

CRIMINAL CHAMBERS No. 6 (Juzgado Central de Instrucción No. 6)
SPANISH NATIONAL COURT (Audiencia Nacional)
MADRID, SPAIN
CASE: 97/10 (DP 391/08)

**SUPPLEMENTAL BRIEF IN SUPPORT OF THE NOVEMBER 4, 2011 REQUEST TO
THE UNITED STATES FOR THE EXTRADITION OF INOCENTE ORLANDO
MONTANO**

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INTRODUCTION

Criminal Chambers No. 6 of the Spanish National Court (the “Court”) respectfully submits this supplemental brief (the “Brief”) in support of the pending November 4, 2011 request for extradition (the “Extradition Request”) of Inocente Orlando Montano (“Montano”) from the United States of America (the “US”) to Spain to face trial for the murder of five Spanish Jesuit priests and three Salvadoran citizens at the University of Central America José Simeón Cañas (“UCA”) in El Salvador on November 16, 1989 (the “Jesuit Massacre”). This Brief highlights new evidence of Montano’s direct involvement in the Jesuit Massacre and further supports Montano’s extradition.

PROCEDURAL HISTORY

On November 13, 2008, the Center for Justice & Accountability (“CJA”), a US based human rights legal organization, and the Spanish Association for Human Rights (“APDHE”) (collectively, the “Private Prosecutors”), jointly filed a criminal case before the Spanish National Court (the “SNC”).¹ The Private Prosecutors’ complaint charged certain Salvadoran military officers and soldiers with crimes in connection with their role in the Jesuit Massacre. On January 13, 2009, this Court formally charged fourteen former Salvadoran officers and soldiers (the “Defendants”), including Montano, with murder, crimes against humanity and terrorism for their roles in the Jesuit Massacre. Since Montano was not physically in Spain at the time, on March 31, 2011, this Court issued national and international warrants authorizing Montano’s arrest.² After a two and one-half year investigation, on May 30, 2011, this Court indicted twenty

¹ As a matter of law, in the Spanish legal system, victims, injured parties, and Spanish organizations have standing both to initiate and join criminal proceedings for certain crimes through what is known as private and popular prosecution. *See Article 270 & ss. Rules of Criminal Procedure Title I.*

² A copy of the European Arrest Warrant issued for Montano is attached to the Extradition Request. Arrest warrants for the remaining thirteen Defendants were issued on May 31, 2011. Montano’s arrest warrant was issued

defendants,³ including Montano, as criminally responsible for the Jesuit Massacre. On November 4, 2011, this Court issued its extradition request to the US (“2011 Extradition Request”). The 2011 Extradition Request set forth the factual and legal basis for extraditing Montano and attached documents in support.⁴

Since this Court’s transmittal of the 2011 Extradition Request, several significant developments have occurred that further establish probable cause to extradite Montano. First, Colonel Montano pleaded guilty in the US District Court for the District of Massachusetts to Fraud and Misuse of Visas, in violation of 18 U.S.C. § 61546(a) and Perjury, in violation of 18 U.S.C. § 3553(a). The record reflects the following facts formed the basis for Montano’s conviction:

- Montano left El Salvador in 2001 and arrived in the US on July 2, 2001.⁵
- On September 1, 2002, Montano applied to the US Department of Homeland Security for Temporary Protected Status.⁶ Montano misrepresented key issues on his initial application, including his entry date into the US and his Salvadoran military background.⁷ Montano concealed the fact that he had been a high-

sooner than the other defendants because of the concern that he posed a flight risk. Interpol Services informed this Court that Montano had been located in Everett, MA. USA.

³ One of the indicted defendants, Réne Emilio Ponce, the Chief of Staff at the time of the Jesuit Massacre – who went on to become Minister of Defense – is deceased. William Grimes, Réne Emilio Ponce, El Salvador General Linked to Priests’ Murders, Dies at 64,” THE NEW YORK TIMES, May 3, 2011. Thus, only nineteen defendants face possible extradition to Spain.

⁴ Specifically, this Court provided to the Minister of Justice and the Minister of Foreign Affairs the following: translated copies of the Extradition Request; the document of the Prosecution Office dated April 7, 2011, which requested that the Court issue a ruling asking the Spanish Government to send to US authorities a request for extradition of Inocente Orlando Montano; the document of the Private Prosecution dated November 2, 2011, which reiterates the previous request for extradition; the ruling of indictment dated May 30, 2011; the legal precepts of the Spanish Criminal Code that define the crimes for which the defendants have been indicted and the corresponding penalties; and the warrant of arrest. *See* Extradition Request at pp. 4-5.

⁵ *See* Government’s Sentencing Memorandum at 6, *United States v. Inocente Orlando Montano*, No. 12-CR-10044-DPW (D. Mass. Jan. 8, 2013) [Dkt. No. 53].

⁶ *Id.*

⁷ *Id.* The benefit of Temporary Protected Status is only available to Salvadoran citizens who were physically present in the US as of March 9, 2011 (as well as meeting other criteria). This requisite date of entry is indicated in the most recent Federal Register reference to Salvadorans’ eligibility for the program, 78 *Federal Register* 32418 (May 30, 2013).

ranking officer of the Salvadoran military for thirty years and that, in his final position, he served as El Salvador's Vice Minister of Defense for Public Security, one of the three most powerful positions in the military.

- As a consequence, on August 22, 2011, Montano was arrested and charged in the US District Court for the District of Massachusetts with violations of US immigration law based on the falsifications indicated above. On September 11, 2012, Montano pleaded guilty to three counts of immigration fraud and three counts of perjury.⁸
- On August 27, 2013, Judge Douglas P. Woodlock sentenced Montano to twenty-one months in prison.⁹ Because of his repeated falsifications to obtain legal status in the US for which he was not qualified, Judge Woodlock gave Montano the longest sentence possible under the applicable federal sentencing guidelines.¹⁰

In addition to Montano's conviction and incarceration, this Brief provides new evidence further supporting this Court's position, as initially outlined in the Extradition Request, that upon Montano's release from prison, Montano be extradited to Spain to stand trial for his complicity in the Jesuit Massacre.

⁸ See Plea Agreement, *Montano*, No. 12-CR-10044-DPW [Dkt. No. 42].

⁹ See Plea Agreement, Amended Judgment, *Montano*, No. 12-CR-10044-DPW [Dkt. Nos. 42, 96]. Montano's sentencing hearing, which occurred over a three-day period, included evidence of his responsibility for widespread human rights abuses in El Salvador throughout his military career. See Expert Report of Professor Terry Karl, *Montano*, No. 12-CR-10044-DPW [Dkt. No. 53-1], attached as Exhibit 1 to this Brief; Letter from Mark Anner, *Montano*, No. 12-CR-10044-DPW [Dkt. No. 50-4], attached as Exhibit 2 to this Brief; and Letter from Leslie Fleming, *Montano*, No. 12-CR-10044-DPW [Dkt. No. 50-3], attached as Exhibit 3 to this Brief.

¹⁰ Montano self-surrendered on October 11, 2013 and is currently incarcerated at the Butner Federal Correctional Complex in North Carolina. Based on current federal sentencing procedures, with good behavior Montano will likely be eligible for release between February and June, 2015. The Bureau of Prisons indicates that his release date is April 15, 2015. See US Bureau of Prisons, <http://www.bop.gov/inmateloc/>, last visited June 6, 2014.

