

BEFORE THE INTERNATIONAL CENTRE FOR SETTLEMENT OF
INVESTMENT DISPUTES

ICSID Case No. ARB/19/6

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 In the Matter of Arbitration Between: :
 :
 ANGEL SAMUEL SEDA AND OTHERS, :
 :
 Claimants, :
 :
 and :
 :
 REPUBLIC OF COLOMBIA, :
 :
 Respondent. :
 -----x

Volume 3

VIDEOCONFERENCE: HEARING ON JURISDICTION AND MERITS

Wednesday, May 4, 2022

The World Bank Group
1225 Connecticut Avenue, N.W.
Conference Room C 3-100
Washington, D.C.

The Hearing in the above-entitled matter
came on at 9:30 a.m. before:

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President of the Tribunal

PROF. HUGO PEREZCANO DÍAZ
Co-Arbitrator

DR. CHARLES PONCET,
Co-Arbitrator

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P R O C E E D I N G S

PRESIDENT SACHS: Good morning, ladies and gentlemen.

Are there any housekeeping matters before we go to the Witnesses?

MS. CHAMPION: Not on our part, Mr. President.

MS. BANIFATEMI: None, Mr. President. Thank you very much.

PRESIDENT SACHS: Then we would invite Mr. Hernández to take the stand.

DANIEL RICARDO HERNÁNDEZ MARTÍNEZ,
RESPONDENT'S WITNESS, CALLED

THE WITNESS: Buenos días.

PRESIDENT SACHS: Buenos días.

So, good morning, Mr. Hernández. In front of you is a Witness Declaration. Would you please read the Declaration aloud.

(Pause.)

PRESIDENT SACHS: Can you hear me? So, good morning. No?

Good morning. In front of you is a

1 declaration a Witness Declaration. Do you see it?

2 Would you please read it aloud.

3 THE WITNESS: I solemnly declare upon my
4 honor and conscience that I shall speak the truth, the
5 whole truth, and nothing but the truth.

6 PRESIDENT SACHS: Thank you.

7 You submitted two Witness Statements in
8 these proceedings.

9 There is an echo?

10 (Pause.)

11 PRESIDENT SACHS: Okay. You submitted two
12 Witness Statements in these proceedings, dated
13 16 November 2020 and 14 February 2022. Is their
14 anything you would like to correct or amend in these
15 statements as of now?

16 THE WITNESS: I would like to, not clarify
17 but offer an explanation for a mistake that was made
18 at the time of writing the First Statement.

19 Because of an involuntary mistake, it was
20 indicated that I am a prosecutor in the
21 Anti-Corruption Unit. This is a situation that was
22 misunderstood or I made that mistake in the witness

1 statement because, in the last eight years, I have
2 been in charge of corruption investigations within
3 the Colombian State, specifically at paragraphs 9 and
4 10 of the First Statement.

5 THE INTERPRETER: Interpreter notes that all
6 microphones should be off other than the witness's.
7 If other microphones are on at this time, then that is
8 causing feedback which is causing difficulty for
9 interpreting. Thank you very much.

10 PRESIDENT SACHS: Thank you. Anything else?

11 THE WITNESS: As for the rest, I corroborate
12 and confirm absolutely everything indicated in both
13 statements.

14 PRESIDENT SACHS: Thank you very much.

15 There will be direct.

16 MS. HERRERA: Yes, Mr. President. Thank
17 you.

18 DIRECT EXAMINATION

19 BY MS. HERRERA:

20 Q. Good morning, Mr. Hernández.

21 THE INTERPRETER: The Interpreter would ask
22 the President to kindly turn off the microphone,

1 please. I believe I'm getting feedback through it.

2 BY MS. HERRERA:

3 Q. Could you introduce yourself to the Tribunal
4 and tell us about your experience and your position
5 today?

6 A. Of course. My name is Daniel Ricardo
7 Hernández Martínez. I am a prosecutor in the Republic
8 of Colombia. I began working at the institution on
9 12 February 2004. I came in as a judicial technician.
10 From there, I was promoted to Assistant Prosecutor,
11 and then local prosecutor, in which capacity I was in
12 different municipalities of Colombia, in La Palma, in
13 Cundinamarca and Girardot, and later at the local unit
14 in the city of Bogotá.

15 And from there I was promoted to a position
16 of deputy sectional prosecutor in the Sex Crimes Unit.
17 I worked four years in this unit. At that time, I was
18 the Prosecutor who had the most trials in Colombia.
19 227 trials were carried out by my office, and this led
20 to a new promotion as a Specialized Prosecutor.

21 I worked in the Unit on Human Rights and
22 International Humanitarian Law, in charge of

1 investigating homicides of leaders of land. I had good
2 results, including in proceedings that went forward
3 before the Inter-American Commission on Human Rights,
4 such as that of Martha Gaibao. There was a judgment
5 in relation to more than 17 persons for this homicide.

6 After that, I was assigned the position of
7 Coordinator of the Special Investigations Group of the
8 Office of the Deputy Attorney General in 2014. From
9 that time to date, I've been handling cases that have
10 become well-known nationally.

11 And I was promoted in 2016 as prosecutor
12 before the Court; and, since then, I have been
13 assigned to the Technical Investigation Corps, which
14 is the TIC. That's the judicial police who work for
15 the Office of the Attorney General.

16 Q. Thank you, Mr. Hernández.

17 If when you're listening to the translation
18 it's bothering you, you can...

19 Another question, doctor Hernández: Have
20 you received recognition for your work at the Office
21 of the Attorney General?

22 A. Yes, yes, ma'am.

1 Over these years, at the Office of the
2 Attorney General, I have received recognition by the
3 National Army, the National Police, the Office of the
4 Attorney General, itself. I received the second-most
5 important distinction for any private person by the
6 National Army. This is the Cross of Silver, six
7 additional medallions of both the army and the police.

8 Several times I've been recognized by Group
9 III of the DEA, for handling the investigations having
10 to do with macro structures of drug-trafficking,
11 including alias "Guacho." And, in addition to that,
12 I've also received direct recognition from the Office
13 of the Attorney General for the good work that I've
14 done.

15 Q. Thank you, Mr. Hernández.

16 Mr. Hernández, before this Tribunal, it has
17 been said or it has been represented that the Office
18 of the Attorney General is plagued with corruption.

19 What is your opinion? What is your position
20 in this regard?

21 A. I believe that this is a totally
22 disrespectful statement vis-à-vis more than 25,000

1 officials who work for the Office of the Attorney
2 General. It is disrespectful to the memory of my
3 father. I am the son of a victim of the La Rochela
4 Massacre, which occurred in Colombia in 1989. My
5 father worked for the Judicial Police at that time.
6 He gave his life for Colombia, for his institution,
7 and I believe that labeling as corrupt all of the
8 officials who work in the Office of the Attorney
9 General is an offense. There is no foundation
10 whatsoever for such accusations.

11 Now, there are persons who may give rise to
12 or have some problems, but not the institution in
13 general, nor all of the public servants who work in
14 it.

15 Moreover, the Colombian State was held
16 responsible for the La Rochela Massacre, and, as a
17 victim, I have wanted to continue carrying out the
18 work that my father did and for which he gave his
19 life.

20 Q. Thank you, Mr. Hernández.

21 Finally, can you tell this Tribunal why you
22 went to Medellín on 4 July 2020 and met with Mr. Seda?

1 A. Of course. On that 4 June, I received
2 information some days earlier in late May of that
3 year, 2020. I received information from doctor Ana
4 Catalina Noguera, who was the Delegate Prosecutor for
5 Criminal Finance. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

15 Bear in mind some important points: this was the
16 beginning of the pandemic. Airports and roads were
17 completely shut down. One had to travel overland more
18 than 10 hours from Bogotá to the City of Medellín in
19 order to be able to take this statement, which was
20 important for the Office of the Attorney General.
21 That is what led me to go to the City of Medellín,
22 putting at risk the health and life of those who

1 accompanied me, the two investigators, my own and my
2 family's.

3 Q. Thank you.

4 PRESIDENT SACHS: Thank you.

5 We will go to cross-examination, then.

6 Ms. Champion?

7 MS. CHAMPION: Thank you, Mr. President.

8 CROSS-EXAMINATION

9 BY MS. CHAMPION:

10 Q. Good morning, Mr. Hernández.

11 A. Yes.

12 Q. So, I want to clarify a little bit because I
13 actually noticed that discrepancy in your Witness
14 Statement, too, that in the First Witness Statement
15 you seem to agree that you had worked at the
16 Anti-Corruption Unit or you at least didn't contest
17 it, and then in the second one you clarify this.

18 So, you testified a moment ago that you have
19 been doing corruption investigations or you had been
20 for eight years; is that correct?

21 A. What I would like to say and what was stated
22 with this clarification is that I have never belonged

1 to the anti-corruption prosecutorial offices or the
2 Anti-Corruption Unit.

3 Now, I have been in charge of investigations
4 over the last eight years in corruption cases, both
5 State corruption and internal corruption. I simply
6 wanted to make that clarification:

7 I have not belonged to the Anti-Corruption
8 Unit, but I have handled corruption investigations.

9 Q. So, there is a special Anti-Corruption Unit?
10 Is that correct?

11 A. That is correct.

12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 Corps of the Office of the Attorney General.

2 Q. Was Mr. Martínez investigating corruption in
3 the Asset Forfeiture Unit as you were at that time?

4 A. No, ma'am. He simply supported me for
5 receiving the complaint by Angel Seda against Victor
6 Mosquera Iván López for alleged extortion.

7 Q. Isn't it true that Mr. Martínez was later
8 prosecuted for crimes?

9 A. Yes, ma'am, it is true.

10 Q. If you could pull up Exhibit C-217.

11 You do have binders there, Mr. Hernández,
12 but we will also be putting them on the screen.

13 So it was reported that Mr. Martínez was
14 prosecuted for demanding COP\$70 million from the Mayor
15 of Sincelejo in exchange for not opening a corruption
16 investigation against him; is that accurate?

17 A. Yes, that is accurate. That is the incident
18 for which he was investigated, prosecuted,
19 and convicted; that is Oscar Javier Martínez
20 Monterroza.

21 (Overlapping interpretation with speaker.)

22 Q. Sorry, I apologize. Can you please repeat

1 your answer? I interrupted you accidentally.

2 (Pause.)

3 Q. Sorry, Mr. Hernández. I believe I asked you
4 to confirm that he was prosecuted for soliciting a
5 bribe from the Mayor of Sincelejo in exchange for not
6 opening a corruption investigation against him; is
7 that correct?

8 A. It is correct. He was prosecuted,
9 investigated, and then he came up with a plea
10 agreement, accepting the charges from the Office of
11 the Attorney General.

12 Q. This is going to be the slowest conversation
13 of all time.

14 Okay. And so, my understanding also is that
15 he was also sentenced to four years, eight months in
16 prison for that; is that correct?

17 A. I don't actually know how long his sentence
18 was, but I can assure you he was convicted because he
19 accepted the charges in a preliminary agreement or
20 plea bargain.

21 [REDACTED]

[REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

A. When the Attorney General at the time,

5

doctor Nestor Humberto Martínez, entered the Fiscalía

6

as Attorney General, he adopted a policy called

7

"glass pockets." This policy was aimed at attacking

8

State corruption and clearly also corruption that

9

could arise within the institution. It was a policy

10

developed by the Attorney General, Nestor Humberto

11

Martínez.

12

Q. Can you explain to me this "glass pocket"?

13

Is that translation correct?

14

A. That is what it was called "bolsillos de

15

cristal." It has to do with the reasoning that the

16

pockets of the public officials have to be so delicate

17

they cannot accept dirty money because that might

18

cause them to break.

19

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

14 Q. So, corruption, I'm assuming, is quite
15 difficult to investigate; is that fair?

16 A. Corruption is an act that is difficult to
17 investigate. Moreover, in many discussions and
18 conversations, I have expressed that the same
19 expression or denomination used for sex crimes is
20 applicable, to the extent that it is a crime that
21 happens "behind closed doors", oftentimes only known
22 to the victim and the victimizer, in this case, the

1 person who offers the bribe and the official who
2 receives it. That is why it is complicated to
3 investigate. One must obtain and bring about a
4 situation whereby the person who has carried out the
5 corrupt activity feels the trust so as be able to turn
6 over that information to the Colombian State.

7 Because of that, the jurisdiction itself, or
8 the legislators themselves came up with certain
9 specific grounds. This is Article 324 of Law 906 of
10 2004, and it's Number 18, and it gives rise to what is
11 called in Colombia "principio de oportunidad,"
12 prosecutorial discretion. Any natural person, a
13 Colombian or foreign citizen or a public servant who
14 blows the whistle on acts of corruption and who states
15 openly that they have participated in such acts may be
16 benefited by this principle of prosecutorial
17 discretion.

18 What is this principle? Well, it means that
19 the Office of the Attorney General may waive bringing
20 a criminal action. Because of this, this possibility
21 came about, this legal solution to help corruption
22 investigations in Colombia go forward.

1 (Overlapping interpretation with speaker.)

2 Q. Apologies.

3 When you say that it's difficult to get
4 people to come forward about corrupt activities,
5 you're talking about the victims of corruption; right?
6 I mean, in other words, people who actually went
7 through with it, paid the bribe. It's difficult to
8 get those people on the record; is that fair?

9 A. That is fair because it is very difficult
10 for a person to accept the fact that they have
11 committed a crime. Committing a crime, well, that
12 entails a prison and a stiff prison sentence. So, the
13 idea is to put in place some kind of guarantee, some
14 kind of solution, some kind of guarantee, some kind of
15 legal possibility that would allow for that person to
16 provide that information and accept that they did,
17 indeed, commit a crime.

18 Q. Short of getting a witness on the record,
19 when you are investigating, for example, a prosecutor
20 for corruption, what signs do you look for?

21 A. When one is investigating, not necessarily
22 just a prosecutor but any public servant in the

1 Colombian State, it is my view, based on my own
2 investigative techniques and the ones I've developed,
3 the operating premise is to verify whether there is
4 property or assets in this person's name that show an
5 unjustified increase in wealth, not justified based on
6 their salary. The public servant lives off their
7 salary, unless it can be shown that they have, say,
8 family companies or situations of that sort.

9 Second--well, excuse me, first. The first
10 act must be wiretaps. That is the investigative act
11 that is carried out in relation to practically each
12 and every--by each and every Prosecutor who works in
13 Colombian territory in order to verify and to cross
14 check some of the information obtained, information
15 that is legally obtained, in order to verify whether
16 there's some kind of relationship that would show us
17 that this person has some proximity, some friendship,
18 some degree of additional trust with a person who's
19 being investigated, with a person being subject to any
20 kind of work being done. Those would be the most
21 important steps that could be taken in an
22 investigation of corruption of the public official.

1 Q. And in the case of a prosecutor in
2 particular, do you look for evidence of irregularities
3 in the way they have handled a case?

4 A. Those would be specific issues, as I
5 understand your question, with respect to what would
6 be malfeasance. If the person has changed over time
7 the way in which they make decisions, those would be
8 specific decisions that should be maintained over
9 time.

10 The best example would be if a prosecutor in
11 each case that they handle within the Sex Crime Unit
12 always has as a custom to request measures —that imply
13 putting the person under investigation within walls,
14 and in respect to the same crime, with the same
15 characteristics, they request a non-custodial measure
16 rather than a custodial measure, then that would set
17 off an alarm, and one can verify that the way in which
18 this person is deciding things is changing, and that
19 could give rise to an investigation because of that
20 possible malfeasance.

21 But malfeasance, unlike public bribery,
22 well, the investigation must be much more exhaustive

1 with respect to the line of decision-making that the
2 same office has maintained.

3 (Overlapping interpretation with speaker.)

4 Q. Sorry. Can you repeat just the last part of
5 your answer?

6 A. For the crime of malfeasance, it gives rise
7 to a more exhaustive investigation in order to verify
8 whether the decision-making line, or the office's case
9 law, to use a comparison, has been maintained over
10 time.

