the U.S. prosecutions of Colombian paramilitary leaders to advance U.S. foreign policy interests in Colombia.

In preparation of this report, we consulted primary documents, including U.S. court records regarding the extradited Defendants, Department of State reports on human rights conditions in Colombia, and testimony from current and former U.S. officials regarding Colombia as well as the U.S. interests in promoting the rule of law there. We also reviewed documents released by Colombian government agencies, including the Attorney General's Office, the High Commissioner for Peace, and the National Commission on Reparations and Reconciliation. International legal materials were also consulted. In addition, we reviewed secondary sources including newspaper accounts from U.S. and Colombian outlets, as well as documentation compiled by international nongovernmental organizations (NGOs) and civil society groups in Colombia.

Our analysis is limited by the availability of U.S. and Colombian court documents. The complete case records of U.S. prosecutions of eighteen extradited AUC leaders are not publicly accessible.[43] Thus we were unable to verify the current legal status of each of the cases against AUC leaders including whether a Defendant has reached a plea agreement. Similarly, official transcripts of the statements by Defendants before proceedings conducted under the Justice and Peace Law in Colombia are not publicly available. However, Colombian newspapers published reports of these statements, which we consulted. Finally, the participation of some of the researchers in legal actions related to this report may have influenced the analysis.[44] Every effort was made to minimize research bias by training researchers and by consulting multiple sources. The benefit of researcher involvement in some of the court proceedings against Defendants is a deeper understanding of the legal and factual issues involved.

Background

PARAMILITARY DEVELOPMENT AND CRIMINAL ACTIVITIES

The extradited Defendants include most of the former leaders of the AUC.[45] In the 1980s, wealthy Colombian landowners created militias to wage a "dirty war" against left-wing guerilla groups and suspected sympathizers.[46] Financed by the drug trade, the independent militias formed a national network in 1997, the AUC, to advance their common goals of controlling territory and drug trafficking routes. Often acting with the support or acquiescence of the Colombian military, the AUC used brutal and violent methods to wrest territory from guerilla control. AUC combatants forcibly displaced, disappeared, tortured, and killed thousands of *campesinos*, Afro-Colombians, indigenous persons, trade unionists, human rights advocates, religious leaders, and other civilians.[47]

AUC commanders colluded with the political, military, and business sectors to ensure control of their areas of operation. In 2000, Human Rights Watch, a U.S.-based NGO, documented that half of Colombia's eighteen brigade-level army units regularly collaborated in paramilitary activity.[48] Military personnel directly participated in several high-profile massacres committed by paramilitary groups.[49]

In exchange for political protection, Colombian officials used paramilitaries to intimidate citizens and secure votes.[50] In the 2000s, several paramilitary leaders boasted that the AUC "controlled" thirty to thirty-five percent of the members of Colombia's Congress.[51] International and domestic businesses operating in Colombia have provided the AUC with financial backing and logistical support.[52]

After the United States indicted several AUC commanders for drug-related crimes in 2002,[53] paramilitary leaders announced a unilateral ceasefire and entered into talks with the Colombian government. These resulted in an agreement to demobilize AUC combatants.[54] In 2005, Colombia's Congress passed the Justice and Peace Law which established a legal framework for the demobilization of paramilitary members who had committed serious human rights abuses. The new law offered legal leniency and public benefits to any paramilitary member—from foot soldiers to the high command—in exchange for an agreement to disarm, forfeit assets, and tell the truth about human rights abuses they committed.[55] If paramilitaries fulfilled the requirements of the Justice and Peace Law, they were eligible for sentences of five to eight years regardless of the severity of their crimes, or their rank or role in the AUC.[56]

JUSTICE AND PEACE PROCESS

According to the Colombian government, approximately 31,000 paramilitary fighters had demobilized by 2006.[57] Of these, 3,712 applied for benefits under the Justice and Peace Law.[58] Applicants were required to provide information about the structure and hierarchy of their former organization, their rank and role, and to confess to their crimes. Victims of paramilitary violence were permitted to attend the hearings and pose questions to the perpetrators.[59] The Colombian government reports that as of June 2009, more than 27,000 victims had attended 1,836 hearings.[60]

At the time of their extraditions, all of the extradited paramilitary commanders were participating in the Justice and Peace process. Most were revealing details about their atrocities and the identity of their accomplices.[61] (*See* text box) Because of their roles and lengthy histories with the organization, Defendants had unparalleled knowledge of AUC's ties to Colombian officials. The testimony of AUC commanders was particularly important because relatively few paramilitaries had come forward to divulge their crimes, let alone had the ability to reveal involvement of government officials as accomplices.[62]

The Justice and Peace hearings progressed in two stages. First, the applicant testified without restriction about his experience (referred to in Spanish as *version libre*). Second, state prosecutors had the opportunity to directly question paramilitary commanders about their crimes and could ask questions supplied by victims.[63] Because Defendants' extraditions came during the first stage of the process, the record of their crimes is partial and incomplete. Some Defendants disclosed information about their crimes, as well as details of military complicity and political corruption. Paramilitary commander Salvatore Mancuso, for example, used an eighty-seven-slide PowerPoint presentation to detail his role in killing 336 victims.[64] However, most Defendants avoided testifying about certain categories of crimes, such as forced recruitment of child combatants, forced displacement, sexual violence, kidnapping, torture, voter intimidation, and smuggling.[65]

SUPREME COURT INVESTIGATIONS

Alongside the Justice and Peace process, Colombia's Supreme Court is investigating paramilitaries' alliances. The Supreme Court, which has exclusive jurisdiction to investigate sitting members of Colombia's Congress,[66] has initiated investigations of representatives accused of working with paramilitary groups to commit crimes ranging from electoral fraud to kidnapping and murder.[67]

The Supreme Court investigations were prompted in 2005, after AUC members made a series of statements to the media about the extent of the group's influence on Colombia's Congress.[68] The investigations gained speed in 2006, after the discovery of a political pact signed in 2001 by paramilitary commanders and thirty-one politicians.[69] Known as the *parapolítica* or paragate scandal, one third of Colombia's congressional representatives have come under investigation for their ties to illegal armed groups.[70] Of the 133 current and former members of Congress implicated in the investigations, Colombian authorities have subpoenaed seventy-one to testify and detained fifty.[71] Nearly all the legislators under investigation are members of President Uribe's governing coalition.[72] Allegations of illegal conduct extend to the vice-president[73] and even to the president.[74]

Defendants possess evidence crucial to these investigations. For example, files discovered on a laptop belonging to extradited AUC commander Rodrigo Tovar Pupo were used in the investigations of eighteen politicians.[75] Yet the evidentiary value of extradited paramilitary testimony has not been fully exploited. Defendant Salvatore Mancuso is a potential witness in proceedings against twenty-six elected officials, however his extradition has limited his availability as a witness.[76] Similarly, Defendant Carlos Jiménez Naranjo is suspected of having conspired with seventeen politicians but has only provided testimony relevant to one investigation.[77]

OTHER CRIMINAL INVESTIGATIONS

The Colombia Attorney General's Office is prosecuting crimes committed by extradited paramilitaries as well as investigating ties between paramilitary groups and public officials. The Human Rights and Humanitarian Law Unit of the Attorney General's Office and the criminal courts retain jurisdiction over criminal investigations begun before paramilitary leaders demobilized and entered into the Justice and Peace process. Defendants face multiple indictments and convictions in Colombia for serious human rights abuses including massacres, forced disappearances, and murders.[78]

Colombia's Attorney General reports that prosecutors have opened 276 cases against public officials.[79] The vast majority of these cases involves allegations of public officials conspiring with paramilitary groups (in a few cases to commit murder) and is in an early phase of investigation.[80] The extradited AUC leaders are witnesses and accomplices in many of these cases.

Impacts of Extraditions on Colombia's Accountability Measures

Review of available data indicates that the extraditions of Defendants have had several adverse consequences for Colombia's accountability measures and victims' rights. The primary effects include: (1) the participation of Defendants in the Justice and Peace process effectively has ceased; (2) access to remedies for Colombian victims has been severely curtailed; (3) the ability of Defendants to cooperate with ongoing Colombian corruption and human rights investigations has substantially diminished; and (4) Colombia's Supreme Court has effectively blocked additional U.S. prosecutions of Colombian drug kingpins who are participating in the Justice and Peace process.

ADVERSE IMPACTS ON JUSTICE AND PEACE PROCESS

Only five of the thirty Defendants have continued their voluntary statements at the Justice and Peace hearings from the United States.[81] Defendant Salvatore Mancuso participated in four *version libre* confession sessions from the United States, more than the other extradited leaders.[82] During these sessions, he detailed several massacres and trade unionist murders.[83] However, on September 30, 2009, Mancuso announced his decision to withdraw from the process.[84] His announcement came three days after fellow extradited AUC leader Diego Murillo Bejarano made a similar announcement. In letters to Colombian authorities,[85] both Defendants cited unexplained delays,[86] the inability to confer with subordinates,[87] and threats to family members in Colombia as the reasons for their decisions.[88] Colombian authorities have confirmed the difficulties in securing the Defendants' continued participation. Of thirty-nine hearing requests made by Colombian authorities during a five-month period, only ten were satisfied.[89]

The risks to Defendants' relatives in Colombia are exerting a chilling effect on Defendants' cooperation. On October 16, 2008, Defendant Ramiro Vanoy Ramirez suspended his participation in the Justice and Peace process after four of his children were kidnapped and his nephew was killed.[90] No additional confession sessions for Miguel Mejía Muñera[91] and Guillermo Pérez-Alzate,[92] the two Defendants who have not formally withdrawn, are scheduled.

As it stands, Defendants have little incentive to participate in the Justice and Peace process. The threat of extradition and the promise of reduced sentences in Colombia motivated their cooperation with the Justice and Peace process while they were in Colombia. These inducements are irrelevant in the United States where Defendants face prison terms for drug-related crimes. U.S. prosecutors have not incentivized the Defendants' cooperation through plea agreements or by leveraging U.S. prosecutions for torture.[93]

ADVERSE IMPACTS ON ACCESS TO REMEDIES FOR COLOMBIAN VICTIMS

The extraditions of Defendants have adversely impacted the Colombian victims of their crimes. To preserve victim involvement in the Justice and Peace process, Colombian and U.S. authorities initially planned for Defendants to testify via video conference for viewing by accredited victims in Colombia.[94] In practice, however, Colombian authorities have cancelled several transmissions because of lack of funds.[95] Similarly, U.S. custody of Defendants has frustrated victims' ability to question perpetrators directly, as stipulated by the Justice and Peace Law.[96]

The extraditions of Defendants have also restricted Colombian victims' access to reparations. The Justice and Peace Law guarantees victims "quick and integral reparation" for the harms they have suffered.[97] Toward that end, demobilized paramilitaries are required to turn over all illegal assets to the Victims Reparation Fund (Fund).[98] Ambassador Brownfield stated: "[W]e want the maximum compensation, the maximum reparation that is possible for [paramilitary] victims."[99] The Defendants amassed great wealth through the drug trade and land stolen from rural peasants fleeing paramilitary violence.[100] The extradition orders of paramilitary commanders established that the United States would seek to transfer assets acquired from Defendants to the Fund.[101] Although the United States has identified assets of twenty-one of the thirty Defendants, there is no indication U.S. officials have transferred any of these resources to Colombian victims.[102] The Fund currently contains under $4 million in paramilitary assets[103] to satisfy claims from more than 200,000 victims.[104]

Further, Colombian victims have been unable to pursue economic redress against Defendants through the U.S. criminal proceedings. In theory, victims are eligible to collect compensation from Defendants and to inform the terms of a plea bargain and eventual sentence under the U.S. Crime Victims Rights Act (CVRA).[105] However, U.S. prosecutors have opposed the efforts of Colombian victims to intervene[106] and have refused to acknowledge them as victims under the statute.[107] This approach prevents victims from even learning of the status of the prosecutions of Defendants.[108]

ADVERSE IMPACTS ON COLOMBIAN CRIMINAL INVESTIGATIONS

Colombian investigations outside the Justice and Peace process have been stymied by the extradition of Defendants. At the direction of the United States, Colombia has forwarded all requests for judicial cooperation to the justice attaché at the U.S. Embassy.[109] However, Colombian judges and prosecutors report that U.S. officials have not been sufficiently responsive. Transmission of information has been delayed and cancellations of exchanges are frequent.[110] In a May 21, 2009 letter to a Colombian non-governmental organization, the Colombian Human Rights Unit identified fifty-four unanswered requests for judicial assistance.[111] The list included several unanswered requests to depose Defendant Rodrigo Tovar Pupo which had been pending for ten months.[112]

Colombia's Supreme Court has encountered similar difficulties. For instance, since late 2008, the Supreme Court has made multiple requests to take statements from Defendants, including AUC leaders Carlos Jiménez Naranjo, Rodrigo Tovar Pupo, and Diego Murillo Bejarano. However, as of October 28, 2009, U.S. authorities had not responded.[113] On several occasions, Colombian Supreme Court magistrates have visited the United States to meet with U.S. officials and Defendants to collect information.[114] In October 2009, Supreme Court president Augusto Ibañez led a delegation to the U.S. to meet with DOJ officials with the aim of improving judicial cooperation.[115] Although the meeting took place eighteen months after the extradition of Defendants, Supreme Court Justice Ibañez described the meeting as a "preliminary" effort to improve cooperation in the future.[116] No concrete agreement resulted from the meeting.