FACTUAL BACKGROUND¹¹

I. THE EL SALVADORAN ARMED FORCES AND VICE MINISTER MONTANO

Sufficient probable cause establishes that Montano participated in the propaganda campaign against Rector Ignacio Ellacuría, helped prepare the terrain for the attack against the Jesuit priests at the UCA, engaged in specific necessary acts that resulted in the November 16, 1989 murder of the six Jesuit priests and two women at the UCA, and subsequently covered up the crime. The military and political context is crucial to understanding Montano's role in the Jesuit Massacre.

The El Salvadoran Armed Forces ("ESAF")¹² ruled El Salvador for much of its modern history. Following a coup d'état by younger military officers seeking reform in October 1979, senior officers supporting the status quo regained control and implemented a policy of increased state terror and repression. The country descended into a full-scale civil war between the ESAF

¹¹ The facts described in this section are drawn from reports, testimony, and documents before the Spanish National Court. As described in the March 31, 2011 warrant issued by the Spanish National Court for the arrest of Colonel Montano, this Court has reviewed declassified documents of the U.S. Department of State, Central Intelligence Agency and Department of Defense, among other agencies, the final report of the UN Truth Commission, *From Madness to Hope: The Twelve Year's War in El Salvador*, issued in March 1993 ("Truth Commission Report"), the report of the Task Force of Massachusetts Rep. Joseph Moakley on behalf of the US Congress ("Moakley Commission Report") and many other documents. The Spanish National Court heard expert testimony from Professor Terry Karl, a political scientist and Gildred Professor of Latin American Studies at Stanford University, who has studied El Salvador politics and military for thirty-five years. Col. José Luis Garcia of Argentina testified as an expert on Latin American militaries and, in particular, El Salvador military institutions. Kate Doyle, a senior Latin American analyst with the National Security Archives, testified as an expert on US government declassified documents, particularly those related to Central America. The Spanish National Court also heard fact witness testimony from a number of witnesses, including two witnesses receiving special protection and confidentiality at this stage from this Court with direct information regarding the crimes. Recently, the Spanish National Court received a Supplemental Expert Report from Professor Terry Karl ("Karl Supplemental Report"). The Karl Supplemental Report focuses on the specific role of former Col. Montano in the conspiracy to kill the Jesuits and indicates its reliance, in part, on evidence acquired since the preparation of her 2009 Report to the Spanish National Court. The Karl Supplemental Report is attached as Exhibit 4 to this Brief. The Karl Supplemental Report includes three appendices numbered Appendix I-III. This Brief selectively will provide specific references to relevant evidence, but additional evidence is found in the above-mentioned materials, most particularly the Karl Supplemental Report.

¹² The term "Armed Forces of El Salvador" or "ESAF" encompasses the three security forces in El Salvador – the National Guard, the National Police and the Treasury Police – and the three military forces - the army, the navy and the air force. During Montano's military career, no separate civilian-controlled policing body existed in El Salvador; the power to arrest suspects and investigate crimes fell under military control.

and the Farabundo Martí Liberation Front (FMLN) from 1980-1992. During this decade, despite moving to a nominally civilian government, civilian control over the military did not exist. The Armed Forces continued to be the most powerful institution in the country. The ESAF and its associated military and paramilitary death squads were responsible for over 85% of the human rights violations in this period, including large-scale massacres, torture, disappearances, kidnapping of children and extra-judicial killings of over 75,000 civilians.¹³

As required by Salvadoran law, the military and security forces in which Montano served maintained a classic chain of command, with orders moving down this chain and reports and information moving up. Unlike most other militaries, however, members of the very small officer corps could move laterally among all branches of the military and security forces, and thus they did not make their career solely within one branch. This unusual factor meant that the allegiance of each officer was primarily to his military graduating class, known as a *tanda*, rather than to a particular branch of service. This strong graduating class allegiance throughout an officer's military career had a corresponding "code of silence," in which military officers of the same *tanda* protected each other. Thus, impunity from accountability for human rights abuses or other crimes was the hallmark of this system.¹⁴

¹³ See Truth Commission Report, *passim*. The Truth Commission attributes the remaining 15% of human rights violations to unknown perpetrators or to the armed opposition, the FMLN. In 2010, the President of El Salvador publicly admitted and formally took responsibility for the Salvadoran Armed Forces' commission of "grave violations of human rights and abuses of power," and acknowledged that the ESAF: "made illegitimate use of violence, broke the constitutional order and violated basic norms of decency and peace... The state is responsible, both for its actions and well as its omissions..." "Discurso Presidente, Mauricio Funes XVIII Aniversario de la firma de los Acuerdos de Paz, 16 Enero 2010," available at <http://www.archivocp.contrapunto.com.sv/documentos/discurso-presidente-mauricio-funes-xviii-aniversario-de-la-firma-de-los-acuerdos-de-paz>.

¹⁴ See "Post Plan Reporting: Military's Response to Human Rights Accusations," from Edwin Corr, US Ambassador to El Salvador to US Department of State, US Declassified Document 00961 (June 29, 1988); see generally, William Stanley, *The Protection Racket State: Elite Politics, Military Extortion and Civil War in El Salvador*, (Temple University Press: Philadelphia, PA, 1966).

Colonel Montano was a member of the most powerful *tanda* in ESAF history, known as the *Tandona*.¹⁵ He was a career military officer who graduated as one of the top students from the *Tandona* class of 1966. Montano was appointed to one of the top three positions in the ESAF on June 1, 1989 when he became Vice Minister of Defense for Public Security (“Vice Minister”), with authority over the three security forces – the National Police, the National Guard, and the Treasury Police. At the same time, other members of the *Tandona* assumed control of almost all of the remaining top military positions.¹⁶ In 1989, at the time of the Jesuit Massacre, Colonel Montano and other *Tandona* leaders controlled the ESAF and made up almost the entire “High Command” – the seat of power that decided military and security policy for the country.¹⁷

The three security forces, over which Vice Minister Montano had authority, had a long history of human rights abuses. Upon becoming Vice Minister, Montano had *de jure* and *de facto* power to reduce or eliminate such abuses, but instead he presided over a resurgence of extrajudicial killings, torture, deaths in custody and arbitrary detention aimed at spreading terror.¹⁸ For years prior to holding this position, Montano-commanded troops carried out human

¹⁵ No class graduated from the Military Academy in 1965, which was a key factor in the larger size of the 1966 class. At the time of graduation, the 1966 class contained approximately 47 members.

¹⁶ See especially Karl Supplemental Report, Figure 1, p. 25, Figure 2, p. 26, & pp. 24-31. Less than twenty *Tandona* officers remained in the military by 1989. They commanded five of the six infantry brigades, five of the seven military detachments, the three security forces, the National Directorate of Intelligence (DNI), and the intelligence, operations and personnel posts in the High Command. [Excised] Priority “Tandona Politics – ‘Ponce is Not the Tandona (Bio Data)’,” [Page Six Missing], Classification Excised, Cable, Excised Copy, February 22, 1990 [Online Version, EL00507, <http://www/gwu.edu/~nsarchiv>, National Security Archives] (describing the inner circle of the *Tandona* as including Montano among its ranks).

¹⁷ The High Command included: Alfredo Cristiani Burkard, the civilian president of the country; Rafael Humberto Larios, the Minister of Defense; Juan Orlando Zepeda and Inocente Orlando Montano, the two Vice Ministers; and Réne Emilio Ponce, the Chief of Staff of the *Estado Mayor* (Joint General Staff); three of these five were part of the *Tandona*.

