

No. 19A1058

In the
Supreme Court of the United States

KEITH STANSELL, ET AL.

v.

SAMARK JOSE LOPEZ BELLO, ET AL.,

Applicants

On Application for a Stay

RENEWED EMERGENCY APPLICATION FOR A STAY
OF THE JUDGMENT OF EXECUTION
PENDING THE FILING AND DISPOSITION
OF A PETITION FOR A WRIT OF CERTIORARI

To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court
of the United States

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

The parties to the proceeding below are as follows:

1. Applicants Samark Jose López Bello, Yakima Trading Corporation, EPBC Holdings, Ltd., 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 64E LLC, and 200G PSA Holdings LLC, Profit Corp. CA, SMT Technologia CA, and PYP International LLC
2. Keith Stansell, Marc Gonsalves, Thomas Howes, Judith Janis—as personal representative of Thomas Janis’s estate—and Thomas Janis’s surviving children (collectively, “Plaintiffs”).
3. Revolutionary Armed Forces of Colombia (“FARC”), a terrorist organization.

Related proceedings:

1. Stansell v. Samark Jose López Bello et al., No. 20-11736-GG (11th Cir.)
2. Stansell v. Samark Jose López Bello et al., No. 19-11415 (11th Cir.)
3. Stansell v. Samark Jose López Bello et al., No. 19-13957 (11th Cir.)
4. Stansell v. Samark Jose López Bello et al., Civil Action No. 19-20896 (S.D. Fla.)

CORPORATE DISCLOSURE STATEMENT

Per Supreme Court Rule 29, Applicants Samark Jose López Bello, Yakima Trading Corporation, EPBC Holdings, Ltd., 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 64E LLC, and 200G PSA Holdings LLC, Profit Corp. CA, SMT Technologia CA, and PYP International LLC (“Applicants”) state that neither he nor the listed companies, have a parent company or is associated with a publicly-held company that has a 10% or greater ownership interest in the identified parties.

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To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court of the United States, pursuant to R. 22.4:

On February 15, 2019, the District Court, under the Terrorism Risk Insurance Act of 2002 (“TRIA”), issued an ex parte order, finding that the Applicants were agents or instrumentalities of the Revolutionary Armed Forces of Colombia (“FARC”) and attaching and ordering a sale of property, without pre-deprivation notice and without providing a meaningful post-deprivation hearing consistent with Due Process of law.

On April 30, 2020, the District Court, after finding issues of material fact relating to the required question of agency and instrumentality, reversed course without explanation and found the Applicants to be “indirect” instrumentalities of the FARC. As a result, the District Court ordered the bank-garnishees to liquidate over \$53,000,000 of securities owned by Applicants and pay the sum over to Plaintiffs. Applicants timely appealed to the Eleventh Circuit Court of Appeals. Applicants also timely moved before the District Court to stay execution of the money judgment pursuant to Federal Rule 62(b) pending the appeal.

The District Court denied Applicants’ Motion to Stay the Final Judgment by and refused to consider the security that was available to protect the judgment pending appeal. On the same day, Applicants moved before the Eleventh Circuit Court of Appeals for an Emergent Stay Pending Appeal. The Eleventh Circuit

Court of Appeals, in a one page order, and without any analysis, denied Applicants' Motion for Stay. On June 23, 2020, the District Court ordered the bank-garnishes to liquidate all funds owned by Applicants within 48 hours, and turn over these assets to Stansell. This Emergency Motion before this Court is necessitated and made more urgent because of the June 23, 2020 Order.

The Eleventh Circuit Appeal implicates the denial of the Applicants' Due Process rights under the Fifth Amendment to the United States Constitution. The Appeal seeks to resolve a split among the Circuits regarding the elements necessary to prove agency or instrumentality under TRIA. In seeking a Stay, Applicants seek to maintain the status quo by stopping the liquidation of Applicants' assets. Maintaining the status quo will not harm Stansell because the assets will remain secured and available should April 30, 2020 turnover order ultimately be affirmed. In contrast, a denial of the requested stay will cause Applicants irreparable harm as the assets will be forever lost and any recoupment will be non-existent when the April 30, 2020 Order is reversed on its merits.

Opinions Below

The United States District Court for the Southern District of Florida issued the following relevant orders: February 15, 2019 (Ex Parte Order Granting Attachment and Ordering Sale of Real and Personal Property); April 30, 2020

(Final Turnover Judgment Order); June 3, 2020 (Order Denying Motion to Stay Pending Appeal); June 15, 2020 (Order Denying Motion for Reconsideration); and June 23, 2020 (Order requiring bank-garnishees to liquidate and turn over Applicants' Assets in 48 hours). Each of these orders are unreported but included in the appendix attached hereto. App00044; App00392; App00477; App00487; App0035 [Paperless Order, ECF No. 382]. The United States Court of Appeals for the Eleventh Circuit issued one relevant order, dated June 19, 2020 (Order Denying Stay Pending Appeal), also unreported but included in the appendix attached hereto. App00489.

Jurisdiction

Applicants' Motions to Stay Pending Appeal were denied by the District Court and the Eleventh Circuit Court of Appeals. This Court has jurisdiction now to entertain a stay pending appeal under 28 U.S.C. § 2101(f). See S. Ct. R. 22.3, 23.1 (allowing applicants to seek a stay from the Supreme Court.)

Constitutional/Statutory Provisions Involved

The Due Process Clause provides that "No person shall be ... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. Amend V.

Statement of the Case

Plaintiffs below, the TRIA Judgment-Creditors (referred to herein as “Stansell”) seek to enforce a default judgment they obtained in a lawsuit against members of the Revolutionary Armed Forces of Colombia (“FARC”) in 2010 under the Anti-Terrorism Act (“ATA”). On February 13, 2019, Stansell filed, under seal, an Ex Parte Expedited Motion for Issuance of Post-Judgment Writs of Garnishment and Execution seeking to attach and levy upon the U.S.-based assets of López and his affiliated companies.¹ Stansell sought to obtain Applicants’ assets to satisfy the default judgment against the FARC – even though López was never a defendant in the FARC lawsuit. App0003 [ECF No. 18]. On February 14, 2019, the District Court set an ex parte hearing on Stansell’s Application. On February 15, 2019, the District Court issued an order granting Stansell’s requested relief. The District Court Order made the following findings of fact and conclusions of law based solely on Stansell’s unchallenged and untested ex parte application:

- (1) This Court has subject matter jurisdiction to conduct post-judgment execution proceedings of a plaintiff’s final judgment under a federal statute (ATA), rendered by a U.S. district court and properly

¹ TRIA creates a mechanism for judgment creditors to obtain the U.S.-based assets of terrorist parties or agents or instrumentalities thereof if those U.S.-based assets have been subject to sanction under the unilateral determination of the Office of Foreign Asset Control. Applicants’ assets at issue in the case below are assets subject to restrictions imposed by OFAC under the SDNTK program tag.

registered in this district pursuant to 28 U.S.C. §1963, with post-judgment execution under the ATA and TRIA §201.

(2) The Court grants the Plaintiffs' motion (ECF No. 18).

(3) Based upon the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") factual findings and the Plaintiffs' supporting expert witness testimony and appendix, the Court finds that the OFAC Kingpin Act designated members of the "EL AISSAMI & LÓPEZ BELLO NETWORK" (identified on OFAC Chart, ECF No. 18-1) are each an agency or instrumentality of the FARC, and their blocked assets are therefore subject to attachment and execution pursuant to TRIA and 18 U.S.C. 2333(e).

(4) The Court concludes that the Plaintiffs, through their extensive submissions, have adequately established that (1) they have obtained an Anti-Terrorism Act judgment against a terrorist party (the FARC) that is based on an act of international terrorism, (2) the assets which the Plaintiffs seek to execute on are "blocked assets" as that term is defined under the TRIA and the ATA, 18 U.S.C. §2333(e), (3) the total amount of the executions does not exceed the amount outstanding of the Plaintiffs' ATA Judgment, and (4) the Kingpin Act blocked parties and owners of the subject blocked assets identified in OFAC Chart (ECF No. 18-1) are each an agency or instrumentality of the FARC.

(5) The Clerk of this Court is directed to issue the one writ of garnishment and seven writs of execution in the form attached to Plaintiffs' motion (ECF No. 18) as exhibits 11 through 18 so that the Plaintiffs may promptly attach the blocked assets to perfect their judgment liens. Pursuant to Fla. Stat. §56.031, these writs of executions "shall be in full force throughout the state."

(6) The U.S. Marshal for The Southern District of Florida is directed to execute and levy upon and sell the four subject parcels of real property, vessels, aircraft and automobiles under TRIA and pursuant to the procedures for postjudgment execution, levy and judicial sale set forth in Fla. Stat. §§56.061, 56.21, 56.22, 56.25 and 56.27.

App0044.

The February 15, 2019 Order, which was kept under seal for ten days, directed the United States Marshal to sell López's property. As the February 15, 2019 Order was sought and issued on an ex parte basis, there was no pre-deprivation notice provided to Applicants. The Order also did not allow for any post-deprivation hearing as required by the Fifth Amendment Due Process Clause.

The February 15, 2019 Order was unsealed on February 25, 2019 and served on López on February 26, 2019. The judicial sale of the three Brickell properties was set for April 16, 2019. On March 15, 2019, López filed a Motion to Amend the Order pursuant to Fed. R. Civ. Pro. 59(e), seeking to strike the portion of the February 15, 2019 Order that permitted the United States Marshal to sell López's real and personal property. That Motion was denied on March 22, 2019. The District Court, having already found Applicants to be agents and instrumentalities of the FARC based solely on Stansells' ex parte application, also denied Applicants' requests to conduct discovery, and to amend and correct the February 15, 2019 Order.

Applicants filed dispositive motions with the District Court seeking adjudication of the "agency or instrumentality" question. In connection therewith, Applicants submitted undisputed evidence that OFAC never associated them with

the FARC. Applicants also submitted undisputed evidence that: (1) OFAC never found Applicants to have laundered money from drug proceeds on behalf of, or for the benefit of, the FARC; and (2) OFAC never found Applicants to have provided any material assistance to the FARC. López also submitted his own sworn Declarations and three separate Affidavits from experts in the pertinent fields, each attesting that López was not an agent or instrumentality of the FARC.

Based upon this evidence, López filed a Motion for Summary Judgment seeking to dissolve the Writs of Execution served on the Brickell properties on March 29, 2019. App0010 [ECF No. 109]. On April 1, 2019, López filed Motion to Stay the Sale of the Brickell properties scheduled for April 16, 2019, pending resolution of López's Motion for Summary Judgment. App0010 [ECF No. 110]. Having received no response from the District Court as to the Motion for Summary Judgment in advance of the sale, Lopez filed a timely notice of appeal on April 12, 2019 and sought a stay from the District Court pending that appeal.

The District Court denied López's Motion to Stay Pending Summary Judgment on April 15, 2019. The Eleventh Circuit Court of Appeals summarily denied Applicants' Motion to Stay the sale before that Court on April 16, 2019. The sale of the properties went forward on April 16, 2019. On May 8, 2019, López filed a Motion to Administratively Terminate the Action while the appeal was pending.

On May 13, 2019, the Magistrate Judge, to whom all motions were assigned, scheduled a hearing on all outstanding motions which included the pending undecided Motion for Summary Judgment related to the Brickell properties. On June 10, 2019, López objected to the Court conducting a hearing because the appeal divested the District Court of jurisdiction. App00072-73; App00074: 29:1-3. At the time the District Court set the evidentiary hearing, there were six motions to dissolve, addressing each of the writs of garnishment as required by Florida law, and six competing motions for turnover judgments as to the same accounts. Also still pending was López's motion for summary judgment as to the Brickell properties. During the June 10, 2019 telephone conference, the Magistrate Judge informed counsel for Applicants that the June 11, 2019 hearing would likely be their only opportunity to present live evidence and witnesses related to the agency or instrumentality determination. App.000067: 22:5-24.

On June 11, 2019, over López's objection regarding the District Court's jurisdiction, Magistrate Judge Torres conducted an evidentiary hearing and received testimony from five experts. App000088-340. The testimony centered on the question of whether Stansell could prove that López was an agent or instrumentality of the FARC. During the June 11, 2019 hearing, the District Court reversed the burden of proof and required Applicants to overcome the Court's

February 15, 2019 ex parte finding of agency and instrumentality. At the conclusion of Applicants' presentation of evidence, Stansell moved for judgment on their turnover motion, calling it a motion for "directed verdict" arguing that López failed to rebut the District Court's ex parte findings of February 15, 2019. The Court denied Stansell's motion and stated, "I think it's a fact question, so I will deny it." App00142 at 55:14-25; App00143 at 56:1-25; App00144 at 57:1-3. Plaintiffs presented witnesses, including one previously undisclosed "expert." Stansell moved for a "judgment of turnover" at the close of all the evidence. The Court again denied the motion stating, "I think technically more than a scintilla of evidence has been introduced on the part of [López] to support [López's] position."² App00293 at 206:9-20.

The June 11, 2019 hearing was not meaningful in any sense, because the District Court acknowledged in a later Order issued on August 21, 2019, that it was never going to "disturb Judge Scola's determination with regard to Lopez Bello being an agent or instrumentality of the FARC." App00034. The District Court did not afford Applicants any of their rights required under the Due Process

² The District Court, however, ultimately reversed course without explanation in its September 26, 2019 Opinion, when it determined that there were no issues of fact to be decided by a jury and held that Applicants were not entitled to a jury trial on the question of agency or instrumentality.

Clause. Indeed, as the June 11, 2019 hearing did not occur until nearly two months after Applicants' real property was sold, Applicants were never afforded any hearing whatsoever before he was permanently deprived of those properties.

On August 21, 2019, the District Court denied Applicants' motion for administrative termination. In so doing, the Magistrate Judge confirmed the Court's mistaken belief that it could not alter the District Judge's prior ex parte findings regarding agency or instrumentality:

We disagree with Movants' position and find that the pending appeal does not divest this Court of jurisdiction to rule upon the motions currently before this Court. Although we may not disturb Judge Scola's determination with regard to Lopez Bello being an agent or instrumentality of the FARC, we do retain jurisdiction to aid in the execution of the judgment emanating from that Order. See Showtime, 895 F.2d 711 at 713. The merits of the underlying dispute – whether TRIA allows Plaintiff's to attach “blocked assets” owned or controlled by Movants as a result of Lopez Bello's purported association with the FARC – have been dealt with in Judge Scola's February 15 Order. See Pitney Bowes, Inc. v. Mestre, 701 F.2d 1365, 1368 (11th Cir. 1983) (“A final decision is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.”) (quotation omitted). The only thing left to do, then, is determine whether enforcement of the judgment requires turnover of the blocked assets under TRIA (or dissolution of the writs of garnishment), which remains in our power to do.

App00344.

The Magistrate Judge issued a Report and Recommendation on August 21, 2019, addressing Applicants' six Motions to Dissolve the writs of garnishment and

ostensibly addressing Applicants' Motion for Summary Judgment as to the Brickell properties. As there was no new evidence introduced into the record after the hearing, the Report and Recommendation reached conclusions contrary to the Magistrate Judge's findings of disputed issues of fact at the June 11, 2019 hearing. Instead, the August 21, 2019 Report and Recommendation found that López was an agent and instrumentality of the FARC. App00350-52. Applicants filed timely and comprehensive objections.

On September 26, 2019, the District Court adopted the Report and Recommendation on the Motions to Dissolve and the Summary Judgment motion without any modification and without fully addressing Applicants' objections. Id. Applicants' filed an appeal on October 4, 2019. App0026 [ECF No. 283]. The Eleventh Circuit dismissed that appeal on March 4, 2020 for lack of jurisdiction as a final turnover order had not yet been entered, and presumably, because a denial of summary judgment is an interlocutory order.

On March 23, 2020, the Magistrate Judge issued another Report and Recommendation addressing the Stansell's six competing Motions for Turnover Judgment and recommending those turnover motions be granted as to all of the garnishees with the exception of Citibank, N.A. App00030 [ECF No. 322]. Also on March 23, 2020, the Magistrate Judge issued a second Report and

Recommendation, which found that the Court lacked jurisdiction over the Citibank, N.A. account and recommended transfer of the writ of garnishment over that account to the Southern District of New York under the first filed rule. App0030 [ECF No. 323].

On April 30, 2020, the District Court adopted both of the Reports and Recommendations issued by the Magistrate Judge on March 23, 2020, and entered a money judgment against López in the amount of \$53,208,315. App00392. The April 30, 2020 Order mandates that various bank-garnishees turn over **\$53,208,315** to Stansell. López filed a timely notice of appeal on May 6, 2020. App00031 [ECF No. 341]. On the same day, López, filed with the District Court an Expedited Motion for Stay and Motion to Waive the Security Requirement Pending Appeal. App00411. López requested an expedited ruling by May 11, 2020, to avoid the necessity of having to burden the Eleventh Circuit with an Emergency Motion. The briefing of the Motion to Stay was fully completed on May 9, 2020. The District Court waited until June 3, 2020, at 7:40 a.m. to file a two page Order, which denied the Motion to Stay. App00477.