ADVERSE IMPACTS ON FUTURE EXTRADITIONS TO THE UNITED STATES

The impact of Defendants' extraditions on the Justice and Peace process has resulted in the loss of a critical U.S. strategy for combating drug trafficking. On August 19, 2009, Colombia's Supreme Court banned future extraditions of paramilitaries participating in the Justice and Peace process.

U.S. Attorney General Eric H. Holder Jr. has remarked: "[T]he best way to disrupt and dismantle a criminal organization is […] to locate and extradite, when appropriate, cartel leadership to the United States for prosecution."[117] The US-Colombian extradition relationship has been described by the United States as "one of the most successful in the world."[118] Since 2002, Colombia has extradited 789 narcotics traffickers and other criminals to the United States.[119] However, in 2009 the Colombian Supreme Court found that the extraditions of AUC members in Justice and Peace adversely impacted "the rights of victims and the Colombian public" by leaving them "without the possibility of knowing the truth and obtaining reparation for the crimes committed by paramilitary groups."[120] The Court further reasoned that extradition would "violate Colombia's international obligations to combat impunity with regard to crimes against humanity" and undermine victims' rights.[121] The Supreme Court concluded that individuals should complete their confessions in Colombia before being extradited to the United States.[122]

The United States has indicted additional paramilitary combatants participating in the Justice and Peace process and requested their extradition. For example, Daniel and Freddy Rendón-Herrera, AUC leaders currently participating in the Justice and Peace Process, were indicted by the United States for narcotics importation conspiracy and material support to a terrorist group in April, 2009.[123] In accordance with the 2009 ruling, Colombia's Supreme Court is likely to deny these requests, effectively shutting down U.S. prosecutions of Colombian drug lords.

Policy Rationales for U.S. Support of Colombia's Accountability Measures

It is in the United States' interest to reform its policies and practices regarding its prosecutions of extradited Colombian warlords to better support Colombia's accountability efforts. United States cooperation with Colombian investigations promotes U.S. foreign policy goals to improve accountability, strengthen the rule of law, and combat impunity in Colombia. In recent years, U.S. policymakers have worked with Colombia to improve protection and secure the rights of Colombia's trade unionists. By promoting Defendants' participation in Colombian proceedings, U.S. officials will also advance this goal. Additionally, by cooperating with on-going investigations in Colombia, U.S. prosecutors will further efforts to dismantle paramilitary networks engaged in the narcotics trade and have the opportunity to hold Defendants responsible for the full scope of their crimes under federal law. The United States should support accountability measures by providing Colombian judges and prosecutors access to extradited leaders and by incentivizing Defendants' cooperation with Colombian investigations.

PROMOTING DEFENDANTS' COOPERATION STRENGTHENS RULE OF LAW IN COLOMBIA

The centerpiece of U.S. foreign policy toward Colombia is the counter-narcotics initiative known as Plan Colombia. Under this assistance package, the United States has provided $7 billion in aid to Colombia since 2000,[124] with a substantial portion dedicated to strengthening the rule of law and human rights.[125] The United States has trained thousands of prosecutors, judges, criminal investigators, and forensic experts;[126] developed a specialized unit within the Attorney General's office to investigate human rights abuses;[127] and funded the Justice and Peace process.[128] The United States conditions aid to Colombia on several human rights indicators, including the arrest and prosecution of paramilitary members and their accomplices.[129]

The United States is at a critical juncture in its efforts to strengthen the rule of law in Colombia. Despite U.S. political and financial support to promote an independent judicial system capable of effectively combating narco-terrorism and corruption, Colombian judicial institutions remain vulnerable. With AUC leaders in custody, the United States should act in concert with Colombian authorities to disrupt drug trafficking networks, prevent future violence, and provide redress for past atrocities. Effective cooperation will signal the U.S. commitment to combat impunity at a time when Colombia's oversight agencies are in urgent need of support.

U.S. investment in the Justice and Peace program is in jeopardy. After five years and receipt of substantial U.S. financing, the Justice and Peace process is stalled. Defendants effectively have abandoned the process and consequently frustrated efforts to identify accomplices and dismantle paramilitary networks. Justice and Peace courts have not issued a final conviction in a case.[130] Paramilitary leaders have refused to turn over the bulk of their illegal assets as required.[131] Moreover, while the extraditions may have ended the Defendants' direct involvement in the drug trade, they did little to dismantle paramilitary structures responsible for drug-trafficking and pervasive violence. In 2008, the U.S. government estimated that ten percent (or 3,000) of demobilized paramilitaries had rejoined criminal groups.[132] In June 2009, the United Nations Special Rapporteur on Extrajudicial Executions, Philip Alston, stated that killings by paramilitary groups "continue at a disturbingly high rate across the country…" with "an alarming level of impunity…."[133]

Corruption investigations in Colombia are also facing significant challenges and the United States should act to bolster Colombian corruption investigations. Lead investigators are threatened and criticized by government officials. Colombia's intelligence agency, *Departamento Administrativo de Seguridad* (DAS), is under investigation for systematically and illegally conducting surveillance of Supreme Court magistrates and prosecutors involved in *parapolítica* investigations.[134] President Uribe has made several statements questioning the impartiality of Supreme Court magistrates investigating these cases, going so far as to accuse them of aiding and abetting "terrorism."[135] In 2008, the Uribe administration proposed to strip the Supreme Court of jurisdiction to investigate sitting legislators, including cases involving collusion with paramilitary groups.[136]

As it pledged at the time of the May 2008 extraditions, the United States should support Colombia's accountability efforts by sharing information with Colombian authorities.[137] Reinforcing the efforts of Colombian law enforcement officials to combat drug trafficking and corruption promotes U.S. interests in eradicating narco-trafficking. To assist their Colombian counterparts, U.S. prosecutors should provide incentives to Defendants to reveal details about their crimes, organizational structure, weaponry, finances, and accomplices in government, military, and business sectors to Colombian law enforcement.[138] U.S. prosecutors are in the position to offer inducements including sentence reductions through plea deals,[139] the threat of criminal prosecutions for torture committed in Colombia,[140] and the offer of visas for threatened family members to relocate in the United States.

If the United States does not proactively take measures to incentivize cooperation, Colombian investigations will languish or fail and U.S. inaction will ultimately undermine the impact of the extraditions on paramilitary cartels. The DOJ has stated that "it has no position" on whether Defendants should respond to requests by Colombian authorities, effectively conceding that cooperation will not unduly burden U.S. prosecutions.[141] Therefore the United States should take a proactive posture and promote Defendants' cooperation with Colombia's accountability measures to further U.S. interests in dismantling paramilitary cartels.

U.S. prosecutors should take advantage of existing arrangements to incentivize Defendants' cooperation with accountability efforts. In several cases, Defendants are already providing assistance and information to U.S. authorities on drug prosecutions in exchange for sentence reductions.[142] As part of these plea agreements, U.S. prosecutors should also require Defendants to reveal details about paramilitary atrocities. Former AUC commanders are uniquely able to provide information critical to on-going human rights and corruption investigations. Information gathered from high-ranking commanders in the United States, especially disclosures about alliances with public officials, should be used to support efforts by Colombian authorities to dismantle paramilitary networks.

PROMOTING DEFENDANTS' COOPERATION ADVANCES THE HUMAN RIGHTS OF TRADE UNIONISTS

As part of its goal to secure a free trade agreement with Colombia, the United States has increased diplomatic pressure on its Latin American ally to "aggressively prosecute violence against trade unionists"[143] and increase protection for labor leaders and human rights defenders.[144] Colombia has the highest rate of trade unionist killings in the world.[145] Since 1986, more than 2,700 unionists have been killed; the majority by paramilitary groups who have stigmatized union activists as guerrilla sympathizers and viewed union activity as a threat to their dominance.[146] President Barack Obama concisely described the situation in 2008: "The history in Colombia right now is that labor leaders have been targeted for assassination on a fairly consistent basis and there have not been prosecutions."[147]

A recent increase in conviction rates for these cases is due in part to testimony provided by demobilized paramilitaries who have identified perpetrators and provided details about their role in murdering trade unionists.[148] Nevertheless, U.S. congressional representatives have urged the Colombian government to demonstrate greater and sustained progress. In a September 12, 2008 letter to President Uribe, U.S. Representative George Miller, Chairman of the Committee on Education and Labor, stated that "impunity will persist unless the Government of Colombia does more to investigate and prosecute the 'intellectual authors' who ordered, planned, or paid for the low-level assassin to perpetuate the killing [of trade unionists]."[149]

The current prosecutions against Colombian Defendants offer the United States a unique opportunity to break the cycle of impunity in cases of unionist murders. Intellectual authors of violence against unionists, including AUC leaders Rodrigo Tovar Pupo, Hebert Veloza García, and Salvatore Mancuso Gómez, are in U.S. custody.[150] Colombian investigations have revealed that paramilitary groups did not act alone but conspired with public officials, including the former director of Colombia's intelligence agency, to intimidate and murder trade unionists.[151] Defendants possess information about these networks and the identities of public officials involved. U.S. prosecutors are able to offer Defendants incentives, including the threat of additional prosecutions for human rights violations, to disclose information to Colombian law enforcement about violence against trade unionists and any government officials implicated in such crimes. Resolving these unsolved murders will promote accountability for violence against Colombian trade unionists, a primary concern blocking a free trade agreement between the United States and Colombia.

U.S. POLICY ON COOPERATION WOULD FURTHER COMPLIANCE WITH INTERNATIONAL LAW

On October 6, 2009, Lanny A. Breuer, the head of DOJ's Criminal Division, testified before the Senate Judiciary Committee that "[b]ringing the perpetrators of human rights and humanitarian law violations to justice is a mission of immense importance."[152] The significance of this mission derives from the United States' interests in signaling its commitment to rule of law and human rights, its treaty obligations and its moral obligation to victims.

U.S. policy toward extradited Defendants should be guided by these same considerations. In this instance, U.S. international obligations are informed by the international *duty to extradite or prosecute* perpetrators of gross violations of human rights.[153] For example, pursuant to the U.N. Convention Against Torture, which the U.S. has ratified, the State Party in whose territory an alleged torturer is found has a duty to either extradite that individual, or to "submit the case to its competent authorities for the purpose of prosecution."[154] This duty is also supported by U.S. domestic anti-torture legislation.[155]

In cases in which gross human rights violators are present in the jurisdiction of another State, the duty to extradite or prosecute implies a duty to cooperate among States to bring perpetrators to justice.[156] In the present situation, the duty to extradite or prosecute should be understood as the duty on the part of the United States to cooperate with pre-existing Colombian efforts to investigate and prosecute human rights violations.[157]

International law supports U.S. cooperation with Colombia because the U.S. has custody of individuals alleged to have committed serious violations against Colombian victims, including torture, extrajudicial killing, and forced disappearances. Consistent with international law, a U.S. policy of judicial cooperation should adopt the following priorities: (1) human rights prosecutions should take priority over other criminal prosecutions; (2) extraditions should not serve as a mechanism for facilitating or aiding impunity; (3) extraterritorial proceedings should not interfere with domestic human rights investigations or diminish the rights of victims; and (4) the United States and Colombia should establish an effective mechanism for judicial cooperation.[158] Multilateral treaties on extradition and transnational criminal cooperation ratified by both Colombia and the United States support these conclusions.[159]

Finally, the duty to investigate and prosecute gross violations of human rights, as well as the corresponding duty to cooperate, is buttressed by the international obligations to protect the rights of victims to learn the truth about the abuses that occurred,[160] and to provide victims access to justice and reparations for the violations they have suffered.[161] In his testimony before the Senate, Breuer noted that the Department of Justice has "played a leading role in seeking justice for the victims of human rights violations and war crimes" for "well over six decades."[162] The United States should honor this tradition by effectively cooperating with Colombian accountability efforts, in accordance with its international obligations.

Recommendations

The U.S. government has a special interest in dismantling the paramilitary networks that have terrorized Colombia for three decades. It has recognized the danger posed by paramilitary groups to Colombia's democracy and rule of law, and supported the investigation and prosecution of paramilitary members in Colombia. Yet more should be done *in the United States,* where paramilitary leaders are in custody, to promote rule of law in Colombia. In particular, the United States should

1. ***Create an effective and efficient procedure for mutual judicial cooperation.*** The United States should establish a procedure that provides timely, consistent, and reliable access by Colombian prosecutors, judges, and victims to extradited paramilitary commanders. In addition, this process should ensure that information obtained by U.S. law enforcement from extradited paramilitaries is shared with Colombian judicial officers. The United States should review current policy to identify the cause of delays in responding to requests for cooperation. New procedures should ensure that U.S. authorities share information with and respond to requests by Colombian authorities in a timely manner to minimize any impact of the extraditions on open investigations in Colombia. The United States should also explicitly agree to repatriate extradited leaders to Colombia once they complete their prison terms in the United States and to transfer seized assets to Colombia's Victims Reparation Fund.
2. ***Incentivize extradited paramilitary leaders to disclose details about their crimes and the identities of their accomplices in the military, government, and national and foreign businesses.*** The United States should actively encourage extradited leaders to testify about their crimes by conditioning sentence reductions or other benefits achieved through plea agreements on disclosure of details about their human rights crimes in Colombia. Prosecutors also could condition the provision of visas to relocate family members under threat in Colombia to the United States in exchange for Defendants' cooperation. The U.S. Department of Justice should reverse its current policy of taking "no position" on whether Defendants should cooperate with Colombian authorities.[163] U.S. foreign policy interests lie in helping Colombia succeed in dismantling paramilitary cartels, prosecuting those responsible for trade unionist murders, and removing corrupt politicians and military officers. DOJ should use this opportunity to reinforce Colombia's accountability measures through effective cooperation.
3. ***Initiate investigations for torture committed by extradited paramilitary leaders.*** The United States should hold extradited leaders accountable for all their crimes under federal law, including torture. The United States should play a leading role in seeking justice for victims of human rights violations and violations of humanitarian law by moving swiftly to initiate investigations and prosecutions for torture.[164] The United States also should leverage the possibility of long prison terms for torture to incentivize extradited paramilitaries to testify about these crimes.