¹⁸ The US prosecution of Montano for immigration-related crimes included evidence and testimony regarding Montano’s military career and his involvement in gross human rights abuses, including massacres and extra-judicial assassinations, among other crimes. See, e.g., note 10, *infra*. See also Karl Supplemental Report, pp. 19-21 & Appendix II (partial list of over a thousand human rights violations attributed to troops under Montano’s command).

rights abuses, but neither he nor any of his officers or troops was held responsible for those crimes. Of particular relevance to the Extradition Request, however, is the massacre of six Jesuit priests, five of whom were Spanish, their housekeeper and her daughter, which was committed on November 16, 1989, while Montano was Vice Minister of Public Security and a member of the High Command. Although one of the primary actors behind these murders, Montano, thus far, has escaped justice for this crime, making it imperative that he be extradited to stand trial in Spain.

II. THE JESUIT MASSACRE

A. Events Leading Up to the Massacre

From his official position as Vice Minister for Public Security, Montano was part of and helped orchestrate a renewed campaign of attacks on the Jesuits and other church figures in July 1989.¹⁹ Although the ESAF had repressed religious figures since 1977, Montano and other members of the *Tandona* once again focused on Ignacio Ellacuría, the Rector of the University of Central America (UCA), and other priests at the UCA. An internationally known scholar, Ellacuría had emerged as a mediator, capable of shepherding a peace agreement in El Salvador between the FMLN, the government of ARENA President Alfredo Cristiani, and important elements within the military. Rector Ellacuría facilitated peace talks that increasingly aimed at removing Montano and the other officers of the *Tandona* from power for their human rights abuses and other crimes. Thus, Rector Ellacuría was a direct threat to Montano and his

Montano stated that the war was not just against FMLN fighters but also “the people who support them.” Chris Hedges, “El Salvador: turning teen-age recruits into effective fighters,” *Christian Science Monitor*, October 6, 1983.

¹⁹ Beginning with the murders and threats against priests in 1977, and later the murder of Archbishop Romero, military or military-led death squads, such attacks against religious personnel and especially Jesuits had a long history in El Salvador. See *Attacks and Threats Against the Church, the Jesuits and the Central University (UCA) in El Salvador*, prepared by Terry Lynn Karl, attached as Exhibit 5 to this Brief.

compatriots. By the time of the Jesuit Massacre at the UCA, the removal of the *Tandona* had become a central demand of the peace talks.²⁰

The *Tandona* strongly opposed its removal from power. To inhibit peace talks, the ESAF engaged in a public campaign of threats against civilian opposition leaders, especially Rector Ellacuría and other Spanish Jesuits; these were broadcast on the official radio station of the ESAF. Montano was intimately involved in this campaign, publicly warning that the peace proposals were a danger to national security and would not be accepted.²¹ In one instance, Montano appeared at a press conference alongside Defense Minister Larios and key military leaders to express collectively their opposition to the potential purge of the ESAF's ranks.²² On other occasions, Montano accused the Jesuit priests in the UCA of "trying to discredit the Public Security Forces and the Armed Forces"²³ – a frightening accusation in the context of heightened repression.

The ESAF campaign specifically targeted Rector Ellacuría. Ellacuría was repeatedly identified as a "terrorist" and the "brains behind the FMLN."²⁴ Montano specifically denounced Ellacuría, labeling him as a person "fully identified with subversive movements" – the type of public accusation that regularly had preceded extrajudicial assassinations throughout the

²⁰ After the Jesuit killings and as part of the peace agreement, all members of the *Tandona* were removed from the ESAF by the U.N. -established Ad Hoc Commission, set up to review the human rights records of officers. This group included Montano, who was initially sent into "gilded exile" as military attaché to the Salvadoran Embassy in Mexico. Karl Supplemental Report, p. 92, n. 373. See, e.g., Tim Golden, "Salvadoran Commission Seeks Army Purge," NEW YORK TIMES, October 25, 1992.

²¹ See "Salvadoran government and rebels prepare for peace talks," *United Press International*, October 14, 1989.

²² Defense Minister Larios called the idea of purging the ESAF "absurd" and "impossible." See Karl Supplemental Report, p. 35, n. 120, citing *El Proceso de Dialogo-Negociacion Durante el Primer Año de ARENA*, ECA, 448, June-July, 1989.

²³ *El Diario de Hoy*, July 3, 1989; *Diario Latino*, July 4, 1989.

²⁴ See "Killing of Dr. Ignacio Ellacuria," Central Intelligence Agency, Declassified Document (November 17, 1989)[Online version, EL 00281, <http://www.gwu.edu/~nsarchiv>, National Security Archives].

decade.²⁵ These repeated accusations were aimed at discrediting the peace talks and preparing both soldiers and the public to view the Jesuit priests as enemies—and ultimately justifying the murder of the priests.

The ESAF's campaign to disrupt discussions for a negotiated settlement was not limited to threats. In the months leading up to the Jesuit Massacre, attacks on labor and human rights organizations escalated. The National Police, under Vice Minister Montano's authority, engaged in the torture and sexual assault of over sixty labor activists. Similarly, the National Guard and the Treasury Police also tortured and disappeared civilians. Without the support of Vice Minister Montano, the security forces' persistent and public campaign of human rights abuses could not have occurred. Montano made no attempt to prevent these actions, never ordered an investigation of any of the violations, and failed to punish any perpetrators. Attacks against civilians culminated in the spectacular bombing of the headquarters of FENASTRAS, the leading Salvadoran labor confederation, which occurred while FENASTRAS was under constant surveillance by the National Police.²⁶ This was a prelude to the Jesuit Massacre. Almost immediately and without any investigation, Vice Minister Montano forecasted his later response to the Jesuit murders: he blamed the bombing on the dead themselves.²⁷

The FENASTRAS bombing set the stage for the Jesuit Massacre in two direct respects. First, as a result of the bombing, the FMLN suspended peace negotiations with the Government and, two weeks later, on November 11, 1989, launched a major military offensive, especially in

²⁵ Karl Supplemental Report, p. 40 and n.148.

²⁶ The bomb killed ten and wounded over thirty. The director general of FENASTRAS, who had been publicly threatened in the days before the bombings, was killed. Mark Anner, a US advisor to FENASTRAS, gave a detailed description of the events leading up to the bombing and the attack itself (he was severely wounded in the attack) in a letter he submitted to the Court in *Montano*, No. 12-10044-DPW, [Dkt. 50-3], Exhibit 2, attached to this Brief.

²⁷ Vice Minister Montano falsely stated: "Undoubtedly someone inside was moving explosives," on Salvadoran television, Channel 12, on November 8, 1989. See Karl Supplemental Report, p. 43, n. 162.

San Salvador. Second, ARENA President Cristiani asked Rector Ellacuría, who was in Spain receiving a prize on behalf of the UCA, to return to El Salvador in order to participate in an independent investigative commission of the bombing.²⁸ Ellacuría returned to El Salvador on November 13, 1989.

As the ESAF attempted to mount a response to the FMLN attacks, the targeting of the Jesuits continued to build, with Montano's participation. On November 12, 1989, a military patrol searched part of the UCA for weapons. Troops then were posted at the entrance of the university complex and throughout the surrounding neighborhood,²⁹ making the area around the UCA one of the most heavily guarded in the city.³⁰ On November 13, the same commando unit that would later kill the Jesuits conducted what amounted to a reconnaissance mission in preparation for these murders. The unit was able to become familiar with the terrain and verify Rector Ellacuría's return from Spain. The priests were killed inside the University a mere three days later.³¹

²⁸ Retired Colonel Juan Antonio Martinez Varela sent a letter to Ellacuría requesting his return. See Karl Supplemental Report, p. 45. Varela, along with Montano and others, was a member of the hard line *Los Manequés* group. See Karl Supplemental Report, p. 46, n. 174 & p. 58, n. 224. In Ellacuría's reply, he told of his specific travel plans and the date of his return, November 13. See Ignacio Ellacuría to Colonel Juan Antonio Martinez Varela, November 9, 1989, photocopy, AIE, cited in Teresa Whitfield, *Paying the Price: Ignacio Ellacuría and the Murdered Jesuits of El Salvador* (Temple University Press: Philadelphia, PA, 1995), p. 282.