11 Q. And in the case of Asset Forfeiture
12 Proceedings, isn't it the case that one pattern of
13 corruption that has been seen is using the imposition
14 of Asset Forfeiture Proceedings as the leverage
15 against someone and then soliciting a bribe in order
16 to lift those proceedings?

17 A. In the only investigation that I have had
18 for potential acts of corruption without the Unit of
19 Asset Forfeiture, we had some instances as the one
20 that you described, but never--they never went beyond
21 being mere speculations. We never received nor
22 obtained a statement from a person who said that he or

1 she had been suggested to change attorneys, and that
2 in addition to that, he or she would have had a
3 request for money or that the citizen had made a
4 payment towards one of those officials.

5 We always had hearsay that has never been
6 proven, that led to speculation, and that logically
7 had to be investigated. Why? Because in the
8 Constitution...

9 Q. That's sufficient

10 (Overlapping interpretation with speaker.)

11 A. But I think it is important for me to
12 explain to the Tribunal the following point as to how
13 this has to be construed and why. The Colombian
14 Constitution requires the Office of the Attorney
15 General of the Republic to investigate all of the
16 complaints, statements or facts that may be presented
17 before the body. It doesn't mean that everyone will
18 end up with prosecution or the presentation of an
19 accusation. What the Office of the Attorney General
20 does, what we prosecutors do is investigate the
21 hearsay, and determine whether it is true or not. ■

■

1

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

█ [REDACTED]

█

[REDACTED]

█

█ [REDACTED]

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[REDACTED]

█

[REDACTED]

13

Q. You referenced wiretapping a moment ago.

14

You talk about this in your Witness Statement. You

15

characterize it as an "invasion of privacy," and you

16

talk about how it's necessary to have a basis for it.

17

It requires "strict legal control," you said, in your

18

Witness Statement, your Second Witness Statement,

19

Paragraph 14.

20

What basis do you need to have to wiretap

21

someone?

22

A. Certainly.

1 That is Article 221 of Law 906 of 2004 that
2 provides for any violation to the fundamental
3 guarantees, be it because of a search warrant or an
4 interception of the communications, personal records.
5 All of those acts that may violate fundamental
6 guarantees require, at the stage of acquiring the
7 information, means that would allow you to determine
8 the need, urgency, adequacy, the proportionality of
9 that act of the investigation to be carried out.

10 Q. And does that require facts from which you
11 can make an inference that the person may have engaged
12 in illicit conduct?

13 A. Not necessarily. Precisely: the stage when
14 you obtain the information is the primary stage, you
15 need to have reasonable inference. What you need is
16 material evidence that would lead to a suggestion that
17 that act of investigation is required; for example, in
18 the case of wiretapping.

19 All of this, clearly, is conducted first by
20 the Prosecutor. The Prosecutor orders the wiretapping
21 because of those justified reasons; and, if he or she
22 thinks that they are enough, wiretapping is ordered.

1 Upon concluding the investigation, pursuant to
2 Colombian Procedural Law, we need to appear before the
3 supervisory Judges to verify three things. First, the
4 order: that the order is truly supported by actual
5 reasoned grounds. That is to say, that there must be
6 material reasons that support that Order.

7 Second, we need evidence that the procedure
8 was carried out properly.

9 And third, the results, whether they lead to
10 a derived evidence or not.

11 Q. When you say that it must be necessary, does
12 that mean that if less invasive means are possible
13 those could be used instead?

14 A. I don't think I understand the question.

15 Q. I believe a moment ago, you said a wiretap
16 is only allowed if it is necessary. Does that mean
17 that you need to show that less-invasive means of
18 investigation cannot be used?

19 A. Yes. That is the judgment of necessity that
20 is presented to the Judge, and it has to be argued
21 before the Judge why that means of investigation was
22 chosen as opposed to one that is less intrusive. That

1 is what we prove before the supervisory Judge as part
2 of the ensuing control proceedings: that that was the
3 proper and necessary act.

4 Q. But the Prosecutor can impose the wiretap
5 without a Judge approving that in advance; correct?

6 A. That is the procedure. That's why I said
7 it.

8 First, the Order is issued by the
9 Prosecutor. The Prosecutor issues the wiretapping
10 order.

11 Now, to be able to use that material
12 evidence to act according to the law, to comply with
13 the principle of legality, the Prosecutor that has
14 ordered a wiretapping, upon concluding the
15 investigation, without going beyond 36 hours after the
16 completion of the wiretapping will have to appear
17 before the supervisory Judges to control the Order,
18 the procedure, and the results. And as part of the
19 Order, the Judge verifies whether the elements that
20 supported that Order were sufficient or not.

21 If the Judge considers that the elements
22 that the Prosecutor took into account to order the

1 wiretapping were not sufficient, he declares the
2 illegality of the Order, and that cancels out the
3 proceeding and its results.

4 So, that is why it is important to complete
5 this process before the judiciary.

6 (Overlapping interpretation with speaker.)

7 Q. --to keep your answers a bit shorter.

8 REALTIME STENOGRAPHER: I'm sorry?

9 BY MS. CHAMPION:

10 Q. If I could ask you to keep your answers a
11 little bit shorter, and just answer the question I'm
12 asking you, that would be helpful so we can speed this
13 up and get you out of here; okay?

14
[REDACTED]

[REDACTED]

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MS. HERRERA: Excuse me, Mr. President,

6

just--sorry. There are some issues with the

7

translation. What the Witness says was not confirmed,

8

say "typified."

9

REALTIME STENOGRAPHER: I'm sorry. I didn't

10

hear the last word you said.

11

MS. HERRERA: "Typified," like, establishes

12

a type, not "confirm."

13

BY MS. CHAMPION:

14

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(Overlapping interpretation with speaker.)

8

MS. CHAMPION: It was "good-faith liar"

9

instead of "buyer."

10

MS. HERRERA: Sorry, there are quite a few

11

errors, one that I wanted to note is that it's not

12

"attack," it's "SATAAC" as a method of investigation.

13

MS. CHAMPION: Also, it was "buyer," not

14

"liar."

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Q. Mr. Hernández, do witnesses in Colombia have

15

a right to counsel?

16

A. This is very important because two things

17

need to be clearly set apart, Members of the Tribunal.

18

If we're talking about a person under investigation,

19

there is a right and there is an obligation for that

20

person to be accompanied by a lawyer, and this is

21

Article 282 of the Law 906 of 2004, but if it is just

22

a witness or an interviewee, then no presence of a

1 lawyer is necessary.

2 But in the case of my proceedings, I

3 authorize the presence of lawyers. [REDACTED]

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Q. Mr. Hernández, you are a public official;

8

correct?

9

A. Yes, ma'am.

10

Q. And you have duties of confidentiality

11

imposed upon you by law; is that correct?

12

A. No, what we have are confidentiality

13

vis-à-vis proceedings. I do not have anything to do

14

with professional privilege.

15

Q. What Mr. Seda had learned from you at the

16

meetings, you disclosed that to him at those meetings;

17

is that correct?

18

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PRESIDENT SACHS: Could we possibly envisage
a morning break soon?

MS. CHAMPION: Sure. That's fine. We can
take one now.

PRESIDENT SACHS: Okay. Fine. We will
resume at 11:18.

MS. CHAMPION: Could you remind the Witness?

PRESIDENT SACHS: I will.

Mr. Hernández, you are still under
testimony, and therefore you should not talk to
anybody during the break.

THE WITNESS: I shall observe your
instruction, sir.

1

(Recess.)

2

PRESIDENT SACHS: Mrs. Champion, you may

3

continue.

4

BY MS. CHAMPION:

5

Q. Mr. Hernández, we are almost done.

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4 MS. BANIFATEMI: May I interrupt?

5 THE WITNESS: Yes ma'am. But he said that he
6 believed that they would be related, but never
7 presented evidence or any element that would show
8 this.

9 Moreover, he said that the extortion came
10 directly from Mr. Mosquera and Mr. Iván López. That
11 was the complaint he lodged in December 16 or
12 19 December of 2016, and this complaint was forwarded
13 for investigation into these alleged acts of
14 extortion.

15 MS. BANIFATEMI: Ms. Champion, may I
16 interrupt, just for the record, just to signal a
17 discrepancy between the English and the Spanish
18 version. Mr. Hernández said "no bajo mi dirección,"
19 and in the English version it's "no, under my
20 direction", which is the exact opposite, so I just
21 wanted to correct the record for the English version.
22 Thank you.

1 MS. CHAMPION: Thank you.

2 BY MS. CHAMPION:

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PRESIDENT SACHS: So, now your testimony is

20

over. Thank you for your testimony, and you are now

21

released as a witness. You may stay in the room, if

22

you want. And we will then turn to Ms. Ardila.

1 THE WITNESS: Thank you very much, everyone,
2 counselors. Enjoy your afternoon.

3 (Witness steps down.)

4 MS. BANIFATEMI: Mr. President, while we're
5 waiting for Ms. Ardila to come, which we--I'm asking
6 are we taking a break or will we immediately move on
7 to Ms. Ardila?

8 PRESIDENT SACHS: Let's move on immediately
9 and have the lunch break then at 1:00.

10 MS. BANIFATEMI: So, I just wanted to make a
11 point on the record, if I may, Mr. President, in
12 relation to one of the questions that was asked. I
13 did not want to interrupt the flow of
14 cross-examination.

15 PRESIDENT SACHS: Yes, please.

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ALEJANDRA ARDILA POLO, RESPONDENT'S WITNESS, CALLED

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PRESIDENT SACHS: So, good morning,

6

Ms. Ardila. Can you hear me?

7

(Microphone off.)

8

THE INTERPRETER: No microphone.

9

PRESIDENT SACHS: In front of you there's a

10

Declaration. Can you please read it for the record.

11

THE WITNESS: I solemnly declare upon my

12

honor and conscience that I shall speak the truth, the

13

whole truth and nothing but the truth.

14

PRESIDENT SACHS: Thank you.

15

You submitted a Witness Statement dated

16

16 February 2022. Is there anything in this Witness

17

Statement that you would like to correct?

18

THE WITNESS: I don't want to correct

19

anything. Thank you.

20

PRESIDENT SACHS: Questions will be asked in

21

direct. Who will be in charge? Ms. Herrera?

22

Okay.

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DIRECT EXAMINATION

BY MS. HERRERA:

Q. Good morning, Ms. Ardila.

A. Good morning, Doctor.

Q. Could you please introduce yourself to the Tribunal, and could you please tell us what your career has been in the Attorney General's Office, and when was it that you arrived at the Asset Forfeiture Unit?

A. I am a lawyer. My specialty is administrative law and criminal law. I have a Master's degree in criminal procedure law. I graduated from the University in 2003 --I have had 19 years of experience in the exercise of the profession. I arrived at the Attorney General's Office after the following background.

First, I was a Legal Adviser for the National Army of Colombia. Then, I was an Investigative Judge for criminal proceedings in the military.

And then, from 2010 to date, I have worked as a Specialized Prosecutor. And now, I work with the

1 Specialized Office that fights drug-trafficking.

2 Specifically, I work in an area that is
3 quite impacted by organized armed groups. These are
4 dissident groups from the FARC that work now in
5 Tumaco, Nariño. I have faced transnational
6 drug-trafficking by prosecuting this kind of conducts.

7 Specifically, as a prosecutor at the
8 Specialized Unit for Asset Forfeiture, I have been
9 there, well, since August 2014, until May 2019.

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16 That was my work, in general terms, when I
17 worked for the Asset Forfeiture Office and the work
18 that I did at the time.

19 Q. Thank you, ma'am.

20 Specifically, when is it that you arrived at
21 the Asset Forfeiture Unit and how?

22 A. I arrived at the Asset Forfeiture Unit in

1 August 2014. I came from a different section, which
2 was the Magdalena section; and, in there, I was a
3 prosecutor for four years, and then I arrived at the
4 Asset Forfeiture Unit in August 2014.

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22 Q. Dr. Ardila, when did you get the Meritage

1 Case? When were you assigned to it?

2 A. The Meritage Case was assigned to me via a
3 resolution issued by the Director of the Asset
4 Forfeiture Unit. And the Case was assigned to me on
5 8 April 2016.

6 Q. Finally, Ms. Ardila, how did you decide to
7 impose Precautionary Measures on the Meritage lot,
8 held by Corficolombiana?

9 A. This case is particular. When it was
10 admitted and opened before the Asset Forfeiture Unit,
11 it was based on a detailed report on the real estate
12 recordation documents in connection with those pieces
13 of property in particular. When it was submitted to
14 me, it was accompanied by a very detailed study.
15 Amongst the evidence obtained, we got a tutela action
16 that was submitted by Iván López together with other
17 documents, and amongst those documents, there were
18 some Title Studies that were conducted by two law
19 firms. And we were able to determine that it was
20 evident that the origin of those properties that were
21 the subject of the Asset Forfeiture Action was illicit
22 because of the drug-trafficking activities that had

1 been conducted by Iván López Vanegas.

2 Also, it was evident that there were
3 multiple changes, physical changes and legal changes,
4 that those pieces of land had suffered. Apart from
5 those physical and legal changes, we could also
6 evidence that, in connection with the registered
7 ownership of those lots of land, there were one or
8 many individuals that did not have the financial
9 capacity to have acquired those lots. There was a
10 mango seller amongst them that was included in the
11 "SISBEN" system. This is a subsidized health system
12 in Colombia, and well, this individual could not have
13 held the land nor paid the money for the land
14 legitimately.

15 Q. Ms. Ardila, you included as an affected
16 party at the initial stage of the Asset Forfeiture
17 Proceedings, did you include Newport as an affected
18 party?

19 A. Of course. Newport was included as an
20 affected party via Dr. Gladys Lucía Sánchez, its
21 representative, and also the fiduciary,
22 Corficolombiana. The fiduciary was the holder of the

1 ownership rights in connection with the affected
2 assets.

3 Q. Iván López was--did Iván López ask you to be
4 recognized as an affected party in those proceedings?

5 A. Yes, via his lawyer, Dr. Victor Mosquera. A
6 request was put to the Fiscalía that he be recognized
7 as an affected party. There was a resolution that was
8 issued by me, and it was decided not to recognize that
9 he was an affected party because he was not the holder
10 of that piece of property.

11 Q. The question was whether Iván López asked
12 you to be recognized as an affected party in the
13 Meritage Case.

14 A. Yes. That request was made but my office
15 issued a Decision whereby the affected party status of
16 Mr. Iván López was not recognized.

17 PRESIDENT SACHS: Okay. He said this
18 before, but okay, we have it now.

19 MS. HERRERA: Yeah, it was just that I think
20 the translator didn't get it, sir.

21 PRESIDENT SACHS: Thank you.

22 Cross-examination. Ms. Champion?

1 MS. CHAMPION: Thank you.

2 CROSS-EXAMINATION

3 Q. Good morning.

4 A. Good morning to you, ma'am.

5 Q. So, Ms. Malagón was your supervisor in the
6 Asset Forfeiture Unit?

7 A. She was my boss, my superior. She was my
8 director.

9 Q. So, she assigned cases to you?

10 A. To me and to all other Prosecutors that were
11 members of that unit.

12 Q. Did she tell you how to handle your cases?

13 A. She never did that.

14 Q. So, the Decisions you made in your cases
15 were your own?

16 REALTIME STENOGRAPHER: I'm sorry, the
17 answer? Interpreter?

18 THE WITNESS: My own. My own.

19 (Pause.)

20 MS. CHAMPION: Yes, I'm getting used to this
21 myself. It's confusing, with the simultaneous
22 interpretation.

1 BY MS. CHAMPION

2 Q. So, you had reviewed the criminal complaint
3 that Mr. Iván López filed before the Organized Crime
4 Unit in 2014; correct?

5 A. That complaint was submitted in 2014 before
6 another Fiscalía, Number 24, against Organized Crime
7 in the City of Medellín.