APPENDIX

CHART OF EXTRADICTED DEFENDANTS[165]

(Defendants listed alphabetically by their first, last name)

Defendant & Case Name	Date of Extradition	Case Status
Jhon Eidelber **Cano** Correa, a/k/a "Flechas," or "Santiago" *USA v. Bustamante, et al.*, Case #: 2:02-cr-01188-JS (E.D. New York (Brooklyn)	September 22, 2006	Pleaded guilty on April 29, 2008. Information about current status of proceeding is unavailable.
Fredy **Castillo** Carrillo, a/k/a "Pinocho" *USA v. Giraldo-Serna, et al.*, Case #: 1:04-cr-00114-RBW-15 (District of Columbia (Washington, DC))	September 22, 2006	Information about current status of proceeding is unavailable.
Jaime Arturo **Gamez** Moreno, a/k/a "Jimmy" *USA v. Figueroa et. al.*, Case #: 1:02-cr-00940-RPP (S.D. New York)	September 1, 2008	Case records sealed.
Gerardo **Gelves** Castro, a/k/a "Diomedes" or "El Cantante" *(case sealed)* Case #: 07-cr-300 (District of Columbia (Washington, DC))	March 24, 2009	Case records sealed.
Nodier **Giraldo** Giraldo *USA v. Giraldo-Serna et al.*, Case #: 1:04-cr-00114-RBW-7 (District of Columbia (Washington, DC))	May 13, 2008	Information about current status of proceeding is unavailable.
Hernán **Giraldo** Serna, a/k/a "El Patrón" *USA v. Giraldo-Serna et al.*, Case #: 1:04-cr-00114-RBW-1 (District of Columbia (Washington, DC))	May 13, 2008	Information about current status of proceeding is unavailable.
Edwin Mauricio **Gómez** Luna *USA v. Giraldo-Serna et al.*, Case #: 1:04-cr-00114-RBW-11 (District of Columbia (Washington, DC))	May 13, 2008	Information about current status of proceeding is unavailable.
Huber Anibal **Gómez** Luna, a/k/a "El Mello Rico," "Hector," or "Repetido" *USA v. Giraldo-Serna, et al.*, Case #: 1:04-cr-00114-RBW-10 (District of Columbia (Washington, DC))	September 22, 2006	Information about current status of proceeding is unavailable.

CHART OF EXTRADICTED DEFENDANTS (CONT'D)

Defendant & Case Name	Date of Extradition	Case Status
Carlos Mario **Jiménez** Naranjo, a/k/a "Macaco" *USA v. Naranjo, et al.*, Case #: 1:05-CR-00235-RMC (District Court of Columbia (Washington, D.C.)) *USA v. Naranjo, et al.*, Case #: 8:02-cr-00482-JDW-EAJ-1 (Middle District of Florida (Tampa))	May 7, 2008	Information about current status of proceeding in Washington D.C. is unavailable. The Defendant's initial appearance in the Florida proceeding is scheduled on February 22, 2010.
Salvatore **Mancuso** Gómez *USA v. Castano-Gil, et al.*, Case #: 1:02-cr-00388-ESH-2 (District of Columbia (Washington, DC))	May 13, 2008	All hearings and conferences terminated on November 3, 2008.
Miguel Angel **Mejía** Muñera, a/k/a "El mellizo," "Pablo Arauca," or "El loco" *USA v. Mejia-Munera, et al.*, Case #: 1:00-cr-10171-WPD-1 (Southern District of Florida (Miami))	March 4, 2009	Case records sealed.
Diego Fernando **Murillo** Bejarano, a/k/a "Don Berna" *USA v. Murillo-Bejarano, et al.*, Case #: 1:03-cr-01188-RMB-1 (Southern District of New York (Foley Square))	May 13, 2008	Pleaded guilty June 17, 2008. Sentenced to 375 months on April 22, 2009.
Alvaro Antonio **Padilla** Melendez, a/k/a "El Topo" *USA v. Vengoechea-Mendez et al.*, Case #: 1:05-cr-00341-RMU (District of Columbia (Washington, DC))	February 22, 2007	Plea hearing took place on September 30, 2008. Information about current status of proceeding is unavailable.
Alvaro **Padilla** Redondo *USA v. Padilla-Redondo*, Case #: 8:04-cr-00282-SDM-TGW (Middle District of Florida (Tampa)) *USA v. Padilla-Redondo*, CASE #: 8:07-cr-00528-SDM-TGW-1 (Middle District of Florida (Tampa))	February 23, 2007	Pleaded guilty on May 28, 2008 in both proceedings and sentenced to 70 months (credited 48 months for time served) on September 28, 2008.

CHART OF EXTRADICTED DEFENDANTS (CONT'D)

Defendant & Case Name	Date of Extradition	Case Status
Guillermo **Pérez** Alzate, a/k/a "Pablo Sevillano" *USA v. Perez-Alzate et al.*, Case #: 8:02-cr-00482-JDW-EAJ-1 (Middle District of Florida (Tampa))	May 13, 2008	Pleaded guilty on October 27, 2008 and sentenced to 210 months on August 17, 2009.
Jhon Alexander **Posada** Vergara *USA v. Barros-Gomez, et al.*, Case #: 5:05-cr-00039-OC-10GRJ (Middle District Florida Florida (Ocala))	September 22, 2006	Pleaded guilty on January 9, 2007 and sentenced to 87 months imprisonment on August 14, 2007.
Norberto **Quiroga** Poveda, a/k/a "Cinco cinco," "55," "Beto" or "Beto Quiroga" (case name sealed) Case #: 07-cr-300 (District of Columbia (Washington, DC))	March 18, 2009	Case records sealed.
Hector Ignacio **Rodríguez** Acevedo a/k/a "Nacho Rodríguez" *USA v. Rodríguez-Acevedo*, Case #: 1:05cr20443-PCH-1 (Southern District Florida (Miami))	February 14, 2007	Pleaded guilty on March 27, 2007 and sentenced to 50 months on June 18, 2007. Released on March 09, 2009
Diego Alberto **Ruiz** Arroyave *USA v. Varela et al.*, Case #: 4:02-cr-00714-6 (Southern District of Texas (Houston))	May 13, 2008	Pleaded guilty October 6, 2008 and sentenced to 90 months on June 6, 2009.
Luis Carlos **Ropero** Diaz, a/k/a "Santos" *USA v. Medina et al.*, Case #: 1:06-cr-00232-RCL (District of Columbia (Washington, DC))	December 3, 2008	Pleaded guilty on November 30, 2009.
Juan Carlos **Sierra** Ramírez, a/k/a "El Tuso" *USA v. Castano-Gil et al.*, Case #: 1:02-cr-00388-ESH-3 (District of Columbia (Washington, DC))	May 13, 2008	All hearings and conferences terminated November 3, 2008.
José Gregorio **Terán** Vásquez, a/k/a "El Pipon"	November 20, 2008	No information available about proceeding.

CHART OF EXTRADICTED DEFENDANTS (CONT'D)

Defendant & Case Name	Date of Extradition	Case Status
Manuel Enrique **Torregrosa** Castro *USA v. Villarreal-Archila et al.*, Case #: 5:07-cr-00019-WTH-GRJ-2 (Middle District of Florida (Ocala))	May 13, 2008	Pleaded guilty on May 15, 2009. No information available about sentencing.
Rodrigo **Tovar** Pupo, a/k/a "Jorge 40" *USA v. Giraldo-Serna et al.*, Case #: 1:04-cr-00114-RBW-9 (District of Columbia (Washington, DC))	May 13, 2008	Information about current status of proceeding is unavailable.
Ramiro **Vanoy** Ramírez, a/k/a "Cuco Vanoy" *USA v. Bernal-Madrigal, et al.*, Case #: 0:99-cr-06153-KMM-24 (Southern District of Florida (Ft. Lauderdale))	May 13, 2008	Pleaded guilty on July 29, 2008 and sentenced to 293 months on October 9, 2008.
Eduardo Enrique **Vengoechea** Mola *USA v. Giraldo-Serna et al.*, Case #: 1:04-cr-00114-RBW-16 (District of Columbia (Washington, DC))	May 13, 2008	Information about current status of proceeding is unavailable.
Miguel **Villarreal** Archila a/k/a "Salomó," "El Flaco" *USA v. Villareal-Archila et al.*, Case #: 5:07-cr-00019-WTH-GRJ (Middle District of Florida (Ocala))	September 1, 2008	Pleaded guilty on June 19, 2009. Status conference scheduled for April 30, 2010.
Herbert **Veloza** García, a/k/a "Don Hernan," "Mono Veloza," "Ever Veloza-Garcia," "Hernan Hernandez," "Cara de Polla" or "HH" *USA v. Garcia*, Case #: 1:07-cr-00274-WHP-1 (Southern District of New York (Manhattan))	March 5, 2009	Status conference scheduled for January 29, 2010. According to government filing, parties are negotiating resolution of matter.
Francisco Javier **Zuluaga** Lindo, a/k/a "Gordo Lindo" *USA v. Bernal-Madrigal, et al.*, Case #: 0:99-cr-06153-KMM-24 (Southern District of Florida (Ft. Lauderdale))	May 13, 2008	Pleaded guilty on July 29, 2008 and sentenced to 262 months on October 9, 2008.

Notes

1 In 2001, the United States classified the AUC as a "narco-terrorist organization," and indicted several of its leaders. *See* U.S. Dep't of State, 2001 Report on Foreign Terrorist Organizations (2001). The U.S. Drug Enforcement Agency defines narco-terrorism as "a subset of terrorism, in which terrorist groups, or associated individuals, participate directly or indirectly in the cultivation, manufacture, transportation, or distribution of controlled substances and the monies derived from these activities. Further, narco-terrorism may be characterized by the participation of groups or associated individuals in taxing, providing security for, or otherwise aiding or abetting drug trafficking endeavors in an effort to further, or fund, terrorist activities." *Drugs, Money and Terror* (Apr. 24, 2002) (testimony of Asa Hutchinson, Adm'r of the Drug Enforcement Admin. before the House Int'l Relations Comm).

2 *See* Ambassador William Brownfield, Remarks at a Press Conference in Bogota (May 13, 2008) [hereinafter Brownfield Press Conference], *available at* http://bogota.usembassy.gov/pc_001_13052008.html.

3 Joseph Contreras, *War Without End*, Newsweek, May 21, 2001, http://www.newsweek.com/id/79457?tid=relatedcl; *see also* Gov't's Motion for Pretrial Detention at 3, United States v. Giraldo Serna et al, No. 04-00114 (D.C. May 15, 2008).

4 *'El Patrón', Hernán Giraldo Serna*, profile, Verdad Abierta, (Colom.), http://www.verdadabierta.com/victimarios/los-jefes/683-perfil-de-hernan-giraldo-serna-alias-el-patron (last visited Jan. 21, 2010).

5 *Fabio Luis Coley y Jorge Luis de la Rosa, Investigadores del CTI* [*Fabio Luis Coley and Jorge Luis de la Rosa, CTI Investigators*], El Tiempo (Colom.), July 9, 2007, *available at* http://www.eltiempo.com/archivo/documento/CMS-3630864.

6 *Acusan a Hernán Giraldo de Violar a 19 Niñas* [*Hernán Giraldo Accused of Raping 19 Girls*], Verdad Abierta, July 7, 2009, *available at* http://www.verdadabierta.com/justicia-y-paz/1403-acusan-a-hernan-giraldo-de-violar-a-19-ninas.

7 Press Release, Dep't of Justice, Colombian Paramilitary Leader Extradited to the United States to Face U.S. Drug Charges (May 7, 2008), http://miami.fbi.gov/dojpressrel/pressrel08/mm20080507a.htm; *see also* Government's Detention Memorandum at 2, United States v. Jimenez-Naranjo, No. 05-00235 (D.C. May 13, 2008).

8 *La Paradoja de Macaco* [*The Paradox of Macaco*], Semana (Colom.), May 10, 2008, *available at* http://www.semana.com/noticias-nacion/paradoja-macaco/111691.aspx; *see also* Roberto Llanos Rodado, *Mandos medios de las Autodefensas estremecieron por la crudeza de sus testimonios* [*Shaken by the Harshness of Testimonies by Mid-Ranked Commanders*], El Tiempo, Dec. 12, 2007, *available at* http://www.eltiempo.com/archivo/documento/CMS-3855378.