²⁹ A one-page description of these events was found in Father Ignacio Martin Baró's computer after his death. "From this moment," he wrote, "a group of soldiers were posted at the entrance to the university complex, checking [registrando] of everyone who entered or exited, and from Monday, November 13, prohibiting the entrance or departure of anyone." See Ignacio Martín Baró, Cateo de la Universidad Centroamericana y la Comunidad Universitaria Jesuitica, San Salvador, November 14, 1989.

³⁰ Joseph J. Moakley [et al.], Interim Report of the Speaker's Task Force on El Salvador, US House Speaker's Special Task Force on El Salvador to Thomas S. Foley, 44 (April 30, 1990) [Online Version, EL01375, <http://www.gwu.edu/~nsarchiv/>, National Security Archives].

³¹ See "Jesuit Murder Investigation," Declassified Document from US Embassy, Mexico, Arthur M. Sedillo to Richard Chidester (February 28, 1990) [Online Version, EL01119, <http://www.gwu.edu/~nsarchiv/>, National Security Archives].

B. The Decision by Vice Minister Montano and other members of the High Command to Kill the Jesuits

1. Premeditation

The extensive evidence presented to and reviewed by this Court shows that Vice Minister Montano and other members of the High Command made the decision to order the murder of Ellacuría and any witnesses that might be present. Necessary preparations for the killings occurred well before the meeting in which the order to kill was finalized and transmitted. Furthermore, this act was a premeditated one.

The reconnaissance mission of November 13, 1989, ordered by Chief of Staff Ponce, provides compelling evidence of this premeditation.³² The search team included the commandos of the elite Atlacatl Battalion, who had been moved from their usual base of operations outside the city to San Salvador to await orders directly from the *Estado Mayor* – a departure from their normal chain of command. These same Atlacatl commandos would carry out the massacre.³³ During this reconnaissance, soldiers confirmed and reported Ellacuría’s presence on campus; he had returned from Spain just an hour before.

³² Several of the participants in the crime also recognized that the real purpose of the November 13 mission to the UCA campus was a reconnaissance mission. *See, e.g.*, Carlos Dada, “Entrevista con teniente coronel Camilo Hernández: Si. Yo les di el rifle para que mataran a Ellacuría,” *El Faro*, June 6, 2011.

³³ The features of the search were unusual. First, the National Intelligence Directorate (DNI) lent an intelligence officer to the search, another indication that its purpose was intelligence gathering. Second, the search lasted only a half hour and focused solely on the Pastoral Center and the priests’ residence; the search team refused Father Martin Baró’s offer to search the entire campus. Third, after the murders, the High Command could offer no credible rationale for this second search, especially because no FMLN soldiers could conceivably have been inside the UCA after the University had been searched, surrounded and closed off during and after the November 12, 1989 search of the campus. *See* “Jesuit Murder Investigation,” Declassified Document, US Embassy Mexico, Arthur M. Sedillo to Richard Chidester (February 28, 1990) [Online Version, EL01119, <http://www.gwu.edu/~nsarchiv>, National Security Archives]. *See generally*, Karl Supplemental Report, pp. 47-48 and nn. 180-189 (describing and analyzing the November 13, 1989 search).

2. Decision-Making Meetings and the Transmission of the Official Order

Vice-Minister of Defense Montano was part of the decision-making process to kill the Jesuits. Much of the day of November 15, 1989 consisted of meetings at the *Estado Mayor* to plan a more aggressive response to the FMLN offensive. This entailed attacks against civilians, including the UCA Jesuits. A mid-day meeting of the hard-line *Los Manequés*, a civilian-military faction that included Montano, specifically discussed the killing of Ellacuría. An early afternoon meeting of the ARENA Party leadership (the rightist party in power) transmitted this knowledge; during the meeting, a diagram was drawn by Major Roberto D'Áubuisson, ARENA founder and president, falsely placing Father Ellacuría at the top of the FMLN command structure. Major D'Áubuisson subsequently assured party members that by the next day “everything would be taken care of.”³⁴

Meetings of the top commanders and the inner circle of the *Tandona*, including Montano, were held throughout the afternoon and evening of November 15, to implement the assassination of the UCA Jesuits.³⁵ At the end of the evening, Montano was part of the small core group of elite officers that met with Colonel Guillermo Alfredo Benavides when the formal, official order was delivered to “kill Ellacuría and leave no witnesses.” Based on their confidential interviews with witnesses, jurists of the United Nations’ Truth Commission described the final small gathering on the night before the murders:

³⁴ The CIA gave a detailed description of this meeting including D'Áubuisson's denunciations of Fathers Ellacuría, Martín Baró, and Montes whom he accused of “brainwashing students” and “being responsible for them joining the FMLN.” The CIA report stated that it would be “difficult to dismiss [these statements] as mere coincidence” in light of the killings the next morning. See Declassified Document, CIA, “Killing of Dr. Ignacio Ellacuría [Online Version, EL00281, <http://www.gwu.edu/~nsarchiv>, National Security Archives].

³⁵ Foreknowledge of the crime also was demonstrated in the words of a member of the Atlacatl Battalion waiting in the Loyola Center prior to the killings: “We’re going to look for Ellacuría, and if we find him we’re going to be given a prize!” Father Fermín Sainz, (unpublished manuscript, on file with the (former) Lawyers Committee for Human Rights, also cited in Martha Doggett, Lawyers Committee for Human Rights, *Death Foretold. The Jesuit Murders in El Salvador* (Georgetown University Press: Washington, D.C., 1993), p. 54, and given to the Moakley Commission.

After the meeting, the officers stayed in the room talking in groups. One of these groups consisted of Colonel Réne Emilio Ponce, General Juan Rafael Bustillo, Colonel Francisco Elena Fuentes, Colonel Juan Orlando Zepeda and Colonel Inocente Orlando Montano. Colonel Ponce called over Colonel Guillermo Alfredo Benavides and, in front of the four other officers, ordered him to eliminate Father Ellacuría and to leave no witnesses.³⁶

Colonel Benavides' diary, which was entered into evidence before this Court and authenticated by Former Spanish Ambassador to El Salvador Fernando Alvarez de Miranda, recorded the conversation that occurred amongst the participants in this smaller meeting. Benavides first noted that the small group, including Montano, was part of the "decision-making group." Next, Benavides' diary indicates that Vice Minister Montano provided Benavides with the crucial intelligence that Rector Ellacuría had returned to the UCA, a fact of which Benavides was unaware. Finally, Benavides' diary records that Montano was present as the official order to kill Ellacuría was transmitted.³⁷ This Court heard a witness who credibly testified that Montano participated in this meeting.³⁸ Colonel Benavides emerged from this High Command meeting, called together his officers at the Military College, and told them that he had been given the following order: "He [Ellacuría] must be eliminated, and I don't want witnesses."³⁹

³⁶ Truth Commission Report, Illustrative Case: The Murder of the Jesuits. (emphasis added).

³⁷ Former Spanish Ambassador to El Salvador Mr. Fernando Alvarez de Miranda testified that he received and had in his possession copies of Benavides' diary. Criminal Case File 97/2010 (Sumario), Spanish National Court Criminal Chambers No. 6, Testimony of September 6, 2011. The diary also was made available to the Spanish newspaper *El Mundo* and published in that paper on November 22, 2009.