8 Q. But you've reviewed it; correct?

9 A. Of course, I did.

10 Q. So, the Prosecutor in the Organized Crime
11 Unit, that was Number 24; right? María Isabel Correa
12 Torres, I think her name is?

13 A. That's correct.

14 Q. She referred it to the Money-Laundering and
15 Asset Forfeiture Unit by--I don't know how to say that
16 in English, "compulsa de copias," requesting copies?

17 A. That is the information I have.

18 Q. But it was not assigned to you at that time;
19 correct?

20 A. I don't know exactly what you're asking.
21 What date? What date did that happen?

22 Q. I'm talking about 2014, when it's first

1 filed.

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Q. Did you talk to her about what actions she had taken in that investigation?

21

A. I did not.

22

Q. Let's look at the Resolution appointing you,

1 C-153.

2 The exhibits are also displayed on the
3 screen, if that's easier, Ms. Ardila.

4 A. Thank you.

5 Q. If you turn to the second page, I think
6 you'll see this document is signed by Andrea Malagón,
7 and on the 8th day of April 2016.

8 Do you see that?

9 A. Yes, I do see that.

10 Q. And in the table above that, it identifies
11 you as the name of the Prosecutor; correct?

12 A. That's correct.

13 Q. And it assigns a file number at the top
14 there 13641?

15 A. That's correct.

16 Q. So, turning back to the first page of this
17 document, it states at the top: "To assign a Special
18 Prosecutor of the Specialized Attorney General's
19 Office for Asset Forfeiture to undertake procedures
20 under Law 1708 of 2014."

21 Do you see that?

22 MS. HERRERA: Sorry, if I may suggest--

1 THE WITNESS: I do see that.

2 MS. HERRERA: Perhaps I may suggest that you
3 look at the physical documents, the hard copies, that
4 may be easier for you.

5 THE WITNESS: Excuse me. What is the
6 number?

7 BY MS. CHAMPION:

8 Q. It's in the other binder. It's a two-page
9 document. I think it's fine for you to look at it on
10 the screen. You should do what you're comfortable
11 with.

12 A. I got it, yes.

13 Q. So, moving down, it says: "The Director of
14 the Specialized Attorney General's Office for Asset
15 Forfeiture, exercising her legal and regulatory
16 powers," so this is an exercise of Ms. Malagón's
17 powers; correct?

18 A. That's correct.

19 Q. So, keep going, under the "Whereas", it
20 states that: "In accordance with the provisions of
21 the second paragraph of Resolution 0-0576 of
22 April 2nd, 2014, issued by the Office of the Attorney

1 General, which states that cases or investigations
2 shall always be assigned to the Specialized Attorney
3 General's Office for Asset Forfeiture directly by the
4 Attorney General's Office on a specific basis, or by
5 prior recommendation of the National Committee on
6 Prioritization of Situations and Cases, without
7 prejudice to commencing the same on a sua sponte and
8 preventive basis when the facts of the case so
9 warrant."

10 Do you see that?

11 A. Correct, I do see that.

12 Q. And the next paragraph refers to a report
13 dated April 8, 2016. "The Criminal Investigation
14 Division of the Superintendence of Notaries and
15 Recordation Land asked this national Office to assign
16 a filing number for an investigation into the assets
17 held by Iván López Vanegas, a member of the Envigado
18 Cartel."

19 Do you see that?

20 A. I do see that.

21 Q. And continuing on, it says: "In view of the
22 above, and taking into account Meeting Minutes No. 035

1 dated April 6, 2016, which corroborate the pertinent
2 presentation of the case by the Criminal Investigation
3 Division to the Internal Working Group on Information
4 Analysis, Prioritization, and Statistics, led by the
5 Director of the Specialized Attorney General's Office
6 for Asset Forfeiture, at which meeting the
7 determination was made to assign a filing number and
8 priority to this investigation given that it involves
9 a criminal organization related to the Envigado
10 Cartel."

11 Do you see that?

12 A. I do see that.

13 Q. Then it goes on to state: "Accordingly, the
14 assigned Prosecutor may attend to the needs of the
15 pertinent investigation, given that it falls within
16 the central subject matter of emerging criminal
17 organizations, and may therefore carry out the
18 pertinent actions related to the specific case and may
19 also report for this assignment in the month of
20 April."

21 Do you see that?

22 And then it goes on: "Now, therefore, the

1 undersigned Director of the Specialized Attorney
2 General's Office for Asset Forfeiture," next page, "to
3 assign for the undertaking of these procedures for
4 preventative purposes in accordance with Article 34 of
5 Law 1708 of 2014, a prosecutor of this Specialized
6 Attorney General's Office to oversee the
7 investigations into asset forfeiture carried out by
8 said office."

9 Do you see that?

10 A. I do see that.

11 Q. This was a resolution assigning you to open
12 this investigation; is that correct?

13 A. That is correct.

14 Q. Okay. Now, the first page referred to an
15 April 8th report. Do you recall that?

16 A. Of course, I recall it.

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MS. HERRERA: If I may, about the

14

translation is translating "attachment" as

15

"confiscation," (in Spanish) as "confiscation."

16

MS. CHAMPION: I have no objection to

17

translating it as "seizure." Or what do you want to

18

call it?

19

MS. HERRERA: "Seizure" is being translated

20

in Spanish as "confiscation," which is not right. It

21

has a different meaning.

22

MS. CHAMPION: So, what's your suggested

1 translation?

2 MS. HERRERA: "Attachment."

3 THE INTERPRETER: "Attachment" is "embargo."

4 We have different words.

5 This is the Interpreter. We have "seizure"
6 and "attachment," so "attachment" is being interpreted
7 as "embargo," and "seizure" as "confiscation." Now,
8 if you want both words translated the same way, please
9 let us know.

10 MS. BANIFATEMI: For the record, the
11 translator is making suggestions that nobody who is
12 actually involved should be listening, so it's
13 probably we should listen to the translator saying
14 what problem they have. It you can go ahead.

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MS. CHAMPION: The Court Reporter is asking

18

for a break. We can have lunch, if it suits the

19

Tribunal.

20

PRESIDENT SACHS: Sorry. Let's have lunch

21

now. One hour, meaning five minutes after 2:00.

22

You are still under testimony, Ms. Ardila,

1 so please don't talk to anybody during the break.

2 Thank you.

3 THE WITNESS: Thank you.

4 MS. HERRERA: Just to make sure that we
5 clarify the one point the terms and the translation,
6 confiscation is illegal in Colombia, that's why.

7 (Comments off microphone.)

8 (Whereupon, at 1:05 p.m., the Hearing was
9 adjourned until 2:10 p.m. the same day)

10 AFTERNOON SESSION

11 PRESIDENT SACHS: So, are we ready to
12 resume?

13 MS. CHAMPION: Yes.

14 PRESIDENT SACHS: Then please proceed,
15 Ms. Champion.

16 CONTINUED CROSS-EXAMINATION

17 BY MS. CHAMPION:

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Q. I will point you to C-336. You'll see the

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001-462801? Do you see that?

17

A. I see that, yes.

18

Q. And if you look at the end of Page 4 and 5,

19

the end of Page 4, top of Page 5, you'll see the

20

subdivision.

21

So, it's divided--if you look at the top of

22

Page 5, you'll see the Lot Nos. 1, 2, 3, 4, 5, 6, 7.

1 Do you see that?

2 A. At Page 5, I see that there was a
3 segregation of the Lot. It is even active, and I
4 would say that it would have to be closed because of
5 exhaustion of area.

6 Q. I would like to focus your attention on the
7 top, Lot 1/719319. Do you see that, Lot 1?

8 (No audible response.)

9 Q. Just remember that number, 719319.

10 And then I will point you to Exhibit 337,
11 and you'll see the registration lot number there,
12 001-719319 in the top right corner. That's the
13 subdivided lot; correct?

14 A. I would need to read all of the record on
15 the real estate registration to get to that conclusion
16 because I only see here a page that says 2801, and for
17 me to study the title I need time.

18 Q. If you look under the top there under "
19 Supplementation," you'll see that it notes "Promotora
20 Sierralta acquired the property in the additional
21 amount through purchase from Iván López Vanegas."

22 Do you see that?

1

[REDACTED]

14

Q. All right. So, let's talk about the

15

Precautionary Measures Resolution. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] you prepared a

18

Precautionary Measures Resolution against the

19

Meritage; correct?

20

A. That's correct.

21

Q. And you prepared that document; correct?

22

You personally prepared it.

1 A. I developed it myself.

2 Q. On Page 20--so I can refer you to
3 Exhibit 22?

4 A. I have it.

5 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

9 Do you see them there?

10 (No audible response.)

11 Q. And it says there--I'm sorry, I just need a
12 verbal answer. You nodded. You see the reference to
13 that lot number here in this document on Page 27? I
14 want Page 28, sorry.

15 A. I don't think that I understand the
16 question.

17 Q. One second. When he gets to the correct
18 page, it'll be easier.

19 (Pause.)

20 A. I don't think that I understand the
21 question.

22 [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

Do you see that?

9

A. I see that.

10

(Overlapping interpretation with speaker.)

11

Q. -So that's the lot that is the subject of

12

Mr. López's complaint; correct?

13

A. In the statement provided before the Office

14

of Prosecutor Number 24, that was what he said before

15

that Prosecutor.

16

[REDACTED]

17

[REDACTED]

18

A. Not exactly that one. There is a breakdown

19

of the original asset.

20

Q. So, did this lot number still exist in 2016?

21

A. By 2016—and I hope my memory serves me

22

right—that Property Recordation Record, as well as

1 another one that ends in four zeros, had been closed
2 to create new ones because of the legal
3 transformations for those assets.

4 Q. You have a good memory. You did get that
5 correct. It does end in the four zeros. It sounds
6 like you've reviewed the record in this case; is that
7 correct?

8 A. Of course, as in all cases.

9 Q. Can you pull up the Appendix F, please.

10 Are you familiar with the flowchart that we
11 submitted in this case that shows the history of the
12 plots? It looks like this.

13 A. Yes, I am seeing it.

14 Q. Well, I can represent to you that Colombia
15 has not disputed the accuracy of this chart in this
16 case. In fact, they've adopted it as well.

17 A. Yes. I have seen it.

18 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

[REDACTED]

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■ [REDACTED]

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[REDACTED]

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■ [REDACTED]

■

[REDACTED]

■

[REDACTED]

1 Starting in 1994--and I apologize, may I
2 point out, starting in 1994--I don't know--do you have
3 a pointer?

4 Q. We all know this chart very well by now.

5 MS. HERRERA: She wants to show--if there's
6 a way--

7 MS. CHAMPION: Here is the piece of paper.

8 (Overlapping speakers.)

9 MS. HERRERA: Claimed had--

10 MS. CHAMPION: I don't know where it is. It
11 was horrible, anyway. We'll go--we'll check our room.
12 Yeah, the colors, the shapes; hexagon, square.

13 PRESIDENT SACHS: If you wish to stand up
14 and show it on the screen--yeah?--for example. Yeah?

15 THE WITNESS: Well, for the interpretation,
16 we need the mic.

17 That's the one I would be using.

18 (Pause.)

19 THE WITNESS: Very well. Thank you.

20 So, let us focus our attention on this one.
21 That is, I don't think I can read that far. That is
22 the one acquired in 1994.

1 We cannot lose sight of the fact that there
2 were two corporations rather--I hear my echo. So, we
3 cannot lose sight of the fact that there were two
4 corporations that acquired in 1994, the Lot that I am
5 pointing at right now.

6 So, why is it key to have that piece of
7 information in mind? Because of the following reason:
8 In 1994, the two corporations of the two half-siblings
9 between Entrelagos Orozco y Vanegas and Sierralta
10 López y Cia. acquired two lots that initially belonged
11 to Sociedad Agrícola Las Granjas. Those two lots were
12 not only bought at this date, by the two corporations
13 represented by the López brothers, but also in the
14 same act, the same year, the two lots that used to
15 belong to La Sociedad Agrícola Las Granjas were
16 consolidated.

17 But, the most relevant aspect is that, from
18 the outset--and that is starting in 1994--we cannot
19 lose sight of the fact that the percentage of property
20 for each corporation was fully identified. That is
21 the corporation Entrelagos Orozco y Vanegas bought
22 25 percent and if you look at the corporation

1 Sierralta López y Cia., it always bought as of that
2 date, 75 percent of the properties. And why is it
3 relevant to look as these percentages? Because of the
4 following.

5 You will be able to see that the second
6 change to the Lot was that, in 1997, the corporations
7 made the decision to subdivide the Lot based on the
8 percentages that they each had in connection with the
9 ownership of those assets. That is 25 versus 75, but
10 in connection with both lots. That is, the society
11 Entrelagos Orozco y Vanegas had 75 percent of the
12 asset, and Sierralta López y Cia. had 75 percent of
13 the asset, and the same happened with the B Lot.

14 When you referred to this "reconsolidation,"
15 as you call it, and we call it (in Spanish) "englobe"
16 in my country, upon analyzing what had happened after
17 that reconsolidation that took place in 2006--this was
18 done by the Office of the Attorney General--you can
19 see that this partnership of Entrelagos Orozco y
20 Vanegas recovered 25 percent of the initial asset.
21 So, if you add up the 185,558 square meters, amount to
22 25 percent of 742,300 square meters, so that means

1 that, by then my analysis not to attach this asset had
2 to do with a crucial aspect. The first one is what I
3 am just indicating to you. The 25 percent amounts to
4 the same 25 percent that in 1994 had been purchased by
5 them.

6 And why is it that we cannot, at least with
7 the evidence we had back then, why is it that we
8 cannot link it to the fact that this may be related to
9 illicit activity? And the answer is that the Office
10 of the Attorney General did not have any evidence that
11 the legal representative of that corporation or
12 partnership--that is to say, Jaime Orozco Vanegas--had
13 carried out illicit activities, any of the ones that
14 are provided for under the Criminal Code in Colombia.

15 And in addition to that, you should take
16 into account that, by that date--and I am referring to
17 2016 and starting in 2011--Mr. Orozco Vanegas had
18 died, but it was really striking to see what happened
19 with the facilities or read the Lot that ends with
20 00485 because as of 2004, we saw many legal
21 transactions that were taking place within one or two
22 years, and Mr. Luis José Varela Arboleda, was the

1 registered owner of the asset, and it seems that he
2 was already in the public database that any citizen
3 may check, that is the SISBEN, and that is related to
4 the subsidized health system to cover the health needs
5 of those that have fewer means in our country.

6 And starting--I am trying to explain, based
7 on that, what I see here. And from that moment on,
8 you see after the reconsolidation that was led by
9 Mr. José Luis Cardona Rodríguez, to receive the
10 ownership, Tatiana Gil and Mónica Rendón, a model, La
11 Palma Argentina and, well, the Meritage Project.

12 So, all of this situation, and I am going to
13 start indicating--starting in 2004 when Luis José
14 Varela Arboleda was the registered owner of the asset.
15 We see from the Office of the Attorney General a
16 series of irregular transactions and transfers of the
17 title to people that did not have the economic means
18 to have a lot of this value.

19 So the answer is, given your question, is
20 that the Office of the Attorney General, given that
21 information that they obtained based on these
22 Forfeiture Proceedings, is that the individuals that

1 participated there were controlled by the Oficina de
2 Envigado, the criminal association in that city, in
3 that municipality of Antioquia.

4

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

█ [REDACTED]

12 Q. So, if we look at the pink box at the top,
13 Luis José Varela Arboleda, your view was that he was a
14 front-buyer; correct? [REDACTED]

15 A. That is correct.

16 (Overlapping interpretation with speaker.)

17 Q. -And lot A is equally--it's co-owned;
18 correct? It's co-owned by Entrelagos Orozco Vanegas
19 and Sierralta López as of that date 1997; correct? It
20 was co-owned.

21 A. Yes. Co-owned by both partnerships or
22 associations.

1 Q. And Lot A and Lot B re consolidated in 2006,
2 I believe? 2005. And all of that activity is
3 directed by Jaime Orozco; correct?