9 *La Paradoja de Macaco, supra* note 8.

10 *El Nuevo Ventilador de los Paras* [*The New Paramilitary Confessor*], Semana, Mar. 10, 2008, *available at* http://www.semana.com/noticias-on-line/nuevo-ventilador-paras/110124.aspx.

11 Gov't's Motion for Pretrial Detention & Proposed Order at 3, United States v. Castaño-Gil, No. 03-00388 (D.C. May 20, 2008).

12 *'Mancuso' Supera 500 Muertos En Confesiones* [*'Mancuso' Exceeds 500 Dead in Confessions*], El Tiempo, Dec. 20, 2007, *available at* http://www.eltiempo.com/archivo/documento/MAM-2773107; *see also* Indictment of Salvatore Mancuso Gómez, May 20, 2008 (Fiscalía General Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario) [Attorney General's Office National Unit of Human Rights and International Humanitarian Law] (No. 784 C UDH-DIH) (Colom.) (on file with authors) (accusing Defendant of homicide, aggravated kidnapping, conspiracy to commit a crime, and terrorism in the case of the Massacre of Mapiripán); Case of the Mapiripán Massacre v. Colombia, Inter-Am. Ct. H.R. (ser. C) No. 162 (Sept. 15, 2005).

13 *See* Comisión Nacional de Reparación y Reconciliación [Nat'l. Comm'n. of Reparation & Reconciliation] [hereinafter CNRR] (Colom.), Así va la Ley de Justicia y Paz [Progress of the Justice and Peace Law] (2009), http://www.cnrr.org.co/bcnrr/numero10/CNRR_boletin10justiciaypaz.pdf.

14 Indictment at 3, No. 03-01188, United States v. Murillo-Bejarano (S.D.N.Y. July 12, 2004).

15 *See, e.g.*, Así va la Ley de Justicia y Paz, *supra* note 13, at 1; *'Don Berna' Volvió A Señalar a Montoya y Gallego* [*'Don Berna' Once More Implicates Montoya and Gallego*], Verdad Abierta, June 23, 2009, http://www.verdadabierta.com/justicia-y-paz/extraditados/1370-don-berna-volvio-a-senalar-a-montoya-y-gallego.

16 *'Don Berna', Diego Fernando Murillo Bejarano*, profile, Verdad Abierta, http://www.verdadabierta.com/victimarios/los-jefes/715-perfil-diego-fernando-murillo-bejarano-alias-don-berna (last visited Jan. 21, 2010).

17 Sentence of Diego Fernando Murillo Bejarano, Feb. 6, 2008 (Juzgado Tercero Penal de Circuito Especializado de Medellín) [Third Criminal Court of the Specialized Circuit of Medellín] (No. 2006-0241 (Fiscalía 2302)) (Colom.) (on file with authors) (sentencing the Defendant to 26 years for aggravated homicide, forced disappearance, forced displacement, and conspiracy to commit a crime); *see also* Instituto Popular de Capacitación, *El Terror, Mecanismo de Dominación de 'Don Berna'* [*Terror, 'Don Berna's' Mechanism of Domination*], Semana, July 16, 2007, *available at* http://www.semana.com/wf_InfoArticulo.aspx?idArt=105030.

18 Juan Carlos Garzón, Fundación Seguridad & Democracia (Colom.), Desmovilización del Bloque

Libertadores del Sur del Bloque Central Bolívar [Demobilization of the Southern Liberators Bloc of the Bolívar Central Boc] 1 (2005), *available at* http://www.seguridadydemocracia.org/docs/pdf/conflictoArmado/parasBolívar.pdf.

19 *Alias 'Pablo Sevillano' reconoció 120 asesinatos* [Alias *'Pablo Sevillano' Recognizes 120 Deaths*], El Tiempo, Jan. 22, 2007, *available at* http://www.eltiempo.com/archivo/documento/CMS-3929237.

20 *"Pablo Sevillano," Guillermo Pérez Alzate*, profile, Verdad Abierta, http://www.verdadabierta.com/victimarios/los-jefes/665-perfil-guillermo-perez-alzate-alias-pablo-sevillano (last visited Jan. 21, 2010).

21 *Id.*

22 Gov't's Motion for Pretrial Detention at 4, United States v. Giraldo Serna et al, No. 04-00114 (D.C. May, 15, 2008); *see also* Inter-Am. Comm'n on Human Rights, Report on Implementation of Justice and Peace Law 2007 (estimating that Rodrigo Tovar had 4500 troops under his command), *available at* https://www.cidh.oas.org/countryrep/ColombiaAUC2007eng/Colombiadesmovilizacion2007.eng.htm.

23 Roberto Llanos Rodado, *'40' Solo Recordó a 7 de 768 Desaparecidos* [*'40' Only Remembered 7 of 768 Dissappearances*], El Tiempo, July 7, 2007, *available at* http://www.eltiempo.com/archivo/documento/MAM-2565769.

24 *'Jorge 40', Rodrigo Tovar Pupo*, profile, Verdad Abierta, http://www.verdadabierta.com/victimarios/los-jefes/691-perfil-rodrigo-tovar-pupo-alias-jorge-40 (last visited Jan. 21, 2010).

25 *El Computador de 'Jorge 40'* [*'Jorge 40's' Computer*] Semana, Sept. 2, 2006, *available at* http://www.semana.com/noticias-nacion/computador-jorge-40/96785.aspx.

26 Press Release, Dep't of Justice, Former Colombian Paramilitary Leaders Sentenced (Oct. 9, 2008), http://www.justice.gov/usao/fls/PressReleases/081009-02.html; *see also* International Crisis Group, Colombia: Towards Justice and Peace? 23 (2006).

27 *Imputan 33 cargos a 'Cuco Vanoy' en EEUU* [*Cuco Vanoy Indicted on 33 charges in the United States*], Verdad Abierta, May 20, 2009, http://www.verdadabierta.com/parapolitica/1263-imputan-33-cargos-a-cuco-vanoy-en-eeuu; Letter from Carlos Alberto Marín, Deputy Director, Colombian Commission of Jurists, to Michael Mukasey, U.S. Attorney General (Oct. 7, 2008) (citing to report that Vanoy had confessed to 235 homicides) (on file with authors).

28 *"Cuco Vanoy," Ramiro Vanoy*, profile, Verdad Abierta, http://www.verdadabierta.com/component/content/article/36-jefes/688-perfil-de-ramiro-vanoy-alias-cuco-vanoy (last visited Jan. 21, 2010).

29 *'H.H', José Éver Veloza*, profile, Verdad Abierta, http://www.verdadabierta.com/victimarios/los-jefes/658-perfil-jose-ever-veloza-alias-hh (last visited Jan. 21, 2010).

30 Chris Kraul, *Colombia Hands Ex-paramilitary Leader Over to U.S.*, Los Angeles Times, Mar. 06, 2009, *available at* http://articles.latimes.com/2009/mar/06/world/fg-colombia-extradite6.

31 *See* 2001 Report on Foreign Terrorist Organizations, *supra* note 1; *Drugs, Money and Terror, supra* note 1.

32 *See* Brownfield Press Conference, *supra* note 2.

33 Colombia has extradited eight AUC bloc commanders and the majority of the AUC's ruling council to the U.S., including Hernán Giraldo Serna, Carlos Jiménez Naranjo, Salvatore Mancuso Gómez, Diego Murillo Bejarano, Guillermo Pérez Alzate, Rodrigo Tovar Pupo, Ramiro Vanoy Ramirez, and Hebert Veloza García.

34 Beginning in 2006, Colombia began extraditing former AUC members to the United States to face charges of drug trafficking, money laundering, and terrorism. *See* Appendix for list of extradited AUC members.

35 *See* U.N. Econ. & Soc. Council [ECOSOC], Commission on Human Rights, High Commissioner for Human Rights, *Report of the United Nations High Commissioner for Human Rights on the Human Rights Situation in Colombia*, ¶ 76, U.N. Doc. E/CN.4/2002/17 (Feb. 28, 2002) (based on information from the Colombian government estimating that in 2001 paramilitaries committed 89 massacres in which 527 people lost their lives). The Justice and Peace Unit of the Prosecutor General is investigating 246,000 crimes attributable to paramilitary groups. *Ex paras confiesan 21.000 homicidios* [*Ex-Paramilitaries Confess to 21,000 Homicides*], Agence France-Presse, Sept. 14, 2009. *See also* Tipos Penales Representativos en Hechos Enunciados [Representative Types of Crimes in Revealed Facts], Tipos Penales Representativos en Hechos Confesados [Representative Types of Crimes in Confessed Facts], CNRR, http://www.cnrr.org.co/new09/vjr/hechos2.html (last visited Jan 15, 2010).

36 Press release, Dep't of Justice, Colombian Terrorists Arrested in Cocaine-for-Weapons Deal (Nov. 6, 2002), *available at* http://www.justice.gov/dea/pubs/pressrel/pr110602.html (the AUC "is considered by international human rights groups and the U.S. Department of State to be responsible for 70% of the human rights violations in Colombia").

37 Brownfield Press Conference, *supra* note 2.

38 *See* Justice and Peace Law 975, art. 10, 11, Diario Oficial No. 45.980 (2005), *available at* http://www.fiscalia.gov.co/justiciapaz/Documentos/LEY_975_concordada.pdf (last visited Jan. 23, 2010).

39 *See* Corporación Nuevo Arco Iris [New Rainbow Corp.] (Colom.), Parapolítica: La ruta de la expansión paramilitar y los acuerdos politicos [Parapolitics: The Route of Paramilitary Expansion and Political Deals] (2d ed. 2007) for a discussion of the AUC's alliances with politicians at a regional level, *available at* http://www.nuevoarcoiris.org.co/sac/files/libros/Libro_parapolitica.pdf; *see also* Human Rights Watch, Breaking the Grip? Obstacles to Justice for Paramilitary Mafias in Colombia 8 (2008) [hereinafter Breaking the Grip].

40 The International Human Rights Law Clinic (IHRLC) represents the family members of several victims disappeared and murdered by extradited paramilitary leaders in connection with Defendants' drug conspiracies. In cooperation with co-counsel, Wilson Sonsini Goodrich & Rosati, IHRLC has petitioned the Department of Justice (DOJ) to recognize Colombian victims' statutory rights as crime victims under the U.S. Crime Victims' Rights Act. The DOJ has refused victims' participation, arguing that Colombian victims of paramilitary violence are not direct and proximate victims of extradited paramilitaries' drug conspiracies. Gov't's Memorandum of Law in Opposition to Ms. Alba Ines Rendon Galvis's Motion Pursuant to the Crime Victims Rights Act at 7, United States v. Diego Fernando Murillo Bejarano, No. 03-01188 (S.D.N.Y. Feb. 27, 2009) [hereinafter Gov't's Memorandum of Law]; Letter from Kenneth A. Blanco, Deputy Assistant Attorney General, Dep't of Justice, Criminal Division, to Roxanna Altholz, Assoc. Director, Int'l Human Rights Clinic, and Almudena Bernabeu, Int'l Attorney, Center for Justice & Accountability (Dec. 19, 2009) (on file with authors).

41 *See* Appendix. The exact number and content of plea deals is unknown as many Defendants' information has been taken out of the public domain. However, available plea deals do not incentivize Defendants' cooperation with Colombia's accountability efforts. *See, e.g.*, Plea Agreement (Ramiro Vanoy Ramirez), United States v. Bernal-Madrigal, et al, No.99-06153 (S.D.F.L. July 29, 2008); Plea Agreement (Javier Zuluaga Lindo), United States v. Bernal-Madrigal, et al, No.99-06153 (S.D.F.L. July 29, 2008); Plea Agreement (Manuel Enrique Torregrosa Castro), United States v. Villarreal Archila et al., No. 07-00019 (M.D.F.L. May 15, 2009); Plea Agreement (Miguel Villarreal Archila), United States v. Villarreal-Archila et al, No. 07-00019 (M.D.F.L. May 18, 2009); Juan A. Lozano, *Colombian Paramilitary Leader Sentenced in Texas*, Associated Press, June 2, 2009, http://abcnews.go.com/US/wireStory?id=7738293 (last visited Jan. 15, 2010).

42 *See* Appendix.

43 *See* Appendix and *infra* text accompanying note 108.

44 *See supra* text accompanying note 40.

45 According to a 2009 report by a Colombian human rights organization, only five paramilitary leaders remain in Colombia, including Luís Eduardo Cifuentes, Raúl Hasbún Mendoza, Ramón Isaza Arango, Iván Laverde Zapata, and Freddy Rendón Herrera. Corporación Colectivo de Abogados "José Alvear Restrepo" [Lawyers Collective Corp. "José Alvear Restrepo"] (Colom.) Obstáculos a la Aplicación de Justicia [Obstacles to the Application of Justice] 41 (2009) [hereinafter Obstáculos a la Aplicación de Justicia], http://www.colectivodeabogados.org/IMG/pdf/obstaculos1oct2009.pdf. According to the U.S. State Department, eighteen paramilitary leaders remained in Colombian custody as of May 31, 2008. U.S. State Dep't., Memorandum of Justification Concerning Human Rights Conditions with Respect to Assistance for the Colombian Armed Forces 37 (n.d.), *available at* http://justf.org/files/primarydocs/090908cert.pdf.