³⁸ See Transcript of Protected Witness No. 2, Criminal Case File 97/2010 (Sumario), Spanish National Court Criminal Chambers No. 6.

³⁹ Turning to Lieutenant José Espinoza, a member of the Atlacatl, and referring to the search of the Jesuit residence conducted two days earlier, Benavides recounted: "You did the search and your men know the site. Use the same layout as the day of the search. They must be eliminated – and I don't want witnesses." See Carlos Dada, "Entrevista con teniente coronel Camilo Hernández: 'Si. Yo les di el rifle para que mataran a Ellacuría,'" June 6, 2011. When Espinoza pointed out the seriousness of what he had just been ordered to do, Benavides assured him that "You have my support." See also report of US Embassy, which claims that Benavides told his lieutenants "It's either them or us. They have been bleeding our country and we have to break them. Ellacuría is one of them and he must die. I don't want any witnesses . . . This is an order and you will do it." "Best Guess on Facts of Jesuit Case," Declassified Document from William G. Walker, US Embassy to Bernard Aronson, US Department of State (January 26, 1990) [Online Version, EL01098, <http://www.gwu.edu/~nsarchiv>, National Security Archives].

3. The Coordinated Military Operation

Security forces under Montano's authority participated in the joint operation supporting the Jesuit Massacre. According to a detailed map of the operation, members of the Treasury Police and the National Police – both forces under Montano's authority – helped form a perimeter surrounding the UCA or were stationed just inside the UCA grounds.⁴⁰ The sheer magnitude of personnel and the coordination of a joint operation are indicative of the High Command's involvement, including Vice Minister Montano.

The entire operation took about an hour. The commando unit took the five-minute trip from the military compound to the UCA, doing little to conceal its operation in an area patrolled by scores of other military and security force troops. Father Martín-Baró unlocked the door to the Jesuit residence area, voluntarily letting in the soldiers. After ordering five of the priests to lie face down on a grassy knoll, two soldiers shot them one by one. A few yards away, another soldier shot Elba Ramos who was embracing her daughter, Celina. A sixth priest died while pleading for his life.⁴¹ One of the actual murderers later recalled that the priests did not look dangerous since they were “quite old, unarmed” and “in their pajamas.” But he said that his colonel had told him the priests were “delinquent terrorists,” and it was “their brains that mattered.”⁴² All were found shot in the head.⁴³

C. The Aftermath of the Jesuit Massacre and Montano's Role in the Cover-Up

Despite what soon was widespread knowledge throughout the military that the ESAF had carried out the murders, Vice Minister Montano helped the ESAF cover up its crimes by

⁴⁰ Karl Supplemental Report, Figure 3, p. 54, p. 53 (description of the map in Figure 3).

⁴¹ Downstairs other soldiers went on a rampage, burning books, computers and documents.

⁴² See Statement of direct perpetrator Gonzalo Guevara Cerritos, Doggett, *Death Foretold*, pp. 108-120.

⁴³ This Court has received into evidence the official autopsy reports of the priests. Case File 97/2010 (Sumario), Spanish National Court Criminal Chambers No. 6.

protecting the highest officers involved and charging that the FMLN was responsible.⁴⁴

Montano also denounced the testimony of eyewitness Lucia Cerna, who testified credibly before this Court that the military carried out the massacre.⁴⁵ The explanation that the FMLN was responsible did not ring true from the beginning. With continued US aid to the ESAF at stake, then President George H.W. Bush sent the head of the Southern Command to El Salvador to insist to members of the High Command – Montano, Larios and Ponce – that the perpetrators be caught and tried.

Montano was central to obstructing the criminal investigation, for which there was mounting pressure, especially from the US. Montano influenced the Special Investigation Unit (SIU) of the National Police, which initially was given this task, in two important ways.⁴⁶ First, he designated former SIU Chief, Colonel Ivan López y López, to assist Lieutenant Colonel Rivas Mejia, the current chief, with the UCA investigation; López y López had well-known experience protecting *Tandona* officers by obstructing previous SIU investigations, and, like Montano, he had been inside the command center of the Joint Command on the night of the murders – a conflict of interest not revealed until over a year and a half later.⁴⁷ Second, Vice Minister Montano had appointed all 47 SIU detectives, all seconded from the National Police. These men were dependent on Montano for their positions.

⁴⁴ See Karl Supplemental Report, pp. 65-69 (describing the typical pattern of military cover up).

⁴⁵ Testimony of Lucia Cerna, Criminal Case File 97/2010 (Sumario), Spanish National Court Criminal Chambers No. 6. Montano accused her of having been manipulated by a leading human rights advocate who, Montano alleged, worked for an FMLN front group. *El Diario de Hoy*, December 13, 1989; *La Prensa Grafica*, December 13, 1989.

⁴⁶ The United States had funded the SIU in hopes of creating a civilian-controlled unit to carry out human rights investigations. The SIU, however, remained under military control. The U.S. acknowledged the failures of their effort and Montano's role in preventing the SIU from becoming independent from the military as inextricably bound up with the desire to prevent prosecutions of the members of the military. See "The Special Investigative Unit: Wrestling with Civilianization," Confidential Cable (December 12, 1991) [Online Version, EL01308, <http://www.gwu.edu/~nsarchiv>, National Security Archives].

⁴⁷ Karl Supplemental Report, p. 77 & n. 307.

Ultimately, Montano's obstructions and manipulations paid dividends. The SIU failed to secure the crime scene, permitted evidence to be disturbed and removed, ignored important physical evidence, intimidated eyewitness Lucia Cerna, focused on the FMLN as perpetrators - even after it was patently apparent that the FLMN was not involved - and failed to take witness statements from the Atlacatl Battalion, even after members of the military and security forces had come forward to report their involvement. When Colonel Benavides approached the SIU's Lieutenant Colonel Rivas to seek protection from him, Benavides was advised to destroy weapons used in the operation and revise the Military Academy's logbooks, which then were destroyed.⁴⁸

These efforts to obscure the facts of the murder were not entirely successful, primarily due to the revelations by a US military adviser of Benavides' role in the murders.⁴⁹ This was a crucial turning point: it meant that a full cover up was no longer viable, and damage control was necessary.⁵⁰ In the wake of these disclosures, Montano and others in the High Command turned to another method of deflecting full investigation. They swiftly appointed an "Honor Commission" and designated the new head of the Air Force as its leader—the same officer who told US sources that the Jesuits "needed killing."⁵¹ Montano and other High Command members gave them their instructions in a confidential meeting.⁵²

⁴⁸ Even in the flawed trial held in El Salvador, the evidence was so compelling that Lieutenant Colonel Camilo Hernandez was found guilty of ordering the destruction of evidence.

⁴⁹ In early January 1990, Major Eric Buckland, a member of the US military advisers' group, revealed to his commanding officer that a member of the ESAF had told him that the military, and specifically Colonel Benavides, was responsible for the Jesuit Massacre. Declassified Cable, "The Jesuit Case – A Possible Break in the Case," (January 8, 1990) [Online Version EL 01084, <http://www.gwu.edu/~nsarchiv>, National Security Archives].

⁵⁰ Karl Supplemental Report, p. 79 and nn. 315-316. In addition to increased US pressure, non-Tandona officers made it known that they would not "take the heat" for the top leadership. "Staff Del O'Neil: El Salvador," Classification Unknown, Memorandum (January 10, 1990) [Online Version, EL 00484, <http://www.gwu.edu/~nsarchiv>, National Security Archives].