4 A. Based on information given by José Luis
5 Cardona Rodríguez, yes, that is the information that
6 he offered.

7 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

10

Q. And you had determined that fiduciary

11

Corficolombiana was involved with Mr. López Vanegas's

12

illegal activities as of 2016? You made that

13

determination?

14

A. As regards the participation of Fiduciaria

15

Corficolombiana in carrying out illicit activities,

16

no. But as the law on asset forfeiture says, one did

17

not consider it a good-faith third party exempted of

18

fault.

19

Q. Let's go back to the Precautionary Measures

20

Resolution, C-22.

21

Did you make a determination in here about

22

Corficolombiana's good faith?

1 A. In this case, the requirements set out in
2 the Code on asset forfeiture were met; that is to say
3 the requirements with respect to the Resolution by
4 which a Precautionary Measure is imposed.

5 Q. That's not what I asked you. Did you make
6 an assessment of Corficolombiana's good faith in the
7 Precautionary Measures Resolution?

8 A. At that time, the analysis done by this
9 Prosecutor, indeed, took into account that one
10 necessarily had to review that specific aspect in
11 relation to Fiduciaria Corficolombiana.

12 Q. Where is that spelled out in the
13 Precautionary Measures Resolution? I don't see any
14 assessment of Corficolombiana's good faith in here.

15 A. It is not indicated because the pertinent
16 rule doesn't say that the Office of the Prosecutor
17 needs to include that specific aspect in its
18 resolution. That was done in the Determination of the
19 Claim.

20 Q. Ms. Ardila, let's look at Page 58 of this
21 document. It's Number 4, the heading is "ON
22 PRECAUTIONARY MEASURES." It says here: "At the

1 outset we must note the provisional nature of
2 Precautionary Measures in Asset Forfeiture Actions, as
3 they are required in order to guarantee compliance
4 with the results of the proceedings, as it does not
5 have the effect of res judicata, and as stated in 87
6 Code of Extinction of Domain, for the purpose of
7 preventing that the assets in question may be hidden,
8 negotiated, encumbered, misappropriated, transferred
9 or may suffer any damage, be lost, or destroyed with
10 the aim of ending their illegal use or destination.
11 In seeking its application, in any case, to protect
12 the rights of third parties showing faultless good
13 faith."

14 Do you see that?

15 A. Yes, I see it.

16 Q. And on Page--further down on that page,
17 Page 55 and 56 of the English, Franz, and 56 and 57 of
18 the Spanish. You referred to Section 118 of the Asset
19 Forfeiture Law. You quote it in full, and it states
20 at the top: "The initial state shall have the purpose
21 of fulfilling the following aims," including Number 5,
22 "seek and collect evidence that may lead to a

1 reasonable inference that there has been an absence of
2 good faith without fault."

3 Do you see that?

4 A. I do see it.

5 Q. And the next page where it says
6 "furthermore," (in Spanish) "además" in Spanish,
7 "furthermore, the link between the holders of the
8 rights, the grounds for the action and the asset
9 subject of the action--whether it may have an illegal
10 provenance or destination--must be proved with
11 evidence. Also, the Prosecutor's Office is obligated
12 to collect evidence that may prove the absence of good
13 faith without fault."

14 And--you see that?

15 A. Yes, I observe that.

16 Q. And here on Page 58--

17 A. Yes, I see it.

18 Q. Pardon me.

19 58 of the English, 59 of the Spanish, you
20 quote to Alejandro Martinez Sánchez on the standard
21 applicable to a third party acting in good faith.

22 Do you see that?

1 A. That's right. I do see it.

2 Q. He's the authority on the standard of good
3 faith without fault?

4 A. Mr. Wilson Martínez is a person who has
5 participated in trainings on this--these issues, and I
6 did quote him because he participated in the manual
7 that was drawn up by "ICITAP".

8 Q. Right so he's the authority on extinction of
9 domain law; correct?

10 A. As are all of us lawyers in our country.

11 MS. HERRERA: Excuse me, again, another
12 issue with the translation. It says--it says that "the
13 Prosecutor Office is obligated to collect evidence
14 that may prove good faith without fault," and it's "to
15 collect evidence that proves the absence of good faith
16 without fault."

17 MS. CHAMPION: Okay. I don't have the
18 original Spanish in front of me.

19 (Overlapping interpretation.)

20 BY MS. CHAMPION:

21 Q. You testified a moment ago that all of us
22 who are lawyers understand the Asset Forfeiture Law.

1 Did all of you who are lawyers write the law?

2 A. I understand that there was a fellow
3 prosecutor, Jorge Pardo, who did participate in
4 preparing the drafts or the bills put before the
5 Congress.

6 Q. So, what steps did you take to collect any
7 evidence of third parties who might be acting in good
8 faith without fault here, before imposing the
9 Precautionary Measures?

10 A. In this case, I will be specific about one
11 issue, which is that the initial phase of the
12 procedure had not concluded. These Precautionary
13 Measures are adopted and issued in the context of the
14 process because--as a matter of urgency and necessity
15 so as to not allow that, with the construction of the
16 Meritage Project on a terrain of illicit origin or
17 land of illicit origin, there might be a negative
18 impact on the unit buyers.

19 And so, as of July of 2016, in addition to
20 the full legal Registry analysis, which was done by
21 the Superintendency of Notaries and Registry, we also
22 had the Title Studies that were performed by two law

1 firms. And according to the considerations of the
2 Office of the Attorney General, they did not meet the
3 requirements for having observed that within the chain
4 of title there was a person who had been a
5 drug-trafficker as of 1994 through a corporation which
6 was Sierralta López y Cia.

7 But in addition nor was even a Google search
8 done of Iván López Vanegas so as to be able to verify
9 that, as of 2003, Mr. Iván López Vanegas had been
10 arrested in Colombia for the purpose of extradition.

11 Now, if in addition to having performed a
12 mere study of the titles that would show the different
13 transfers, the legal transactions that had taken place
14 in respect of those properties, one could have looked
15 at another database that's public, any citizen can go
16 into the health system of Colombia, indeed we do this
17 in our investigations in order to be able to determine
18 that Mr. Luis José Varela Arboleda, who sold mangoes
19 and who would take care of vehicles in Envigado, would
20 hold title to that asset as of 2004.

21 Now, with those two searches, in addition to
22 telling the buyer who bought and who sold, well, it

1 would have been possible to detect that the property
2 did present certain anomalies, particularly after the
3 cousins Tatiana Gil Muñoz and Mónica Rendón Gil. So,
4 it was possible to detect, and I detected this as a
5 prosecutor who did this investigation at the outset,
6 that there were certain inconsistencies that did not
7 allow the fiduciary, Corficolombiana, which held title
8 to that property, to be taken into account by the
9 Office of the Attorney General as a third party in
10 good faith exempt of fault.

11 But in addition, it should be pointed out
12 that the fiduciary Corficolombiana is an entity that
13 is supervised by the Superintendency of Financial
14 Institutions, and this circumstance, considered in
15 connection with its professional activity, which is
16 done under law, and that makes it such that the
17 standard for verifying assets is different from that
18 of a regular citizen. It's very different when a
19 legal Registry analysis is done in respect of an
20 agency by the Superintendency of Finance, this
21 compared to a regular citizen.

22 And here it was possible to observe that had

1 there been due diligence with prudence, one would have
2 been able to pick up on at least those elements, those
3 two situations that I'm spelling out here.

4 Q. Please, I'm asking questions. I would
5 really appreciate it if you could answer my question.

6 What steps did you take to collect evidence
7 about Corficolombiana's good faith before imposing the
8 Precautionary Measures? You mentioned Title Studies.
9 Did you collect those before imposing the
10 Precautionary Measures?

11 A. Yes, if--yes, it was found in the
12 documentation that was forwarded by Prosecutor Number
13 24 against organized crime of the City of Medellín.

14 Q. She gave you two title studies?

15 A. She sent not only the statement made by Iván
16 López Vanegas but also a copy of the entire tutela
17 action that had been brought by Mr. López Vanegas in
18 which there were various attachments, including the
19 Title Studies performed by the two law firms, Otero &
20 Palacio and Gúzman Monroy.

21 Q. So, you had the Otero & Palacio Title Study
22 before you imposed Precautionary Measures?

1 A. That's right.

2 Q. But you don't cite it in this document?

3 A. Because the law does not require the Office
4 of the Attorney General to make reference to those
5 aspects only to the objective requirements that must
6 be contained in a decision on Precautionary Measures.

7 Q. And Gúzman and Monroy, that Title Study,
8 that was a Title Study commissioned by Mr. López
9 himself; correct?

10 A. No. By the company La Palma Argentina.

11 Q. So, you have--again, you said a lot.
12 Forgive me if I get it wrong, but you think that if
13 the Title Study did not surface the name of Iván López
14 Vanegas, then it was inadequate, per se? That's your
15 view?

16 A. I'm sorry, I didn't understand your
17 question.

18 Q. Is it your position that if a Title Study
19 did not include the name "Iván López Vanegas," it was
20 inadequate per se?

21 A. No, what you say is not so. May I expand on
22 my answer?

1 PRESIDENT SACHS: Yes, you may, but shortly,
2 please.

3 THE WITNESS: Thank you.

4 Title Studies should include an analysis of
5 all of the transfers from the origin of the property,
6 especially because of one particular aspect. The Lot
7 is situated in a municipality where there is very
8 nature control of criminal organizations devoted to
9 drug-trafficking, so it's not the same thing, to buy a
10 property in the City of Bogotá as it is in the City of
11 Envigado, particularly at that time which was a high
12 point of drug-trafficking in Colombia.

13 It was necessary to undertake a Title Study
14 from the very origin of the property.

15 Q. Where is that written down? Where does
16 somebody go to look for that rule?

17 A. It is not established in the statute law but
18 it is a practice, mindful that our legislation has the
19 particularity of having a constitutional action of
20 asset forfeiture which is not subject to statute of
21 limitations.

22 Q. And you're aware that there were Title

1 Studies on this property that did go back a number of
2 years and still did not surface Mr. Iván López's name;
3 correct? You're aware of that?

4 A. To which are you referring exactly?

5 Q. I guess what I would say is, is it your
6 position that, let's say, your Title Study firm makes
7 a mistake, Colombia should be able to just take all of
8 your assets because your Title Study firm made a
9 mistake?

10 A. Not precisely because of that, but because
11 on reviewing a property--and one cannot establish a
12 general position of just what are the requirements
13 that must be met for purchasing a property in
14 Colombia. But it is required, mindful of the general
15 considerations of prudence and due diligence, well,
16 there are certain activities that should be taken into
17 account that make it possible to establish that the
18 person who was selling it to me is really the one who
19 holds title to the property and not a frontperson.

20 Q. You're aware that Corficolombiana, through
21 its outside counsel, Francisco Sintura, former Deputy
22 Attorney General, submitted a complete list of the

1 owners of the property going all the way back to its
2 origins, legal representatives for the entities that
3 owned it and other names, and obtained a certification
4 that there were no investigations relating to any of
5 those owners? You're aware of that; right? "Yes" or
6 "no."

7 A. Correct.

8 Q. Thank you.

9 A. May I expand upon my--

10 MS. HERRERA: Objection. That's a leading
11 question.

12 MS. CHAMPION: It's cross.

13 THE WITNESS: President, may I expand upon
14 my answer?

15 PRESIDENT SACHS: Yes. Let me first see the
16 question because that was now--

17 Yes, again a short explanation.

18 THE WITNESS: I'm going to explain the
19 answer by citing an example. Today, I can take a
20 photograph. The photograph will reflect what is
21 present today, but I cannot take that photograph to
22 keep it under my arm and then be able to pull it out

1 to be able to show that it's the same situation even
2 though time has elapsed.

3 BY MS. CHAMPION:

4 Q. Let's talk about the seizure. You seized
5 the Meritage Property on August 3rd, 2016; correct?

6 A. Correct.

7 Q. And you met Felipe López Montoya, the Vice
8 President of Construction for Newport at the Lot that
9 day?

10 A. I don't know who Felipe Montoya is. There
11 were many people there that day.

12 Q. He signed the Certificate of Seizure. Can
13 you pull that up? Do you have exhibit number? C-165.
14 It's Page 27 of the Spanish, but you will see that
15 Felipe López Montoya is the name listed on the
16 Certificate of Embargo.

17 A. I have it.

18 Q. So, Mr. Montoya tried to show you the
19 certificate obtained from the Fiscalía during the
20 seizure, did he? Do you recall that?

21 A. I'm sorry, could you ask the question one
22 more time?

1 Q. Mr. López Montoya tried to show you the
2 certification letter that had been obtained from the
3 Fiscalía when you were seizing the property. Do you
4 recall that?

5 A. I do not recall that.

6 Q. And you don't remember telling him "that's a
7 great document, it will be very useful to you?" You
8 don't remember that?

9 A. I do not.

10 Q. And you said that because it was evidence of
11 good faith; right? That's why it would be useful?

12 A. I do not remember that.

13 Q. And you weren't interested in looking at
14 evidence of the diligence that had been done before
15 purchasing the property that day; correct?

16 A. I don't understand your question.

17 Q. You weren't interested in reviewing the
18 evidence of good faith that had been exercised when
19 acquiring the property. You refused to look at that;
20 is that correct?

21 A. Are you making a statement or is it a
22 question?

1 Q. It's a question. You weren't interested in
2 looking at that. You weren't interested in looking at
3 evidence of good faith.

4 A. That's not true.

5 Q. You told Mr. López Montoya that you were
6 going to proceed with the seizure anyway. Do you
7 recall that?

8 A. In all of the seizure proceedings, I carry
9 out the procedure, and somebody else addresses it, but
10 more than six years have gone by, and I don't recall
11 any of what you're telling me.

12 Q. You told Mr. López Montoya that you were
13 surprised how far along construction was? Do you
14 recall that?

15 MS. HERRERA: I'm sorry, I think the Witness
16 has responded she doesn't recall.

17 MS. CHAMPION: She hasn't.

18 PRESIDENT SACHS: The question was a bit
19 different now, so new answer.

20 Please.

21 BY MS. CHAMPION:

22 Q. Do you recall telling Mr. López Montoya that

1 you were surprised how far along the Project was?

2 A. I don't remember that.

3 Q. Did you have any idea when you showed up to
4 impose the Precautionary Measures that there were
5 already over 150 Unit Buyers that had purchased units
6 in the Project?

7 A. I was aware of the construction of the
8 Project, but not of the specific number of Unit
9 Buyers.

10 Q. So, you knew there were a lot of potential
11 good-faith third parties that might be affected by the
12 seizure. You knew that.

13 A. If you review the Precautionary Measures
14 Decision, the urgency was based by the Office of the
15 Prosecutor precisely on that aspect, to avoid persons
16 who might invest in that project that was being built
17 on a lot with illicit origin might lose their money.

18 Q. So, you testified that the evidence of good
19 faith that you obtained before imposing the
20 Precautionary Measures came from the file transmitted
21 to you by Fiscal 24 in the Organized Crime Unit;
22 correct?

1 A. In addition to all of the evidence that
2 already existed in the file.

3 Q. But you didn't ask Corficolombiana for any
4 documentation before imposing the Precautionary
5 Measures? "Yes" or "no."

6 A. I don't remember.

7 Q. You don't remember whether you did or not?

8 A. I did ask for it in the initial phase, and
9 it's in the record.

10 Q. But you don't recall whether you did before
11 the Precautionary Measures were imposed.

12 A. I do not remember.

13 Q. And how about Newport?

14 A. At that time, all that was taken into
15 account was the holder of the property right to the
16 assets that were going to be proposed for asset
17 forfeiture.

18 Q. And you didn't think Newport was such a
19 party; correct?

20 A. Yes, I did. Indeed, I notified Newport
21 after the Determination of the Claim so that they
22 could put forward their opposition vis-à-vis the asset

1 forfeiture action and file evidence that would show
2 that they were third parties in good faith without
3 fault, if they wished to do so.