46 Clare Ribando Seelke & June S. Beittel, Congressional Research Service, Colombia: Issues for Congress 6 (Jan. 12, 2009), *available at* http://fpc.state.gov/documents/organization/116762.pdf.

47 *See* Bureau of Democracy, Human Rights, and Labor, U.S. State Dep't, Country Reports on Human Rights Practices, Colombia (2002), http://www.state.gov/g/drl/rls/hrrpt/2001/wha/8326.htm (stating that "[t]hroughout the country, paramilitary groups killed, tortured, and threatened civilians suspected of sympathizing with guerrillas in an orchestrated campaign to terrorize them into fleeing their homes, to deprive guerrillas of civilian support and allow paramilitary forces to challenge the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN) for control of narcotics cultivations and strategically important territories.").

48 Human Rights Watch, The Ties That Bind: Colombia and Military-Paramilitary Links Vol. 12, No. 1 (B) (Feb. 2000), *available at* http://www.hrw.org/legacy/reports/2000/colombia/#SUMMARY%20AND%20RECOMMENDATIONS.

49 *See, e.g.*, Case of the Ituango Massacres v. Colombia, Inter-Am. Ct. H.R. (ser. C) No. 148 (July 1, 2006); Case of the 19 Tradesmen v. Colombia, Inter-Am. Ct. H.R. (ser. C) No. 109 (July 5, 2004); Case of the Mapiripán Massacre v. Colombia, Inter-Am. Ct. H.R. (ser. C) No. 134 (Sept. 15, 2005); Case of the Rochela Massacre v. Colombia, Inter-Am. Ct. H.R. (ser. C) No. 163 (May 11, 2007).

50 La ruta de la expansión paramilitar y los acuerdos politicos, *supra* note 39.

51 *Habla Vicente Castaño*, Semana, June 5, 2005, *available at* http://www.semana.com/noticias-portada/habla-vicente-castano/87628.aspx. *See also* Enrique Rivas G., *Salvatore Mancuso dice que "Lo ideal es crear una guardia nacional"* [*Salvatore Mancuso says, "The Ideal is to Create a National Guard"*], El Espectador (Colom.), Aug. 7, 2005, *available at* http://www.derechos.org/nizkor/colombia/doc/salvatore3.html.

52 For example, in 2007, Chiquita Brands pleaded guilty in U.S. court to providing $1.7 million in payments to the AUC. Press Release, Dep't of Justice, Chiquita Brands International Pleads Guilty to Making Payments to a Designated Terrorist Organization And Agrees to Pay $25 Million Fine (Mar. 19, 2007), http://www.justice.gov/opa/pr/2007/March/07_nsd_161.html. The Organization of American

States has accused the company of using its docks to smuggle arms for paramilitary groups. Org. of Am. States, *Report of the General Secretariat of the Organization of American States on the Diversion of Nicaraguan Arms to the United Defense Forces of Colombia*, OEA/Ser.G/CP/doc. 3687/0329 (Jan. 6, 2003), http://www.oas.org/oaspage/ni-coarmas/ni-coenglish3687.htm; *See also* Steve Kroft, *The Price of Bananas: How Colombian Paramilitaries Landed a U.S. Corporation in Hot Water*, CBS 60 MINUTES, Aug. 9, 2009, http://www.cbsnews.com/stories/2008/05/08/60minutes/main4080920.shtml?tag=contentMain;contentBody. Paramilitaries have implicated dozens of domestic businesses. See, e.g., Isis Beleño, *Explosivas Declaraciones del Sobrino de Hernán Giraldo* [*Explosive Statements from Hernán Giraldo's Nephew*], Int'l Peace Observatory, June 16, 2007, http://www.peaceobservatory.org/es/7992/explosivas-declaraciones-del-sobrino-de-hernan-giraldo.

53 Attorney General John Ashcroft, AUC Indictment Press Conference (Sept. 24, 2002), http://www.justice.gov/archive/ag/speeches/2002/092402aucindictmentpressconference.htm.

54 Acuerdo de Santa Fe de Ralito para Contribuir a la Paz de Colombia [Santa Fe de Ralito Agreement to Contribute to Peace in Colombia] (Colom.) (July 15, 2003), http://www.altocomisionadoparalapaz.gov.co/web/acuerdos/jul_15_03.htm.

55 Justice and Peace Law 975, arts. 10, 11, Diario Oficial No. 45.980 (2005), *available at* http://www.fiscalia.gov.co/justiciapaz/Documentos/LEY_975_concordada.pdf (last visited Jan. 13, 2010).

56 *Id.* at art. 29.

57 *See* Proceso de Paz con las Autodefensas [Peace Process with the Self-Defense [Forces]], http://www.altocomisionadoparalapaz.gov.co/web/g_autodefensa/dialogos.htm (last visited Jan. 17, 2010).

58 *See* Postulados a la Ley 975/05 [Applicants to the Law 975] (2005), http://www.fiscalia.gov.co/justiciapaz/Documentos/Postulados975.pdf (last visited Jan. 17, 2010).

59 Victims have directly questioned Defendants during the confession sessions, often requesting information about the fate or the location of the remains of a loved one. *See, e.g., Víctimas y verdugos cara a cara vía satellite* [*Victims and Executioners Face to Face Via Satellite*], SEMANA, July 28, 2008, *available at* http://www.semana.com/noticias-online/victimas-verdugos-cara-cara-via-satelite/113997.aspx.

60 *See* CNRR-Versiones Libres Programadas [CNRR-Planned Confessions], http://www.cnrr.org.co/new09/vjr/veresta.html (last visited Jan. 14, 2010).

61 Information about the status of each extradited paramilitary in the Justice and Peace process is available at a search engine located on the website of Colombia's Attorney General, http://www.fiscalia.gov.co/justiciapaz/Versiones.asp (last visited Jan. 17, 2010).

62 Paramilitaries are responsible for the vast majority of the 70,000 killings of civilians since the 1980s and millions of forced displacements. *Colombian Terrorists Arrested in Cocaine-for-Weapons Deal*, *supra* note 36. Yet according to the Colombian government, paramilitaries have recounted details of less than a third of these murders. *See* ASÍ VA LA LEY DE JUSTICIA Y PAZ, *supra* note 13, at 1. According to NGO reports, only 300 AUC members have provided substantive information about paramilitary structure and crimes through the Justice and Peace process. BREAKING THE GRIP, *supra* note 39, at 34. Nevertheless, statements made by former paramilitaries in the Justice and Peace process have implicated 140 members of the armed forces in criminal activities. *Colombia's paramilitaries: Militias march again*, THE ECONOMIST, Oct. 31, 2009, at 3, *available at* http://www.economist.com/world/americas/displaystory.cfm?story_id=14744897. Their testimonies have led to the recuperation of the remains of 2,164 victims. ORGANIZATION OF AMERICAN STATES (O.A.S.), DECIMO TERCER INFORME TRIMESTRAL DEL SECRETARIO GENERAL AL CONSEJO PERMANENTE SOBRE LA MISION DE APOYO AL PROCESO DE PAZ EN COLOMBIA [THIRTEENTH TRIMESTER REPORT OF THE SECRETARY GENERAL OF THE PERMANENT COUNCIL ON THE SUPPORT MISSION TO THE PEACE PROCESS IN COLOMBIA] 7, (Oct. 22, 2009), *available at* http://www.cnrr.visiondirecta.com/09e/IMG/pdf/informeMAPP13.pdf.

63 *See* the stages of the Justice and Peace process, Justice and Peace Law 975, Diario Oficial No. 45.980 (2005), *available at* http://www.fiscalia.gov.co/justiciapaz/Documentos/LEY_975_concordada.pdf (last visited Jan. 23, 2010). According to Article 17 of Law 975, the Justice and Peace Law requires voluntary testimony by defendants, questioning by prosecutors of the defendant, and the defendant's commitment to forfeit asset for victims' reparations. *Id.* at art. 17. Prosecutors then issue a factual indictment to which the defendant must plead guilty in order to qualify for benefits under the Justice and Peace Law. *Id.* at arts. 18 & 19. The Justice and Peace court then will assess reparation claims submitted by victims and whether the defendant has satisfied the requirements of Justice and Peace and is eligible for an alternate sentence, i.e. a prison term of 5 to 8 years. *Id.* at art. 29.

64 Salvatore Mancuso Gómez, Power Point Presentation during Justice and Peace Testimony (2007), *available at* http://www.cipcol.org/?p=338 (last visited Jan 17, 2010).

65 BREAKING THE GRIP, *supra* note 39, at 37-39.

66 *See* CONSTITUCIÓN POLITICA DE COLOMBIA 1991 art. 235.3 (amended by Decree 1500, 2002).

67 *See* OBSTÁCULOS A LA APLICACIÓN DE JUSTICIA, *supra* note 45.

68 Complaint from Clara López Obregón, to Luis Camilo Osorio, Attorney General of Colombia (June 9, 2005), http://www.claralopez.net/Claralopez/Columnas/nota1.htm.

69 *See Fue Mancuso y no De la Espriella quien reveló el*

Pacto de Ralito [*It Was Mancuso and Not De la Espriella Who Revealed the Pact of Ralito*], El Espectador, Dec. 17, 2008, *available at* http://www.elespectador.com/impreso/judicial/articuloimpreso99941-fue-mancuso-y-no-de-espriella-quien-revelo-el-pacto-de-ralito; *Texto original del "Acuerdo de Ralito"* [*Original Text of "Ralito Accord"*], El País (Colom.), Jan. 19, 2007, *available at* http://www.derechos.org/nizkor/corru/doc/ralito1.html; José Antonio Sánchez and Carlos Camacho Marín, *Así Se 'Tejió' el Pacto Secreto del 2001 entre Políticos y 'Paras', en Santa Fe Ralito* [How They Wove the Secret Pact of 2001 Between Politicians and Paramilitaries in Santa Fe Ralito], El Tiempo, Jan. 20, 2007, *available at* http://www.derechos.org/nizkor/colombia/doc/paz/ralito3.html; *El Acuerdo de Ralito fue un pacto con el diablo* [*The Ralito Accord Was a Pact With the Devil*], Semana, Jan. 21, 2007, http://www.derechos.org/nizkor/corru/doc/ralito.html.

70 *See* list of Members of Congress being investigated, according to party affiliation, www.verdadabierta.com (search "Congresistas elegidos en el 2006 procesados por parapolítica") Apr. 1, 2009.

71 Obstáculos a la Aplicación de Justicia, *supra* note 45, at 12-14.

72 Human Rights Watch Comments to the Office of the U.S. Trade Representative Concerning the U.S.-Colombia Free Trade Agreement (Sept. 15, 2009) [hereinafter Human Rights Watch Comments] http://www.hrw.org/en/news/2009/09/15/human-rights-watch-comments-office-us-trade-representative-concerning-us-colombia-fr#_ftnref14; Obstáculos a la Aplicación de Justicia, *supra* note 45, at 14. For example, Mario Uribe, President Uribe's second cousin and close ally, was arrested in 2008 for collusion with paramilitaries. June S. Beittel, Congressional Research Service, Colombia: Issues for Congress 13 (Nov. 13, 2009), *available at* http://assets.opencrs.com/rpts/RL32250_20091113.pdf; *see also* Juan Forero, *Colombian Senator: Death Squads Met At Uribe's Ranch,* Apr. 18, 2007, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2007/04/17/AR2007041702007.html.

73 Patrick Markey, *Colombia Probes Vice President over Militia Ties,* Reuters, Mar. 19, 2009, http://www.reuters.com/article/idUSTRE59I4TO20091019.

74 Salvatore Mancuso has provided information regarding AUC involvement in Uribe's 2002 election. *Debate celebrado el 17 abr 07 en el Senado de la República de Colombia sobre el paramilitarismo en Antioquia* [*Debate on April 17 '07 in the Senate of the Republic of Colombia Regarding Paramilitarism in Antioquia*], Radio Nizkor (Colom.), Apr. 26, 2007, *available at* http://www.radionizkor.org/colombia/index.html#debate2; *Fiscal Dice que No Había Razones para Extraditar a Jefes Paramilitares* [*Prosecutor Says There Were Not Reasons to Extradite Paramilitary Leaders*], Verdad Abierta, May 29, 2009, http://www.verdadabierta.com/justicia-y-paz/extraditados/1300-fiscal-dice-que-no-habia-razones-para-extraditar-a-jefes-paramilitares; *'Don Berna' Asegura que AUC Apoyó a Campaña de Uribe en 2001* [*'Don Berna' Affirms that the AUC Supported Uribe's 2001 Campaign*] Semana, Apr. 22, 2009, *available at* http://www.semana.com/noticias-conflicto-armado/don-berna-asegura-auc-apoyo-campana-uribe-2001/123142.aspx; *'Conmigo extraditaron la verdad': Salvatore Mancuso en Entrevista Exclusiva* [*'With Me They Extradited the Truth': Exclusive Interview with Salvatore Mancuso*], Cambio (Colom.), May 28, 2009, *available at* http://www.cambio.com.co/portadacambio/830/ARTICULO-WEB-NOTA_INTERIOR_CAMBIO-5289247.html.