On June 3, 2020, Applicants filed an Emergency Motion before the Eleventh Circuit seeking a stay of the execution on the turnover judgment and arguing that the District Court erred when it applied the incorrect standard to the Motion to

Stay and that the District Court abused its discretion in refusing to waive the bond requirement. On June 19, 2020, the Eleventh Circuit summarily denied Applicants' Motion to Stay, without any opinion. App00489. On June 23, 2020, the District Court entered an order discharging the garnishees from all liability and mandating turnover of any remaining outstanding amounts of \$53 million judgment within 48 hours. App00035 [ECF No. 382].

Lopez seeks relief from this Court in the form of a stay of the underlying judgment issued by the District Court on April 30, 2020, which directed the turnover of more than \$53 million in financial accounts. This Court may grant relief pursuant to 28 U.S.C. §2101(f), which provides as follows:

In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted therefor, or fails to obtain an order granting his application, or fails to make his plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

28 U.S.C. §2101(f). A stay pursuant to §2101(f) simply operates to suspend judicial alteration of the status quo. Ohio Citizens for Responsible Energy, Inc. v. Nuclear Regulatory Commission, 479 U.S. 1312, 1313 (1986). The relief sought by the

Applicants merely maintains the status quo by stopping the liquidation of Applicants' assets.

Relief from a single Justice is appropriate in those extraordinary cases where the applicant is able to rebut the presumption that the decisions below - both on the merits and on the proper interim disposition of the case - are correct. See Rostker v. Goldberg, 448 U.S. 1306, 1308 (1980) (citing Whalen v. Roe, 423 U.S. 1313, 1316-1317 (1975) (Marshall, J., in chambers)). By docket entry on June 30, 2020 Justice Thomas denied this Application, which Applicants now renew. R. 22.4.

In order to obtain such a stay, a four-part showing must be made. See id. First, the moving party must show that there is a "reasonable probability" that four Justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction. Graves v. Barnes, 405 U.S. 1201, 1203-1204 (1972) (Powell, J., in chambers); Mahan v. Howell, 404 U.S. 1201, 1202 (1971) (Black, J., in chambers). Second, the movant must demonstrate that "there is a fair prospect that a majority of the Court will conclude that the decision below was erroneous." Rostker, 448 U.S. at 1308. Third, there must be a demonstration that irreparable harm is likely to result from the denial of a stay. Id. (citing Whalen, 423 U.S., at 1316; Graves, 405 U.S. at 1203). Finally, in a close case it may be appropriate to

“balance the equities” to explore the relative harms to the parties, as well as the interests of the public at large. Id. (quoting Holtzman v. Schlesinger, 414 U.S. 1304, 1308-1309 (1973) (Marshall, J., in chambers) (citing cases); Republican Committee v. Ripon Society, 409 U.S. 1222, 1224 (1972) (Rehnquist, J., in chambers)).

Argument

I. There Is More Than A Reasonable Probability That Four Justices Will Consider The Issue Sufficiently Meritorious To Grant Certiorari Or To Note Probable Jurisdiction And There Will Be A Fair Prospect That A Majority Of The Court Will Conclude That The Decision Below Was Erroneous.

A. The District Court Procedures In Administering the TRIA Case Consistently Violated Applicants’ Due Process Rights Under the Fifth Amendment.

TRIA does not give plaintiffs pre-existing property rights. Board of Regents of State Colleges v. Roth, 408 U.S. 564, 577 (1972) (“Property interests, of course, are not created by the Constitution. Rather property rights are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law”). Conversely, Applicants have property rights that deserve constitutional protections. In the action below, Stansell has sought to execute on the U.S.-based assets of Applicants that have been designated by OFAC. The only basis for Stansell to execute on Applicant’s assets is for Stansell

to prove that Applicants are, each and every one of them, an agent or instrumentality of the underlying judgment debtor, the FARC.

Because Stansell's lawsuit below seeks to deprive Applicants, who are non-judgment debtors, of their real and personal property as well as their financial accounts, Applicants were entitled to pre-deprivation notice and were entitled to an adequate post-deprivation proceedings that comport with Constitutional Due Process. See Peralta v. Heights Medical Center, Inc., 485 U.S. 80, 85 (1988) ("Even the temporary or partial impairments to property rights that attachments, liens, and similar encumbrances entail are sufficient to merit due process protection").

"The Due Process Clause of the Fifth Amendment guarantees that '[n]o person shall ... be deprived of life, liberty, or property, without due process of law.' Our precedents establish the general rule that individuals must receive notice and an opportunity to be heard before the Government deprives them of property." United States v. James Daniel Good Real Prop., 510 U.S. 43, 48 (1993) (citations omitted); Connecticut v. Doehr, 501 U.S. 1, 13 (1991) ("even the temporary or partial impairments to property rights that attachments, liens, and similar encumbrances entail are sufficient to merit due process protection"). "The right to prior notice and a hearing is central to the Constitution's command of due process. 'The purpose of this requirement is not only to ensure abstract fair play to the

individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment – to minimize substantively unfair or mistaken deprivations of property.” James Daniel Good Real Prop., 510 U.S. at 53.

As such, Applicants were entitled to pre-deprivation notice of the Stansell’s application and the District Court was required to provide a timely and meaningful post-deprivation remedy. Logan v. Zimmerman Brush Co., 455 U.S. 422, 433-34, (1982); Boddie v. Connecticut, 401 U.S. 371, 377, 379-80 (1971); Stansell v. Revolutionary Armed Forces of Colombia (FARC), 771 F.3d 713, 727 (11th Cir. 2014). Applicants here received neither.

Consistent with Supreme Court law, the Eleventh Circuit held that requests for writs, which go beyond mere attachment, must be preceded by notice to the non-judgment debtor. In fact, that principle was acknowledged by prior opinion in this case. See Stansell, 771 F.3d at 729. The February 15, 2019 Order went beyond mere attachment. First, the February 15, 2019 Order made a final determination, which the District Court erroneously believed it could not “disturb,” that Applicant López was an agent and instrumentality of the FARC based on the OFAC designation, without first providing López any opportunity to be heard. All subsequent orders were tainted by this unconstitutional and unprecedented procedure that was arbitrarily adopted by the District Court.

The unfair and tainted process continued after the Applicants were granted Intervenor status. The District Court denied Applicants' request for a conference and scheduling order pursuant to Federal Rule of Civil Procedure 16, one of the most fundamental aspects of federal practice. The District Court also denied Applicants' request to strike the illegal verbiage from the February 15, 2019 Order that allowed for the immediate sale of Applicants' real and personal property before Applicant was provided with any due process.

Applicants even acquiesced to allowing the attachments flowing from the February 15, 2019 Order to stand, so long as they would be afforded a meaningful opportunity to be heard before any of their property was sold pursuant to the February 15, 2019 Order. Applicants moved before the District Court to stay the first property sale of the Brickell properties, which was set for April 16, 2019 in order for the Court to adjudicate Applicants' pending Motion for Summary Judgment before the sale date, to no avail. Instead, the District Court waited until May 13, 2019, after the sale was complete, and after Applicants had filed an appeal to challenge the illegal February 15, 2019 Order, to order a hearing on Applicants' Motions. App0019 [ECF No. 209] ("Upon the Court's review of the record, the undersigned hereby finds it appropriate to set an evidentiary hearing on all pending Motions presently before the Court"). Worse still, to date, the District

Court has never addressed the substantive arguments made in Applicants' motion for summary judgment related to the Brickell properties. App00352 ("Moreover, a decisionmaker need not specifically address and reject every argument raised by one of the parties").

Refusing to adjudicate Applicants' motion for summary judgment and providing Applicants a hearing on June 11, 2019, after the sale of the real property, was not timely and violated the Applicants' due process rights. Stansell, 771 F.3d at 728 ("[w]ithout notice and a fair hearing where both sides are permitted to present evidence, [a] third party never has an opportunity to dispute its classification as an agency or instrumentality"); Goldberg v. Kelly, 397 U.S. 254, 267-68 (1970) ("Due process must not only be adequate; it must be timely"). See, e.g., James Daniel Good Real Prop., 510 U.S. 53; Doehr, 501 U.S. 13. The District Court's intent to adhere to its original, ex parte determination regardless of the evidence submitted did not become clear until it openly stated, on August 21, 2019, that it would not disturb the preliminary finding of agency and instrumentality set forth in the February 15, 2019 ex parte Order. App00344. It is undisputed that Applicants never received any pre-deprivation notice or hearing. Nor were Applicants ever afforded a timely and meaningful post-deprivation hearing. The

District Court's management and rulings in this civil action violated every fundamental concept of what it means to "be afforded due process of law."

For these reasons, there is a reasonable probability" that four Justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction.

B. District Court Erroneously Found That An Indirect Connection Is Sufficient to Create Agency And Instrumentality and Render a Non-Party Liable to Satisfy a Default Judgment.

The District Court erroneously held that an indirect connection is sufficient to satisfy a finding of agency and instrumentality based on dicta in Stansell. TRIA only authorizes plaintiffs holding judgments against terrorist organizations to seek satisfaction of the judgment against non-parties, such as Applicants, if they can demonstrate a "connection" to the terrorist group. There is no basis in the law for the District Court to have ordered a turnover of Applicants' assets based upon a perceived "indirect" connection among unrelated individuals. The District Court thus erred on this critical question.

In Stansell, OFAC alleged that the "Partnerships" from whom the Stansells sought to collect were owned by SDNT individuals who themselves had direct ties to the terrorist group, the North Valley Cartel ("NVC"). Plainview Florida II, Inc. ("Plainview") owned a 50% share of each of the Partnerships. The remaining 50%

was owned by Granada & Associates, Inc. (“Granada”). The Partnerships argued that the designated individuals with connections to the NVC, Carlos Saieh and Moises Saieh, had ownership interests in Granada, not any **direct interest** in the Partnerships themselves. Stansell, 771 F.3d at 738.

These sui generis facts led the Stansell Court to conclude that an indirect relationship between SDNTs (Carlos and Moises Saieh and Granada) and the corporate entities they own downstream (the Partnerships) is sufficient to establish agency or instrumentality under TRIA. The Partnership failed to demonstrate that the corporate actions were not directed by the designated individuals.

The Partnerships also failed to present any facts which demonstrated that they were not an agent or instrumentality of the NVC, because they only submitted arguments based upon their corporate structure. Stansell, 771 F.3d at 742 (citing In re Air Crash Disaster Near Roselawn, Ind., 96 F.3d 932, 940-41 (7th Cir. 1996) (“In re Air Crash Disaster”) (holding that an entity-owned by an agency or instrumentality of a foreign state is itself an agency or instrumentality of that foreign state under the FSIA)).

This rationale does not apply to this case. Contrary to the District Court’s strained construction, the Eleventh Circuit did not rely on the In re Air Crash Disaster case to create an “indirect connection” between and among third parties

for the imposition of TRIA judgments. In fact, In re Air Crash Disaster did not address the agency and instrumentality question. Rather, the issue adjudicated in In re Air Crash Disaster was whether there was federal jurisdiction under 28 U.S.C. §1441(d) based on FSIA. In re Air Crash Disaster thus stands for one single proposition: The ownership interests of more than one foreign government may be combined to reach the majority ownership required by §1603(b)(2). The holding does not create some esoteric “indirect” connection that can create agent or instrumentality liability to satisfy a default judgment issued against another third-party.³

Accordingly, a judgment-creditor must prove that an individual against whom collection is sought is actually an agent or instrumentality of a terrorist organization. Stansell does not stand for the proposition that agency or instrumentality can be found if the designated individual has some connection to another designated person, who in turn has some connection to another designated person, who has some connection to the judgment debtor. See Stansell, 771 F.3d at

³ As Stansell indicated, FSIA is inapplicable to actions brought under TRIA. Stansell, 771 F.3d at 732. The Eleventh Circuit, having already rejected the definition of “agency or instrumentality” under FSIA, could not have intended to use FSIA to determine that an “indirect” connection, equates to an automatic finding of “agency or instrumentality under TRIA. Stansell, 771 F.3d at 742 (citing In re Air Crash Disaster, 96 F.3d at 940-41).

723; Kirschenbaum v. 650 Fifth Ave. & Related Properties, 830 F.3d 107, 135-36 (2d Cir. 2016), abrogated on other grounds, Rubin v. Islamic Republic of Iran, 138 S. Ct. 816 (2018).

The District Court’s interpretation of TRIA creates an irrebuttable presumption, and violates fundamental fairness embodied in the Fifth Amendment Due Process Clause. This is so because a designated person who has any ties, whether personal (e.g., brother, friend, cousin) or otherwise, to another designated person, cannot overcome the broad and sweeping interpretation of the word “indirect.” In short, the District Court’s interpretation of the “indirect connection” language has allowed for a judgment exceeding \$53 million against Applicants even though Stansell has never proven or provided any actual evidence of material support from López or his affiliate companies to the FARC.

In effect, such an outcome would equate OFAC’s designation as a conclusive finding of agency or instrumentality. See e.g., Irrebuttable Presumptions, 2 Federal Trial Handbook: Criminal §52:3 (4th ed.); Vlandis v. Kline, 412 U.S. 441, 446 (1973) (holding that statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments). This interpretation contravenes Stansell which held that the agency or instrumentality determination must be made separately from

OFAC's unilateral designation. Thus, the District Court's adherence to its February 15, 2019 findings is even more egregious because OFAC never connected López or his affiliate companies to the FARC.

Because there is arguably a split in the Circuits on these issues, and such a finding implicates Constitutional Due Process, there is a "reasonable probability" that four Justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction.

C. There Is A Split In The Circuit Courts As To Whether There Is A "Temporal Limitation" On TRIA's Agent or Instrumentality Requirement.

The TRIA statute is silent as the time period in which a person can be found to be an agent or instrumentality of a designated terrorist organization. Relying on Second Circuit law, Applicants argued below that the "agency and instrumentality" determination should be made when a proceeding is commenced to attach property in aid of execution on that judgment, not at the time when the underlying injury that formed the basis of default judgment took place. Kirschenbaum v. 650 Fifth Ave., 257 F. Supp. 3d 463, 518 n.60 (S.D.N.Y. 2017) (rejecting defendants' argument that instrumentality status should be determined as of the date the wrongful death or personal injury). See Kirschenbaum v. 650 Fifth Ave. & Related Properties, 830 F.3d 107, 136 (2d Cir. 2016) (question of fact as to whether Alavi

was providing services to Bank Melli (and, therefore, Iran) through the time of the filing of the civil forfeiture complaint), abrogated on other grounds by Rubin v. Islamic Republic of Iran, 138 S. Ct. 816 (2018).

In this case, Stansell was required to prove that as of February 13, 2019, the date that the execution proceedings were commenced, Applicants were knowingly providing material assistance to the FARC. Kirschenbaum, 257 F. Supp. 3d at 518. Because there was no such evidence, the District Court rejected Applicants' legal arguments and stated:

Not surprisingly, this concocted theory has no legal basis. *Stansell I* has already affirmed a non-state actor "agency or instrumentality" standard that reaches "past dealings with the FARC." *Stansell v. FARC*, 2013 WL 12133661, at *2 (M.D. Fla. May 2, 2013), *aff'd in relevant part, Stansell I*, 771 F.3d at 732. There is no "temporal limitation" on providing assistance to terrorists at least in this Circuit. Second, all that TRIA requires is that a plaintiff establish that "she has obtained a judgment against a terrorist party ... for a claim based on an act of terrorism." *Id.* at 723. Plaintiffs have met that standard. There is no statutory limitation on when the underlying acts had to take place, or when those acts should be judged against any blocked asset designation, or whether the terrorists ultimately abandoned their aims. Plaintiffs have satisfied the statutory prerequisites for relief. As a result Lopez Bello's temporal limitation theory can be discarded.

App00382-383. This is not some "concocted theory." The Second Circuit imposes a temporal limitation in TRIA actions relative to the question of agency or instrumentality. It is crucial that this Court rectify the split in the circuits because

interpretation of federal statutes should be uniform. This pure legal question is sufficiently meritorious to grant certiorari or to note probable jurisdiction.

Turnbow v. Comm'r, 368 U.S. 337, 339 (1961) (resolving proper interpretation and uniform application of the Internal Revenue laws); Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 483 U.S. 143, 144 (1987) (creating uniform statute of limitations rather than relying on various analogous state law).

The foregoing highlight the most egregious errors and legal issues, which Applicants submit demonstrate a reasonable probability that four Justices of this Court will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction. Applicant further submits that based upon these facts and the applicable law, on appeal to this Court, there will be a fair prospect that a majority of the Court will conclude that the decision below was erroneous.