4 Q. But before the Precautionary Measures were
5 imposed, you didn't do that?

6 A. Specifically what?

7 Q. What you just stated you did. You said that
8 you did consider their good faith, but did you do that
9 before the Precautionary Measures? Did you solicit
10 any evidence about that before the Precautionary
11 Measures were imposed? "Yes" or "no."

12 A. Before imposing the Precautionary Measures,
13 it must be recalled that the initial phase is under
14 seal. Indeed, even afterwards, after the
15 Precautionary Measures, they had six more months to
16 carry out the purposes established in Article 118 of
17 the Law on Asset Forfeiture to culminate that initial
18 phase, so I had no reason to do so.

19 Q. So, it's your position you were not
20 obligated to do that before imposing Precautionary
21 Measure, before embargoing the property.

22 A. Look. The practice is not for the Fiscalía

1 to say to those whose properties are under
2 investigation to say, sir, do you have any piece of
3 evidence that shows your status of third party good
4 faith? That's not how the system works in Colombia.

5 Q. You just testified a minute ago that you
6 can't remember whether you asked Corficolombiana or
7 not. Did you or didn't you before imposing the
8 embargo? Did you solicit evidence of due diligence
9 and good faith?

10 A. I remember that I was the one that wrote to
11 Corficolombiana in the city of Medellin, personally.
12 I remember that, but I don't remember the date.

13 Q. I'm sorry, what are you talking about? You
14 gave them what? Are you talking about the resolution?

15 A. In this case, the Fiscalía--and this is in
16 the file--requested the trust contracts.

17 Q. Again, did you collect evidence from
18 Corficolombiana before imposing the Precautionary
19 Measures or not? Just "yes" or "no." If you don't
20 remember, just say that.

21 A. I do not recall.

22 Q. Okay. You know you said that you can't do

1 that, but then you said you might have done it, so I'm
2 a little confused.

3 You refused to give a copy of the
4 Precautionary Measures Resolution to Mr. López Montoya
5 when you embargoed the property; is that correct?

6 A. That is not customary. No copy of a
7 Certificate of Seizure is left by the prosecutors who
8 conduct the seizure.

9 Q. You don't provide a copy of the
10 Precautionary Measures Resolution when you embargo a
11 property?

12 A. This is a system that is in writing. The
13 individuals have to go to the Fiscalía to conduct two
14 different acts. First, to gain personal knowledge by
15 notice of the imposition of the Precautionary
16 Measures. In general, they show Powers of Attorney.
17 This is what happened with the fiduciary,
18 Corficolombiana. It submitted a Power of Attorney for
19 Dr. Francisco Sintura. His representation was
20 accepted, and then he could have access to the
21 Precautionary Measures Resolution.

22 Again, this decision was made during the

1 initial stage of the proceedings, and that stage was
2 still ongoing.

3 Q. But it took a few weeks before you gave
4 Mr.--or before Mr. Sintura obtained a copy of the
5 Precautionary Measures Resolution; correct?

6 A. I didn't really understand the question.

7 Q. Didn't Mr. Sintura repeatedly go to the
8 Asset Forfeiture Unit and write letters and repeatedly
9 ask for the Precautionary Measures Resolution, and it
10 was denied or ignored? Isn't that correct?

11 A. That's not true. Based on the information
12 on the file, he submitted his Power of Attorney and
13 was recognized as a legal representative two days
14 later. And then something specific happened in this
15 case. He went to an official that was not a member of
16 the Asset Forfeiture Unit for this individual to
17 provide him with a copy of the Precautionary Measures
18 Resolution. I was not at the office at that time
19 because I was studying.

20 Q. Yes, you mentioned this in your Witness
21 Declaration. You say that you were out of the office
22 I believe in September 2016. That's Paragraph 36 of

1 your Witness Statement. You say: "In September 2016,
2 I was studying a specialization in Commercial Law at
3 the University Externado in the City of Bogotá, so
4 sometimes I was absent from my office." Right?

5 And then you say: "Precisely the day on
6 which Dr. Francisco José Sintura went to the Attorney
7 General's Office to request a copy of the decision
8 imposing the Precautionary Measures, I was absent."
9 Right? That's what you said in your Witness Statement
10 September 2016; right?

11 A. Sí.

12 Q. So let's look at SP--I'm sorry, C-21? Oh
13 no, sorry. Let's look at--yeah, C-21.

14 THE INTERPRETER: The Witness said "yes."

15 BY MS. CHAMPION:

16 Q. C-21.

17 This is a letter dated August 2016 to you
18 from Francisco Sintura. He identifies himself as
19 counsel for Fiduciaria Corficolombiana. That's who
20 you understood to be the titleholder at this time;
21 correct?

22 (No audible response.)

1 Q. And on Page 2, he notes that he went to your
2 office on August 17 to obtain a copy of the
3 Precautionary Measures Resolution but you were not
4 there--or actually he was denied a copy. And then in
5 Paragraph 7, he requests a copy.

6 Did you provide one to him at that time?

7 A. It says that it was not possible for him to
8 have access, not that I refused.

9 Q. I didn't actually understand your answer.

10 Did you provide him a copy of the resolution
11 after he sent you this letter?

12 A. I recall that he showed the Power of
13 Attorney to add to those proceedings in August 2016; I
14 think it was 18 August. I recognized him legal
15 authority to act on the 22nd, and on the 25th, or
16 whatever the date he's indicating here, I was not in
17 the office, and he could not have access to it.

18 Let me explain how the system works.

19 At the time, all of the prosecutors were on
20 the fourth floor of a building, and the attorneys
21 could not have access to the prosecutors' offices.
22 That's why we have a secretary's office on the first

1 floor. The lawyer goes to the secretary's office and
2 asks the person to call somebody from the Prosecutor's
3 Office, and then the prosecutor brings down the file.
4 Apparently, I wasn't there at the office on that date.

5 Q. And he wrote you again on August 25th, 2016;
6 that's C-165, Page 29 of this document--oh, that's not
7 the right--oh, it is this, yeah. We only have it in
8 the Spanish. So, this again is a letter from
9 Francisco Sintura to you August 25th, 2016.

10 Do you see that?

11 A. Just one moment.

12 We're looking at an application for the
13 revocation of the Precautionary Measure.

14 (Overlapping interpretation with speaker.)

15 Q. Oh, sorry.

16 If you look at the next page, you'll see the
17 paragraph numbered 11, that he says he's been going to
18 the Unit daily to get a copy of the resolution and the
19 formal notification of the seizure, unsuccessfully.

20 Do you see that?

21 A. Yes, I do see that.

22 Q. And he says: I also told you that in my

1 letter of August 18. Do you see that?

2 A. What was the second question again? Do I
3 see what?

4 Q. I think he is referencing his prior letter
5 to you here; no?

6 A. Yes. I'm seeing that he went to the Unit,
7 and I wasn't at the office. Perhaps I was elsewhere.
8 I don't remember that date.

9 MS. HERRERA: It has been an
10 hour-and-a-half. I don't want to interrupt your flow,
11 but it would be--

12 PRESIDENT SACHS: Yes, I was going to come
13 to that.

14 MS. CHAMPION: That's fine. 10 minutes?

15 PRESIDENT SACHS: Not to interrupt your line
16 of questions?

17 MS. CHAMPION: Yes.

18 PRESIDENT SACHS: We will need a slightly
19 longer break, 20 minute, if you will, meaning that we
20 will resume at 4:00, please.

21 (Recess.)

22 PRESIDENT SACHS: Okay. You may proceed,

1 Ms. Champion.

2 BY MS. CHAMPION:

3 Q. Just to wrap up the Precautionary Measures,
4 the decision to impose those was entirely yours; is
5 that correct?

6 A. Correct.

7 Q. So, the 500 people working on the site that
8 day all lost their jobs? Are you aware of that?

9 A. I am not aware of that situation, but I
10 would understand that that was the case.

11 Q. Over 150 Unit Buyers out of luck; correct?

12 A. The unit buyers do have a legal link with
13 the builder or with Fiduciaria Corficolombiana.

14 Q. And the entire project came to a halt
15 because of the imposition of those Precautionary
16 Measures; correct?

17 A. Precisely. In the resolution of
18 Precautionary Measures, this situation was argued by
19 the Office of the Attorney General to avoid carrying
20 out a construction on an asset that had an illicit
21 origin.

22 (Pause.)

1 Q. Just to reiterate that last question, the
2 decision to impose the Precautionary Measures was
3 entirely up to you; correct?

4 A. And that is correct.

5 Q. And that decision caused a halt to the
6 entire project; correct?

7 A. The forfeiture action has to be done that
8 way, without those considerations. We do not have
9 those considerations under the law.

10 Q. 500 people working on the site that day lost
11 their jobs--is that correct?--because of the
12 imposition of the Precautionary Measures.

13 A. I am not aware of that situation.

14 [REDACTED]

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MS. HERRERA: I'm sorry, but you're

20

reading--you're reading the records, something that

21

she had said she had not seen and reading what it

22

says.

1 PRESIDENT SACHS: So, what is your question,
2 Ms. Champion, to the Witness?

3 BY MS. CHAMPION:

4 [REDACTED]

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18 Q. Just one more question. You knew that
19 Mr. Seda and Royal Realty Newport were represented by
20 Gladys Lucía Sánchez in the Asset Forfeiture
21 Proceedings? You were aware of that?

22 A. Ms. Gladys Lucía was representing Newport in

1 Article 124 of the Asset Forfeiture Law. It's

2 Exhibit 3. Page 36 of Exhibit 3.

3 A. Would you please repeat the number, please,
4 of the Exhibit?

5 Q. Page 36, Article 124.

6 Exhibit 3, pardon me.

7 A. Yeah.

8 Q. So, this provision provides that the
9 Attorney General's Office may dismiss an Asset
10 Forfeiture Proceeding at any time when it is shown
11 that the assets in question are in the name of third
12 parties acting in good faith without fault.

13 You see that? Section 5.

14 Oh, I'm sorry. 4, Section 4.

15 A. (In Spanish-no translation)

16 Q. So, this provision--

17 (Overlapping interpretation with speaker.)

18 A. I see it.

19 Q. -So this provision of the Asset Forfeiture
20 Law gave you the power to have the action dismissed at
21 any time if you made a finding that the assets in
22 question were in the name of third parties acting in

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Q. I'd like to direct your attention to

18

Article 48 of the Asset Forfeiture Law. That's

19

Exhibit 3. Page 13 in the English, Franz, Page 14 in

20

the Spanish.

21

So, this provision provides--it's under

22

Chapter II, Decisions.

1 Do you see that? And it says
2 classification: The Decisions that are issued within
3 the scope of the proceedings are referred to as
4 sentences, specific Orders, requirement, and
5 Resolutions; correct? And subpart five says--

6 A. Correct.

7 Q. "In case they are issued by a prosecutor,
8 Resolutions."

9 Do you see that?

10 So this, requires Decisions that are made by
11 the Prosecutor in the Asset Forfeiture Proceeding to
12 be done by Resolution; is that correct?

13 A. That's correct.

14 Q. Did you issue a Resolution in response to
15 this application by Mr. Mosquera?

16 A. I don't recall exactly. But I do recall
17 that, through a Resolution, Mr. Iván López Vanegas was
18 not recognized as an affected party.

19 Q. How does an Asset Forfeiture case end if
20 it's successful? The State gets the property; right?

21 A. That's right.

22 Q. Let's go back to Mr. Mosquera.

1

[REDACTED]

16 Q. So, on April 8th, Ms. Malagón assigns the
17 Asset Forfeiture Case to you for properties pertaining
18 to Mr. López Vanegas on April 8th--right?--with
19 priority, the Resolution says. Do you recall that?
20 We looked at it earlier.

21 A. That is what is written in the record and in
22 the Resolution that was signed by the Director.

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A. For the 2016 Resolution, no, but that is why
copies were referred.

MS. HERRERA: She has already
responded that, and why.

Q. And within three months, little over three
months after being assigned this Case, you imposed
Precautionary Measures on the Meritage; correct?

1 A. That is correct.

2 Q. You mentioned the date that you signed the
3 Precautionary Measures Resolution earlier, July 22nd,
4 2016; is that right?

5 MS. HERRERA: I'm sorry. Are we going to go
6 back to everything that we've reviewed some hours ago
7 that she answered already?

8 BY MS. CHAMPION:

9 Q. That's the date you signed the Resolution;
10 correct?

11 A. 22 July 2016.

12 [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

20 MS. BANIFATEMI: Mr. President, if I may
21 intervene at this point. This is a series of improper
22 questions. She has told you, that she--and now, just

1 she confirmed that she can respond based on the
2 process that she was in charge of. [REDACTED]

3 [REDACTED] If you would like to
4 argue your case, then maybe on closing or PHB, that
5 would be a proper time. Now's not the time to put
6 facts in the mouth of Ms. Ardila who doesn't know
7 those facts, and has told you so.

8 MS. CHAMPION: I had never asked her a
9 question about Mr. Valderrama until just now. I'm
10 almost done--

11 (Overlapping speakers.)

12 PRESIDENT SACHS: Please, please, please.
13 It's late in the afternoon, and you have a few last
14 questions?

15 MS. CHAMPION: I'm almost done. I'm almost
16 done.

17 PRESIDENT SACHS: Almost done. Raise them
18 and then we--okay?

19 BY MS. CHAMPION:

20 Q. Did you tell anyone that you had prepared
21 the Precautionary Measures Resolution for the Meritage
22 Property? Did you tell anyone that before you imposed

1 the embargo?

2 A. If somebody from outside the Unit asks me,
3 of course not, and it must be borne in mind--I don't
4 know. Somebody's speaking.

5 (Overlapping speakers.)

6 REALTIME STENOGRAPHER: I'm hearing two
7 Interpreters who seem to be speaking over one another.

8 THE WITNESS: I too am hearing someone here.

9 REALTIME STENOGRAPHER: Can we test it once
10 again? Can the Witness say something into the
11 microphone?

12 THE WITNESS: Hello.

13 BY MS. CHAMPION:

14 Q. Did Ms. Malagón know about the Precautionary
15 Measures Resolution in July of 2016?

16 A. Clearly, because within that Office on Asset
17 Forfeiture, before the Prosecutor shows his or her
18 decisions, there is a technical-legal committee that
19 reviews the decisions.

20 Q. Do you know when that occurred in this case?

21 A. I don't remember exactly, but in general,
22 when the draft of the Decision is prepared, then it is

1 passed on to the person who reviews it, and it
2 undergoes two reviews. The initial reviewer and then
3 the Director.

4 Q. So, is it fair to say it would have been
5 before you signed the Resolution on July 22nd, before
6 you actually physically signed it?

7 A. Yes. Yes, yes. Generally, it's a few days
8 before.

9 MS. CHAMPION: If I could just confer with
10 my colleague for a minute, I think I may be done.

11 (Pause.)

12 BY MS. CHAMPION:

13 ■ [REDACTED]
■ [REDACTED]
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14

I don't have any further questions.

15

PRESIDENT SACHS: Fine. Redirect?

16

MS. HERRERA: Yes, thank you, Mr. President.

17

REDIRECT EXAMINATION

18

BY MS. HERRERA:

19

Q. Ms. Ardila, I have some questions that I'm

20

going to ask you to answer them as concisely as

21

possible, insofar as possible, because I have several,

22

unless you need to provide some explanation.

1 First, is the Office of the Attorney General
2 a party or a judge within the asset forfeiture
3 proceedings under Law 1708 of 2014?

4 A. It is a party.

5 Q. The initial phase--that initial phase of
6 asset forfeiture under Law 1708 of 2014, is that
7 confidential under Colombian law?

8 A. Yes, ma'am. That's Article 10 of the Code
9 on Asset Forfeiture.

10 Q. Now, Precautionary Measures in this case,
11 were they ordered in the initial phase?

12 A. On an exceptional basis, mindful of the
13 provision of Article 89 of the Code on Asset
14 Forfeiture.

15 Q. During the seizure that you carried out at
16 the Meritage Lot, was there any representative of
17 Corficolombiana present?