75 *See El Computador de 'Jorge 40' Puede Ser el Inicio de Un Nuevo Proceso 8.000* [*'Jorge 40's Computer Could Be the Start of a New Process 8,000*], Semana, Oct. 10, 2006, *available at* http://www.semana.com/wf_InfoArticulo.aspx?idArt=97456; Obstáculos a la Aplicación de Justicia, *supra* note 45. Hernán Giraldo Serna, Salvatore Mancuso Gómez, Diego Murillo Bejarano, Rodrigo Pérez Alzate, Juan Sierra Ramírez, Rodrigo Tovar Pupo, and Hebert Veloza García have all provided testimony in the parapolitics investigation as to their alliances with Colombian political figures. Obstáculos a la Aplicación de Justicia, *supra* note 45, at Appendix II.

76 *See id.* at Appendix II 16-17.

77 *See id.* at Appendix II 16, 27.

78 *See, e.g.,* Sentence of Diego Fernando Murillo Bejarano, Feb. 6, 2008 (Juzgado Tercero Penal de Circuito Especializado de Medellín) [Third Criminal Court of the Specialized Circuit of Medellín] (No. 2006-0241 (Fiscalía 2302)) (Colom.) (on file with authors) (sentencing Defendant to 26 years for aggravated homicide, forced disappearance, forced displacement, and conspiracy to commit a crime); Conviction of Hernán Geraldo Serna, Jan. 21, 2009 (Juzgado Penal de Circuito Especializado de Santa Marta) [Criminal Court of the Specialized Circuit of Santa Marta] (RAD:47001-3107-001-2007-00068) (Colom.) (on file with authors) (sentencing Defendant to 38.5 years for forced disappearance); Indictment of Salvatore Mancuso Gómez, May 20, 2008 (Fiscalía General Unidad Nacional de Derechos Humanos y Derecho Internacional Humanitario) [Attorney General's Office National Unit of Human Rights and International Humanitarian Law] (No. 784 C UDH-DIH) (Colom.) (on file with authors) (accusing Defendant of homicide, aggravated kidnapping, conspiracy to commit a crime, and terrorism).

79 *See* Fiscalía General de la Nación [Attorney General of the Nation], Informe Rendición de Cuentas 2008-2009 [Accountability Report 2008-2009], 77-80 (2009) (Colom.) *available at* http://fgn.fiscalia.gov.co:8080/Fiscalia/archivos/RendiciondeCuenta/informe_rendicion_de_cuentas.pdf.

80 *Id.*

81 Only Salvatore Mancuso Gómez, Miguel Mejia Munera, Diego Murillo Bejarano, Guillermo Pérez-Alzate, and Ramiro Vanoy Ramirez participated in confession sessions in accordance with the Justice and Peace process after their extradition. The schedule of testimonies of extradited paramilitary leaders in the Justice and Peace process is available at a searchable database *available at* http://www.fiscalia.gov.co/justiciapaz/Versiones.asp (last visited Jan. 29, 2009).

82 http://www.fiscalia.gov.co/justiciapaz/DetalleVersion.asp?ce=6892624 (last visited Jan. 21, 2010).

83 *See, e.g., Homicidios selectivos en Córdoba Fueron la Mayoría de los Casos Imputados a Mancuso* [*Selective Homicides in Córdoba were the Majority of the Cases Attributed to Mancuso*], June 24, 2009, CNRR, http://www.cnrr.visiondirecta.com/09e/spip.php?article1665&var_recherche=mancuso; *Los Guardados de Mancuso* [*Mancuso's Hidden Cards*], Verdad Abierta, Nov. 22, 2008, http://verdadabierta.com/justicia-y-paz/versiones/47-extraditados/563-los-guardados-de-mancuso.

84 Letter from Salvatore Mancuso Gómez, former AUC commander, to Mario Iguaran, Attorney General et al. (Sept. 30, 2009) [hereinafter Letter from Mancuso Gómez] http://lapazencolombia.blogspot.com/2009/09/carta-abierta-de-salvatore-mancuso.html.

85 *Id.*; Letter from Diego Fernando Murillo Bejarano, former AUC commander, to Magistrates, Colombian Supreme Court (Sept. 17, 2009) [hereinafter Letter from Murillo Bejarano] http://static2.elespectador.com/files/7260e93dc4630ab1b55729b676e36e18.doc.

86 For example, multiple hearings involving Defendants Salvatore Mancuso and Rodrigo Tovar Pupo were cancelled or delayed due to logistical difficulties or by U.S. officials. *See* Gustavo Gallón G. & Yukyan Lam, Colom. Comm'n of Jurists (Colom.), Actualización sobre la situación de los jefes paramilitares extraditados de Colombia a Estados Unidos [Update on the Situation of Paramilitary Leaders Extradited from Colombia to the United States] 4 (2009) [hereinafter Actualización sobre la situación de los jefes paramilitares]. *See also Solo Tres Jefes 'Paras' Han Vuelto A Responder ante Justicia y Paz Un Año Después de Su Extradición* [*Only Three Paramilitary Leaders Have Returned to Appear Before Justice and Peace a Year After Their Extradition*], El Tiempo, May 5, 2009, [hereinafter *Solo Tres Jefes 'Paras'*] *available at* http://www.eltiempo.com/colombia/justicia/solo-tres-jefes-paras-han-vuelto-a-responder-ante-justicia-y-paz-un-ano-despues-de-su-extradicion_5133135-1. *See also Ordenan libertad de Karelly Lara* [*Release of Karelly Lara Ordered*], El Espectador, Mar. 12, 2009, *available at* http://www.elespectador.com/noticias/judicial/articulo126768-ordenan-libertad-de-karelly-lara.

87 During a November 2008 deposition from the United States, Salvatore Mancuso was unable to answer several questions posed by victims for lack of access to his subordinates. *See Solo Tres Jefes 'Paras', supra* note 86. *See also* Juan Forero, *As Colombian War Crimes Suspects Sit in U.S. Jails, Victims' Kin Protest,* Wash. Post, Oct. 4, 2009, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2009/10/03/AR2009100303001.html. The defense for Salvatore Mancuso also complained that U.S. officials confiscated documents Mancuso had prepared for a scheduled hearing, which resulted in the cancellation of one of the hearings. Actualización sobre la situación de los jefes paramilitares, *supra* note 86, at 4-5.

88 Letter from Mancuso Gómez, *supra* note 84; Letter from Murillo Bejarano, *supra* note 85.

89 Actualización sobre la situación de los jefes paramilitares, *supra* note 86, at 5.

90 *See 'Cuco Vanoy' No Colaborará Más con la Justicia en Colombia* [*'Cuco Vanoy' Will No Longer Collaborate with Justice in Colombia*], Semana, Oct. 17, 2008, *available at* http://www.semana.com/noticias-justicia/cuco-vanoy-no-colaborara-justicia-colombia/116697.aspx; *'Oficina de Envigado' Secuestró a 4 Hijos de 'Cuco' Vanoy para Presionar Entrega de Caletas y Tierra* [*'Envigado Office' Kidnapped 4 Sons of 'Cuco' Vanoy in Order to Pressure the Handover of Cash and Land*], El Tiempo, Jan. 17. 2009, *available at* http://www.eltiempo.com/archivo/documento/CMS-4759874; *Noticias breves de justicia: Asesinan a otro familiar del ex 'para' 'Cuco' Vanoy* [*Justice Briefs: Additional Family Member of Ex-paramilitary "Cuco" Vanoy Assassinated*], El Tiempo, Jan. 27, 2009, *available at* http://www.eltiempo.com/colombia/justicia/noticias-breves-de-justicia_4778034-1.

91 *See* http://www.fiscalia.gov.co/justiciapaz/DetalleVersion.asp?ce=16627309 (last visited Jan. 20, 2010). Miguel Mejía Muñera has criticized the effectiveness of Justice and Peace process since his extradition. Letter from Miguel Mejía Muñera to the International Community and Public Opinion (2000), http://justiciaypazcolombia.com/IMG/pdf/carta_mellizo.pdf (last visited Jan. 29, 2010).

92 *See* http://www.fiscalia.gov.co/justiciapaz/DetalleVersion.asp?ce=71646827 (last visited Jan. 20, 2010).

93 Defense attorneys discourage extradited leaders from providing statements that could expand their criminal liability in the United States, which further undermines Defendants' cooperation. Fundación Ideas para la Paz [Foundation Ideas for Peace] (Colom.), The Uses and Abuses of Extradition in the War on Drugs 5 (2009).

94 *See Han negado 11 audiencias con 'paras' en Estados Unidos* [*Eleven Hearings with 'Paras' Have Been Denied in the United States*], El Tiempo, Aug. 7, 2009, *available at* http://www.eltiempo.com/archivo/documento/CMS-

4432427; *Hernán Giraldo Será el Primer 'Para' Extraditado que Declarará desde E.U. en Casos de 'Parapolítica'* [*Hernán Giraldo Will be the First Extradited Paramilitary Who Will Testify from the U.S. in 'Parapolitics' Cases*], El Tiempo, June 5, 2008, *available at* http://www.eltiempo.com/archivo/documento/CMS-4235348.

95 *See* Actualización sobre la situación de los jefes paramilitares, *supra* note 86, at 4-5 (citing letter from Colombian court explaining the cancellation of hearing involving Salvatore Mancuso for lack of funds for transmission to Colombia from United States).

96 Decree No. 315, de 7 de febrero de 2007, art. 2, *available at* http://www.fiscalia.gov.co/justiciapaz/Documentos/Decreto_315-07_difusi.pdf.

97 Justice and Peace Law 975, art. 37, Diario Oficial No. 45.980 (2005), *available at* http://www.fiscalia.gov.co/justiciapaz/Documentos/LEY_975_concordada.pdf (last visited Jan. 23, 2010).

98 *Id.* at arts. 42, 54.

99 Brownfield Press Conference, *supra* note 2.

100 *See* Breaking the Grip, *supra* at note 39, at 3 ("paramilitaries and their cronies have acquired massive wealth and political influence, subverting democracy and the rule of law"). Minority Rights Group International notes that Colombian paramilitaries control 40% of the arable land in Colombia. Minority Rights Group International, World Directory of Minorities and Indigenous Peoples – Colombia (2008), *available at* http://www.unhcr.org/refworld/docid/4954ce5dc.html.

101 *See, e.g.,* Diego Fernando Murillo Bejarano Extradition Order, U.S.-Colom., May 12, 2008, ¶ 8 (on file with authors).

102 Twenty-one of the Defendants' indictments include forfeiture allegations. The indictments of Diego Murillo Bejarano, Ramiro Vanoy Ramirez, and Francisco Zuluaga Lindo do not include forfeiture allegations. We are unable to verify whether the indictments of Jaime Gamez Moreno, Gerardo Gelves Castro, Alvaro Padilla Redondo, Guillermo Pérez Alzate, Noberto Quiroga Poveda, and Jose Teran Vasquez include forfeiture allegations because we did not have access to the indictments.

103 The National Commission for Reconciliation and Reparation reports that roughly $4 million in assets have been turned over to the Victims Reparation Fund. Así va la Ley de Justicia y Paz, *supra* note 13, at 1. This includes $592,000 in cash, in addition to property assets. Fondo para la Reparación de las Víctimas [Reparation Fund for Victims], http://www.accionsocial.gov.co/contenido/contenido.aspx?catID=455&conID=1667 (last visited Jan. 21, 2010). These figures pale in comparison to the nearly $150 million in the Fund as a result of international donations. *See El 2010 Será el Año de la Restitución de Bienes* [2010 Will be the Year for Property Restitution], CNRR, Dec. 11, 2009, http://www.cnrr.visiondirecta.com/09e/spip.php?article2332&var_recherche=2010; *Disponibles Fondos para Reparación de Víctimas en Colombia* [Funds Available for Reparation of Colombian Victims], Semana, Sept. 14, 2009, *available at* http://www.semana.com/noticias-nacion/disponibles-fondos-para-reparacion-victimas-colombia/128697.aspx.

104 CNRR-Versiones Libres Programadas, *supra* note 60.

105 Victims of paramilitary violence qualify as CVRA victims if they demonstrate that the harm suffered was the direct and proximate result of a Defendant's drug-trafficking conspiracy. 18 U.S.C. § 3771 (2009). Victims, including the family members of an environmental activist assassinated by an extradited paramilitary leader for opposing coca-growing in his area of operation, have petitioned the Department of Justice to recognize their statutory rights as crime victims.

106 The CVRA was passed in 2004 to broaden the rights of crime victims by providing victims of a federal offense the rights to be notified of all public court proceedings, to be heard by the court before it accepts a plea or imposes a sentence, and to receive restitution. U.S. government guidelines for CVRA recognize that the statute may encompass non-U.S. citizen victims of crimes committed abroad that are being tried in U.S. courts. *See generally* U.S. Dep't of Justice, Attorney General Guidelines for Victim and Witness Assistance (2005), *available at* http://www.justice.gov/olp/pdf/ag_guidelines.pdf.