II. Applicants Will Suffer Irreparable Harm and the Balance of the Equities Favor a Stay.

The refusal of the courts below to enter a stay will cause Applicants irreparable harm. Requiring the bank-garnishees to liquidate and turnover the securities in their custody before the Eleventh Circuit has an opportunity to address the significant constitutional and statutory issues raised in this application will leave Applicants without a remedy upon reversal of the District Court's erroneous "agency or instrumentality" decision. If the securities are

liquidated, and the money is disbursed to the Stansells, there would be no means of recoupment for Applicants upon a successful appeal.

Additionally, there is no harm to the Stansells in awaiting confirmation that the judgment they received in the District Court is indeed constitutional and legal. The funds that are subject to the judgment are secured. To the extent those funds have not yet been liquidated and transferred to Stansell's counsel, they will remain with the bank-garnishees and those banks, which are U.S.-based financial institutions, will be obligated to safeguard those funds. There is no risk whatsoever to the Stansells in leaving the financial accounts unliquidated and secured with the bank-garnishees. Moreover, a stay seeking to vindicate constitutional rights is in the public interest. United States v. Alabama, 691 F.3d 1269, 1301 (11th Cir. 2012); Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012) ("it is always in the public interest to prevent the violation of a party's constitutional rights") (quoting G & V Lounge, Inc. v. Mich. Liquor Control Comm'n, 23 F.3d 1071, 1079 (6th Cir. 1994)).

For these reasons, the likelihood of irreparable harm and the balance of the equities favor a stay.

III. Because The Judgment Is Secured, This Stay Need Not Be Conditioned Upon Security.

The April 30, 2020 Judgment Order is a final money judgment authorizing various bank-garnishees to turn over \$53,208,315. Thus, López moved before the District Court for protection pending appeal pursuant to Rule 62(b). Pursuant to Eleventh Circuit law, “Rule 62(d), [now 62(b)] entitles an appealing party as a matter of right to have a money judgment against it stayed while the order it challenges is on appeal, provided that the party seeking the stay pays a bond guaranteeing payment if it loses the appeal.” Dixon v. United States, 900 F.3d 1257, 1268 (2018) (emphasis added). See also Venus Lines Agency v. CVG Industria Venezolana De Alumino, C.A., 210 F.3d 1309, 1313 (11th Cir. 2000).

As a general matter, the purpose of the bond is to protect the appellees from a loss resulting from the stay of execution.” Poplar Grove Planting & Ref. Co. v. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1190-91 (5th Cir. 1979). The posting of a bond or security is not mandatory and can be waived in the court’s discretion. Id. at 1191.

In the motions before the District Court and the Eleventh Circuit, Applicants demonstrated that there is, and always has been, sufficient security to maintain the status quo, and satisfy the purpose of the security requirement. The April 30, 2020 money judgment has been secured since February 15, 2019. The

February 15, 2019 Order provided for the issuance of writs of garnishment as to each of the financial accounts that are the subject of the April 30, 2020 Order. The writs of garnishment require the bank-garnishees to maintain the status quo and to prevent potential liquidation of those funds during the pending litigation. Violation of the writ carries serious consequences for the garnishees under Florida law.

A garnishee who has been served with a writ of garnishment is required to retain any property of the judgment debtor, in its possession or control, until disposition or dissolution of the writ. Daniels v. Sorriso Dental Studio, LLC, 164 So. 3d 778, 781 (Fla. 2d DCA 2015). The effect of this obligation is “to make the garnishee the trustee of the funds of the defendant.” In re Masvidal, 10 F.3d 761, 764 (11th Cir. 1993) (quoting Reaves v. Domestic Fin. Co., 113 Fla. 672, 152 So. 718, 720 (1934)). Thus, “[i]f a garnishee fails to retain the property of the [judgment debtor] or otherwise comply with the writ, the plaintiff may obtain a monetary judgment against the garnishee.” Arnold, Matheny & Eagan, P.A., 982 So.2d at 632 (citing Fla. Stat. §77.081). The writs, therefore, give the Plaintiffs all the security they need vis-a-vis the financial accounts that are the subject of the judgment. The February 15, 2019 Order has remained intact from its entry until today, and will remain intact until further order of the Court. Because the

judgment is already secured, López’s “ability to pay the judgment is plain.”

Suntrust Bank v. Ruiz, 2015 WL 1126713, at *2 (S.D. Fla. Nov. 6, 2015).

As with all other previous rulings, the District Court abused its discretion in its June 3, 2020 Order because it ignored this undisputed fact. The very funds that make up the judgment have already been secured by the District Court, and third-parties with the financial ability to pay any judgment secure those funds, the posting of a bond is duplicative and unnecessary. Center for Individual Rights v. Chevaldina, 2019 WL 7370412, at *1 (S.D. Fla. Oct. 29, 2019) (citing Avirgan v. Hull, 125 F.R.D. 185, 186 (S.D. Fla. 1989)). It was an abuse of discretion for the District Court to deny the motion and the Eleventh Circuit compounded the error by denying López’s motion for relief before that Court without any analysis of this issue.

For these reasons, the Stay issued by this Court need not be conditioned upon the payment of security because there is already sufficient security available to protect the Plaintiffs’ judgment.

CONCLUSION

The Application for a Stay of the District Court's Judgment of April 30, 2020 should be Granted. Applicants further request this Court to issue a stay of the District Court's Order and order the District Court to maintain the status quo by continuing the attachment over the accounts, or ordering the sequestering the funds in a Court supervised account.

Respectfully submitted,

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Dated: July 1, 2020
218778475v5

No. 19A1058

In the
Supreme Court of the United States

KEITH STANSELL, ET AL.

v.

SAMARK JOSE LOPEZ BELLO, ET AL.,

Applicants

On Application for a Stay

**APPENDIX IN SUPPORT OF RENEWED EMERGENCY APPLICATION
FOR A STAY OF THE JUDGMENT OF EXECUTION
PENDING THE FILING AND DISPOSITION OF
A PETITION FOR A WRIT OF CERTIORARI**

**To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court
of the United States**

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U.S. District Court
Southern District of Florida (Miami)
CIVIL DOCKET FOR CASE #: 1:19-cv-20896-RNS

Stansell et al v. Revolutionary Armed Forces of Colombia
Assigned to: Judge Robert N. Scola, Jr
Referred to: Magistrate Judge Edwin G. Torres
Case in other court: 19-11415-F
19-11415-HH
19-13957-H
USCA, 20-11736-G

Date Filed: 02/12/2019
Date Terminated: 02/12/2019
Jury Demand: Defendant
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Cause: Registration of Foreign Judgment

Date Filed	#	Docket Text
07/28/2010	<u>2</u>	Judge Assignment RE: Electronic Complaint to Senior Judge William M. Hoeverler (vjk) (Entered: 07/28/2010)
10/07/2011	<u>3</u>	Writ of Garnishment Returned Executed Date of Service 10/3/11 as to Bank of America. (yha) (Entered: 10/09/2011)
10/07/2011	<u>4</u>	Writ of Garnishment Returned Executed Date of Service 10/5/2011 as to Banco Santander International. (yha) (Entered: 10/09/2011)
10/07/2011	<u>5</u>	Writ of Garnishment Returned Executed Date of Service 10/6/2011 as to J.P. Morgan Chase & Co. (yha) (Entered: 10/09/2011)
10/07/2011	<u>6</u>	Writ of Garnishment Returned Executed Date of Service 10/5/2011 as to Stanchart Securities International, Inc.. (yha) (Entered: 10/09/2011)
10/07/2011	<u>7</u>	Writ of Garnishment Returned Executed Date of Service 10/5/2011 as to Standard Chartered Bank International (Americas) LTD.. (yha) (Entered: 10/09/2011)
01/17/2013	<u>8</u>	Writ of Garnishment Returned executed Date of Service 1/16/13 as to Ocean Bank, N.A.. (cbr) (Entered: 01/18/2013)
11/20/2015	<u>9</u>	United States Marshal Return on Order of Sale, Sale Date 11/18/2015 (dj) (Entered: 11/20/2015)
11/20/2015	<u>10</u>	United States Marshal Return on Order of Sale, Sale Date 11/18/2015 (dj) (Entered: 11/20/2015)
11/20/2015	<u>11</u>	United States Marshal Return on Order of Sale, Sale Date 11/18/2015 (dj) (Entered: 11/20/2015)
09/06/2016	<u>12</u>	Unopposed MOTION to Substitute Party <i>and Suggestion of Death of Plaintiff Greer Janis</i> by Marc Gonsalves, Thomas Howes, Keith Stansell, Judith Janis. Attorney Tony P. Korvick added to party Judith Janis(pty:pla). Responses due by 9/23/2016 (Attachments: # <u>1</u> Exhibit Colorado Death Certificate, # <u>2</u> Exhibit Colorado Letters of Administration)(Korvick, Tony) (Entered: 09/06/2016)
09/07/2016	13	CLERKS NOTICE REASSIGNING CLOSED CASE. Document(s) have been submitted to this Court which pertain to a case in which the assigned judge is no longer with this Court. Case reassigned to Judge Robert N. Scola, Jr for all further proceedings. Senior Judge William M. Hoeverler no longer assigned to case (vjk) (Entered: 09/07/2016)
10/14/2016	<u>14</u>	ORDER granting <u>12</u> Motion to Substitute Party. Signed by Judge Robert N. Scola, Jr. on 10/14/2016. (pes) (Entered: 10/17/2016)
07/25/2018	<u>15</u>	NOTICE of Attorney Appearance by Newton Patrick Porter on behalf of Marc Gonsalves, Thomas Howes, Judith Janis, Keith Stansell. Attorney Newton Patrick Porter added to party Marc Gonsalves(pty:pla), Attorney Newton Patrick Porter added to party Thomas Howes(pty:pla), Attorney Newton Patrick Porter added to party Judith Janis(pty:pla), Attorney Newton Patrick Porter added to party Keith Stansell(pty:pla). (Porter, Newton)

		(Entered: 07/25/2018)
02/12/2019	<u>1</u>	REGISTRATION of Foreign Judgment. <i>from Middle District of Florida</i> Filing fee \$39.00 receipt number 113C-3046407, filed by Keith Stansell, Thomas Howes, Marc Gonsalves. (Attachments: # <u>1</u> Judgment from Middle District, # <u>2</u> Order (Directing Clerk to Enter Judgment))(Korvick, Tony) Modified on 3/9/2020 (mr1). (Entered: 07/28/2010)
02/12/2019	<u>16</u>	APPENDIX IN SUPPORT OF POST-JUDGMENT EXECUTION AGAINST AGENCIES OR INSTRUMENTALITIES OF THE FARC by Marc Gonsalves, Thomas Howes, Judith Janis, Keith Stansell, michael janis, Christopher T. Janis, Jonathan N. Janis (Attachments: # <u>1</u> Exhibit Two Top FARC Associates Found Guilty On Drug Charges DEA News Release, April 14, 2010, # <u>2</u> Exhibit FARC rank alongside Taliban among world's biggest drug traffickers Colombia Reports, April 7, 2011, # <u>3</u> Exhibit FARC 50 grand jury indictment D.D.C. Case 1:04-cr-00446-TFH DE9: Iii. The FARC's Role As The Largest Supplier Of Cocaine To The United States And The World. # <u>4</u> Exhibit U.S.A. vs. Gerardo Aguilar Ramirez, a/k/a "Cesar," (FARC 1st Front Commander) Statement Of Facts In Support Of Guilty Plea, Dec. 16, 2009 D.D.C. Case No. 04-cr-446, # <u>5</u> Exhibit DE 1 Indictment USA v Montes-Ovalles 10th Front SDNY 09-cr-00083, 1-29-09, # <u>6</u> Exhibit Associates of Colombian Terrorist Organization Charged with Conspiracy to Import Ton-Quantities of Cocaine, DEA News Release March 20, 2009, # <u>7</u> Exhibit High-Ranking Female Member of Colombian FARC Narco-Terrorist Organization Among 3 Convicted on U.S. Drug Charges, DEA News Release Feb. 20, 2007, # <u>8</u> Exhibit The Financial Arm of the FARC: A Threat Finance Perspective Journal of Strategic Security, Volume IV Issue 1 2011, pp. 19-36, # <u>9</u> Exhibit Colombia makes largest drug seizure ever, The Telegraph, 02 May 2007, # <u>10</u> Exhibit William R. Brownfield, Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs, May 17, 2011 Press Roundtable on Trans-Atlantic Symposium on Dismantling Transnational Illicit Networks, # <u>11</u> Exhibit 9/12/08 Treasury OFAC Press Release: Treasury Targets Venezuelan Government Officials Supporting the FARC, # <u>12</u> Exhibit 9/8/11 Treasury OFAC Press Release: Treasury Designated Four Venezuelan Officials for Providing Arms and Security to the FARC, # <u>13</u> Exhibit 5/29/12 Reuters: Fugitive Venezuela judge helps elite U.S. anti-drugs unit, # <u>14</u> Exhibit 11/6/12: Testimony of Ambassador Roger F. Noriega Before the United States House Of Representatives Committee On Homeland Security, A Line in the Sand: Assessing Dangerous Threats to Our Nations Borders, # <u>15</u> Exhibit 8/21/13 Treasury OFAC Press Release: Treasury Targets Venezuelan Narcotics Trafficker Action Designates Former Venezuelan Military Official, Previously Indicted, # <u>16</u> Exhibit 1/21/15 Indictment (unsealed) USA v Nestor Luis Reverol Torres in EDNY Case No. 15-cr-00020 (former Director VZ National Anti-drug agency), # <u>17</u> Exhibit 1/27/15 Epoch Times: Venezuelas Assembly President is Head of Drug Cartel, Claims Ex-Security Chief, # <u>18</u> Exhibit 3/8/15 [IEEPA] Executive Order 13692 Blocking Property and Suspending Entry of Certain Persons Contributing to the Situation in Venezuela, # <u>19</u> Exhibit 4/24/15 Indictment USA v. Pedro Luis Martin Olivares, SDNY Case No. 15-cr-20299, # <u>20</u> Exhibit 8/11/15 American Enterprise Institute: Venezuela: Rise of a narcostate, # <u>21</u> Exhibit 12/16/15 American Enterprise Institute: Fresh evidence of the Venezuelan narcostate, # <u>22</u> Exhibit Jan/Feb 2016 Military Review, Prof. Leopoldo E. Colmenares G.: Criminal Networks in Venezuela, Their Impact on Hemispheric Security, # <u>23</u> Exhibit 8/1/16 DOJ Press Release: Former Top Leaders Of Venezuelas Anti-Narcotics Agency Indicted For Trafficking Drugs To The United States, # <u>24</u> Exhibit 11/3/16 Sun Herald: U.S. judge delivers new blow to Venezuelan first nephews on eve of trial, # <u>25</u> Exhibit 11/9/16 Insight Crime: Arrest of Third Suspect May be Gamechanger in Venezuela Narco Nephews Case, # <u>26</u> Exhibit 1/4/17 Insight Crime: GameChangers 2016: Venezuelas Cartel of the Suns Revealed, # <u>27</u> Exhibit 2/13/17 Treasury OFAC Press Release: Treasury Sanctions Prominent Venezuelan Drug Trafficker Tareck El Aissami and his Primary Front Man Samark Lopez Bello, # <u>28</u> Exhibit 2/13/17 OFAC Chart of El Aissami and Lopez Bello network, # <u>29</u> Exhibit June 2017 American Enterprise Institute: Kingpins and Corruption, Targeting Transnational Organized Crime In The Americas, # <u>30</u> Exhibit 8/13/17 Miami Herald: Powerful Venezuelan lawmaker may have issued death order against Rubio, # <u>31</u> Exhibit 9/4/17 Insight Crime: The FARC's Riches, # <u>32</u> Exhibit 9/20/17 Treasury FINCEN Advisory on Widespread Public Corruption in Venezuela, # <u>33</u> Exhibit 12/14/17 DOJ Press Release: Nephews of Venezuela First Lady Each Sentenced to 18 Years in Prison for Conspiring to Import Cocaine into the United States, # <u>34</u> Exhibit 4/24/18 PanAmPost: Testimony of Colombian Marlon Marin, nephew of Ivan Marquez, head of the Colombian FARC guerilla, reveals once again that Chavismos second most powerful man is up to his neck in the drug trade through the Cartel de los