⁵¹ "[Excised] Air Force Chief Comment About the Murder of the Jesuit Priests in El Salvador," Classification Excised, Cable, (May 15, 1990) [Online version EL00311, <http://www.gwu.edu/~nsarchiv>, National Security

Faced with the cut off of US aid, within a week the Honor Commission named some of those responsible for the killings; at the same time, it successfully shielded the architects of the crime – Montano, the other members of the High Command and the top echelon of the *Tandona* - from responsibility. The Commission identified six direct perpetrators, two non-*Tandona* officers, and Colonel Benavides. Attorneys for the *Estado Mayor*, who were assigned to represent the defendants, quickly purged witness statements of any intimation of higher command involvement.⁵³

In addition to his role with the SIU and the Honor Commission, Montano also was crucial to an extensive campaign of threats and intimidation to protect *Tandona* officers, shut down any dissension in the military and retrench the “code of silence.”⁵⁴ The deaths of two key witnesses – a captain who claimed to have been approached to organize the UCA operation (and refused) and an intelligence officer who revealed that the chief of the DNI gave the order for the campus reconnaissance search – occurred under suspicious circumstances. Informants told their US Embassy handlers that they were afraid for their lives. A direct perpetrator was transferred and, soon thereafter, shot and wounded. Other direct perpetrators were given especially dangerous

Archives]. Other members of the Honor Commission included the lawyer of the *Estado Mayor* (who was also Chief of Staff Ponce’s personal lawyer), one of the *Tandona*’s important officers, and other military officers. “Jesuit Case Update-ESAF Log Chronicles Murder at 12:30 A.M.” (September 9, 1990) [Online Version, EL 01200, <http://www.gwu.edu/~nsarchiv>, National Security Archives]. See generally Karl Supplemental Report, pp. 80-81 & n. 318.

⁵² Karl Supplemental Report, pp. 81-82 and nn. 324, 329, 330.

⁵³ Whitfield, *Paying the Price*, p. 282.

⁵⁴ Despite strong dissatisfaction from younger officers who viewed the *Tandona* as continuing to shield itself at the expense of more junior military, Montano and other top commanders persisted in their efforts to protect themselves. “Dissatisfaction in the Officer Corps Over the Failure of Chief of Staff Ponce to Resolve the Jesuit Case and Remove Corrupt and Incompetent Senior Officers,” Classification Excised Cable (August 17, 1990) [Online Version, EL00329, <http://www.gwu.edu/~nsarchiv>, National Security Archives] (Montano specifically named by young officers as a senior officer who should be purged from the military).

assignments, which they believed were aimed at harming them, if not bringing about their deaths.⁵⁵ Protected witnesses before this Court testified credibly in a similar vein.⁵⁶

The cumulative impact of obstructionism by the SIU, failure to investigate orders from higher up by the Honor Commission, and massive intimidation and threats, from the day the murder occurred, led to the strict maintenance of the code of silence; this meant that Montano and other members of the High Command successfully had shielded themselves from criminal responsibility. Instead, although a trial in El Salvador occurred in September 1991, no members of the High Command were charged; the trial resulted only in the convictions of Colonel Benavides and Lieutenant Mendoza for the murders and the acquittal of all of the direct perpetrators.⁵⁷ Once again, the High Command, including Vice Minister Montano, remained protected. As this Court determined previously, the trial was “ineffectual and highly criticized.”⁵⁸ The United States Court of Appeals for the Seventh Circuit concurred when they held that the Salvadoran trial was “a kangaroo court that would make kangaroos blush.”⁵⁹ The Salvadoran trial never investigated the role of top commanders who approved and ordered the Jesuits Massacre nor the extensive cover-up subsequently orchestrated by senior officers, including Vice Minister Montano. This failure of the Salvadoran judicial system prompted this Extradition Request.

⁵⁵ Karl Supplemental Report, pp. 86-88 & nn. 350-358 (citing interviews, US declassified documents, newspaper accounts, and reports from the Moakley Commission); Carlos Dada, “Entrevista con teniente coronel Camilo Hernández: Si. Yo les di el rifle para que mataran a Ellacuría,” *El Faro*, June 6, 2011.

⁵⁶ See Transcripts of Protected Witnesses No.1 and No.2, Case File 97/2010 (Sumario), Spanish National Court Criminal Chambers No. 6.

⁵⁷ As noted previously, the direct perpetrators had confessed to the crime. Doggett, *Death Foretold*, pp. 108-120.

⁵⁸ Indictment, Case File 97/2010 (Sumario), Spanish National Court Criminal Chambers No. 6.

⁵⁹ *Doe v. Gonzales*, 484 F.3d 445, 451 (7th Cir. 2007).

LEGAL ARGUMENT

I. REQUIREMENTS FOR EXTRADITION

A. Jurisdiction

Under US law and pursuant to applicable extradition treaties, a US federal judge may issue a warrant after a foreign country charges “any person found within [the judge’s] jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention.” 18 U.S.C.S. § 3184 (2013). “Jurisdiction of any such foreign government” is not limited to territorial jurisdiction; instead, “it refers to the authority of a nation *to apply its laws to particular conduct.*” *Demjanjuk v. Petrovsky*, 776 F.2d. 571, 582 (6th Cir. 1985) (emphasis added) ; *accord Restatement (Third) of Foreign Relations Law of the US*, § 404 (“A state has jurisdiction to define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern . . . even where [territorial jurisdiction is not] present.”).

This Court has jurisdiction over Montano pursuant to Article 23.4 of the Spanish Organic Law of the Judiciary, as amended by the Organic Law 1/2014 of March 13, 2014, Ref. BOE-A-2014-2709.⁶⁰ This Court retains jurisdiction over Montano and the crimes with which he has

⁶⁰ Art. 23.4 provides in pertinent part:

[S]erá competente la jurisdicción española para conocer de los hechos cometidos por españoles o extranjeros fuera del territorio nacional susceptibles de tipificarse, según la ley española, como alguno de los siguientes delitos cuando se cumplan las condiciones expresadas

...
e) *Terrorismo, siempre que concurra alguno de los siguientes supuestos:*

...
4.º la víctima tuviera nacionalidad española en el momento de comisión de los hechos;

[The Spanish courts are competent to exercise jurisdiction over acts committed by Spaniards or by foreigners outside the national territory that constitute under Spanish law any of the following offenses when the express conditions are met:

been charged even though certain changes to extraterritorial jurisdiction are pending review in Spanish Appellate Courts.⁶¹ Put simply, Article 23.4 e) 4.º vests this Court with jurisdiction to investigate and adjudicate Montano due to the nature of his alleged crimes and the Spanish citizenship of his alleged victims. Further, extradition is proper pursuant to the applicable extradition treaties discussed below.

B. The Extradition Treaties

On May 29, 1970, Spain and the US signed a bilateral extradition treaty (the “Extradition Treaty”) that entered into force on June 16, 1971.⁶² Also relevant is the 2003 extradition treaty between the US and the European Union (“EU Treaty”).⁶³ The EU Treaty replaces some provisions in bilateral treaties between the US and EU member states, including Spain. To the

...
e)Terrorism, so long as one of the following conditions is met:

...
4.º the victim had Spanish nationality at the time of the commission of the offense.]

Spanish Organic Law of the Judiciary, 6/1985, of July 1, 1985, Art. 23.4, Ref. BOE-A-1985-12666, *available at* <https://www.boe.es/buscar/act.php?id=BOE-A-1985-12666> (Spanish language only).