107 Blanco letter to Roxanna Altholz, *supra* note 40; Gov't's Memorandum of Law, *supra* note 40. Unless the DOJ policy is changed immediately, Colombian victims will lose their opportunity to participate in the proceedings. CVRA provides the possibility of intervention by victims, but a petition to re-open a plea or sentence must be filed within 14 days or it becomes invalid, 18 U.S.C. § 3771(d)(5)(B) (2009), thus victims must be recognized before further Defendants reach plea agreements or receive their sentences.

108 Public access to case records relating to the U.S. criminal proceedings of eighteen extradited paramilitaries has been restricted. As a rule, the public has access to criminal case records in the United States unless judges exercise the discretion to place information under seal. Nixon v. Warner Communications, Inc., 435 U.S. 589, 599 (1978) ("the decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case"). Without access to case records, Colombian victims are unable to verify the status of U.S. drug prosecutions including whether AUC leaders have reached plea deals with U.S. prosecutors. For example, Colombian newspapers report that Salvatore Mancuso has reached a plea deal with U.S. prosecutors. These reports are impossible to verify because case records about Mancuso's U.S prosecution are not available to the public. *See Mancuso Negocia Preacuerdo en Estados Unidos* [*Mancuso Negotiates Plea Deal in the United States*], Semana, July 21, 2008, *available at* http://www.semana.com/noticias-on-line/mancuso-negocia-preacuerdo-estados-unidos/113822.aspx.

109 The procedures for transmitting official requests are governed by the Inter-American Convention on Mutual Assistance in Criminal Matters, an agreement that provides a framework for transnational cooperation in criminal prosecutions. Inter-American Conv'n. on Mutual Assistance in Crim. Matters, Apr. 14, 1996, O.A.S.T.S. No.

75. *See also* Letter from William R. Brownfield, U.S. Ambassador to Colombia, U.S. Dep't of State, to Carlos Hoguín Sardi, Minister, Colombia's Ministry of Interior and Justice (June 25, 2008) (on file with authors).

110 *See* Colom. Comm'n of Jurists, In Search of Solutions for Victims Following the Extradition of Paramilitary Leaders to the United States 5-6 (2009) (citing Letter from Supreme Court Unit, Colombian Prosecutor General's Office, to Colombian Commission of Jurists, June 1, 2009; Letter from Supreme Court Unit, Colombian Prosecutor General's Office, to Colombian Commission of Jurists, May 22, 2009), http://www.coljuristas.org/Portals/0/ngosextraditionengSEP2009CONGRESS.pdf; *see also 'Reconstruir la Verdad es Difícil en Estas Condiciones', Dice Fiscal Sobre Extradición de Paras* [*'Reconstructing the Truth is Difficult Under Present Conditions,' Says Prosecutor Regarding the Extradition of Paramilitaries*], El Tiempo, May 4, 2009, *available at* http://www.eltiempo.com/colombia/justicia/reconstruir-la-verdad-es-dificil-en-estas-condiciones-dice-fiscal-sobre-extradicion-de-paras_5133195-1.

111 Letter from Sandra Jeannette Castro Ospina, Director, National Human Rights and Humanitarian Law Unit, to Gustavo Gallón Giraldo, Director, Colom. Comm'n of Jurists (May 21, 2009) (on file with authors).

112 *Id.*

113 Actualización sobre la situación de los jefes paramilitares, *supra* note 86, at 5-6.

114 *Id.* at 6.

115 *Id.*

116 *Id.*

117 Eric Holder, U.S. Attorney Gen., Efforts to Combat Mexican Cartel Efforts and Grants for Local Assistance, July 15, 2009, http://www.justice.gov/ag/speeches/2009/ag-speech-090715.html.

118 Office of the Coordinator for Counterterrorism, U.S. Dep't of State, Pub. No. 11248, Country Reports on Terrorism 2004 80 (2005), *available at* http://www.state.gov/documents/organization/45313.pdf.

119 Executive Office of the President, National Drug Control Strategy: 2009 Annual Report 30 (2009), *available at* http://www.whitehousedrugpolicy.gov/publications/policy/ndcs09/chapter3.pdf.

120 Aprobado Acta No. 260, Corte Suprema de Justicia [Supreme Court] 44 (Aug. 19, 2009) (Colom.).

121 *Id.* at 44. According to the Court, "recent experience" proves that extraditions "paralyze" the Justice and Peace process because extradited paramilitaries were unable to continue their confessions from the United States. *Id.* at 38.

122 *Id.* at 29, 38.

123 Superseding Indictment, United States v. Rendon-Herrera et al., No. 04-962 (S.D.N.Y. Apr. 16, 2009). Similarly, Edward Cobos Tellez, demobilized leader of the *Héroes de los Montes de María* Bloc was indicted for conspiracy to import narcotics in March 2009. Superseding Indictment, United States v. Diego Vecino, No. 05-00967 (S.D.N.Y. Mar. 3, 2009).

124 Beittel, *supra* note 72, at 20.

125 *See* H.R. Rep. 111-366, pt. F, at 1500-1501, *available at* http://justf.org/Legislation_Text?bill_number=Conference%20Report%20111-366&date=2009-12-08.

126 *Counternarcotics Strategy in Colombia: Hearing Before the Subcomm. on the W. Hemisphere, House Foreign Affairs Comm.*, 110th Cong. (2007) (Testimony by Anne W. Patterson), *available at* http://www.globalsecurity.org/military/library/congress/2007_hr/070424-patterson.htm.

127 *U.S.-Colombia Relations: Hearing Before the Subcomm. on the W. Hemisphere, House Foreign Affairs Comm.*, 110th Cong. (2007) (Testimony by Charles S. Shapiro), *available at* http://www.globalsecurity.org/military/library/congress/2007_hr/070424-shapiro.htm.

128 U.S. Gov't Accountability Office, Plan Colombia 60 (2008), *available at* http://www.gao.gov/new.items/d0971.pdf.

129 *See* Omnibus Appropriations Act of 2009, H.R. 1105, 111th Cong. §7046 (2009) (enacted), *available at* http://rpc.senate.gov/public/_files/L6OmnibusAppropriations03022009.pdf.

130 Aprobado Acta No. 260, Corte Suprema de Justicia [Supreme Court] (Aug. 19, 2009).

131 *See supra* text accompanying note 103. The AUC is estimated to control 40% of Colombia's arable land. *See* World Directory of Minorities and Indigenous Peoples – Colombia, *supra* note 100.

132 U.S. Gov't Accountability Office, Plan Colombia 56 (2008), *available at* http://www.gao.gov/new.items/d0971.pdf. The State Department has made similar findings, noting that "a significant number of former mid-level AUC commanders continue their involvement in the drug trade." Bureau for Intn'l Narcotics & Law Enforcement Affairs, U.S. Dep't of State, International Narcotics Control Strategy Report 200 (2009), *available at* http://www.state.gov/documents/organization/120054.pdf.

133 Philip Alston, United Nations Special Rapporteur on Extrajudicial Executions, Statement about June 8-18, 2009 Mission to Colombia (June 2009), http://www/unhchr.ch/huricane/huricane/nsf/view01/C6390E2F247BF1A7C12575D9007732FD?opendocument (last visited Jan, 31, 2010).

134 *Id.* The "parapolítica" investigations resulted in the investigation of 133 former and current congressional representatives. Obstáculos a la Aplicación de Justicia, *supra* note 45 at 4. There are also investigations into at least 253 additional public officials, including mayors, governors, and military officials for paramilitary ties. Claudia López and Oscar Sevillano, Corporación Nuevo Arco Iris, Balance político de la parapolítica 1 (2009), *available at* http://www.nuevoarcoiris.org.co/sac/files/arcanos/arcanos_14_diciembre_2008_files/arcanos_14_informe_parapolitica.pdf. These difficulties emerge just as investigations produce results and reveal the extent of paramilitary influence over state institutions. One key investigation led to the arrest of the head of DAS for supplying paramilitaries with names of unionists and human rights defenders to assassinate. *El Fiscal Iguarán Acusa a Jorge Noguera* [*Prosecutor Iguarán Accuses Jorge*

Noguera], Verdad Abierta, May 11, 2009, http://www.verdadabierta.com/parapolitica/nacional/das-gate/1217-el-fiscal-iguaran-acusa-a-jorge-noguera.

135 Letter from Kenneth Roth, Executive Director, Human Rights Watch, to Barack Obama, U.S. President (June 26, 2009), *available at* http://www.hrw.org/en/news/2009/06/26/colombia-obama-should-press-uribe-rights.

136 Proposed Constitutional Changes Harm Accountability, Favor Uribe Allies, Human Rights Watch, Aug. 4, 2008, http://www.hrw.org/legacy/english/docs/2008/08/04/colomb19533.htm. *See also* Yamid Amat, *"La Corte Suprema de Justicia puede correr peligro"; Augusto Ibáñez ["The Supreme Court of Justice Could Be in Danger"; Augusto Ibáñez*], El Tiempo, Jan. 17, 2010, *available at* http://www.eltiempo.com/colombia/justicia/la-corte-suprema-de-justicia-puede-correr-peligro-augusto-ibanez_6968667-1.

137 Brownfield Press Conference, *supra* note 2 ("The prosecutors in the Justice Department will share their evidence and information with the prosecutors of the Republic of Colombia, allowing them the opportunity to examine, analyze, and decide on how they wish to proceed in accordance with the Justice and Peace Law.").

138 One example of how incentives can work is the case of Defendant and former AUC commander Diego Murillo Bejarano. Weeks before Murillo was scheduled to be sentenced for drug related crimes in the United States, IHRLC and co-counsel, Wilson Sonsini Goodrich & Rosati, filed a request on behalf of a mother whose son was kidnapped and murdered by Murillo's troops to afford her the statutory rights of crime victims. Gov't's Memorandum of Law in Opposition to Ms. Alba Ines Rendon Galvis's Motion Pursuant to the Crime Victims Rights Act, United States v. Diego Fernando Murillo Bejarano, No. 03-01188 (S.D.N.Y. 2009). The judge denied the petition but post-poned the sentencing for 45 days, over the objections of U.S. prosecutors, in order to provide an opportunity for the Defendant to contribute to the Justice and Peace process. *See* Transcript of Oral Argument at 25-26, In re Rendon Galvis, 564 F.3d 170 (2d Cir. 2009) (No. 03-01188). The judge indicated that he would consider the Defendant's cooperation with Justice and Peace at sentencing. *See id.* Although Murillo ultimately decided to stop testifying from the United States, his case demonstrates how the United States may encourage truth-telling by Defendants in U.S. custody.

139 In the context of a plea agreement, U.S. federal prosecutors have discretion to move for the dismissal of charges or recommend sanctions on the lower end of federal sentencing guidelines in exchange for the defendant's plea. Fed. R. Crim. P. 11(c)(1). *See also* Principles of Federal Prosecution, Plea Agreements Generally § 9-27.400 http://www.justice.gov/usao/eousa/foia_reading_room/usam/title9/27mcrm.htm#9-27.400 (last visited Jan. 17, 2010). U.S. sentencing guidelines also permit the U.S. government to file a request for a sentence below the indicated guideline, on the basis of "substantial assistance in the investigation or prosecution of another person who has committed an offense." U.S. Sentencing Guidelines Manual, Substantial Assistance to Authorities § 5K1.1 (2009), *available at* http://www.ussc.gov/2009guid/GL2009.pdf. The Federal Rules of Criminal Procedure allow the government to request "downward departures" based on substantial assistance even after the sentence is imposed. Fed. R. Crim. P. 35(b).

140 U.S. federal law permits prosecutions of foreign nationals for acts of torture committed abroad. 18 U.S.C. § 2340A provides that "[w]hoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life." Torture is defined as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control." 28 U.S.C. § 2340(1). In 2008, DOJ successfully prosecuted a former commander of a Liberian paramilitary organization. He was sentenced to ninety-seven years for multiple acts of torture. United States v. Belfast, No. 06-20758, 2007 U.S. Dist. WL 844508 (S.D. Fla. Feb. 12, 2007). Although the Defendants were extradited to face drug proceedings, the U.S. may bring additional charges with Colombia's consent. Under the doctrine of specialty, "a person who has been brought within the jurisdiction of a court by virtue of proceedings under an extradition treaty, can only be tried . . . for the offense for which he is charged in the proceedings for his extradition." United States v. Alvarez-Machain, 504 U.S. 655, 659 (1992), quoting, United States v. Rauscher, 119 U.S. 407, 430 (1886). The circuit courts are split over whether a defendant has standing to claim the benefits of the doctrine. *See, e.g.,* United States v. Puentes, 50 F.3d 1567, 1572 (11th Cir. 1995) ("The question of whether a criminal defendant has standing to assert a violation of the doctrine of specialty has split the federal circuit courts of appeals"); United States v. Davis, 954 F.2d 182, 186 (4th Cir. Md. 1992) ("[T]he Circuits are split regarding whether an individual defendant has standing to raise the issue of a violation of the principle of specialty"). The Eleventh Circuit recently held that the "rule of specialty" applies only when established by treaty. United States v. Valencia-Trujillo, 573 F.3d 1171 (11th Cir. 2009) (holding that a defendant extradited from Colombia did not have standing to raise a specialty claim because he was not extradited pursuant an extradition treaty). Courts agree that the surrendering State may subsequently consent to trial for crimes other than those for which extradition was granted. *See* United States v. Tse, 135 F.3d 200, 205 (1st Cir. 1998); United States v. Puentes, 50 F.3d 1567, 1575 (11th Cir. 1995); United States v. Riviere, 924 F.2d 1289, 1300-1 (3d Cir. 1991); United States v. Najohn, 785 F.2d 1420, 1422 (9th Cir. 1986). In this instance, the doctrine of specialty "exists only to the extent that the surrendering country wishes." The Colombian government could consent to U.S. prosecutions for torture. *See* United States v. Lazsarevich, 147 F.3d 1061, 1064-65 (9th Cir. 1998) (internal citations omitted).