		Suns, # <u>35</u> Exhibit May 2018 Insight Crime: Venezuela–A Mafia State? §2. Drug Trafficking within the Venezuelan Regime: The Cartel of the Suns, # <u>36</u> Exhibit 5/7/18 Treasury OFAC Press Release: Treasury Sanctions Drug Trafficking and Money Laundering Network Led By Former Senior Venezuelan Intelligence Official, # <u>37</u> Exhibit 5/7/18 OFAC Chart on Pedro Luis Martin Olivares network, # <u>38</u> Exhibit 5/17/18 Insight Crime: Drug Trafficking Within the Venezuelan Regime: The Cartel of the Suns, # <u>39</u> Exhibit 5/18/18 Treasury OFAC Press Release: Treasury Targets Influential Former Venezuelan Official and His Corruption Network, # <u>40</u> Exhibit 6/2/18 Daily Beast: How Cuba Helped Venezuela Become a Mafia State, # <u>41</u> Exhibit 9/25/18 Treasury OFAC: Treasury Targets Venezuelan President Maduros Inner Circle and Proceeds of Corruption in the United States, # <u>42</u> Exhibit 2/6/19 PanAmPost: Colombia: [President] Ivan Duque Claims that FARC Dissidence is Backed by Venezuela)(Korvick, Tony) (Entered: 02/12/2019)
02/12/2019	<u>17</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis <i>OF FILING EXPERT WITNESS AFFIDAVITS</i> (Attachments: # <u>1</u> Affidavit Col. Luis Miguel Cote, # <u>2</u> Affidavit Doug Farah) (Korvick, Tony) (Entered: 02/12/2019)
02/13/2019	<u>18</u>	EXPEDITED MOTION EX PARTE, EXPEDITED MOTION FOR ISSUANCE OF POST–JUDGMENT WRITS OF GARNISHMENT AND EXECUTION by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis. (Attachments: # <u>1</u> Exhibit OFAC Chart, # <u>2</u> Exhibit OFAC Press Release, # <u>3</u> Exhibit OFAC Blocking Notice Condos 63F and 46B, # <u>4</u> Exhibit OFAC Blocking Notice Condo 64E, # <u>5</u> Exhibit OFAC Blocking Notice on Gulfstream, # <u>6</u> Exhibit USA Response – Waku yachts, # <u>7</u> Exhibit Claimants Motion to Vacate Vessel Arrests, # <u>8</u> Exhibit OFAC Blocking Notice on Motor Vehicles, # <u>9</u> Exhibit SDNY Order Jan 23 2019, # <u>10</u> Text of Proposed Order, # <u>11</u> Exhibit proposed writ garnishment Raymond James, # <u>12</u> Exhibit proposed writ execution condo 63F, # <u>13</u> Exhibit proposed writ execution condo 46B, # <u>14</u> Exhibit proposed writ execution condo 64E, # <u>15</u> Exhibit proposed writ execution Gulfstream, # <u>16</u> Exhibit proposed writ execution Waku Trinity, # <u>17</u> Exhibit proposed writ execution Waku Benetti, # <u>18</u> Exhibit proposed writ executio Lopez Bello automobiles)(Korvick, Tony) Modified on 2/13/2019 (dj). Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/13/2019)
02/13/2019	19	Clerks Notice to Filer re <u>18</u> EXPEDITED MOTION EX PARTE, EXPEDITED MOTION . Sealed/Ex Parte Document Filed Electronically ; ERROR. It is not necessary to refile the document but future sealed/ex parte filings must be filed in accordance with the CM/ECF Administrative Procedures. (dj) (Entered: 02/13/2019)
02/14/2019	<u>20</u>	Order Setting Hearing on <u>18</u> Expedited Ex–Parte Motion for Issuance of a Post–Judgment Writs of Garnishment and Execution. The Court sets a hearing on the motion for today, Thursday, February 14, 2019 at 5:30 pm at 400 North Miami Avenue, Courtroom 12–3, Miami, Florida. Signed by Judge Robert N. Scola, Jr on 2/14/2019. (ra) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/14/2019)
02/14/2019		Setting Sealed Motion Hearings: Sealed Motion Hearing set for 2/14/2019 05:30 PM in Miami Division before Judge Robert N. Scola Jr. (ra) Modified by Unsealing per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/14/2019)
02/14/2019	21	PAPERLESS Sealed Minutes for proceedings held before Judge Robert N. Scola, Jr: Ex–Parte Hearing on Plaintiffs' Motion for Issuance of Post–Judgment Writs of Garnishment and Execution held on 2/14/2019 (docket entry 18). Total time in court: 10 minutes. Attorney Appearance(s): Newton Patrick Porter, Tony P. Korvick. Court Reporter: Tammy Nestor, 305–523–5148 / Tammy_Nestor@flsd.uscourts.gov Signed by Judge Robert N. Scola, Jr (jh) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/14/2019)
02/15/2019	<u>22</u>	Order Granting <u>18</u> Expedited Motion, Expedited Motion for Issuance of Post–Judgment Writs of Garnishment and Execution filed by Michael Janis, Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Christopher T. Janis. Signed by Judge Robert N. Scola, Jr on 2/15/2019. (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/19/2019)

02/20/2019	<u>23</u>	WRIT OF EXECUTION/GARNISHMENT Issued as to: Garnishees, Raymond James & Associates, Inc., and Raymond James Financial, Inc., (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/20/2019	<u>24</u>	WRIT OF EXECUTION Issued as to 1425 Brickell Ave 63-F LLC., (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/20/2019	<u>25</u>	WRIT OF EXECUTION Issued as to 1425 Brickell Ave Unit 46B, LLC., (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/20/2019	<u>26</u>	WRIT OF EXECUTION Issued as to 1425 Brickell Ave 64E LLC., (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/20/2019	<u>27</u>	WRIT OF EXECUTION Issued as to Samark Lopez Bello, as Ultimate Owner of EPBC Holdings, Ltd. (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/20/2019	<u>28</u>	WRIT OF EXECUTION Issued as to Samark Jose Lopez Bello, including his tangible and intangible assets, motor vehicles (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/20/2019	<u>29</u>	WRIT OF EXECUTION Issued as to Samark Lopez Bello, as Ultimate Owner of Nautical Corp., (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/20/2019	<u>30</u>	WRIT OF EXECUTION/GARNISHMENT Issued as to: Garnishees, UBS Financial Services, Inc., (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/20/2019	<u>31</u>	WRIT OF EXECUTION/GARNISHMENT Issued as to: Garnishees, Morgan Stanley Smith Barney, LLC., (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/20/2019	<u>32</u>	WRIT OF EXECUTION/GARNISHMENT Issued as to: Garnishees, Safra National Bank of New York and Safra Securities LLC., (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/20/2019	<u>33</u>	WRIT OF EXECUTION/GARNISHMENT Issued as to: Garnishees, Citibank, N.A., (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/20/2019	<u>34</u>	WRIT OF EXECUTION/GARNISHMENT Issued as to: Garnishees, Branch Banking & Trust Company (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/20/2019)
02/21/2019	<u>35</u>	WRIT OF EXECUTION Issued as to 200G PSA Holdings LLC., (nc) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/21/2019)
02/25/2019	<u>36</u>	Immediate Notification-Request to Unseal Per Court Order by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis. (Porter, Newton) Modified by Unsealing Document per 37 Paperless Order on 2/25/2019 (nc). (Entered: 02/25/2019)
02/25/2019	37	PAPERLESS ORDER: The Court grants <u>26</u> the Plaintiffs' motion to unseal all sealed or ex parte matters in this case. The Clerk is thus directed to unseal all sealed or ex parte docket entries in this case, including entries submitted by the parties as well as the Court. Signed by Judge Robert N. Scola, Jr. on 2/25/2019. (kbe) (Entered: 02/25/2019)
02/25/2019	38	CLERK'S NOTICE of Compliance by Unsealing All Sealed and Ex Parte Documents pursuant to 37 Paperless Order. (nc) (Entered: 02/25/2019)
02/25/2019	<u>39</u>	US Marshal's NOTICE of LEVY as to UBS Financial Services, Inc. (Korvick, Tony) (Entered: 02/25/2019)
02/25/2019	<u>40</u>	US Marshal's NOTICE of LEVY as to Branch Banking & Trust Company (Korvick, Tony) (Entered: 02/25/2019)
02/25/2019	<u>41</u>	US Marshal's NOTICE of LEVY as to Raymond James & Associates Inc. and Raymond James Financial (Korvick, Tony) (Entered: 02/25/2019)

02/25/2019	<u>42</u>	US Marshal's NOTICE of LEVY as to Morgan Stanley Smith Barney LLC (Korvick, Tony) (Entered: 02/25/2019)
02/25/2019	<u>43</u>	US Marshal's NOTICE of LEVY as to Safra National Bank (Korvick, Tony) (Entered: 02/25/2019)
02/25/2019	<u>44</u>	US Marshal's NOTICE of LEVY as to 1425 BRICKELL AVE 63-F LLC (Korvick, Tony) (Entered: 02/25/2019)
02/25/2019	<u>45</u>	US Marshal's NOTICE of LEVY as to 1425 BRICKELL AVENUE UNIT 46B, LLC (Korvick, Tony) (Entered: 02/25/2019)
02/25/2019	<u>46</u>	US Marshal's NOTICE of LEVY as to 1425 BRICKELL AVENUE 64E LLC (Korvick, Tony) (Entered: 02/25/2019)
02/25/2019	<u>47</u>	NOTICE of Compliance <i>Fla. Stat. 77.041 and Service to Counsel</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis (Attachments: # <u>1</u> Exhibit USPS first class mail receipt/copies envelopes) (Porter, Newton) (Entered: 02/25/2019)
02/26/2019	<u>48</u>	MOTION to Seal <i>Garnishee UBS Financial Services Inc.'s Motion to File Under Seal Response to Writ of Execution/Garnishment</i> per Local Rule 5.4 by UBS Financial Services Inc.. (Attachments: # <u>1</u> Proposed Order) (Johnson, Alise) (Entered: 02/26/2019)
02/26/2019	<u>49</u>	US Marshal's NOTICE of LEVY as to Citibank, N.A. (Korvick, Tony) (Entered: 02/26/2019)
02/26/2019	<u>50</u>	US Marshal's NOTICE of LEVY as to M/V Waku (43 meter Trinity) (Korvick, Tony) (Entered: 02/26/2019)
02/26/2019	<u>51</u>	US Marshal's NOTICE of LEVY as to M/V Waku (63 meter Benetti) (Korvick, Tony) (Entered: 02/26/2019)
02/26/2019	<u>52</u>	NOTICE of Compliance <i>Supplement to DE 47 Notice of Compliance Fla. Stat. 77.041</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell (Porter, Newton) (Entered: 02/26/2019)
02/26/2019	<u>53</u>	NOTICE of Compliance <i>Fla. Stat. 77.041 and Service to Counsel</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell (Attachments: # <u>1</u> Exhibit USPS first class mail receipt and copies of envelopes) (Porter, Newton) (Entered: 02/26/2019)
02/27/2019	54	PAPERLESS ORDER: The Court grants <u>48</u> Garnishee UBS Financial Service Inc.'s motion to file under seal. UBS's proposed response contains private banking information. UBS may therefore file its response under seal. The Clerk is directed to maintain the filing under seal until February 27, 2029, at which time it must be destroyed. Signed by Judge Robert N. Scola, Jr. on 2/27/2019. (kbe) (Entered: 02/27/2019)
02/27/2019	<u>55</u>	Unopposed MOTION to Intervene by Samark Jose Lopez Bello, Yakima Trading Corporation, EPBC HOLDINGS, LTD., 1425 BRICKELL AVE 63-F LLC, 1425 BRICKELL AVE UNIT 46B LLC, 1425 BRICKELL AVE 64E LLC, 200G PSA HOLDINGS LLC. Attorney Glen Matthew Lindsay added to party Samark Jose Lopez Bello(pty:intv), Attorney Glen Matthew Lindsay added to party Yakima Trading Corporation(pty:intv), Attorney Glen Matthew Lindsay added to party EPBC HOLDINGS, LTD.(pty:intv), Attorney Glen Matthew Lindsay added to party 1425 BRICKELL AVE 63-F LLC(pty:intv), Attorney Glen Matthew Lindsay added to party 1425 BRICKELL AVE UNIT 46B LLC(pty:intv), Attorney Glen Matthew Lindsay added to party 1425 BRICKELL AVE 64E LLC (pty:intv), Attorney Glen Matthew Lindsay added to party 200G PSA HOLDINGS LLC(pty:intv). (Attachments: # <u>1</u> Memorandum, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 02/27/2019)
02/28/2019	<u>56</u>	RESPONSE to Motion re <u>55</u> Unopposed MOTION to Intervene <i>Plaintiffs Response to DE 55</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell. Replies due by 3/7/2019. (Porter, Newton) (Entered: 02/28/2019)
02/28/2019	57	PAPERLESS ORDER: To the extent it is necessary, the Court grants <u>55</u> the putative intervenors' unopposed motion to intervene. The Clerk is directed to add the following parties to the docket in this case: Samark Jose Lopez Bello; 1425 Brickell Ave 63-F

		LLC; 1425 Brickell Ave Unit 46B LLC; 1425 Brickell Ave 64E LLC; 200G PSA Holdings LLC; MFAA Holdings Limited; and Yakima Trading Corporation. Signed by Judge Robert N. Scola, Jr. on 2/28/2019. (kbe) (Entered: 02/28/2019)
03/01/2019		SYSTEM ENTRY – Docket Entry 58 restricted/sealed until further notice. (nc) (Entered: 03/01/2019)
03/01/2019	<u>59</u>	Writ of Execution issued as to Samark Lopez Bello. (drz) (Entered: 03/01/2019)
03/01/2019	<u>60</u>	NOTICE of Compliance <i>with Fla. Stat. 77.055 on UBS Answer DE 58</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit) (Korvick, Tony) (Entered: 03/01/2019)
03/04/2019	<u>61</u>	ANSWER to Writ of Garnishment by Raymond James and Associates, Inc.. Reply/Objections to Writ Answer due by 3/25/2019. (drz) (Entered: 03/04/2019)
03/04/2019	<u>62</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for JEFFREY M. SCOTT, ESQ. and JEFFREY M. KOLANSKY, ESQ.. Filing Fee \$ 150.00 Receipt # 113C-11441406 by 1425 BRICKELL AVE 63-F LLC, 1425 BRICKELL AVE 64E LLC, 1425 BRICKELL AVE UNIT 46B LLC, 200G PSA HOLDINGS LLC, EPBC HOLDINGS, LTD., Samark Jose Lopez Bello, Yakima Trading Corporation. Responses due by 3/18/2019 (Attachments: # <u>1</u> Certification, # <u>2</u> Certification, # <u>3</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 03/04/2019)
03/04/2019	<u>63</u>	NOTICE of Compliance <i>Fla. Stat.77.055.Notice.Answer.Raymond.James.DE61</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell (Attachments: # <u>1</u> Exhibit Fla.Stat.77.055.Notice.Right.Dissolve.Answer, # <u>2</u> Exhibit USPS Receipts and Copies Envelopes) (Porter, Newton) (Entered: 03/04/2019)
03/04/2019	64	PAPERLESS ORDER: The Court grants <u>62</u> counsel's motion to appear pro hac vice. Attorneys Jeffrey M. Scott and Jeffrey M. Kolansky are given permission to appear and participate in this matter on behalf of Samark Jose Lopez Bello, Yakima Trading Corporation, EPBC Holdings, Ltd., 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave Unit 46b LLC, 1425 Brickell Ave 64e LLC, and 200G PSA Holdings LLC. The Clerk is directed to provide these attorneys with notification of all electronic filings via the email addresses set forth in the motion. Signed by Judge Robert N. Scola, Jr. on 3/4/2019. (kbe) (Entered: 03/04/2019)
03/07/2019	<u>65</u>	Notice of Pending, Refiled, Related or Similar Actions by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis (Korvick, Tony) (Entered: 03/07/2019)
03/07/2019	<u>66</u>	STATUS REPORT <i>Plaintiffs' Status Report Pursuant to Court Order DE 22</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis (Porter, Newton) (Entered: 03/07/2019)
03/07/2019	67	PAPERLESS: Order directing the Clerk of Court to re-designate this matter as a contested civil case for statistical purposes. Signed by Judge Robert N. Scola, Jr. on 3/7/2019. (kbe) (Entered: 03/07/2019)
03/08/2019	68	CLERK'S NOTICE of Compliance re 67 Order on Miscellaneous Case – Contested (dj) (Entered: 03/08/2019)
03/12/2019	<u>69</u>	CLERK'S NOTICE of filing de#68 in case #10mc22724 (Attachments: # <u>1</u> de# 69 in case #10mc22724, # <u>2</u> de#70 in case #10mc22724) (dj) (Entered: 03/12/2019)
03/12/2019	70	PAPERLESS ORDER: The Court denies <u>69</u> the Movants' opposed expedited motion for a Rule 16 scheduling conference and to set a date certain to file their motions to dissolve various writs. After review, the Court does not find a Rule 16 conference or scheduling order appropriate in these proceedings. Further, to the extent the Court has discretion, under Florida's garnishment law, to grant an extension of the deadline for the Movants to file their motions to dissolve the various writs, the Court does not find the Movants have submitted sufficiently good cause to warrant such an extension. Signed by Judge Robert N. Scola, Jr. on 3/12/2019. (kbe) (Entered: 03/12/2019)