18 A. No, I don't recall.

19 Q. And Corficolombiana was the one that held
20 the property right at that time; correct?

21 A. Correct.

22 MS. CHAMPION: It's all leading. It's a

1 cross-examination. She's your witness. Are you
2 treating your witness as hostile? I don't think you
3 have permission to do that.

4 MS. HERRERA: Sorry? How is it hostile?

5 MS. CHAMPION: You can't direct your own
6 witness unless you ask to treat them as hostile, at
7 least in my world, but it's not proper. You're
8 testifying through your witness. If you want to make
9 legal arguments, you can make them in your papers.

10 PRESIDENT SACHS: Okay, ladies and
11 gentlemen, please, you have a few more minutes for
12 redirect, please proceed.

13 MS. HERRERA: Thank you, Mr. President.

14 BY MS. HERRERA:

15 Q. Here it was said that the decision to impose
16 Precautionary Measures was yours alone. Was there any
17 review for the legality of those measures?

18 A. Of course. It was presented by the legal
19 representative--to the representative--legal
20 representative of Corficolombiana, and initially the
21 formal and material or substantive control was ordered
22 of the Decision by the Prosecutor to seize the assets.

1 There was an appeal by the lawyer, and the superior
2 judge for asset forfeiture fully upheld the Decision
3 by the Judge in the asset forfeiture matter, who
4 endorsed the Precautionary Measures that had been
5 ordered by the Prosecutor in that case.

6 Q. Ms. Ardila, you were told mistakenly that
7 the right of petition of Corficolombiana included a
8 complete list of the buyers in the chain of title. Do
9 you recall having seen that right of petition and
10 whether some individual or a company was missing?

11 A. Six years have gone by, but I do recall that
12 Iván López Vanegas was not included in that list.

13 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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7

Q. Ms. Ardila, Mr. Víctor Mosquera was the one

8

who asked that Iván López be recognized as affected

9

party; do you recall that?

10

A. Yes, I do.

11

Q. You said that you didn't recognize Mr. Iván

12

López as an affected party or Affected Person. Can

13

you confirm that.

14

A. Yes, I confirm it.

15

Q. For the record, it's R-192, Page 14.

16

PRESIDENT SACHS: No follow-up questions?

17

Good.

18

MS. HERRERA: I'm sorry, it seems to me that

19

Dr. Ardila is quite tired. She can have some minutes?

20

Would that be okay? Or are you okay to continue?

21

You're done? I thought there were question from the

22

Tribunal. That's why I'm asking if she can have

1 some--

2 ARBITRATOR PONCET: I have one or two
3 questions, but we can wait, if Dr. Ardila Polo needs a
4 break, of course.

5 MS. HERRERA: Thank you, Mr. Poncet.

6 ARBITRATOR PONCET: It won't last more than
7 five minutes though.

8 PRESIDENT SACHS: Is that okay, Dr. Ardila?

9 THE WITNESS: I'm fine. Yes, of course.
10 Thank you.

11 QUESTIONS FROM THE TRIBUNAL

12 ARBITRATOR PONCET: Dr. Ardila Polo, there
13 is one thing I would like you to help me understand in
14 connection with the way the Asset Forfeiture Law is
15 applied, and I'm sure you have it in front of you.
16 It's C-3. You probably know it by heart anyway.

17 THE WITNESS: I must say that I have not
18 been in the Asset Forfeiture Unit for the last three
19 year, but I will try to recall, of course.

20 ARBITRATOR PONCET: If that can be of any
21 comfort to you, the last time I dealt with Forfeiture
22 Laws was when I was in Parliament about 25 years ago.

1 THE WITNESS: Yeah.

2 ARBITRATOR PONCET: You have it? Okay.

3 What I need help with is, due to the fact
4 that I come from a legal system which gives great
5 emphasis and great importance to formal due
6 process--material due process is a different field,
7 but formal due process is important. And it seems to
8 me that this is exactly what the--what Law 1708 does.
9 For instance--for instance, Article 5 says "in the
10 exercise and processing of the Asset Forfeiture
11 Action, the right to due process enshrined in the
12 Political Constitution, and this law shall be
13 guaranteed."

14 I am also impressed by the fact that--okay.
15 Let me spare you the rest.

16 You agree with me that the law puts emphasis
17 on due process?

18 THE WITNESS: Indeed, it is a guiding
19 principle of that procedure.

20 ARBITRATOR PONCET: Now, if I look at the
21 Article 13, I have there a number of rights of the
22 Affected Person that are indeed very much to the honor

1 of the drafters of the law, there is a whole catalog
2 of rights that an Affected Person has. You agree with
3 that?

4 THE WITNESS: Yes, I do.

5 ARBITRATOR PONCET: Now, obviously, to claim
6 the right that an Affected Person has, one has to be
7 recognized as an Affected Person, doesn't one?

8 THE WITNESS: That's correct.

9 ARBITRATOR PONCET: Can you help me
10 understand, when we have a seizure in August 2016, and
11 the Court Decision in April 2022, that is 69 months
12 later, if I compute rightly granting that a measure
13 like this can be extremely useful, can be necessary,
14 has all sorts of justifications, if there is polluted
15 money or funding in the acquisition or in the trade
16 involved, can you explain why, in your view it could
17 have taken 69 months for a court to say that it was an
18 interested person because it would seem that such a
19 long waiting period is hardly compatible with due
20 process or with what we call fair and equitable
21 treatment in international terms.

22 I'm very perplexed. Do you have an

1 explanation?

2 THE WITNESS: I'm going to try and be brief
3 because this is a matter that merits a discussion, and
4 there are differences in opinion in our country.

5 ARBITRATOR PONCET: I was hoping to put you
6 in a situation where you could answer quickly.

7 THE WITNESS: This is not something that
8 everybody agrees on.

9 I just want to leave you with a very
10 important message, which is that this proceeding, the
11 proceeding that we are assessing today, both from an
12 evidentiary and a legal viewpoint, this is a procedure
13 that started because of the passing of a law in
14 mid-2014. When the decisions were made to issue
15 Precautionary Measures in the case in connection with
16 the Meritage plot of land, well, I think only two
17 years had elapsed from the time the law was
18 implemented.

19 I can say that I'm a pioneer in the
20 implementation of this law, although I was not
21 involved in the drafting of the law. But in
22 connection with the affected parties, which is the

1 point of discussion here, this is not something that
2 everyone agrees on. Now, why? Because--

3 ARBITRATOR PONCET: I agree. That's not my
4 question. My question is: What is the possible
5 explanation of a judicial review process that takes
6 five years, six years to decide if somebody has an
7 interest in defending one's property?

8 THE WITNESS: There were amendments to the
9 law, sir, there is a single court in Colombia, it is
10 made up of three justices, and they had to decide
11 precisely on the appeal that was brought by Newport
12 represented by its lawyer, well, I would not be able
13 to tell you exactly the reason why. But what it is
14 known is that the obligations that the judges
15 have--eleven for the whole country--and the three
16 justices which make up the only court in deciding
17 these matters, well, that takes time, sir.

18 Also, this is a very complex matter. This
19 was not an easy matter because of the amendments to
20 the law.

21 ARBITRATOR PONCET: Does the Attorney
22 General have the power or the Attorney General's

1 Office, does it have the power to recognize that an
2 entity or a person has an interest in a property that
3 is under attachment spontaneously, or does this have
4 to be done by the Court?

5 THE WITNESS: Well, this is what we call in
6 our country the integration of the contentious
7 proceedings, and this is the jurisdiction of the Judge
8 that hears the case.

9 I don't know if you understood what I was
10 trying to say.

11 ARBITRATOR PONCET: I'm not sure. Let's say
12 six months after August 2013 you or your successor
13 would have decided, "oh, these people may be involved
14 with drug money, maybe not, but it's their property,
15 it's attached, counsel for the Claimants reminded you
16 of the consequences, people losing their jobs, et
17 cetera. I, as a prosecutor, will recognize that they
18 have an interest and give them a chance to state their
19 case." Could you have done that? You or your
20 successor. I mean "you" collectively.

21 THE WITNESS: In point of fact, in this
22 case, the position of the Attorney General's Office

1 was to allow the participation in that process--in
2 those proceedings to the Newport company. The Judge
3 decided at the time that there was no legal link with
4 the plot of land and, therefore, decided that Newport
5 was not an affected party.

6 But this had to do with issues that were
7 provided for in the law itself. This is not something
8 that everyone agrees on. We're talking about the
9 application of the law.

10 ARBITRATOR PONCET: Thank you very much,
11 Ms. Ardila Polo.

12 MS. HERRERA: If I may, one clarification,
13 the appeal was made in 14 June 2019.

14 ARBITRATOR PONCET: Counsel, that's not what
15 I was asking. I asked whether the Attorney General's
16 Office had the authority to admit someone as a person
17 having an interest, and I've heard the answer, and we
18 will draw the consequences or the conclusions, if
19 there are any to be drawn. So, you don't need to--you
20 don't need to provide the answer that was not given.

21 MS. HERRERA: I'm not answering to that.
22 I'm just saying that it's not 69 months of appeal.

1 I'm just clarifying it was three. That's it.

2 ARBITRATOR PONCET: I said it was 69 months,
3 and I think I'm right, May, June, July. If you go
4 from August 2016 to April 2022, that's 69 months.

5 PRESIDENT SACHS: You look frustrated. Do
6 you want to add something? Very shortly.

7 MS. HERRERA: It appears in the record as
8 referring to the appeal.

9 PRESIDENT SACHS: Mrs. Ardila, this is the
10 ends of your testimony. Thank you for your testimony.
11 You are now released as a witness, and we have to
12 discuss how to further proceed with it.

13 THE WITNESS: Good afternoon, everyone.

14 PRESIDENT SACHS: Good afternoon.

15 (Witness steps down.)

16 PRESIDENT SACHS: So, we will have a short
17 break, and. Who is next? Dr. Gómez?

18 So, 10 minutes, and we resume.

19 (Recess.)

20 PRESIDENT SACHS: Can we call Dr. Caro,
21 please.

22 JOSÉ IVÁN CARO GÓMEZ, RESPONDENT'S WITNESS, CALLED

1 PRESIDENT SACHS: Dr. Caro, please make
2 yourself comfortable. So, good afternoon, Dr. Caro.

3 THE WITNESS: Good afternoon.

4 PRESIDENT SACHS: Would you kindly read the
5 Declaration that is in front of you loud.

6 THE WITNESS: Witness Declaration: I
7 solemnly declare upon my honor and conscience that I
8 shall speak the truth, the whole truth, and nothing
9 but the truth.

10 PRESIDENT SACHS: Thank you.

11 Dr. Caro, you submitted two Witness
12 Statements, the first one dated 16 November 2020 and
13 the second one 14 February 2022. Is there anything in
14 these statements that you would like to correct at
15 this point of time?

16 THE WITNESS: No corrections, sir.

17 PRESIDENT SACHS: Questions in direct?

18 Ms. Herrera?

19 MS. HERRERA: Thank you, Mr. President.

20 DIRECT EXAMINATION

21 BY MS. HERRERA:

22 Q. Good afternoon, Mr. Caro.

1 Mr. Caro, could you please introduce
2 yourself to the Tribunal and tell them what is your
3 current position and your experience in connection
4 with asset forfeiture.

5 A. Yes, of course.

6 As I was saying a moment ago, my name is
7 José Iván Caro Gómez, I am a prosecutor specialized in
8 the asset forfeiture, in asset forfeiture matters at
9 the Attorney General's Office in Colombia. I have
10 been in that institution for 17 years.

11 Starting in 2013, I started as an asset
12 forfeiture Prosecutor. My experience as a prosecutor
13 on asset forfeiture matters may be summarized as
14 follows: I am a trainer at the Directorate of Higher
15 Studies of the Attorney General's Office of Colombia
16 in connection with asset forfeiture matters. I train
17 Colombian prosecutors.

18 Likewise, I give lectures as an invited
19 lecturer, by the United Nations office against
20 Drug-trafficking and Crime in connection with matters
21 related to asset forfeiture.

22 Also, I am a lecturer at the Department

1 Against Organized Crime, transnational organized crime
2 at the Organization of American States.

3 I am the coordinator of 81 prosecutors
4 working on asset forfeiture, which comprise the asset
5 forfeiture jurisdiction in our country.

6 I also provide training and advisory to all
7 of these prosecutors that are part of the office.

8 Q. Dr. Caro, I don't know if you can hear the
9 echo. I just want to make sure that you can hear
10 properly, and you have no interference.

11 A. I can hear properly.

12 Q. Thank you.

13 Could you please tell me what are the
14 typical--what is the typical workload, and also the
15 situation of work for the prosecutors working on asset
16 forfeiture?

17 A. Certainly.

18 Each asset forfeiture Prosecutor in our
19 country has about 120 cases as part of their workload.
20 Also, in a similar fashion, the judges in the area of
21 asset forfeiture have about 200 cases each. There are
22 four magistrates at the national level that have about

1 80 cases each. And the jurisdiction includes 11
2 judges at the national level and four Magistrates who
3 are at the second instance of these jurisdictions.

4 Q. Mr. Caro, when were you assigned to the
5 Meritage case, and in what conditions?

6 A. Through Resolution 0091 of March 2017, I was
7 reassigned the case--the Meritage case and four
8 additional cases.

9 Q. What is the analysis conducted to present
10 the asset forfeiture Requerimiento in connection with
11 the Meritage lot?

12 A. I received the case. I analyzed the
13 evidence that the case had. I previously established
14 that there is illicit activity in the assets --that are
15 part of the asset forfeiture proceeding. And after
16 this, after analyzing this, I present the
17 Requerimiento before the Judges from the asset
18 forfeiture section to go on with the forfeiture
19 proceeding.

20 Q. How do you establish the illicit origin of
21 the Lot?

22 A. The illicit origin of the Lot is established

1 as part of the chain of title. The Lot that we later
2 on called "Meritage" had in the chain of title a drug
3 trafficker whose extradition was requested by the
4 United States.

5 Q. Mr. Caro, what is the analysis that led you
6 to reasonably infer the absence of good-faith third
7 parties without fault at the time of the
8 Requerimiento?

9 A. In these cases, it is very important to
10 verify the absence of good faith without fault. One
11 of the limiting factors for the Asset Forfeiture
12 Action is to guarantee the rights of the good-faith
13 third parties without fault.

14 In this case, in particular, upon conducting
15 my study, I established that the ones that are the
16 holders of the ownership right could not be considered
17 within the elevated category of good-faith third
18 parties without any fault.

19 Q. Mr. Caro, did you include Newport as an
20 affected party in the Requerimiento or in the
21 application before the courts dealing with asset
22 forfeiture cases?

1 A. Yes. Upon my analysis, and upon verifying
2 who are claiming rights over the Lot, I recognized a
3 company called "Newport" as the affected party in the
4 proceeding. And, in that situation, I referred that
5 to the judiciary.

6 Q. What are the consequences for Newport to
7 have been recognized by the Office of the Attorney
8 General as an affected party?

9 A. The consequences that the recognition of
10 Newport as a third party or as an affected party has
11 as part of this process is they are guaranteed that
12 they can resort to the Colombian courts to be able to
13 support the position that they're saying they have.

14 Q. Mr. Caro, who has jurisdiction to decide
15 whether Newport is a good-faith third party without
16 fault?

17 A. In all cases, it is for the Judge who hears
18 the case on asset forfeiture to establish whether
19 Newport is a good-faith third party.

20 Q. So, that Decision as to whether Newport is a
21 good-faith third party, is it outstanding?

22 A. Yes, it is to be decided before the Court so

1 that it is the Court the one to establish whether it
2 is a good-faith third party or not.