141 *See, e.g.*, "The Government has made clear to the defendant's counsel that it has no position on whether the defendant should respond to the requests of the Colombian authorities. The Government has stated that, should the defendant choose to participate in any interviews with Colombian authorities, the Government (i) would not use any of his statements made in the interview in connection with the sentencing proceeding in this matter; and (ii) would not consider his interview as a basis for varying from any of the stipulations set forth in the plea agreement, or as cooperation with United States authorities under either U.S.S.G. § 5K1.1 or 18 U.S.C. § 3553(e)." Gov't's Memorandum of Law, *supra* note 40, at 8 (footnote 4).

142 *See, e.g.*, Plea Agreement (Manuel Enrique Torregrosa Castro) at 4-8; USA v. Villarreal-Archila et al., No. 07-00019 (M.D. Fla. May 15, 2009); Plea Agreement (Miguel Villarreal Archila) at 4-8, USA v. Villarreal-Archila et al., No. 07-00019 (M.D.F.L. May 18, 2009).

143 *U.S.-Colombia Relations*, *supra* note 127. During the recent visit between Presidents Obama and Uribe, President Obama expressed the U.S.'s interest in cooperating with Colombia in ensuring protection of labor and civil rights leaders. Remarks by President Obama and President Uribe of Colombia (June 29, 2009), http://www.whitehouse.gov/the_press_office/Remarks-by-President-Obama-and-President-Uribe-of-Colombia-in-Joint-Press-Availability/.

144 *See* Statement of Ron Kirk, U.S. Trade Representative-Designate, to the United States Senate Committee on Finance, Mar. 9, 2009 (stating "The President and I believe that our mission is not simply to increase American exports, as important as that is, but to ensure that the way we promote trade reflects our country's values about economic progress and justice"); *U.S.-Colombia Relations*, *supra* note 127; and Anthony Faiola, *U.S. to Toughen Its Stance On Trade*, Wash. Post, Mar. 10, 2009, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2009/03/09/AR2009030903157.html. Congressional members of the Democratic Party have made addressing the violence against Colombian trade unionists a condition for a trade agreement. In a June 29, 2007 statement, Democratic leaders announced their opposition to the trade agreement: "There is widespread concern in Congress about the level of violence in Colombia, the impunity, the lack of investigations and prosecutions, and the role of the paramilitary." They called on Colombia to demonstrate "concrete evidence of sustained results" before consideration of a trade agreement. Pelosi, Hoyer, Rangel, and Levin Statement on Trade (June 29, 2007), http://www.house.gov/apps/list/speech/mi12_levin/FS062907.shtml.

145 Human Rights Watch Comments, *supra* note 72.

146 *Id.* According to available estimates, paramilitaries were responsible for 2,433 acts of violence against trade unionists between January 1, 1986 and August 7, 2009. *Examining Workers' Rights and Violence against Labor Union Leaders in Colombia: Hearing Before Comm. on Educ. and Labor, U.S. House of Rep.*, 111th Cong. (2009) (Testimony by Maria McFarland Sánchez-Moreno), *available at* http://www.hrw.org/en/news/2009/02/12/testimony-maria-mcfarland-s-nchez-moreno-us-house-representatives. Violence against trade unionists increased 72% in 2008. National Labor School (Colom.), Death Isn't Mute, 7 (2009) ("Between January 1 and December 31 of 2008, there were 762 violations against life, liberty and integrity of Colombian trade unionists, a figure which shows an increase of 72,8% of violations as compared to the same period at 2007, in which there were 441."), *available at* http://www.protectionline.org/IMG/pdf/Informe_DH_2008-2009-_ENS-_Version_en_Ingles.pdf.

147 Laura Meckler, *New Movement on Colombia Trade Pact*, Wall St. J., Apr. 20, 2009, *available at* http://online.wsj.com/article/SB124010048395232143.html.

148 McFarland, *supra* note 145. Despite the uptick in convictions, approximately 95% of trade unionist murder cases remain unsolved. Human Rights Watch Comments, *supra* note 72.

149 Letter from George Miller, U.S. Representative and Chairman, Comm. on Labor and Educ., to Alvaro Uribe, Colombian President 9 (Sept. 12, 2008), http://www.aflcio.org/issues/jobseconomy/globaleconomy/upload/millerletter0908.pdf.

150 *See* Breaking the Grip, *supra* note 39, at 37, 103-04. For example, in 2001, armed paramilitaries pulled over a municipal bus in rural Colombia. Two trade unionists were taken off the bus and later found murdered and left on the side of a road. The crimes were attributed to Rodrigo Tovar Pupo. *'Jorge 40' y 'Tolemaida' acusados por asesinato de sindicalistas de la Drummond* [*'Jorge 40' and 'Tolemeida' Accused of Assassinating Drummond Trade Unionists*], Semana, Jan. 6, 2009, *available at* http://www.semana.com/noticias-conflicto-armado/jorge-40-tolemaida-acusados-asesinato-sindicalistas-drummond/119359.aspx.

151 *¿Cuándo renunciará?* [*When Will He Step Down?*], Semana, Apr. 8, 2006, *available at* http://www.semana.com/wf_InfoArticulo.aspx?IdArt=93806; Breaking the Grip, *supra* note 39, at 103-04, 107.

152 *No Safe Haven: Accountability for Human Rights Violators, Part II: Hearing Before Subcomm. on Human Rights and the Law, S. Comm. on the Judiciary,* 111th Cong. 2 (2009) (Statement of Lanny A. Breuer, Assistant Att'y Gen., Crim. Division, Dep't of Justice) [hereinafter *No Safe Haven*] http://www.justice.gov/criminal/pr/testimony/2009/10/10-06-09breuer-testimony.pdf.

153 Norms such as the prohibition of torture, extrajudicial killings, and forced disappearances are peremptory norms that are paramount for the maintenance of international order. *See* Vienna Convention on the Law of Treaties art. 53, Jan. 27, 1980, 1155 U.N.T.S. 331 ("…a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."). All nations share an interest to ensure that these norms are upheld. *See* M. Cherif Bassiouni & Edward M. Wise, Aut Dedere Aut Judicare: The Duty To Extradite or Prosecute in International Law 51-69 (1995).

154 United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, art. 5 (2), U.N. Doc. A/39/51 (1984) ("Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him […]"); *id.* at art. 7 (1) ("The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.").

155 18 U.S.C. § 2340A(b). See *supra* text accompanying note 139.

156 C.H.R. res. 2005/35, art. III (4), U.N. Doc. E/CN.4/2005/ L.10/Add.11 (Apr. 19, 2005).

157 The Inter-American Court found in *Goiburú et al. v. Paraguay* that under the American Convention on Human Rights, States must collaborate with each other to eliminate impunity for human rights violations, "either by exercising their jurisdiction to apply their domestic law and international law to prosecute…or by collaborating with other States that do so or attempt to do so." Goiburú et al. v. Paraguay Case, Inter-Am. Ct. H.R. (ser. C) No. 153, ¶ 131 (Sept. 22, 2006).

158 These principles are set forth in a compliance report by the Inter-American Court addressing the relationship between the Defendants in U.S. custody and Colombian law enforcement. *See* Mapiripán v. Colombia Case, Inter-Am. Ct. H.R., ¶¶ 40-41 (July 8, 2009).

159 The Montevideo Convention on Extradition establishes that extraditions of individuals who face trials in their country of origin should not move forward "until [the defendant's] trial ends or his sentence is served." Montevideo Convention on Extradition art. 6, Jan. 25, 1935, 49 Stat. 3111, 165 L.N.T.S. 45. Another agreement to which both states are party, the Inter-American Convention on Mutual Assistance in Criminal Matters, provides the framework to implement the duty to cooperate in criminal prosecutions. The treaty obligates states to provide requested cooperation including assistance in taking of testimony, sequestration of property, delivery of judicial documents, and transmittal of information and evidence. Inter-American Conv'n. on Mutual Assistance in Crim. Matters, arts. 2, 7, Apr. 14, 1996, O.A.S.T.S. No. 75.

160 The U.S. obligation to promote and protect the right to truth is established by the International Covenant on Civil and Political Rights (ICCPR) and the American Declaration of the Rights and Duties of Man. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), art. 19 (2), U.N. Doc. A/6316 (Mar. 23, 1976); Organization of American States, American Declaration of the Rights and Duties of Man, art. IV (1948), *available at* http://www.cidh.org/Basicos/English/Basic2.American%20Declaration.htm. International courts have described the right to truth as a norm of international customary law that is an inalienable, non-derogable right belonging to victims, their families, and society at large. Case of Tibi v. Ecuador, Inter-Am. Ct. H.R. (Ser. C) No. 114, ¶ 258 (Sept. 7, 2004); Case of Bámaca Velásquez v. Guatemala, Inter-Am. Ct. H.R. (Ser. C) No. 70, ¶ 201 (Nov. 25, 2000); *see generally* U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, *Promotion and Protection of Human Rights: Study on the right to the truth,* 11-14, U.N. Doc. E/CN.4/2006/91 (Feb. 8, 2006). Victims have the right to information on the causes and circumstances of the violations; the progress and results of investigations; and in the event of death or forced disappearance, the fate and whereabouts of the victims; and the identity of perpetrators. *See generally* ECOSOC, Comm'n on Human Rights, *Promotion and Protection of Human Rights: Study on the right to the truth,* 11, U.N. Doc. E/CN.4/2006/91 (Feb. 8, 2006). The right to truth is considered a crucial component of reconciliation, international stability, and accountability. *See* G.A. Res. 55/118, ¶ 7, U.N. Doc. A/RES/55/118 (Dec. 4, 2000); G.A. Res. 57/105, ¶ 12, U.N. Doc. A/RES/57/105 (Nov. 25, 2002); G.A. Res. 57/161, ¶ 17, U.N. Doc. A/RES/57/161 (Dec. 16, 2002); S.C. Res. 1468, ¶ 5, U.N. Doc. S/RES/1468 (2003); S.C. Res. 1470, ¶ 12, U.N. Doc. S/RES/1470 (2003); S.C. Res. 1606, U.N. Doc. S/RES/1606 (2005). The Inter-American Commission on Human Rights has held that the right to know the truth is essential for the workings of democratic systems. Ignacio Ellacuría, S.J. et al v. El Salvador, Case 10.488, Inter-Am. C.H.R., Report No. 136/99, OEA/Ser.L/V/II.106, doc. 6 rev. ¶ 224 (1999). International courts have also described the right to truth as a norm of international customary law that is an inalienable, non-derogable right belonging to victims, their families, and society at large. Case of Tibi v. Ecuador, Inter-Am. Ct. H.R. (Ser. C) No. 114, ¶ 258 (Sept. 7, 2004); Case of Bámaca Velásquez v. Guatemala, Inter-Am. Ct. H.R. (Ser. C) No. 70, ¶ 201 (Nov. 25, 2000); *see generally* U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, *Promotion and Protection of Human Rights: Study on the right to the truth,* 11-14, U.N. Doc. E/CN.4/2006/91 (Feb. 8, 2006). Victims have the right to information on the causes and circumstances of the violations; the progress and results of investigations; and in the event of death or forced disappearance, the fate and whereabouts of the victims; and the identity of perpetrators. *See generally* ECOSOC, Comm'n on Human Rights, *Promotion and Protection of Human Rights: Study on the right to the truth,* 11, U.N. Doc. E/CN.4/2006/91 (Feb. 8, 2006).

161 Organization of American States, American Convention on Human Rights, art. 63, July 18, 1978, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, *available at* http://www1.umn.edu/humanrts/oasinstr/zoas3con.htm (last visited Jan. 18, 2010). The ICCPR and the American Declaration of the Rights and Duties of Man obligate the United States to guarantee the rights of victims to an effective remedy. International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), art. 2, U.N. Doc. A/6316 (Mar. 23, 1976); American Declaration of the Rights and Duties of Man, art. V, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992).The Inter-American Court has held that "access to justice is a peremptory norm" which "gives rise to obligations *erga omnes* for the States to adopt all necessary measures to ensure that such violations do not remain unpunished, either by exercising their jurisdiction to prosecute and, when applicable, punish those responsible, or by collaborating with other States that do so or attempt to do so." Goiburú et al. v. Paraguay, Inter-Am. Ct. H.R. (ser. C) No. 153, ¶ 131 (Sept. 22, 2006).

162 *No Safe Haven*, *supra* note 151.

163 Gov't's Memorandum of Law, supra note 40, at 8 (footnote 4).

164 See No Safe Haven, *supra* note 151.

165 The information in this Appendix was gathered from available U.S. and Colombia court records regarding the extradited Defendants.

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