03/13/2019	<u>71</u>	ANSWER to Writ of Garnishment by Branch Banking & Trust Company. Reply/Objections to Writ Answer due by 4/2/2019. (Hendrix, David) (Entered: 03/13/2019)
03/13/2019	<u>72</u>	NOTICE of Compliance <i>Fla. Stat.77.055.Notice.Answer.Branch Banking & Trust Co.DE 71</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis (Attachments: # <u>1</u> Exhibit Notice of Right to Dissolve BBT Answer, # <u>2</u> Exhibit USPS Receipts and Copies Envelopes Notice & BBT Answer) (Porter, Newton) (Entered: 03/13/2019)
03/13/2019	<u>73</u>	Unopposed MOTION to Seal <i>Answer to Writ of Garnishment</i> per Local Rule 5.4 by Safra National Bank of New York. (Attachments: # <u>1</u> Text of Proposed Order) (Puggina, Daniela) (Entered: 03/13/2019)
03/13/2019	<u>74</u>	Writ of Execution Returned as to M/Y Hawk, a 23 Meter(88 feet) Sunseeker Vessel, Cayman Islands registration 74419. (mc) (Entered: 03/14/2019)
03/14/2019	75	PAPERLESS ORDER: The Court grants <u>73</u> Garnishee Safra National Bank of New York's unopposed motion to file its answer to the writ of garnishment under seal. Sealing of this document is necessary to protect the legitimate privacy interests of confidential banking and investment information related to non-parties. The Clerk of Court is directed to maintain the Garnishee's subsequent filing under seal until March 14, 2029, at which time the document must be destroyed. Signed by Judge Robert N. Scola, Jr. on 3/14/2019. (kbe) (Entered: 03/14/2019)
03/14/2019	<u>76</u>	ANSWER to Writ of Garnishment by Morgan Stanley Smith Barney LLC. Reply/Objections to Writ Answer due by 4/3/2019. (Mestre, Jorge) (Entered: 03/14/2019)
03/14/2019	<u>77</u>	ANSWER to Writ of Garnishment by Safra Securities LLC. Reply/Objections to Writ Answer due by 4/3/2019. (Puggina, Daniela) (Entered: 03/14/2019)
03/14/2019		SYSTEM ENTRY – Docket Entry 78 [misc] restricted/sealed until further notice. (991058) (Entered: 03/14/2019)
03/15/2019	<u>79</u>	Expedited MOTION to Amend/Correct <u>22</u> Sealed Order, by 1425 BRICKELL AVE 63–F LLC, 1425 BRICKELL AVE 64E LLC, 1425 BRICKELL AVE UNIT 46B LLC, 200G PSA HOLDINGS LLC, EPBC HOLDINGS, LTD., Samark Jose Lopez Bello, Yakima Trading Corporation. Responses due by 3/29/2019 (Attachments: # <u>1</u> Memorandum, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) Modified Text on 3/18/2019 (ls). (Entered: 03/15/2019)
03/15/2019	<u>80</u>	Expedited Motion to Amend/Correct <u>22</u> Sealed Order, by 1425 BRICKELL AVE 63–F LLC, 1425 BRICKELL AVE 64E LLC, 1425 BRICKELL AVE UNIT 46B LLC, 200G PSA HOLDINGS LLC, EPBC HOLDINGS, LTD., Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Memorandum, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) Modified Relief on 3/18/2019 (ls). (Entered: 03/15/2019)
03/18/2019	81	Clerks Notice to Filer re <u>80</u> EXPEDITED MOTION TO AMEND THE ORDER OF FEBRUARY 15, 2019 (<i>corrected filing—as to Expedited status of filing only</i>) re <u>22</u> Sealed Order,. Wrong Motion Relief(s) Selected ; ERROR – The Filer selected the wrong motion relief(s) when docketing the motion. The correction was made by the Clerk. It is not necessary to refile this document but future motions filed must include applicable reliefs. (ls) (Entered: 03/18/2019)
03/18/2019	<u>82</u>	[STRICKEN] Unopposed MOTION to Seal per Local Rule 5.4 by Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit A) (Campbell, Dennis) Modified text and filers on 3/18/2019 (jc). (Entered: 03/18/2019)
03/18/2019	<u>83</u>	Unopposed MOTION to Seal per Local Rule 5.4 by Citibank N.A.. (Attachments: # <u>1</u> Exhibit A) (Campbell, Dennis) (Entered: 03/18/2019)
03/18/2019	<u>84</u>	NOTICE of Striking <u>82</u> Unopposed MOTION to Seal per Local Rule 5.4 filed by Samark Jose Lopez Bello, Yakima Trading Corporation by Citibank N.A. (Campbell, Dennis) (Entered: 03/18/2019)
03/18/2019	85	PAPERLESS ORDER: The Court grants <u>83</u> Garnishee Citibank N.A.s unopposed motion to file its answer to the writ of garnishment under seal. Sealing of this document is necessary to protect the legitimate privacy interests in confidential banking and

		investment information related to non-parties. The Clerk of Court is directed to maintain the Garnishee's subsequent filing under seal until March 18, 2029, at which time the document must be destroyed. Signed by Judge Robert N. Scola, Jr. on 3/18/2019. (kbe) (Entered: 03/18/2019)
03/18/2019	86	PAPERLESS ORDER: In order to accelerate the briefing on <u>79</u> (or <u>80</u>) the Movant's expedited motion to amend <u>22</u> the Court's order, the Plaintiffs are ordered to respond by 5:00 pm on March 19, 2019. Additionally, the Court notes the Movants have filed what appears to be a duplicate of the motion to amend. The Movants are ordered to immediately either (1) file a notice striking one of the expedited motions or (2) explain why both motions were filed and identify the differences between them. Signed by Judge Robert N. Scola, Jr. on 3/18/2019. (kbe) (Entered: 03/18/2019)
03/18/2019		SYSTEM ENTRY – Docket Entry 87 [misc] restricted/sealed until further notice. (514970) (Entered: 03/18/2019)
03/19/2019	<u>88</u>	NOTICE of Striking <u>79</u> Expedited MOTION to Amend/Correct <u>22</u> Sealed Order, filed by 1425 BRICKELL AVE UNIT 46B LLC, 1425 BRICKELL AVE 63-F LLC, 1425 BRICKELL AVE 64E LLC, 200G PSA HOLDINGS LLC, Samark Jose Lopez Bello, EPBC HOLDINGS, LTD., Yakima Trading Corporation by 1425 BRICKELL AVE 63-F LLC, 1425 BRICKELL AVE 64E LLC, 1425 BRICKELL AVE UNIT 46B LLC, 200G PSA HOLDINGS LLC, EPBC HOLDINGS, LTD., Samark Jose Lopez Bello (Lindsay, Glen) (Entered: 03/19/2019)
03/19/2019	<u>89</u>	RESPONSE in Opposition re <u>80</u> Expedited Motion to Amend/Correct <u>22</u> Sealed Order, <i>Expedited Response</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, Michael Janis. Replies due by 3/26/2019. (Porter, Newton) Modified Text on 3/20/2019 (ls). (Entered: 03/19/2019)
03/19/2019	<u>90</u>	Plaintiff's REPLY to <u>71</u> Answer to Writ of Garnishment <i>Plaintiffs' Reply to Garnishee BB&T Answer</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis. (Porter, Newton) (Entered: 03/19/2019)
03/19/2019	<u>91</u>	Plaintiff's REPLY to <u>76</u> Answer to Writ of Garnishment <i>Plaintiffs' Reply to Garnishee Morgan Stansley's Answer DE 76</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis. (Porter, Newton) (Entered: 03/19/2019)
03/19/2019	<u>92</u>	NOTICE of Compliance <i>Fla. Stat.77.055.Notice.Answer.Morgan.Stanley. DE 76</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis (Attachments: # <u>1</u> Exhibit Fla.Stat.77.055.Notice and Cert. Service, # <u>2</u> Exhibit USPS Receipt Copies Envelopes) (Porter, Newton) (Entered: 03/19/2019)
03/19/2019	<u>93</u>	Plaintiff's REPLY <i>Plaintiffs' Reply to Safra Nat'l Bank's SEALED Answer DE 78</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis. (Porter, Newton) (Entered: 03/19/2019)
03/19/2019	<u>94</u>	NOTICE of Compliance <i>Fla. Stat.77.055.Notice.Answers Safra Securities Answer DE77; Safra Nat'l Bank SEALED Answer DE78</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis (Attachments: # <u>1</u> Exhibit Fla.Stat.77.055.Notice and Cert. Service, # <u>2</u> Exhibit USPS Receipt Copies Envelopes) (Porter, Newton) (Entered: 03/19/2019)
03/19/2019	<u>95</u>	NOTICE of Striking <u>93</u> Response/Reply (Other) filed by michael janis, Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Christopher T. Janis <i>for Scrivener's Error</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis (Porter, Newton) Modified Text on 3/20/2019 (ls). (Entered: 03/19/2019)
03/19/2019	<u>96</u>	Plaintiff's REPLY <i>Plaintiffs' Corrected Reply to Garnishee Safra Nat'l Bank's SEALED Answer DE 78</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Keith Stansell, michael janis. (Porter, Newton) (Entered: 03/19/2019)

03/21/2019	<u>97</u>	Motion to Dissolve <u>30</u> Writ of Garnishment issued as to USB Financial Services, Inc. by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Memorandum, # <u>6</u> Text of Proposed Order)(Lindsay, Glen) Modified Link on 3/22/2019 (ls). (Entered: 03/21/2019)
03/22/2019	98	Clerks Notice to Filer re <u>97</u> MOTION MOTION TO DISSOLVE WRIT OF GARNISHMENT SERVED UPON UBS FINANCIAL SERVICES, INC. . Document Not Linked ; ERROR – The filed document was not linked to the related docket entry. The correction was made by the Clerk. It is not necessary to refile this document. (ls) (Entered: 03/22/2019)
03/22/2019	<u>99</u>	Plaintiff's REPLY TO GARNISHEE CITIBANK, N.A.s SEALED ANSWER (DE 87) by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Korvick, Tony) (Entered: 03/22/2019)
03/22/2019	<u>100</u>	NOTICE of Compliance Fla. Stat. 77.055 Notice & Answer Citibank, N.A. by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Attachments: # <u>1</u> Exhibit Fla.Stat.77.055.Notice and Cert. Service Answer, # <u>2</u> Exhibit USPS Receipt Copies Envelopes) (Porter, Newton) (Entered: 03/22/2019)
03/22/2019	<u>101</u>	ORDER denying <u>80</u> Motion to Amend/Correct. Signed by Judge Robert N. Scola, Jr. on 3/22/2019. See attached document for full details. (kbe) (Entered: 03/22/2019)
03/22/2019	<u>102</u>	Order Referring Motion to Magistrate Judge <u>97</u> Motion to Dissolve <u>30</u> Writ of Garnishment issued as to USB Financial Services, Inc. filed by 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 63-F LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. Motions referred to Judge Edwin G. Torres. Signed by Judge Robert N. Scola, Jr on 3/22/2019. See attached document for full details. (pcs) (Entered: 03/25/2019)
03/25/2019	<u>103</u>	Motion to Dissolve Writ of Garnishment served upon Raymond James & Associates, Inc. re <u>23</u> Sealed Document by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Memorandum, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Text of Proposed Order)(Lindsay, Glen) Modified Text on 3/26/2019 (ls). (Entered: 03/25/2019)
03/26/2019	<u>104</u>	ORDER REFERRING <u>103</u> MOTION TO DISSOLVE WRIT OF GARNISHMENT SERVED UPON RAYMOND JAMES & ASSOCIATES, INC. re <u>23</u> Sealed Document filed by 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 63-F LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. Motions referred to Judge Edwin G. Torres. Signed by Judge Robert N. Scola, Jr on 3/25/2019. See attached document for full details. (pcs) (Entered: 03/26/2019)
03/26/2019	<u>105</u>	SUPPLEMENT to <u>18</u> EXPEDITED MOTION EX PARTE, EXPEDITED MOTION FOR ISSUANCE OF POST-JUDGMENT WRITS OF GARNISHMENT AND EXECUTION , <u>97</u> Motion to Dissolve <u>30</u> Writ of Garnishment issued as to USB Financial Services, Inc. by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation (Lindsay, Glen) (Entered: 03/26/2019)
03/26/2019	<u>106</u>	MOTION for Reconsideration re <u>22</u> Sealed Order, <u>101</u> Order on Motion to Amend/Correct by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Memorandum, # <u>3</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 03/26/2019)
03/27/2019	<u>107</u>	AFFIDAVIT signed by : Jeffrey M. Scott. by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation (Lindsay, Glen) (Entered: 03/27/2019)

03/28/2019	<u>108</u>	ORDER Denying <u>106</u> Motion for Reconsideration and Referring Case To Magistrate Judge For All Pretrial Proceedings. Signed by Judge Robert N. Scola, Jr on 3/28/2019. <i>See attached document for full details.</i> (kpe) (Entered: 03/28/2019)
03/29/2019	<u>109</u>	MOTION for Summary Judgment (Responses due by 4/12/2019), MOTION DISSOLUTION OF THE WRITS OF EXECUTION AND LEVIES re <u>22</u> Sealed Order, <u>46</u> Notice of Levy/Deed, <u>18</u> EXPEDITED MOTION EX PARTE, EXPEDITED MOTION FOR ISSUANCE OF POST–JUDGMENT WRITS OF GARNISHMENT AND EXECUTION , <u>45</u> Notice of Levy/Deed, <u>26</u> Sealed Document, <u>24</u> Sealed Document, <u>25</u> Sealed Document, <u>44</u> Notice of Levy/Deed by 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Appendix Statement of Facts, # <u>6</u> Memorandum, # <u>7</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 03/29/2019)
04/01/2019	<u>110</u>	Expedited Motion to Stay Sale of April 16, 2019 by 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Memorandum, # <u>8</u> Affidavit)(Lindsay, Glen) Modified Relief on 4/2/2019 (ls). (Entered: 04/01/2019)
04/02/2019	111	Clerks Notice to Filer re <u>110</u> EXPEDITED MOTION TO STAY SALE OF APRIL 16, 2019 . Wrong Motion Relief(s) Selected ; ERROR – The Filer selected the wrong motion relief(s) when docketing the motion. The correction was made by the Clerk. It is not necessary to refile this document but future motions filed must include applicable reliefs. (ls) (Entered: 04/02/2019)
04/02/2019	<u>112</u>	MOTION to Dissolve Writ of Garnishment served upon Branch Banking & Trust Company re <u>34</u> Sealed Document by 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Memorandum, # <u>7</u> Text of Proposed Order)(Lindsay, Glen) Modified Text on 4/3/2019 (ls). (Entered: 04/02/2019)
04/03/2019	<u>113</u>	AFFIDAVIT signed by : Jeffrey M. Scott. re <u>110</u> Expedited Motion to Stay Sale of April 16, 2019 , <u>109</u> MOTION for Summary Judgment MOTION DISSOLUTION OF THE WRITS OF EXECUTION AND LEVIES re <u>22</u> Sealed Order, <u>46</u> Notice of Levy/Deed, <u>18</u> EXPEDITED MOTION EX PARTE, EXPEDITED MOTION FOR ISSUANCE OF POST–JUDGMENT WRITS OF GARNISHMENT AND EXECUTION , <u>45</u> Notice of L, <u>112</u> MOTION to Dissolve Writ of Garnishment served upon Branch Banking & Trust Company re <u>34</u> Sealed Document , <u>97</u> Motion to Dissolve <u>30</u> Writ of Garnishment issued as to USB Financial Services, Inc. , <u>103</u> Motion to Dissolve Writ of Garnishment served upon Raymond James & Associates, Inc. re <u>23</u> Sealed Document <i>and attached Supplemental Declaration of Samark Jose Lopez</i> by 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation (Attachments: # <u>1</u> Affidavit Declaration of Samark Jose Lopez)(Lindsay, Glen) (Entered: 04/03/2019)
04/03/2019	<u>114</u>	RESPONSE in Opposition re <u>97</u> Motion to Dissolve <u>30</u> Writ of Garnishment issued as to USB Financial Services, Inc. filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 4/10/2019. (Porter, Newton) (Entered: 04/03/2019)
04/03/2019	<u>115</u>	RESPONSE in Opposition re <u>97</u> Motion to Dissolve <u>30</u> Writ of Garnishment issued as to USB Financial Services, Inc. by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 4/10/2019. (Porter, Newton) Modified Text on 4/4/2019 (ls). (Entered: 04/03/2019)
04/03/2019	<u>116</u>	Plaintiff's MOTION for Judgment <i>Motion for TRIA Turnover Judgment on Garnishee UBS Financial Services, Inc. Sealed Answer DE 58</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Attachments: # <u>1</u> Exhibit OFAC Chart, # <u>2</u> Exhibit Unrebutted OFAC Fact Findings, # <u>3</u> Text of Proposed Order)(Korvick, Tony) (Entered: 04/03/2019)