3 MS. HERRERA: No further questions.

4 PRESIDENT SACHS: Thank you, Ms. Herrera.

5 We go to cross-examination. Mr. Moloo?

6 MR. MOLOO: Thank you, Mr. President.

7 CROSS-EXAMINATION

8 BY MR. MOLOO:

9 Q. Good afternoon, Mr. Caro. I know it's late
10 in the day, but we will see how quickly we can get
11 through the few questions I have for you.

12 I should introduce myself. My name is Rahim
13 Moloo, counsel for the Claimants.

14 And you're here as a fact witness; correct?

15 A. That's correct.

16 Q. Not as an expert witness; correct?

17 A. My experience and my condition allow me to
18 appear before this Tribunal as a witness, but on top
19 of that as someone who is knowledgeable of the Asset
20 Forfeiture Law mainly because when the Asset
21 Forfeiture Code was created in Colombia in 2014, I had
22 to communicate this law to all of the prosecutors in

1 the various areas of the country in Colombia.

2 Q. I understand, but your role in assisting
3 this Tribunal is not to tell them what the law means?
4 You're here to tell them about the facts of this case;
5 correct?

6 A. Yes.

7 Q. Now, you became involved in the Meritage
8 case once the Precautionary Measures had already been
9 invoked; correct?

10 A. The case was reassigned, and the
11 Precautionary Measures had already been issued by the
12 Prosecutor that preceded me in the case.

13 Q. Yes.

14 So, one thing I should have said at the
15 outset as well, most of my questions will be yes-or-no
16 answers. If you want to provide context, you're free
17 to do so, but if you can answer "yes" or "no" first,
18 unless you disagree with the premise of my question, I
19 would really appreciate it.

20 So, not every case has Precautionary
21 Measures--right?--that you're investigating.
22 Precautionary Measures is exceptional.

1 A. That is not the case. It is not necessarily
2 true that not all the cases have Precautionary
3 Measures, particularly exceptional ones.

4 Q. Right. I want to make sure we agree.
5 Not every case has Precautionary Measures;
6 correct? Every case does not have Precautionary
7 Measures. You can start an Asset Forfeiture
8 Proceeding without invoking Precautionary Measures.

9 A. That is true, but let me clarify the
10 situation. If, as part of a process that has to do
11 with asset forfeiture, we do not issue Precautionary
12 Measures, the action could be rendered useless,
13 because if the Parties or the person that holds the
14 ownership becomes aware that that there is this
15 process under way, the Asset Forfeiture Proceeding
16 under way, the most logical and natural action would
17 be to immediately sell the assets so that the State
18 would not go after them.

19 Q. So, again, very simple question: Does every
20 Asset Forfeiture Proceeding have Precautionary
21 Measures? "Yes" or "no."

22 A. Yes.

1 Q. Every Asset Forfeiture Proceeding has--you
2 invoke Precautionary Measures? That's your testimony
3 today?

4 A. That is correct.

5 Q. Okay. I'm looking forward to hearing what
6 the Experts have to say about that tomorrow.

7 So, based on the Precautionary Measures,
8 this particular property was seized on August 3rd,
9 2016; correct?

10 A. The Prosecutor ahead of me issued
11 Precautionary Measures in August 2016.

12 Q. Yes, and it was Ms. Ardila Polo who was the
13 Prosecutor at that time; correct?

14 A. That's correct.

15 Q. And Ms. Ardila Polo was taken off the case,
16 and I think you mentioned you were appointed as her
17 replacement, and that happened on March 6, 2017;
18 correct?

19 A. That is correct.

20 Q. Is that normal that, in the middle of Asset
21 Forfeiture Proceedings, someone would get reassigned a
22 file?

1 A. It could happen often because it is an
2 exclusive power of the Director of Asset Forfeiture.

3 Q. And you said you have about 120 cases at any
4 given time--is that right?--in your direct examination
5 today.

6 A. The prosecutors on asset forfeiture have
7 about 120 cases per office.

8 Q. So, how many cases are you handling at any
9 given time, roughly?

10 A. I may have between 100 and 120 cases.

11 Q. Okay. So, let's go to C-318. You should
12 have a binder in front of you. It's close to the end,
13 and it will also come up on the screen. You can look
14 at whichever one you prefer.

15 So, this is the document that reassigns
16 certain cases from Ms. Ardila Polo to yourself. Do
17 you recall that?

18 A. Yes, I do recall that.

19 Q. And the first file number there, 13641, is
20 the Meritage; is that correct?

21 A. That is correct.

22 Q. And one of the reasons it was reassigned to

1 you is because of its complexity; is that right?

2 A. I do not know why I was reassigned that
3 case.

4 Q. Well, if we go to the next page, it says at
5 the top: "Taking into account the preceding
6 paragraphs, as well as the complexity of the
7 aforementioned investigations, it has been decided
8 that Specialized Prosecutor's Office 53," which I
9 believe is your office, "will take over and continue
10 developing the respective investigations." Is that
11 right?

12 A. All of the asset forfeiture cases are
13 complex.

14 Q. And how long does it take for an Asset
15 Forfeiture Proceeding to go from beginning to end?

16 A. The time depends on the complexity of the
17 cases. Indeed, in one case, where you have several
18 assets, let's say 20-30 cases in which you need to
19 guarantee rights to those who have an actual right, a
20 primary right or an ancillary right over the asset, it
21 may take three, four years, five years.

22 Q. Because you have to assess their rights

1 before you take their asset normally; correct?

2 A. I apologize. I don't understand the
3 question. Could you please repeat it?

4 Q. Well, let me ask you this: How long does it
5 normally take you to prepare a Requerimiento?

6 A. A Requerimiento, depending on the complexity
7 of the case, may take about a month to two months,
8 three months.

9 Q. So, among your 120 cases, it takes about one
10 month to prepare a Requerimiento; is that right?

11 A. Yes. To prepare the Requerimiento takes
12 time since we need to study the case carefully to
13 present the Requerimiento.

14 Q. Okay. And in this instance, from the date
15 of you being appointed to actually filing the
16 Requerimiento, it took you about that amount of time,
17 on April 5th, you filed a 151-page Requerimiento; is
18 that right?

19 A. Yes, it is correct, that is correct.

20 Q. You moved pretty quickly to file that
21 Requerimiento amongst your 120 cases. You get
22 assigned to this case, and within one month you

1 learned the case and you filed the Requerimiento; is
2 that right?

3 A. That is correct, but I need to introduce a
4 clarification.

5 The Asset Forfeiture Law, the original one,
6 like this one, had two procedural stages: First,
7 there was the determination of the Claim, and then the
8 requirement for the asset forfeiture. With the
9 Amendment of 1708 and then with the modification
10 through 1849 of 2017, the provisional determination of
11 the Claim was modified, was suppressed because it had
12 to do with procedural steps that were similar. And as
13 a consequence, the provisional determination of the
14 claim almost had many aspects of the Requerimiento.

15 But, of course, it took me a month to
16 prepare the Requerimiento, working all day long on the
17 case, even on weekends.

18 Q. So, you just ignored your other 120 cases
19 and you focused on this one--is that right?--even on
20 the weekends.

21 A. Yes, when a case is assigned and more so a
22 case such as this one when we had a deadline to

1 present the Requerimiento, it was necessary to devote
2 all of my efforts to present it.

3 Q. Understood.

4 And the Determination of Claim that you were
5 talking about, that was prepared by Ms. Ardila Polo;
6 right? The document that you said is very similar to
7 the Requerimiento. That was prepared by Ms. Ardila
8 Polo?

9 A. She prepared the provisional determination
10 of the Claim, and I made the Requerimiento for asset
11 forfeiture.

12 Q. So, the timing for her being taken off this
13 case is a bit odd; right? She had done all the work
14 for the Report that you say is pretty much the same as
15 the Requerimiento, and in that one month gap between
16 the determination of claim and the Requerimiento, she
17 is removed from the case. That doesn't seem like it
18 would normally happen, would it?

19 A. I cannot offer you that answer because the
20 person reassigning the case is the Director of Asset
21 Forfeiture, the one who actually has that power to be
22 able to act that way.

1 Q. Okay. And would that be Ms. Noguera?

2 A. No, sir. It was the previous Director.

3 Q. Ms. Malagón?

4 A. That is correct.

5 Q. And this case remains your case today;

6 correct? The Meritage case.

7 A. I am litigating this before the Colombian

8 courts.

9 Q. And so, you've been involved in all the

10 court proceedings involving the Asset Forfeiture

11 Proceedings since March 6th, 2017; correct?

12 A. That is correct.

13 Q. And one of the Parties that's adverse to you

14 is Newport in the local court proceedings; is that

15 right?

16 A. Newport is the Party that has exercised

17 their right by means of the Colombian Courts, in first

18 instance and in the appeal, at the appeal level.

19 Q. You have taken opposite views to Newport in

20 those local proceedings; correct?

21 A. No opposite positions since I recognized

22 Newport as an affected party. I indicated that in the

1 Requerimiento for the asset forfeiture.

2 Q. So, Newport's not opposing the Asset
3 Forfeiture Proceeding?

4 A. Yes. And they do, and that's the reason why
5 I mentioned them as part of my Requerimiento, to send
6 it to the Judges. I recognize them as an affected
7 party, even by placing the information where they can
8 be served notice so that they can oppose this
9 proceeding for asset forfeiture before the Courts.

10 Q. Right. My question is slightly different.
11 I'm just saying you have differing views on other
12 aspects of the Case. I understand your position on
13 affected party, but with respect to whether or not the
14 asset forfeiture goes forward, whether or not they're
15 a good-faith third party, et cetera, you're taking
16 opposite views of Newport; correct?

17 A. No, it is not different, because I
18 recognized them as an affected party.

19 Q. Okay. Maybe there's something being lost in
20 translation, so I'll move on, and that's fine.

21 Are you familiar with the property adjacent
22 to the Meritage? I think it's--was referred by your

1 counsel earlier this week as Meritage 2 or the Sister
2 Property that's right next to the Meritage? Are you
3 familiar with that?

4 A. I am not aware of any Sister Property to
5 Meritage.

6 Q. Are you aware of a property that's next to
7 Meritage that comes from a common ownership history?
8 You're not aware of it?

9 A. Yes, I am aware of that property, but we
10 need to clarify the following, that I do not know the
11 Lot physically. I have not gone there, but I know
12 what property you're referring to from the title
13 deeds.

14 Q. Understood. No, and thanks for that
15 clarification. That was my question.

16 And you're aware that it has the same
17 history of title for some period of time--correct?--to
18 the Meritage.

19 A. No, it is not similar to Meritage. Based on
20 my legal criterion, it is not similar.

21 Q. So, are you aware that, in 1994, it was
22 jointly acquired by two entities, and at that point in

1 time it was a consolidated piece of land?

2 A. Yes, yes. I know the way it was set up, but
3 it does not have the same treatment.

4 And let me explain why, because the Meritage
5 asset had some situations that were completely
6 different from the one from the property that you are
7 mentioning.

8 Q. I'm sure you have lots to say about it and
9 you're ready to say it, but just--you'll get your
10 opportunity when I ask my questions.

11 And if you look at that deed--and we can go
12 to it--it's R-8. It's R-8, Exhibit R-8.

13 Does everybody have it in front of them?
14 Okay.

15 A. Yes, I do have it.

16 (Overlapping interpretation with speaker.)

17 Q. -You can see that this is a transaction of a
18 single piece of land from Sociedad Agricola Las
19 Granjas Limitada to Sierralta López and Entrelagos
20 Orozco Vanegas.

21 Do you see that?

22 A. Yes, I do see it.

1 Q. And it was a single piece of land at that
2 point in time; correct? It was a consolidated piece
3 of land; correct?

4 A. Of course, but the difference, if I can make
5 a specification here, is that 25 percent belongs to
6 Entrelagos Orozco Vanegas and 75 percent to Sierralta
7 López, now known as Inversiones Nueve.

8 Q. I understand your position, and your
9 counsel's made that point many times. I'm just asking
10 a different question. I'm asking whether or not it
11 was jointly owned, a single plot of land--not
12 subdivided, a single plot of land by both of these
13 entities; correct?

14 A. Up to that point, yes, correct.

15 (Overlapping interpretation with speaker.)

16 Q. -And it didn't say "you own this part and I
17 own that part." Each one of them owns 75 percent of
18 the whole thing, and the other one owns 25 percent of
19 the whole thing; correct?

20 A. That's right.

21 Q. And the adjacent lot that--we'll call it the
22 Sister Property--there's been no seizure action with

1 respect to that property; correct?

2 A. Which Sister Property are you talking about?

3 Q. The one that is owned by Mr. López Vanegas'
4 half-brother.

5 A. Ah, yes, another property, not the Sister
6 Property, the Meritage. Is that the one you're
7 referring to?

8 Q. Yes, the one that's owned by the
9 half-brother of Iván López. Have you taken--have you
10 commenced Asset Forfeiture Proceedings against them,
11 against that property?

12 A. With respect to that property, no Asset
13 Forfeiture Proceeding has been initiated in respect of
14 that lot.

15 Q. I want to go to C-345. Actually, before we
16 go is there, let me ask you a question.

17 Have you done an investigation into other
18 properties associated with Mr. Iván López?

19 A. Of course, a study had to be carried out of
20 all of the properties that belonged to Iván López
21 Vanegas, including the one you're asking me about.

22 Q. And you have not commenced Asset Forfeiture

1 Proceedings against any of them, have you?

2 A. Of course not because there are no grounds
3 for asset forfeiture in respect of this property.

4 Q. Of any properties that Iván López was
5 associated with; is that right? That's your position,
6 that there is no grounds for Asset Forfeiture
7 Proceedings to be commenced in relation to any
8 properties that Iván López is associated with. That's
9 your posi--did I understand that correctly?

10 A. No, that is not what I said. What I said is
11 that, as regards that Sister Property that you speak
12 of, no Asset Forfeiture Process was initiated, because
13 in respect of it, based on my legal analysis, I did
14 not find any ground for asset forfeiture.

15 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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█ [REDACTED]

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[REDACTED]

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█ [REDACTED]

13

Q. If we go to C-345.

14

Are you familiar with the Quartier property?

15

A. I am not familiar with it.

16

Q. You had--had you investigated all of Iván

17

López's properties that he was previously associated

18

with?

19

A. The thing is, I have no reason to

20

investigate all the properties. For that, there must

21

be asset forfeiture file, and within that context, one

22

would investigate the properties.

1

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

█

[REDACTED]

6

Q. Sorry, just give me a second.

7

Okay. So, you're not familiar with this

8

property?

9

A. As Prosecutor 53? Me? No.

10

█ [REDACTED]

█

[REDACTED]

█

[REDACTED]

█

█ [REDACTED]

█

[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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█ [REDACTED]

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[REDACTED]

█

[REDACTED]

█

█ [REDACTED]

1 [REDACTED] I was assigned
2 by the Resolution that you showed me previously, 0091,
3 five cases, including Case 13641, and that is why I am
4 pursuing it and bringing it before the Judges.

5 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

13 Q. Okay. I'd like to talk a little bit about
14 good faith.

15 Now, it's the Attorney General's Office,
16 their burden of proof to prove that any person
17 affected by the Asset Forfeiture Proceedings are not
18 bona fide owners without fault; correct?

19 A. In principle, it is the Office of the
20 Attorney General that must establish whether there are
21 good-faith third persons within an Asset Forfeiture
22 Process. But the one who decides at the end of the

1 day as to whether or not it is a good-faith third
2 party without fault or not is a court, a judge.

3 Q. So, let me ask you a question. Did you make
4 an assessment as to whether or not there were any
5 good-faith third parties without fault with respect to
6 the Meritage Property? Did you make that assessment,
7 or did you say, "you know what, I'm going to leave it
8 for the Court"?

9 A. No, I did make that assessment previously.
10 One must do it within the Asset Forfeiture Process.
11 There are some preliminary inquiries that one must
12 pursue in order to establish whether there are
13 good-faith third parties without fault.

14 (Overlapping interpretation with speaker.)