⁶¹ The March 14, 2014 amendments to the Organic Law of the Judiciary limit this Court’s jurisdiction over certain crimes, including crimes against humanity. Accordingly, this Court entered an order on March 13, 2014 discontinuing the investigation of the crimes against humanity charges with respect to Montano and the other accused individuals. Order dated March 31, 2014, Case File 97/2010, (Sumario) Spanish National Court, Chambers No. 6, attached as Exhibit 6 to this Brief. However, this Court’s May 30, 2011 indictment charged Montano with murder as a predicate act of terrorism (“*asesinato terrorista*”) for the killing of five Spanish priests. Act of Indictment, Case File 97/2010 (Dp 391/08), at 46, (Sumario) Spanish National Court Chambers No. 6. The charged murders constitute terrorism under Spanish law as defined by Article 406 of the Spanish Penal Code (murder) in conjunction with Article 174 bis. These crimes remain extraditable as explained in the Order, Case File 97/2010, at 5, (Sumario) Spanish National Court Chambers No. 6. Accordingly, this Court retains jurisdiction over the murder charges of the five Spanish victims and seeks extradition on the basis of those murders.

⁶² *See* Treaty on Extradition, US-Spain, May 29, 1970, 1970 U.S.T. LEXIS 490 (the “1970 Treaty”). Since 1970, the United States and Spain have amended the extradition treaty three times. *See* Supplemental Treaty on Extradition, US-Spain, Jan. 25, 1975, 1975 U.S.T. LEXIS 603 (the “First Supplemental Treaty”); Second Supplemental Treaty on Extradition, U.S.-Spain, Feb. 9, 1988, 1988 U.S.T. LEXIS 195 (the “Second Supplemental Treaty”); Third Supplemental Treaty on Extradition, U.S.-Spain, Mar. 12, 1996, 1996 U.S.T. LEXIS 55 (the “Third Supplemental Treaty.”) Together, these treaties are referred to as the “Extradition Treaty”. It is important to note that each supplement is not an entire reprint of the treaty; supplements only partially modify terms and provisions of earlier treaties. Therefore, certain portions of older versions of the Extradition Treaty remain good law.

⁶³ *See* Agreement on Extradition, US-EU, June 25, 2003, 2003 U.S.T. LEXIS 233 (the “EU Treaty”).

extent the EU Treaty materially modifies any relevant provisions of the Extradition Treaty, those modifications are noted here.⁶⁴

The Extradition Treaty requires that the offense for which extradition is sought be “punishable under the laws in *both* Contracting Parties by deprivation of liberty for a period of more than one year or by a more severe penalty . . .” 1988 U.S.T. LEXIS 195, *12–13 (emphasis added). This requirement or practice, known as the “dual criminality” principle, is common among international extradition treaties. *See* 1988 U.S.T. LEXIS 195, *4 (describing the Extradition Treaty’s “dual criminality approach” as a “modern extradition practice” that emphasizes “underlying criminal conduct rather than the particular designation of the offense contained in our respective criminal codes”); *see also* EU Treaty, 2003 U.S.T. LEXIS 233, at 6. Importantly, the Extradition Treaty specifies that extradition is not limited to the principal offenders of a qualifying offense, but that extradition is also appropriate for accomplices, accessories and co-conspirators.⁶⁵

The Extradition Treaty and accompanying law does not require that the two countries label the crime identically, nor does it require that the scope of the liability be the same in the two countries. *Collins v. Loisel*, 259 U.S. 309, 312 (1922) (differing descriptions of the crime of obtaining property by false pretenses did not preclude extradition). Further, the law does not require a court to master foreign law in order to precisely ensure that an act is criminal in both countries: “an extensive investigation of [foreign] law would be inappropriate.” *Peters v. Egnor*, 888 F.2d 713, 716 (10th Cir. 1989) (citing *In re Assarsson*, 635 F.2d 1237, 1244 (7th Cir. 1980)).

⁶⁴ The EU Treaty contemplates coordination between bilateral extradition treaties in effect at the time of its ratification. *See Id.* at 3-4. In most instances, the Extradition Treaty remains materially unaffected by the EU Treaty.

⁶⁵ *Id.* at *13 (“Extradition shall also be granted for participation in any of these offenses, not only as principals or accomplices, but as accessories, as well as for attempts to commit or conspiracy to commit any of the aforementioned offenses, when such participation, attempt or conspiracy is subject, under the laws of both Parties, to a term of imprisonment exceeding one year.”); *see also* EU Treaty, 2003 U.S.T. LEXIS 233, at *6.

Instead, it is enough if the particular act charged is criminal in both jurisdictions. *Collins*, 259 U.S. at 312; *see also Wright v. Henkel*, 190 U.S. 40, 58 (1903).

The evidentiary standard in an extradition hearing is relaxed: “evidence supporting probable cause need not be evidence that would ultimately lead to conviction.” *See e.g., Maguna-Celaya v. Haro*, 19 F. Supp. 2d 1337, 1342 (S.D.Fla. 1998) *rev’d and vacated sub nom. Maguna-Celaya v. Reno*, 172 F.3d 883 (11th Cir. 1999); *United States v. Kin-Hong*, 110 F.3d 103, 120 (1st Cir. 2007). This is because extradition hearings are not a guilt determination but are exclusively a “judgment whether there is competent evidence that would support a reasonable belief that the subject of the proceedings was guilty of the crimes charged.” *Gill v. Imundi*, 747 F.Supp. 1028, 1038 (S.D.N.Y. 1990); *Escobedo v. US*, 623 F.2d 1098, 1102 (5th Cir. 1980). As discussed below, Montano’s alleged crimes and the evidence supporting them satisfy each of these Extradition Treaty requirements.⁶⁶

II. THE CRIMES FOR WHICH EXTRADITION IS SOUGHT SATISFY THE EXTRADITION TREATY REQUIREMENTS

This Court seeks Montano’s extradition for the crime of murder.⁶⁷ The elements of murder in the US and Spain are indistinguishable.⁶⁸ “Malice aforethought” prior to the act of killing is a central element in both statutes. While malice aforethought is present in this case, extradition law insists courts focus more on whether the criminal laws of each country deem the underlying *act* an offense, and less on the formal elements of the crime. The premeditation of

⁶⁶ The Extradition Treaty also requires a statement that neither the prosecution nor the execution of the penalty is barred according to the legislation of the Requesting Party. *See* 1996 Treaty, 1996 U.S.T. LEXIS 55, at *7. As discussed above, pursuant to this Court’s March 31, 2014 Order, neither the prosecution nor the execution of the penalty is barred in this case. *See* Order, at 4, Case File 97/2010 (Sumario) Spanish National Court Chambers No. 6.

⁶⁷ The extradition of Montano is being sought for his role in the murder of the Jesuit priests as a predicate act of terrorism as defined in Spanish Penal Law, Article 406 (Organic Law 10/1995, November 23).

⁶⁸ Spain’s 1995 Penal Code (Organic Law 10/1995, November 23) punishes murder as the “act to take another’s life.” *See also* articles 138, 139, and 140 of the Spanish Penal Code. Under US law, murder is the unlawful killing of a human being with malice aforethought. *See* 18 U.S.C. § 1111.

another's death — the act of reflecting upon, and ultimately acting with “malice” — is the underlying *act* that both criminal codes criminalize. Further, without question, both countries punish murder severely, with significant imprisonment terms.⁶⁹ Both countries specifically recognize criminal liability for conspirators who orchestrate the killing of another human being.⁷⁰

In this case, the significant evidence presently before this Court establishes that there is probable cause sufficient to believe Montano participated in the Jesuit Massacre. In the days leading up to the Jesuit Massacre, Montano collaborated with other members of the High Command in the decision-making to kill the Jesuits and incited and assisted with the planning and ordering of the attack.⁷¹ Montano was part of the small core group of elite officers, one of whom gave the official order to “kill Ellacuría and leave no witnesses” on November 15, 1989.⁷² In the diary of Colonel Benavides, which has been admitted as evidence before this Court, he noted Colonel Montano's presence at this meeting in which the formal order was given and that

⁶⁹ See Organic Law 10/1995, November 23; 18 U.S.C. § 1111.