04/03/2019	117	RESPONSE in Opposition to <u>105</u> Supplement, by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (ls)(See Image at DE #115) (Entered: 04/04/2019)
04/04/2019	118	Clerks Notice to Filer re <u>115</u> Response in Opposition to Motion,. Wrong Event Selected; ERROR – The Filer selected the wrong event. The document was re–docketed by the Clerk, see [de#117]. It is not necessary to refile this document. (ls) (Entered: 04/04/2019)
04/04/2019	<u>119</u>	RESPONSE in Opposition re <u>103</u> Motion to Dissolve Writ of Garnishment served upon Raymond James & Associates, Inc. re <u>23</u> Sealed Document filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 4/11/2019. (Porter, Newton) (Entered: 04/04/2019)
04/04/2019	<u>120</u>	Plaintiff's MOTION for Judgment <i>Tria Turnover Judgment on Garnishee RJA Financial Services, Inc. Answer [DE 61]</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Attachments: # <u>1</u> Exhibit OFAC Chart, # <u>2</u> Exhibit Unrebutted OFAC Fact Findings, # <u>3</u> Text of Proposed Order)(Korvick, Tony) Modified Text on 4/5/2019 (ls). (Entered: 04/04/2019)
04/04/2019	<u>121</u>	DEMAND for Trial by Jury by 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation (Lindsay, Glen) (Entered: 04/04/2019)
04/08/2019	<u>122</u>	AFFIDAVIT signed by : Jeffrey M. Scott. re <u>112</u> MOTION to Dissolve Writ of Garnishment served upon Branch Banking & Trust Company re <u>34</u> Sealed Document , <u>97</u> Motion to Dissolve <u>30</u> Writ of Garnishment issued as to USB Financial Services, Inc. , <u>103</u> Motion to Dissolve Writ of Garnishment served upon Raymond James & Associates, Inc. re <u>23</u> Sealed Document by 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation (Lindsay, Glen) (Entered: 04/08/2019)
04/08/2019	<u>123</u>	MOTION to Dissolve Writ of Garnishment served upon Morgan Stanley Smith Barney, LLC re <u>31</u> Sealed Document by Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Memorandum, # <u>8</u> Text of Proposed Order)(Lindsay, Glen) Modified Text on 4/9/2019 (ls). (Entered: 04/08/2019)
04/08/2019	<u>124</u>	Motion for Hearing on Motion to Dissolve Writ of Garnishment served upon Morgan Stanley Smith Barney, LLC by Samark Jose Lopez Bello, Yakima Trading Corporation. (Lindsay, Glen) Modified Relief on 4/9/2019 (ls). (Entered: 04/08/2019)
04/08/2019	<u>125</u>	MOTION to Dissolve Writ of Garnishment served upon Safra National Bank of New York and Safra Securities LLC re <u>32</u> Sealed Document by Samark Jose Lopez Bello. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Memorandum, # <u>8</u> Text of Proposed Order)(Lindsay, Glen) Modified Text on 4/9/2019 (ls). (Entered: 04/08/2019)
04/08/2019	<u>126</u>	<i>Amended ANSWER and Affirmative Defenses to Complaint (WRIT OF GARNISHMENT/EXECUTION AND INTERPLEADER)</i> , CROSSCLAIM against Yakima Trading Corporation, Samark Jose Lopez Bello, SIX SIS Ltd., COUNTERCLAIM against All Plaintiffs by Citibank N.A.. (Attachments: # <u>1</u> Summon(s))(Campbell, Dennis) (Entered: 04/08/2019)
04/08/2019	130	Amended ANSWER to Writ of Garnishment by Citibank N.A.. Reply/Objections to Writ Answer due by 4/29/2019. (ls)(See Image at DE #126) (Entered: 04/09/2019)
04/09/2019	127	PAPERLESS ORDER: Upon a review of the record, the Court notes that Movants Samark Jose Lopez Bello et al filed <u>110</u> an expedited motion to stay the scheduled sale of certain real properties. In that motion, the Movants introduce doubt as to whether their motion to stay would be included in <u>108</u> the Court's referral of all matters to Judge Torres. The Court thus clarifies <u>108</u> that the Movants' motion to stay is indeed encompassed in the Court's referral of all non–dispositive and dispositive matters in this case. Signed by Judge Robert N. Scola, Jr. on 4/9/2019. (kbe) (Entered: 04/09/2019)
04/09/2019	128	Clerks Notice to Filer re <u>124</u> MOTION Request for Hearing re <u>123</u> MOTION MOTION TO DISSOLVE WRIT OF GARNISHMENT SERVED UPON MORGAN STANLEY

		SMITH BARNEY, LLC re <u>31</u> Sealed Document . Wrong Motion Relief(s) Selected; ERROR – The Filer selected the wrong motion relief(s) when docketing the motion. The correction was made by the Clerk. It is not necessary to refile this document but future motions filed must include applicable reliefs. (ls) (Entered: 04/09/2019)
04/09/2019	129	PAPERLESS ORDER re: <u>110</u> Motion to Stay that has been included in the referral for disposition of all post–judgment matters [D.E. 127]. Upon review of the motion to stay, including the request to stay the sale to allow review of the summary judgment motion and the request for leave from the Office of Foreign Asset Control to apply for a surety bond related to this case, the Court finds good cause to expedite the response to the motion. Plaintiffs' response now due 4/11/2019. Signed by Magistrate Judge Edwin G. Torres on 4/9/2019. (EGT) (Entered: 04/09/2019)
04/09/2019	131	Clerks Notice to Filer re <u>126</u> Answer to Complaint,, Crossclaim,, Counterclaim,. Wrong Event Selected; ERROR – The Filer selected the wrong event. The document was re–docketed by the Clerk, see [de#130]. It is not necessary to refile this document. (ls) (Entered: 04/09/2019)
04/09/2019	132	Clerks Notice to Filer re: Summons(es) cannot be issued. Summons NOT issued for the following reason – No Third Party Complaint Filed.. (ls) (Entered: 04/09/2019)
04/09/2019		Set Deadlines as to <u>110</u> Expedited Motion to Stay Sale of April 16, 2019 . Responses due by 4/11/2019 (ls)(per DE #129) (Entered: 04/10/2019)
04/10/2019	<u>133</u>	REPLY to Response to Motion re <u>97</u> Motion to Dissolve <u>30</u> Writ of Garnishment issued as to USB Financial Services, Inc. filed by 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit E)(Lindsay, Glen) (Entered: 04/10/2019)
04/11/2019	<u>134</u>	MOTION to Dissolve Writ of Garnishment served upon Citibank, N.A. and Demand for Jury Trial re <u>33</u> Sealed Document by Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Memorandum, # <u>9</u> Text of Proposed Order)(Lindsay, Glen) Modified Text on 4/12/2019 (ls). (Entered: 04/11/2019)
04/11/2019	<u>135</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell <i>PROOF OF PUBLICATION OF U.S. MARSHAL NOTICE OF SALES</i> (Attachments: # <u>1</u> Exhibit DBR Invoice and Affidavit of Publication) (Korvick, Tony) (Entered: 04/11/2019)
04/11/2019	<u>136</u>	RESPONSE in Opposition re <u>110</u> Expedited Motion to Stay Sale of April 16, 2019 <i>Expedited</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 4/18/2019. (Attachments: # <u>1</u> Exhibit 2017 OFAC License to Maintain Condos)(Korvick, Tony) Modified Text on 4/12/2019 (ls). (Entered: 04/11/2019)
04/11/2019	<u>137</u>	RESPONSE in Opposition re <u>109</u> MOTION for Summary Judgment MOTION DISSOLUTION OF THE WRITS OF EXECUTION AND LEVIES re <u>22</u> Sealed Order, <u>46</u> Notice of Levy/Deed, <u>18</u> EXPEDITED MOTION EX PARTE, EXPEDITED MOTION FOR ISSUANCE OF POST–JUDGMENT WRITS OF GARNISHMENT AND EXECUTION , <u>45</u> Notice of L filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 4/18/2019. (Attachments: # <u>1</u> Exhibit Counter–Statement of Undisputed Material Facts)(Korvick, Tony) (Entered: 04/11/2019)
04/11/2019	<u>138</u>	REPLY to Response to Motion re <u>103</u> Motion to Dissolve Writ of Garnishment served upon Raymond James & Associates, Inc. re <u>23</u> Sealed Document filed by 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Lindsay, Glen) (Entered: 04/11/2019)
04/12/2019	139	Clerks Notice to Filer re <u>135</u> Notice (Other),. Wrong Event Selected; ERROR – The Filer selected the wrong event. CORRECTIVE ACTION REQUIRED – The Filer must File a Notice of Striking, then refile the document using the correct event Service (Proof) by Publication. (ls) (Entered: 04/12/2019)

04/12/2019	<u>140</u>	NOTICE of Striking <u>135</u> Notice (Other), filed by Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Michael Janis, Christopher T. Janis by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Korvick, Tony) (Entered: 04/12/2019)
04/12/2019	<u>141</u>	NOTICE of Compliance <i>WITH FLA. STAT. §56.21 PUBLICATION OF U.S. MARSHAL NOTICE OF SALES</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Attachments: # <u>1</u> Exhibit Invoice and Affidavit of Publication of US Marshal's Notice of Sale) (Korvick, Tony) (Entered: 04/12/2019)
04/12/2019	<u>142</u>	NOTICE of Filing Proposed Summons(es) by Citibank N.A. re <u>130</u> Answer to Writ of Garnishment filed by Citibank N.A., <u>126</u> Answer to Complaint,, Crossclaim,, Counterclaim, filed by Citibank N.A., (Attachments: # <u>1</u> Summon(s), # <u>2</u> Summon(s), # <u>3</u> Summon(s), # <u>4</u> Summon(s), # <u>5</u> Summon(s), # <u>6</u> Summon(s), # <u>7</u> Summon(s), # <u>8</u> Summon(s), # <u>9</u> Summon(s), # <u>10</u> Summon(s), # <u>11</u> Summon(s)) (Campbell, Dennis) Modified Link on 4/15/2019 (ls). (Entered: 04/12/2019)
04/12/2019	<u>143</u>	REPLY to Response to Motion re <u>110</u> Expedited Motion to Stay Sale of April 16, 2019 filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B)(Lindsay, Glen) (Entered: 04/12/2019)
04/12/2019	<u>144</u>	Notice of Appeal as to <u>22</u> Sealed Order, <u>101</u> Order on Motion to Amend/Correct, <u>108</u> Order, Terminate Motions, Order Referring Case to Magistrate Judge by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. Filing fee \$ 505.00 receipt number 113C-11555613. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Attachments: # <u>1</u> Exhibit DE 22 – Sealed Order, # <u>2</u> Exhibit DE 101 – Order Denying Expedited Motion to Amend Order, # <u>3</u> Exhibit DE 108 – Order Denying Motion for Reconsideration and Referring Case to Magistrate Judge)(Lindsay, Glen) (Entered: 04/12/2019)
04/12/2019	<u>145</u>	EMERGENCY MOTION with Certification of Emergency included <i>for Stay April 16, 2019 Sale of Real Estate Pending Appeal</i> by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, Samark Jose Lopez Bello. Responses due by 4/26/2019 (Attachments: # <u>1</u> Memorandum, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 04/12/2019)
04/15/2019		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>144</u> Notice of Appeal. Notice has been electronically mailed. (hh) (Entered: 04/15/2019)
04/15/2019	<u>146</u>	ORDER denying <u>110</u> Motion to Stay; denying <u>145</u> Emergency Motion with Certification of Emergency for Stay pending appeal. Signed by Magistrate Judge Edwin G. Torres on 4/15/2019. <i>See attached document for full details.</i> (EGT) (Entered: 04/15/2019)
04/15/2019	<u>147</u>	PAPERLESS ORDER: The Court orders Garnishee Citibank, N.A. to show cause why the summonses attached to <u>142</u> its notice should issue. All of the named garnishors, counterclaim respondents, adverse claimants, and crossclaim respondents are already parties to this case. Signed by Judge Robert N. Scola, Jr. on 4/15/2019. (kbe) (Entered: 04/15/2019)
04/15/2019	<u>148</u>	Acknowledgment of Receipt of NOA from USCA re <u>144</u> Notice of Appeal, filed by 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 63-F LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. Date received by USCA: 4/15/19. USCA Case Number: 19-11415-F. (hh) (Entered: 04/15/2019)
04/16/2019	<u>149</u>	AFFIDAVIT signed by : Samark Jose Lopez Bello. re <u>113</u> Affidavit,,, <i>Samark Jose Lopez Bello dated 4/3/19</i> by Samark Jose Lopez Bello (Lindsay, Glen) (Entered: 04/16/2019)

04/16/2019	<u>150</u>	RESPONSE TO ORDER TO SHOW CAUSE re 147 Order,, Order to Show Cause, by Citibank N.A.. (Campbell, Dennis) (Entered: 04/16/2019)
04/16/2019	<u>151</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell <i>Notice of Completion of U.S. Marshal Sales</i> (Porter, Newton) (Entered: 04/16/2019)
04/16/2019	<u>152</u>	Plaintiff's MOTION to Dismiss <u>126</u> Answer to Complaint,, Crossclaim,, Counterclaim, by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Responses due by 4/30/2019 (Attachments: # <u>1</u> Exhibit March 22, 2019 email and letter to Six Sis Ltd and Bank J Safra Sarasin)(Korvick, Tony) (Entered: 04/16/2019)
04/16/2019	<u>153</u>	Plaintiff's MOTION to Strike <u>149</u> Affidavit of <i>Samark Lopez Bello</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Responses due by 4/30/2019 (Porter, Newton) (Entered: 04/16/2019)
04/16/2019	<u>154</u>	RESPONSE in Opposition re <u>112</u> MOTION to Dissolve Writ of Garnishment served upon Branch Banking & Trust Company re <u>34</u> Sealed Document filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 4/23/2019. (Porter, Newton) (Entered: 04/16/2019)
04/16/2019	<u>155</u>	Plaintiff's MOTION for Judgment / <i>Tria Turnover Judgment on Garnishee Branch Banking and Trust Company Answer [DE 71] and Memorandum of Law</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Attachments: # <u>1</u> Exhibit OFAC Chart, # <u>2</u> Exhibit OFAC Fact Findings, # <u>3</u> Text of Proposed Order)(Korvick, Tony) Modified Text on 4/17/2019 (ls). (Entered: 04/16/2019)
04/17/2019	<u>156</u>	Summons Issued as to SIX Sis Ltd., (ls) (Entered: 04/17/2019)
04/17/2019	<u>157</u>	RESPONSE in Opposition re <u>116</u> Plaintiff's MOTION for Judgment <i>Motion for TRIA Turnover Judgment on Garnishee UBS Financial Services, Inc. Sealed Answer DE 58</i> filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Replies due by 4/24/2019. (Attachments: # <u>1</u> Counterstatement of Material Facts, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K, # <u>13</u> Exhibit L, # <u>14</u> Rule 56(d) Declaration)(Lindsay, Glen) (Entered: 04/17/2019)
04/18/2019	<u>158</u>	NOTICE re <u>31</u> Sealed Document, <u>76</u> Answer to Writ of Garnishment, <u>91</u> Response/Reply (Other) by Morgan Stanley Smith Barney LLC of Service (Attachments: # <u>1</u> Exhibit A) (Mestre, Jorge) Modified Links on 4/19/2019 (ls). (Entered: 04/18/2019)
04/18/2019	<u>159</u>	RESPONSE in Opposition re <u>120</u> Plaintiff's MOTION for Judgment <i>Tria Turnover Judgment on Garnishee RJA Financial Services, Inc. Answer [DE 61] filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Replies due by 4/25/2019. (Attachments: # <u>1</u> Respondents' Counterstatement of Material Facts, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K, # <u>13</u> Rule 56(d) Affidavit in Opposition to Motion)(Lindsay, Glen) (Entered: 04/18/2019)</i>
04/18/2019	<u>160</u>	REPLY to Response to Motion re <u>109</u> MOTION for Summary Judgment MOTION DISSOLUTION OF THE WRITS OF EXECUTION AND LEVIES re <u>22</u> Sealed Order, <u>46</u> Notice of Levy/Deed, <u>18</u> EXPEDITED MOTION EX PARTE, EXPEDITED MOTION FOR ISSUANCE OF POST-JUDGMENT WRITS OF GARNISHMENT AND EXECUTION , <u>45</u> Notice of L filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Attachments: # <u>1</u> Reply to Plaintiffs' Counterstatement of Material Facts, # <u>2</u> Exhibit 1, # <u>3</u> Exhibit 2)(Lindsay, Glen) (Entered: 04/18/2019)
04/18/2019	<u>161</u>	MOTION in Limine to Preclude and/or Limit Plaintiffs' Exhibits in Support of Plaintiffs' Motion for Summary Judgment by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd.,

		Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Attachments: # <u>1</u> Memorandum, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 04/18/2019)
04/19/2019	162	Clerks Notice to Filer re <u>158</u> Notice (Other). Document Not Linked ; ERROR – The filed document was not linked to the related docket entry. The correction was made by the Clerk. It is not necessary to refile this document. (ls) (Entered: 04/19/2019)
04/19/2019	163	<p>PAPERLESS ORDER denying <u>153</u> Motion to Strike Affidavit; denying <u>161</u> Motion in Limine.</p> <p>The motions are procedurally defective. This is a post-judgment collection proceeding, based on the Court's ancillary jurisdiction, to enforce a judgment previously entered in another District. As such it is subject to Fed.R.Civ.P. 69, which provides that the procedures to follow are controlled "by the practice and procedure of the state in which the district court is held...". Garnishments and executions in a Florida federal court are thus subject to the practices and procedures of Florida law, specifically chapters 56 and 77. These prescribed procedures "enable speedy and direct proceedings in the same court in which the judgment was recovered to better afford to a judgment creditor the most complete relief possible in satisfying the judgment." <i>Zureikat v. Shaibani</i>, 944 So. 2d 1019, 1023 (Fla. 5th DCA 2006). The intent of the Florida legislature in enacting these provisions was to give creditors "a swift summary disposition of issues," while "preserving the equitable character of both proceedings and the remedies available." <i>Allied Indus. Int'l, Inc. v. AGFA-Gevaert, Inc.</i>, 688 F. Supp. 1516, 1517 (S.D Fla. 1988) (citations omitted), aff'd, 900 F.3d 264 (11th Cir. 1990). "Proceedings supplementary are not independent causes of action but are post-judgment proceedings that permit a judgment creditor to effectuate a judgment lien that already exists." <i>Office Bldg., LLC v. CastleRock Sec., Inc.</i>, 2011 WL 1674963, at *2 (S.D. Fla. May 3, 2011).</p> <p>Therefore, the type of motion practice available in plenary cases under the Court's original jurisdiction does not apply to post-judgment proceedings strictly governed by state law procedures. Motions to strike and motions in limine are thus unnecessary and superfluous, especially where the issues raised therein can be properly raised in response to motions to dissolve writs of garnishment or cross-motions for judgment like the ones already pending here.</p> <p>In short, the parties are ORDERED to not over-litigate this expeditious proceeding through extraneous filings that clog the docket and waste judicial resources. These two pending motions are thus stricken.</p> <p>Signed by Magistrate Judge Edwin G. Torres on 4/19/2019. (EGT) (Entered: 04/19/2019)</p>
04/22/2019	<u>164</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Michael S. Flynn. Filing Fee \$ 75.00 Receipt # 113C-11575644 by Citibank N.A.. Responses due by 5/6/2019 (Attachments: # <u>1</u> Designation, # <u>2</u> Text of Proposed Order)(Campbell, Dennis) (Entered: 04/22/2019)
04/22/2019	<u>165</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Craig T. Cagney. Filing Fee \$ 75.00 Receipt # 113C-11575688 by Citibank N.A.. Responses due by 5/6/2019 (Attachments: # <u>1</u> Designation, # <u>2</u> Text of Proposed Order)(Campbell, Dennis) (Entered: 04/22/2019)
04/22/2019	<u>166</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell re <u>26</u> Sealed Document, <u>24</u> Sealed Document, <u>25</u> Sealed Document <i>NOTICE OF FILING USM 285 FOR U.S. MARSHALS SALES</i> (Attachments: # <u>1</u> Exhibit USM 285 for April 16 sale of Unit 63F, # <u>2</u> Exhibit USM 285 for April 16 sale of Unit 46B, # <u>3</u> Exhibit USM 285 for April 16 sale of Unit 64E) (Korvick, Tony) (Entered: 04/22/2019)
04/22/2019	<u>167</u>	RESPONSE in Opposition re <u>123</u> MOTION to Dissolve Writ of Garnishment served upon Morgan Stanley Smith Barney, LLC re <u>31</u> Sealed Document filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 4/29/2019. (Porter, Newton) (Entered: 04/22/2019)
04/22/2019	<u>168</u>	Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE MORGAN STANLEY SMITH BARNEY LLC ANSWER</i>

		[DE 76] by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Attachments: # <u>1</u> Exhibit OFAC Chart, # <u>2</u> Exhibit OFAC Fact Findings, # <u>3</u> Text of Proposed Order)(Korvick, Tony) (Entered: 04/22/2019)
04/22/2019	<u>169</u>	RESPONSE in Opposition re <u>125</u> MOTION to Dissolve Writ of Garnishment served upon Safra National Bank of New York and Safra Securities LLC re <u>32</u> Sealed Document filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 4/29/2019. (Porter, Newton) (Entered: 04/22/2019)
04/22/2019	<u>170</u>	Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE SAFRA NATIONAL BANK OF NEW YORK ANSWER [DE 78]</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Attachments: # <u>1</u> Exhibit OFAC Chart, # <u>2</u> Exhibit OFAC Fact Findings, # <u>3</u> Text of Proposed Order)(Korvick, Tony) (Entered: 04/22/2019)
04/22/2019	<u>171</u>	RESPONSE in Opposition re <u>134</u> MOTION to Dissolve Writ of Garnishment served upon Citibank, N.A. and Demand for Jury Trial re <u>33</u> Sealed Document filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 4/29/2019. (Attachments: # <u>1</u> Exhibit Citibank's Initial Blocking Reports to OFAC)(Korvick, Tony) (Entered: 04/22/2019)
04/22/2019	<u>172</u>	REPLY to Response to Motion re <u>116</u> Plaintiff's MOTION for Judgment <i>Motion for TRIA Turnover Judgment on Garnishee UBS Financial Services, Inc. Sealed Answer DE 58</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Porter, Newton) (Entered: 04/22/2019)
04/22/2019	<u>173</u>	REPLY to Response to Motion re <u>120</u> Plaintiff's MOTION for Judgment <i>Tria Turnover Judgment on Garnishee RJA Financial Services, Inc. Answer [DE 61]</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Porter, Newton) (Entered: 04/22/2019)
04/22/2019	<u>174</u>	MOTION to Dismiss for Lack of Jurisdiction <u>126</u> Answer to Complaint,, Crossclaim,, Counterclaim, , MOTION to Change Venue by Samark Jose Lopez Bello, Yakima Trading Corporation. Responses due by 5/6/2019 (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Memorandum, # <u>4</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 04/22/2019)
04/23/2019	<u>175</u>	TRANSCRIPT INFORMATION FORM by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation re <u>144</u> Notice of Appeal,,,. No Transcript Requested. (Lindsay, Glen) (Entered: 04/23/2019)
04/23/2019	<u>176</u>	REPLY to Response to Motion re <u>112</u> MOTION to Dissolve Writ of Garnishment served upon Branch Banking & Trust Company re <u>34</u> Sealed Document filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Lindsay, Glen) (Entered: 04/23/2019)
04/24/2019	<u>177</u>	Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE CITIBANK, N.A. ANSWER [DE 87]</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Attachments: # <u>1</u> Exhibit Citibank, N.A. Initial Blocking Reports to OFAC 2017, # <u>2</u> Exhibit OFAC Chart, # <u>3</u> Exhibit OFAC Fact Findings, # <u>4</u> Text of Proposed Order)(Korvick, Tony) (Entered: 04/24/2019)
04/26/2019	<u>178</u>	WAIVER OF SERVICE Returned Executed by Citibank N.A.. SIX Sis Ltd. waiver sent on 4/17/2019, answer due 6/17/2019. (Campbell, Dennis) (Entered: 04/26/2019)
04/28/2019	<u>179</u>	Plaintiff's REPLY <i>GARNISHEE CITIBANK, N.A.s AMENDED ANSWER DE 126</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Korvick, Tony) (Entered: 04/28/2019)

04/29/2019	<u>180</u>	REPLY to Response to Motion re <u>125</u> MOTION to Dissolve Writ of Garnishment served upon Safra National Bank of New York and Safra Securities LLC re <u>32</u> Sealed Document filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Lindsay, Glen) (Entered: 04/29/2019)
04/29/2019	<u>181</u>	REPLY to Response to Motion re <u>123</u> MOTION to Dissolve Writ of Garnishment served upon Morgan Stanley Smith Barney, LLC re <u>31</u> Sealed Document filed by Samark Jose Lopez Bello. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit)(Lindsay, Glen) (Entered: 04/29/2019)
04/29/2019	<u>182</u>	REPLY to Response to Motion re <u>134</u> MOTION to Dissolve Writ of Garnishment served upon Citibank, N.A. and Demand for Jury Trial re <u>33</u> Sealed Document filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Lindsay, Glen) (Entered: 04/29/2019)
04/30/2019	<u>183</u>	MEMORANDUM in Opposition re <u>152</u> Plaintiff's MOTION to Dismiss <u>126</u> Answer to Complaint,, Crossclaim,, Counterclaim, by Citibank N.A.. (Campbell, Dennis) (Entered: 04/30/2019)
04/30/2019	<u>184</u>	RESPONSE in Opposition re <u>155</u> Plaintiff's MOTION for Judgment / <i>Tria Turnover Judgment on Garnishee Branch Banking and Trust Company Answer [DE 71] and Memorandum of Law</i> filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Replies due by 5/7/2019. (Attachments: # <u>1</u> Counterstatement of Material Facts, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J)(Lindsay, Glen) (Entered: 04/30/2019)
05/02/2019	<u>185</u>	Plaintiff's MOTION for Leave to File Excess Pages <i>Nunc Pro Tunc Replies DE 172 and DE 173</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Porter, Newton) (Entered: 05/02/2019)
05/03/2019	<u>186</u>	Writ of Execution issued as to Samark Lopez Bello (ls) (Entered: 05/03/2019)
05/06/2019	<u>187</u>	RESPONSE to Motion re <u>174</u> MOTION to Dismiss for Lack of Jurisdiction <u>126</u> Answer to Complaint,, Crossclaim,, Counterclaim, MOTION to Change Venue <i>Memorandum of Law</i> filed by Citibank N.A.. Replies due by 5/13/2019. (Campbell, Dennis) (Entered: 05/06/2019)
05/06/2019	<u>188</u>	RESPONSE in Opposition re <u>170</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE SAFRA NATIONAL BANK OF NEW YORK ANSWER [DE 78]</i> filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Replies due by 5/13/2019. (Attachments: # <u>1</u> Counterstatement of Material Facts, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K)(Lindsay, Glen) (Entered: 05/06/2019)
05/06/2019	<u>189</u>	RESPONSE in Opposition re <u>168</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE MORGAN STANLEY SMITH BARNEY LLC ANSWER [DE 76]</i> filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Replies due by 5/13/2019. (Attachments: # <u>1</u> Counterstatement of Material Facts, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K)(Lindsay, Glen) (Entered: 05/06/2019)
05/07/2019	<u>190</u>	REPLY to Response to Motion re <u>155</u> Plaintiff's MOTION for Judgment / <i>Tria Turnover Judgment on Garnishee Branch Banking and Trust Company Answer [DE 71] and Memorandum of Law</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis,

		Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Porter, Newton) (Entered: 05/07/2019)
05/07/2019	<u>191</u>	NOTICE of Compliance <i>Fla. Stat. 77.055 Notice & Amended Answer DE 126 Citibank, N.A.</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Attachments: # <u>1</u> Exhibit Fla.Stat.77.055.Notice and Cert. Service, # <u>2</u> Exhibit USPS Receipts and Copies Envelopes) (Porter, Newton) (Entered: 05/07/2019)
05/07/2019	<u>192</u>	REPLY to Response to Motion re <u>152</u> Plaintiff's MOTION to Dismiss <u>126</u> Answer to Complaint,, Crossclaim,, Counterclaim, filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Korvick, Tony) (Entered: 05/07/2019)
05/07/2019	<u>193</u>	PAPERLESS ORDER denying <u>164</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing; denying <u>165</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. These pro hac motions are Denied with leave to renew. The motions and attachments do not comport with all requirements of the Court's Local Rules, including the requirement of certification by pro hac counsel. The motions may be renewed without submission of new fees. Signed by Magistrate Judge Edwin G. Torres on 5/7/2019. (EGT) (Entered: 05/07/2019)
05/07/2019		Attorney Craig T. Cagney and Michael S. Flynn terminated. Notice of Termination delivered by US Mail to Craig Cagney, Michael Flynn. (ls)(per DE #193) (Entered: 05/08/2019)
05/08/2019	<u>194</u>	MOTION to Strike <u>186</u> Writ of Execution by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. Responses due by 5/22/2019 (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Memorandum, # <u>3</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 05/08/2019)
05/08/2019	<u>195</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Michael S. Flynn. <i>Renewed</i> Filing Fee \$ 75.00 Amended/Corrected Motion to Appear Pro Hac Vice Filed – Filing Fees Previously Paid. See <u>164</u> Motion to Appear Pro Hac Vice, by Citibank N.A.. Responses due by 5/22/2019 (Attachments: # <u>1</u> Certification, # <u>2</u> Text of Proposed Order)(Campbell, Dennis) (Entered: 05/08/2019)
05/08/2019	<u>196</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Craig T. Cagney. <i>Renewed</i> Filing Fee \$ 75.00 Amended/Corrected Motion to Appear Pro Hac Vice Filed – Filing Fees Previously Paid. See <u>165</u> Motion to Appear Pro Hac Vice, by Citibank N.A.. Responses due by 5/22/2019 (Attachments: # <u>1</u> Certification, # <u>2</u> Text of Proposed Order)(Campbell, Dennis) (Entered: 05/08/2019)
05/08/2019		Attorney Craig T. Cagney representing Citibank N.A. (Garnishee) and Michael S. Flynn representing Citibank N.A. (Garnishee) Activated. (cco) (Entered: 05/08/2019)
05/08/2019	<u>197</u>	RESPONSE to Motion re <u>177</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE CITIBANK, N.A. ANSWER [DE 87] Memorandum of Law</i> filed by Citibank N.A.. Replies due by 5/15/2019. (Campbell, Dennis) Modified Text on 5/9/2019 (ls). (Entered: 05/08/2019)
05/08/2019	<u>198</u>	RESPONSE in Opposition re <u>177</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE CITIBANK, N.A. ANSWER [DE 87]</i> filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Replies due by 5/15/2019. (Attachments: # <u>1</u> Counterstatement of Material Facts, # <u>2</u> Exhibit A, # <u>3</u> Exhibit B, # <u>4</u> Exhibit C, # <u>5</u> Exhibit D, # <u>6</u> Exhibit E, # <u>7</u> Exhibit F, # <u>8</u> Exhibit G, # <u>9</u> Exhibit H, # <u>10</u> Exhibit I, # <u>11</u> Exhibit J, # <u>12</u> Exhibit K)(Lindsay, Glen) (Entered: 05/08/2019)

05/09/2019	<u>199</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell <i>of Filing USA Statement of Interest – No OFAC License Needed to Seek Attachment or to Execute on Blocked Kingpin Assets Under TRIA</i> (Attachments: # <u>1</u> Exhibit USA 4/26/2019 Statement of Interest in Stansell v. FARC MDL Case No.: 09-cv-2308) (Porter, Newton) (Entered: 05/09/2019)
05/09/2019	<u>200</u>	REPLY to Response to Motion re <u>168</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE MORGAN STANLEY SMITH BARNEY LLC ANSWER [DE 76]</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Porter, Newton) (Entered: 05/09/2019)
05/09/2019	<u>201</u>	REPLY to Response to Motion re <u>170</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE SAFRA NATIONAL BANK OF NEW YORK ANSWER [DE 78]</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Porter, Newton) (Entered: 05/09/2019)
05/09/2019	<u>202</u>	REPLY to Response to Motion re <u>177</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE CITIBANK, N.A. ANSWER [DE 87]</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Porter, Newton) (Entered: 05/09/2019)
05/09/2019	<u>203</u>	REPLY to Response to Motion re <u>177</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE CITIBANK, N.A. ANSWER [DE 87]</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Korvick, Tony) (Entered: 05/09/2019)
05/09/2019	<u>204</u>	RESPONSE in Opposition re <u>194</u> MOTION to Strike <u>186</u> Writ of Execution (<i>DE 194</i>) <i>ON THE VESSEL HAWK</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 5/16/2019. (Korvick, Tony) (Entered: 05/09/2019)
05/09/2019	<u>205</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell <i>of Pending Motions Fully Briefed</i> (Attachments: # <u>1</u> Exhibit Fully Briefed Motions Chart) (Porter, Newton) (Entered: 05/09/2019)
05/10/2019	<u>206</u>	MOTION to Strike <u>205</u> Notice (Other) <i>Regarding Pending Motions Fully Briefed</i> by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. Responses due by 5/24/2019 (Attachments: # <u>1</u> Memorandum)(Lindsay, Glen) (Entered: 05/10/2019)
05/11/2019	<u>207</u>	MOTION to Administratively Terminate this matter without prejudice pending Appeal by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Attachments: # <u>1</u> Memorandum, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) Modified Text on 5/13/2019 (ls). (Entered: 05/11/2019)
05/13/2019	<u>208</u>	RESPONSE in Opposition re <u>206</u> MOTION to Strike <u>205</u> Notice (Other) <i>Regarding Pending Motions Fully Briefed</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 5/20/2019. (Korvick, Tony) (Entered: 05/13/2019)
05/13/2019	209	PAPERLESS Order Setting Evidentiary Hearing. Upon the Court's review of the record, the undersigned hereby finds it appropriate to set an evidentiary hearing on <u>all pending Motions</u> presently before the Court. The hearing will take place on June 11, 2019 at 09:30 AM in the Miami Division, and the parties shall report to the United States Courthouse, James Lawrence King Bldg., Courtroom 5 – Tenth Floor, 99 N.E. 4th Street, Miami, Florida on that date. Docket Order Signed by Magistrate Judge Edwin G. Torres on 5/13/2019. (abu) (Entered: 05/13/2019)