15 Q. -Because if you determined that there is a
16 good-faith third party without fault, you don't start
17 the Asset Forfeiture Proceeding; correct?

18 A. Here, it's difficult to tell you that "I'm
19 not going to go forward with the Asset Forfeiture
20 Process because there is a good-faith third party."
21 Because precisely looking at the principle of the
22 progressive nature of the investigation, it's in the

1 course of the investigation that I'll be able to
2 determine whether it is, indeed, a good-faith third
3 party without fault or not. That is revealed by the
4 evidence.

5 Q. So, is it up to you or the Court to make
6 that initial determination?

7 A. The initial determination, of course, has to
8 be pursuant to an analysis by the Office of the
9 Prosecutor, but it's decided by a court.

10

11 Q. But in order to bring the proceeding, you
12 have to make a decision before it gets to the Court;
13 right? It doesn't get to the Court if you decide
14 there are bona fide third parties without fault;
15 correct?

16 A. Of course, if I note that there are
17 good-faith third parties without fault, then I'm not
18 going to file the action before the Courts.

19 Q. And you didn't do that with respect to
20 Newport, did you?

21 A. That is correct.

22 Q. But now you will have to do that because the

1 Court has decided that Newport was an affected party;
2 correct?

3 A. It is correct, but one must also add
4 something, which is, that as Newport was now
5 recognized as an affected party, in the process, it is
6 the Court that must decide whether it is in reality, a
7 good-faith third party without fault or not because
8 when I filed the Requerimiento for asset forfeiture
9 within the procedural dynamics of asset forfeiture,
10 once I file it with the Court, I become yet one more
11 Party to the procedure without judicial powers to
12 decide the fate of those assets that have already been
13 presented to a court.

14 Q. Right.

15 So, now, finally, Newport's good faith is
16 going to be assessed maybe seven years after the asset
17 was taken--eight years, we don't know how long it's
18 going to take, but it's going to be assessed at this
19 point; correct?

20 A. It's not just that it's only now that it's
21 going to be assessed whether it's a good-faith third
22 party without fault or not. I have already undertaken

1 that analysis. What follows is that the Judge must
2 decide whether the requirements and the conditions for
3 declaring them a good-faith third party without fault
4 or not merit such a finding.

5 Q. I want to be clear for the Tribunal on this.
6 You have not undertaken the analysis with respect to
7 Newport; correct?

8 A. That is not correct because I did undertake
9 an analysis in order to establish whether it was a
10 good-faith third party or not.

11 Q. Well, let's go to the Requerimiento. An
12 analysis of Newport's good faith would be in here;
13 correct?

14 A. It would have to be in the Requerimiento, of
15 course. I would have necessarily had to referred to
16 whether or not Newport is or is not a good-faith third
17 party. It has to be in the Requerimiento.

18 Q. Now, I have read this several times, and I
19 do see that you engage in some analysis--I may not
20 agree with it, but with respect to
21 Corficolombiana--but I did not see anywhere in here an
22 analysis of Newport's good-faith status, can you

1 direct me to it?

2 A. I'm sorry, can you tell me how it is
3 labeled?

4 Q. Sorry. C-24.

5 I assume you have reviewed this document
6 fairly recently. And I know it's long. And the
7 good-faith analysis is in the latter part of it, the
8 last 15 pages or so, if that helps.

9 I can direct you, if it's helpful. Your
10 conclusion appears to be on SP-0138 and 0139.

11 At the bottom of 138, it says: "Therefore,
12 this Prosecutor's Office considers that Fiduciaria
13 Corficolombiana did not use the appropriate means it
14 had at its disposal for verifying the origin of its
15 asset."

16 And then on the next page, second last
17 paragraph, it says: "Thus, Fiduciaria, given this
18 actual non-compliance with the SARLAFT system, cannot
19 be considered a third party acting in good faith and
20 free from fault."

21 Do you see that?

22 But there is no finding with respect to

1 Newport, is there?

2 A. That is correct, but I need to add something
3 here, which is that Newport was related to or
4 associated with the process or I should say the
5 property through a commercial Trust, and the property
6 had become an autonomous property that was registered
7 in the name of Corficolombiana. That is why the
8 mention that is made here of the Fiduciary
9 Corficolombiana, indicating that, according to my
10 legal judgment, one could not accredit it as of that
11 moment as a good-faith third party.

12 Q. So, just to be clear, you did not do an
13 independent assessment of Newport's good faith. You
14 only did an analysis of Corficolombiana's good faith;
15 correct?

16 A. No, that is not correct.

17 Q. I ask one more time. Show me in this
18 document where you do the analysis of Newport's
19 good-faith status.

20 A. The thing is the analysis to establish
21 whether it is a good-faith third party or not was done
22 in respect of the property. But since the property

1 was registered in the name of Corficolombiana, as an
2 autonomous property and as it was tied in through the
3 fiduciary contract, that is where the judgment of
4 reproach is put forward that it is not a good-faith
5 third party.

6 And Newport is necessarily tied in here
7 through that commercial trust.

8 Q. Okay. I think we have your submission on
9 that.

10 But you cannot point me to anywhere in this
11 Decision--right?--that specifically discusses
12 independently Newport's good-faith status. It's just
13 through Corficolombiana, in your position; correct?

14 A. That's right, because Newport was tied to
15 Corficolombiana.

16 Q. Understood.

17 So, let's look at what you did find with
18 respect to Corficolombiana.

19 On SP-0149, you referenced Corficolombiana's
20 website.

21 Do you see that?

22 A. Yes, I do see it.

1 Q. Now, I think you're referring to their
2 website because you're saying, "look, this is what
3 Corficolombiana says that it is going to do;" correct?

4 A. That is correct, but one must also add the
5 following, which is that the natural spokesperson for
6 judicially defending Newport, well, it's through the
7 commercial trust, where the Contract spells it out
8 specifically. That's why I refer to Corficolombiana
9 in this document.

10 Q. No, I understand. I'm asking--on to another
11 question.

12 You're relying on what's Corficolombiana's
13 web page because you're saying this is what it puts
14 out into the public domain, and it would be reasonable
15 to rely on this; correct?

16 A. Yes, of course, that's right.

17 Q. And it says here that what it does as a
18 fiduciary is the following: First, it says, "in real
19 estate Trust Agreements, the fiduciary must verify and
20 determine that the lands on which the Project will be
21 developed have been acquired or have been contributed
22 in a conclusive manner and fully respecting the

1 required legal formalities for this type of
2 negotiations." Do you see that?

3 And then on the next page you got this in
4 bold. You say one of the other things you say they do
5 is they look at the history of transfers of the
6 properties, do not have any problems of a legal nature
7 that may hinder or impede the transfer of ownership of
8 the resulting real estate units to future purchasers.

9 Do you see that?

10 A. Yes.

11 (Overlapping speaker and interpretation.)

12 Q. -So what you're saying is that Newport hired
13 Corficolombiana and relied on them to do this;
14 correct?

15 A. That is correct.

16 Q. And then there are three other things. The
17 point of equilibrium--I mean, you can read them, but
18 those are the other things that Newport would have
19 hired Corficolombiana to do; correct?

20 A. I don't know what the reasons are or why
21 Newport got involved with Corficolombiana or turned to
22 Corficolombiana.

1 Q. Now, I found this puzzling. In your Witness
2 Statement at Paragraph 39--I want to make sure I
3 understand this, and then we will go back to the
4 Requerimiento--you say--

5 MS. HERRERA: Excuse me, which one? Because
6 there are two.

7 MR. MOLOO: Witness Statement 1,
8 Paragraph 39. Thank you, Ms. Herrera.

9 BY MR. MOLOO:

10 Q. You say: "It is possible to say that the
11 current holders in their rights did not act as
12 good-faith third parties since they did not carry out
13 a due diligence prior to their deals in the
14 development of the Project."

15 So, is it your position that they did not
16 carry out any due diligence? Is that what you're
17 saying here?

18 A. That is what I'm saying.

19 Q. So it's your position in this Arbitration
20 that Corficolombiana, one of the largest financial
21 institutions in Colombia, did not perform any
22 diligence; is that right?

1 A. Corficolombiana, as spokesperson for the
2 autonomous property which involved Newport or which
3 with Newport was associated--in my legal judgment did
4 not comply with the standards for establishing itself
5 as a good-faith third party without fault.

6 Q. Well, that wasn't my question. My
7 question--you say here they did not carry out a due
8 diligence prior to the deal, but they did do due
9 diligence. You just think it's inadequate; right?

10 A. That's right.

11 Q. And one of the things they did was they
12 asked Newport to carry out a Title Study from Otero &
13 Palacio; correct?

14 A. That is correct.

15 Q. And they reviewed the Otero & Palacio study
16 which went beyond just the study of the title;
17 correct? It also searched persons in the chain of
18 ownership and whether or not they were on various
19 restrictive lists, like the OFAC List, things like
20 that?

21 A. Of course I reviewed that situation, and I
22 read this study by Otero & Palacio.

1 Q. And I'm sure you know that Corficolombiana
2 wrote to the Attorney General's Office seeking
3 information about all of the past owners for the last
4 65 years; correct?

5 A. The last 65 years? No.

6 Q. Let's go to C-31bis.

7 Sorry, I meant back to 1965. They went back
8 to the Year 1965--correct?--in this request to the
9 Attorney General's Office. Were you aware of that?
10 If you weren't aware, that's fine.

11 A. Excuse me, what exhibit are you referring
12 to? What's its classification?

13 Q. It is C-31bis. If you look at Page 1. This
14 is a letter to the National Anti-Money-Laundering and
15 Asset Forfeiture Unit, from Mr. Sintura, who is acting
16 on behalf of Corficolombiana.

17 And I will let you read this, but he's
18 requesting confirmation that all of the individuals on
19 the history of title that are listed are not--you can
20 see on the last paragraph there, it says: "Prior to
21 the transaction of this Real Property in which it
22 might be interested with the exclusive purpose of

1 complying with basic prevention measures as a
2 precaution in order not to be utilized in an
3 asset-laundering operation or in the financing of
4 terrorism," and then it asks for confirmation from the
5 Unit that there's no investigations into any of the
6 individuals or entities on title.

7 Do you see that?

8 A. I'm trying to locate where you're reading in
9 the document that you're making reference to. I can't
10 see it.

11 Q. If you look at just Pages 1 and 2 of reading
12 the bottom paragraph of page 1 and the top of page 2.

13 Sorry, is this the first time you're seeing
14 this document?

15 A. It is not the first time that I see this
16 document.

17 Q. I'm sorry, my colleague is correcting me
18 once again, just for the record.

19 This identifies all of the titleholders
20 dating back to 1955. It is all the titles.

21 MS. HERRERA: It is not all the titles.

22 MR. MOLOO: Mr. President--

1 PRESIDENT SACHS: In redirect, please.

2 BY MR. MOLOO:

3 Q. Dr. Caro, you are aware that Iván López was
4 not on the title--is not on the title, ever, on the
5 Meritage Property? You know that; right? Iván López'
6 name is nowhere to be found on the title of this
7 property. He was never a titleholder. You know that;
8 correct? Or is that news to you?

9 A. Iván López was the holder of an ownership
10 right in this lot which is under asset forfeiture. He
11 was representing legally Sierralta López.

12 Q. He was the legal representative, but he was
13 not the owner; correct? His name was not on title;
14 correct?

15 To be a legal representative of an entity,
16 do you have to be the owner of that entity?

17 A. Of course. You had to be the owner--as the
18 legal representative, you represent the Company and
19 represent the assets of the Company and the whole
20 company.

21 Q. So, Corficolombiana, an entity of 28,000
22 employees, who is the legal representative? How many

1 legal representatives does it have?

2 A. I wouldn't be able to tell you how many
3 legal representatives Corficolombiana has.

4 Q. The legal representative is the individual
5 who is authorized to bind the entity; correct?

6 A. Claro.

7 Q. It's not necessarily the owner; correct?

8 There may be multiple owners of a particular
9 entity; correct?

10 A. Yes, but the representative of the company
11 before the courts is a legal representative.

12 Q. Correct. And I'm just making it clear that
13 we all understand the legal representative is not the
14 same thing as the owner of a company; correct?

15 A. The legal representative represents legally
16 the Company and, of course, the legal representative
17 administers the assets of the Company.

18 Q. Is Iván--if you look on this Page 2 and
19 Page 3, these are all the individuals and the legal
20 entities that were actually on title. Was Iván López'
21 name ever on Title?

22 Your counsel has given her answer, but I

1 want your answer.

2 A. Please repeat the question. I didn't really
3 understand the question, then.

4 Q. Is Mr. Iván López' name, has it ever been on
5 the title, not whether or not it was the legal
6 representative, of one of the entities whose name was
7 on title, but was Iván López' name ever on title, to
8 your knowledge?

9 A. As the legal representative of the holder of
10 the right of ownership, yes, Iván López Vanegas
11 appeared.

12 Q. You're answering a different question. Was
13 Mr. Iván López ever the direct owner of this property?

14 A. Yes, he was the owner via his legal
15 representation of the Company.

16 Q. So, it's your position that the legal
17 representative owns 100 percent of a company for which
18 they are the legal representative? Is that your
19 position?

20 A. Well, I don't know how many shares Iván
21 López had in this company that he represented, but
22 according to the studies that were conducted, of

1 course Iván López was the legal representative of the
2 Company, and he was also an interest-holder.

3 Q. I understand, but--okay. I don't think
4 you're going to answer my question, so I will move on.

5 There was no requirement for Dr. Sintura to
6 write this letter to the Attorney General's
7 Office--sorry, to the Asset Forfeiture Unit; correct?
8 There was no legal requirement for him to--for them to
9 write this letter and seek this information; correct?

10 A. There is no requirement. Whomever deals
11 with issues that have to do with asset forfeiture
12 knows that an answer to a right of petition is not the
13 best practice to indicate whether a person included
14 here or in one of the companies is related to an Asset
15 Forfeiture Proceeding because that is an exact picture
16 of the time when the information is requested.

17 Tomorrow, perhaps other things may occur,
18 but at that point in time, it is a snapshot of that
19 moment.

20 And perhaps at that moment there are no
21 investigations related to asset forfeiture. This does
22 not mean that later on, perhaps, investigations may

1 come about or investigations may be opened.

2 Q. Okay. Mr. Caro, we just ask you to answer
3 the questions I ask you, and we will all be out of
4 here much quicker.

5 REALTIME STENOGRAPHER: Is it possible to
6 take a five-minute break?

7 MR. MOLOO: Of course. I assume that's
8 acceptable to the Tribunal.

9 PRESIDENT SACHS: Yes, of course. Let's say
10 10 minutes.

11 Dr. Caro, you're still under testimony, so
12 please do not speak to anybody during the break.

13 THE WITNESS: I will do so, Mr. President.

14 (Brief recess.)

15 PRESIDENT SACHS: Let us know how long it
16 will take you before we break.

17 MR. MOLOO: I think I have 45 minutes to an
18 hour left.

19 PRESIDENT SACHS: Then I think we should
20 close for today because the Court Reporters told me
21 that they are "a bout de souffle." I'm sorry for
22 that, but I think we must stop now.

1 MS. BANIFATEMI: Not at all. We understand
2 perfectly. Yes.

3 PRESIDENT SACHS: Now, Dr. Caro, this means
4 for you, unfortunately, that you should spend the
5 evening by yourself or at least not with people that
6 are knowledgeable about this case or have a role to
7 play in this case.

8 THE WITNESS: I will do that, Mr. President.

9 PRESIDENT SACHS: So, we will now close and
10 see you tomorrow morning at 9:30.

11 MR. MOLOO: Yes.

12 PRESIDENT SACHS: Have a nice evening.

13 MR. MOLOO: Thank you. You as well.

14 (Whereupon, at 6:51 p.m., the Hearing was
15 adjourned until 9:30 a.m. the following day.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, appearing to read "David A. Kasdan", is written above a horizontal line.

DAVID A. KASDAN