⁷⁰ Under the Spanish Penal Code, co-conspirators are treated as equally responsible under the law—this is known as “necessary cooperation.” Necessary cooperation calls for “a concurrence of the wills [of those involved] that will make them equally responsible regardless of their individual material contribution.” See Spanish Supreme Court “STS” 19-2-88,30-1-89,30-4-90, 22-2& 17-6-91; see also STS 479/98, de 6-4; 1117/98,de 9-10. Under US law, a conviction for murder does not require that the defendant personally pull the trigger; rather, a party who planned or collaborated in the execution of the murder, but did not pull the trigger himself, may be held responsible for the murder under the conspiracy theory of liability. See, e.g., *United States v. Garcia-Ortiz*, 528 F.3d 74, 81 (1st Cir. 2008) (“Section 1111 does not require that the defendant himself pull the trigger”); *Zelaya v. United States*, 2013 U.S. Dist. LEXIS 117912 (D. Md. Aug. 20, 2013) (“Even if it were true that one of the other [individuals] pulled the trigger, however, Petitioner could still have been liable for murder as a co-conspirator”); *Johnson v. Horel*, 2010 U.S. Dist. LEXIS 125005, 36-37 (N.D. Cal. Nov. 12, 2010) (it does not matter who pulled the trigger for the purpose of proceeding on a conspiracy theory of liability).

⁷¹ See Truth Commission Report; “Jesuit Update: Alleged Espinoza Letter May Implicate Bustillo and Others,” Declassified Document, US Embassy, (September 20, 1991), [Online Version EL01299, <http://www.gwu.edu/~nsarchiv/> National Security Archives]. See also, “Jesuit Update – Ponce Initiative Creates New Options,” Declassified Document from William G. Walker, US Embassy to Peter F. Romero, US Department of State, (March 18, 1991) [Online version, EL01268, <http://www.gwu.edu/~nsarchiv/> National Security Archives].

⁷² *Id.*

Montano spoke up to supply the crucial information that Rector Ellacuría, in fact, had returned to the UCA.⁷³ A protected witness, who testified credibly before this Court, also identified Montano as a participant in the meeting in which the order was delivered to Benavides.⁷⁴

In addition, the types of units involved in the Jesuit Massacre further implicate Montano. According to a detailed map of the operation, members of the Treasury Police and the National Police – both forces under Montano’s authority – helped form a perimeter surrounding the UCA or were stationed just inside the UCA grounds.⁷⁵ The sheer magnitude of personnel and the coordination of a joint operation are indicative of the High Command’s involvement, including Vice Minister Montano. Finally, Montano was integral in the cover-up of the crime and the High Command’s role in its execution, further accentuating his accessory and co-conspirator status. Most significantly, Montano obstructed the investigation, influencing the SIU of the National Police, which was initially tasked with carrying out the investigation.⁷⁶ Thereafter he helped insure that the appointed Honor Commission would not examine senior commanders’ roles as the decision-makers ordering the murders.

III. PRECEDENT SUPPORTS THE EXTRADITION REQUEST

The U.S. and Spain share a rich history of extradition cooperation, dating as far back as the 1800s. *See e.g., In re Oteiza y Cortes*, 136 U.S. 330 (US 1890) (upholding extradition of a Spanish national from the US to Spain and referencing the 1877 agreement between the US and Spain concerning the extradition of criminals). Pursuant to the US and Spain Extradition Treaty,

⁷³ Former Spanish Ambassador to El Salvador Mr. Fernando Alvarez de Miranda testified that he received and had in his possession copies of the diary. Case File 97/2010 (Sumario), Spanish National Court Chambers No. 6, Testimony of September 6, 2011.

⁷⁴ *See* Transcript of Protected Witness No.2, Case File 97/2010 (Sumario), Spanish National Court Criminal Chambers No. 6.

⁷⁵ Karl Supplemental Report, Figure 3, p. 54, p. 53 (description of the map in Figure 3).

⁷⁶ *See* “The Special Investigative Unit: Wrestling with Civilianization,” Confidential Cable (December 12, 1991) [Online Version, EL01308, <http://www/gwu.edu/~nsarchiv>, National Security Archives].

as amended, courts often have granted extradition requests between the US and Spain. *See e.g.*, *US v. Wiebe*, 733 F.2d 549 (8th Cir. 1984) (Court upheld extradition to Spain of Canadian national charged with murder in Spain); *US v. Adler*, 605 F. Supp. 2d 829 (W.D. Tex. 2009) (extradition from Spain to the US upheld); *US v. Flores*, 538 F.2d 939 (2nd Cir. 1976) (same).

Commonly, countries with bilateral extradition treaties agree to extradite nationals of the requesting country found within their jurisdiction. In addition, an important tradition exists of extradition requests being granted by Spain for the extradition of a Spanish national to face criminal charge in the US. In Extradition proceedings n° 48/2001; Judicial Decree (Auto) N° 71/2002, Spanish Supreme Court - Criminal Chamber, Spain extradited a Spanish citizen to California to face charges of rape, drug trafficking, and multiple instances of fraud on the condition that the United States did not sentence the defendant to life imprisonment. In Extradition proceedings n° 22/09; Judicial Decree (Auto) N° 21/10, Spanish Supreme Court - Criminal Chamber, Spain extradited a Spanish citizen to California to face prosecution for conspiracy to commit fraud, misappropriation of public funds, grand larceny, forging official documents, and conflict of interests regarding contracts. Responding to a request of the United States, in Extradition proceedings n° 18/07 Judicial Decree (Auto) N° 113/2009, Spanish Supreme Court - Criminal Chamber, Spain extradited a Spanish citizen to the United States after the defendant was indicted for money laundering in the Southern District of Florida.

Further, as co-signors to the EU Treaty, the abundant history of extradition between the United States and other European countries is further support for extradition in this case. Numerous US courts have allowed extradition to various European Union countries. *See e.g.*, *In re Gambino*, 421 F. Supp. 2d 283 (D. Mass. 2006) (granting extradition from the U.S. to Italy); *Matter of Extradition of Lui*, 939 F. Supp. 934, 941 (D. Mass. 1996) (granting extradition from

the US to the United Kingdom); *US v. Koskotas*, 1988 WL 187501 (D. Mass. Aug. 24, 1989) *mod sub nom. Kostas v. Roche*, 740 F. Supp. 904 (D. Mass. 1990) *affd*, 931 F.2d 169 (1st Cir. 1991) (granting extradition from the US to Greece); *In re Extradition of Firquet*, 1993 U.S. Dist. LEXIS 5164 (S.D.N.Y. 1993) (granting extradition from the US to France); *Bozilov v. Seifert*, 983 F.2d 140 (9th Cir. 1992) (granting extradition from the US to Germany); *Markey v. US Marshal Serv.*, 2010 U.S. Dist. LEXIS 38082 (N.D. In. 2010) (granting extradition from the US to Ireland).

CONCLUSION

Because both Spain and the US criminalize murder and conspiracy to commit murder, and because there is ample probable cause to establish that Montano's actions fall squarely under both countries' definitions of those crimes, extradition is proper and necessary in this case, and should be granted. All elements of the Extradition Treaty have been satisfied. Further, ample precedent exists for extradition by the US to Spain in similar situations. Extraditing Montano, so he can face trial for the murder of Spanish citizens, is appropriate and just.

Respectfully submitted,

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