05/14/2019	<u>210</u>	RESPONSE in Opposition re <u>207</u> MOTION to Administratively Terminate this matter without prejudice pending Appeal filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 5/21/2019. (Korvick, Tony) (Entered: 05/14/2019)
05/15/2019	<u>211</u>	Writ of Execution Returned (ls) (Entered: 05/15/2019)
05/21/2019	<u>212</u>	PAPERLESS ORDER granting <u>195</u> , <u>196</u> Motions to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. The Court finds that the applications satisfy the requirements of S.D. Fla. Local Atty. R. 4. Therefore, the Clerk is directed to add Michael S. Flynn, Esq. and Craig T. Cagney, Esq. as counsel of record for Garnishee-Counterclaimant-Crossclaimant Citibank, N.A. and allow counsel to be noticed electronically on CM/ECF. Docket Order Signed by Magistrate Judge Edwin G. Torres on 5/21/2019. (abu) (Entered: 05/21/2019)
05/21/2019	<u>213</u>	Motion for Hearing/Telephonic Conference by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Lindsay, Glen) Modified Relief on 5/22/2019 (ls). (Entered: 05/21/2019)
05/21/2019	<u>214</u>	REPLY to Response to Motion re <u>207</u> MOTION to Administratively Terminate this matter without prejudice pending Appeal filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit)(Lindsay, Glen) (Entered: 05/21/2019)
05/22/2019	<u>215</u>	Clerks Notice to Filer re <u>213</u> MOTION for Telephonic Scheduling Conference re 209 Order Setting/Cancelling Hearing,, . Wrong Motion Relief(s) Selected ; ERROR – The Filer selected the wrong motion relief(s) when docketing the motion. The correction was made by the Clerk. It is not necessary to refile this document but future motions filed must include applicable reliefs. (ls) (Entered: 05/22/2019)
05/22/2019	<u>216</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Kerri E. Chewing. Filing Fee \$ 75.00 Receipt # 113C-11667583 by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. Responses due by 6/5/2019 (Attachments: # <u>1</u> Certification, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 05/22/2019)
05/28/2019	<u>217</u>	PAPERLESS ORDER granting <u>216</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing. The Court finds that the applications satisfy the requirements of S.D. Fla. Local Atty. R. 4. Therefore, the Clerk is directed to add Keri E. Chewing, Esq. as counsel of record for Intervenor SAMARK JOSE LOPEZ BELLO, YAKIMA TRADING CORPORATION, EPBC HOLDINGS, LTD., 1425 BRICKELL AVE 63-F LLC, 1425 BRICKELL AVE UNIT 46B LLC, 1425 BRICKELL AVE 64E LLC & 200G PSA HOLDINGS LLC and allow counsel to be noticed electronically on CM/ECF. Docket Order Signed by Magistrate Judge Edwin G. Torres on 5/28/2019. (abu) (Entered: 05/28/2019)
06/06/2019	<u>218</u>	TRANSCRIPT of hearing held on 2/14/19 before Judge Robert N. Scola, Jr, 1-7 pages, Court Reporter: Tammy Nestor, 305-523-5148 / Tammy_Nestor@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/27/2019. Redacted Transcript Deadline set for 7/8/2019. Release of Transcript Restriction set for 9/4/2019. (tnr) (Entered: 06/06/2019)
06/06/2019	<u>219</u>	NOTICE by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation of <i>Filing Initial Appellate Brief</i> (Attachments: # <u>1</u> Initial Appellate Brief dated 6/3/2019) (Lindsay, Glen) (Entered: 06/06/2019)

06/06/2019	<u>220</u>	NOTICE by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation of <i>Filing Appellate Notice of Telephone Assessment Conference in United States Court of Appeals for the Eleventh Circuit Case No.: 19-11415</i> (Attachments: # <u>1</u> Notice from Appellate Court of Assessment Conferenced) (Lindsay, Glen) Modified Text on 6/7/2019 (ls). (Entered: 06/06/2019)
06/07/2019	221	PAPERLESS ORDER Setting Telephonic Status Conference: A telephonic status conference is set for June 10, 2019 at 03:00 PM in the Miami Division before Magistrate Judge Edwin G. Torres. At the scheduled time counsel for both parties shall call the following toll-free number: 1-888-684-8852 (access code 5264742#) (security code 1231#). Docket Order Signed by Magistrate Judge Edwin G. Torres on 6/7/2019. (abu) (Entered: 06/07/2019)
06/10/2019	222	PAPERLESS ORDER granting <u>213</u> Motion for Hearing, per this Court's 221 Order dated June 7, 2019. Docket Order Signed by Magistrate Judge Edwin G. Torres on 6/10/2019. (abu) (Entered: 06/10/2019)
06/10/2019	224	PAPERLESS Minute Entry for proceedings held before Magistrate Judge Edwin G. Torres: Telphonic Status Conference held on 6/10/2019. Total time in court: 57 minutes. Attorney Appearance(s): Glen Matthew Lindsay, Jeffrey M. Scott, Jeffrey M. Kolansky, Kerri E. Chewing, Dennis Michael Campbell, Craig T. Cagney, Newton Patrick Porter, Tony P. Korvick, Daniela Fonseca Puggina, Alise Meredith Johnson, Richard Rosenthal, Jessica Marroquin, Josiah Wolfson and Counsel for SIX Sis Ltd.. (Digital 15:10:01) (mdc) (Entered: 06/12/2019)
06/11/2019	<u>225</u>	Minute Entry for proceedings held before Magistrate Judge Edwin G. Torres: Evidentiary Hearing held on 6/11/2019. Witness: William Marquardt, Ernesto Carrasco Ramirez, Douglas Farah, Luis Miguel Cote Gomez and Paul Craine, testified. Court Reporter: Tammy Nestor, 305-523-5148 / Tammy_Nestor@flsd.uscourts.gov. (mdc) (Entered: 06/12/2019)
06/12/2019	223	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: <u>144</u> Notice of Appeal, Appeal No. 19-11415-FF. The entire record on appeal is available electronically. (hh) (Entered: 06/12/2019)
06/14/2019	<u>226</u>	HEARING EXHIBITS A-I by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Related document: <u>225</u> Evidentiary Hearing,. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I)(Korvick, Tony) (Entered: 06/14/2019)
06/17/2019	<u>227</u>	ANSWER to Crossclaim by SIX Sis Ltd.. Attorney Euyelit Adriana Moreno Kostencki added to party SIX Sis Ltd.(pty:crd). (Moreno Kostencki, Euyelit) (Entered: 06/17/2019)
06/17/2019	<u>228</u>	Certificate of Other Affiliates/Corporate Disclosure Statement – NONE disclosed by SIX Sis Ltd. (Moreno Kostencki, Euyelit) (Entered: 06/17/2019)
06/18/2019	229	Clerks Notice to Filer re <u>228</u> Certificate of Other Affiliates/Corporate Disclosure Statement. Corporate Parent Not Added ; ERROR – The Filer failed to add the Corporate Parent. CORRECTIVE ACTION REQUIRED – The Filer must File a Notice of Striking, then refile the document using the Certificate of Other Affiliates/Corporate Disclosure Statement event and ensure all applicable parties are added. (ls) (Entered: 06/18/2019)
06/18/2019	<u>230</u>	TRANSCRIPT of hearing held on 6/11/19 before Magistrate Judge Edwin G. Torres, 1-253 pages, Court Reporter: Tammy Nestor, 305-523-5148 / Tammy_Nestor@flsd.uscourts.gov. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/9/2019. Redacted Transcript Deadline set for 7/19/2019. Release of Transcript Restriction set for 9/16/2019. (tnr) (Entered: 06/18/2019)
06/18/2019	<u>231</u>	NOTICE of Striking <u>228</u> Certificate of Other Affiliates/Corporate Disclosure Statement filed by SIX Sis Ltd. by SIX Sis Ltd. (Moreno Kostencki, Euyelit) (Entered: 06/18/2019)

06/18/2019	<u>232</u>	Certificate of Other Affiliates/Corporate Disclosure Statement by SIX Sis Ltd. identifying Corporate Parent SIX Group Ltd. for SIX Sis Ltd. (Moreno Kostencki, Euyelit) (Entered: 06/18/2019)
06/26/2019	<u>233</u>	TRANSCRIPT of Telephonic Status Hearing held on 6/10/19 before Magistrate Judge Edwin G. Torres, 1–41 pages, re: <u>144</u> Notice of Appeal, Court Reporter: Bonnie J. Lewis, 305–523–5635. Transcript may be viewed at the court public terminal or purchased by contacting the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 7/17/2019. Redacted Transcript Deadline set for 7/29/2019. Release of Transcript Restriction set for 9/24/2019. (hh) (Entered: 06/27/2019)
07/10/2019	234	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: <u>144</u> Notice of Appeal, Appeal No. 19–11415–FF. The entire record on appeal is available electronically. (hh) (Entered: 07/10/2019)
07/17/2019	235	PAPERLESS ORDER granting <u>185</u> Motion for Leave to File Excess Pages. Docket Order Signed by Magistrate Judge Edwin G. Torres on 7/17/2019. (abu) (Entered: 07/17/2019)
07/17/2019	236	PAPERLESS ORDER denying as moot <u>124</u> Motion for Hearing. Docket Order Signed by Magistrate Judge Edwin G. Torres on 7/17/2019. (abu) (Entered: 07/17/2019)
07/18/2019	237	PAPERLESS ORDER denying <u>206</u> Motion to Strike. Signed by Magistrate Judge Edwin G. Torres on 7/18/2019. (abu) (Entered: 07/18/2019)
07/26/2019	<u>238</u>	Plaintiff's EXPEDITED MOTION FOR PRE–SALE VESSEL INSPECTION (<i>inspection requested for Sept. 3, 2019 before USMS execution sale Sept. 4, 2019</i>) by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Attachments: # <u>1</u> Exhibit US Marshal's Notice of Sales for Sept. 4, 2019)(Korvick, Tony) (Entered: 07/26/2019)
08/01/2019	<u>239</u>	EXPEDITED MOTION to Stay Sale of September 4, 2019 re <u>238</u> Plaintiff's EXPEDITED MOTION FOR PRE–SALE VESSEL INSPECTION (<i>inspection requested for Sept. 3, 2019 before USMS execution sale Sept. 4, 2019</i>) by 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello. (Attachments: # <u>1</u> Memorandum, # <u>2</u> Exhibit Full Marked Exhibits, # <u>3</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 08/01/2019)
08/02/2019	<u>240</u>	RESPONSE in Opposition re <u>238</u> Plaintiff's EXPEDITED MOTION FOR PRE–SALE VESSEL INSPECTION (<i>inspection requested for Sept. 3, 2019 before USMS execution sale Sept. 4, 2019</i>) filed by 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Replies due by 8/9/2019. (Lindsay, Glen) (Entered: 08/02/2019)
08/07/2019	<u>241</u>	Notice of Supplemental Authority <i>Dep't Homeland Security ICE Most Wanted Samark Lopez Bello</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Attachments: # <u>1</u> Exhibit Dept Homeland Security ICE Most Wanted list Lopez Bello, # <u>2</u> Exhibit ICE Most Wanted Lopez Bello) (Porter, Newton) (Entered: 08/07/2019)
08/08/2019	<u>242</u>	RESPONSE in Opposition re <u>239</u> EXPEDITED MOTION to Stay Sale of September 4, 2019 re <u>238</u> Plaintiff's EXPEDITED MOTION FOR PRE–SALE VESSEL INSPECTION (<i>inspection requested for Sept. 3, 2019 before USMS execution sale Sept. 4, 2019</i>) filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 8/15/2019. (Korvick, Tony) (Entered: 08/08/2019)
08/08/2019	<u>243</u>	REPLY to Response to Motion re <u>238</u> Plaintiff's EXPEDITED MOTION FOR PRE–SALE VESSEL INSPECTION (<i>inspection requested for Sept. 3, 2019 before USMS execution sale Sept. 4, 2019</i>) filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Korvick, Tony) (Entered: 08/08/2019)

08/09/2019	<u>244</u>	REPLY to Response to Motion re <u>239</u> EXPEDITED MOTION to Stay Sale of September 4, 2019 re <u>238</u> Plaintiff's EXPEDITED MOTION FOR PRE-SALE VESSEL INSPECTION (<i>inspection requested for Sept. 3, 2019 before USMS execution sale Sept. 4, 2019</i>) filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Lindsay, Glen) (Entered: 08/09/2019)
08/19/2019	<u>245</u>	NOTICE of Compliance by US Marshal's Certified Mailing in Compliance with Fla Stat 56.21 re MV WAKU Trinity for Sept. 4, 2019 sale by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell re <u>27</u> Sealed Document (Korvick, Tony) (Entered: 08/19/2019)
08/19/2019	<u>246</u>	NOTICE of Compliance US Marshal's Certified Mailing in Compliance with Fla Stat 56.21 re MV HAWK Sunseeker for Sept. 4, 2019 sale by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Korvick, Tony) (Entered: 08/19/2019)
08/21/2019	<u>247</u>	ORDER denying <u>207</u> Motion to Administratively Terminate this Matter Pending Appeal. Signed by Magistrate Judge Edwin G. Torres on 8/21/2019. <i>See attached document for full details.</i> (abu) (Entered: 08/21/2019)
08/21/2019	<u>248</u>	REPORT AND RECOMMENDATIONS re <u>109</u> MOTION for Summary Judgment MOTION DISSOLUTION OF THE WRITS OF EXECUTION AND LEVIES; <u>97</u> Motion to Dissolve Writ of Garnishment issued as to USB Financial Services, Inc.; <u>103</u> Motion to Dissolve Writ of Garnishment served upon Raymond James & Associates, Inc.; <u>112</u> MOTION to Dissolve Writ of Garnishment served upon Branch Banking & Trust Company; <u>123</u> MOTION to Dissolve Writ of Garnishment served upon Morgan Stanley Smith Barney, LLC; <u>125</u> MOTION to Dissolve Writ of Garnishment served upon Safra National Bank of New York and Safra Securities LLC; and <u>134</u> MOTION to Dissolve Writ of Garnishment served upon Citibank, N.A. and Demand for Jury Trial: RECOMMENDING that each of the Motions be DENIED. Objections to R&R due by September 4, 2019. Signed by Magistrate Judge Edwin G. Torres on 8/21/2019. <i>See attached document for full details.</i> (abu) (Entered: 08/21/2019)
08/26/2019	<u>249</u>	ORDER denying <u>194</u> Motion to Strike. Signed by Magistrate Judge Edwin G. Torres on 8/26/2019. <i>See attached document for full details.</i> (abu) (Entered: 08/26/2019)
08/28/2019	<u>250</u>	REPORT AND RECOMMENDATIONS re <u>239</u> EXPEDITED MOTION to Stay September 4, 2019 Sale of Certain Vessels: <i>RECOMMENDING the Motion be DENIED.</i> As a result of the expedited relief requested in the Motion, Objections to R&R now due by <u>August 30, 2019 at 12:00 P.M.</u> Signed by Magistrate Judge Edwin G. Torres on 8/28/2019. <i>See attached document for full details.</i> (abu) (Entered: 08/28/2019)
08/29/2019	<u>251</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell of Filing 11th Circuit Order (Attachments: # <u>1</u> Exhibit August 29, 2019 Order in 11th Circuit Court of Appeals Case No. 19-11415) (Korvick, Tony) (Entered: 08/29/2019)
08/30/2019	<u>252</u>	RESPONSE in Opposition re <u>250</u> REPORT AND RECOMMENDATIONS re <u>239</u> EXPEDITED MOTION to Stay Sale of September 4, 2019 re <u>238</u> Plaintiff's EXPEDITED MOTION FOR PRE-SALE VESSEL INSPECTION (<i>inspection requested for Sept. 3, 2019 before USMS execution sale Sept. filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. Replies due by 9/6/2019.</i> (Lindsay, Glen) (Entered: 08/30/2019)
08/30/2019	<u>253</u>	RESPONSE in Opposition re <u>250</u> REPORT AND RECOMMENDATIONS re <u>239</u> EXPEDITED MOTION to Stay Sale of September 4, 2019 re <u>238</u> Plaintiff's EXPEDITED MOTION FOR PRE-SALE VESSEL INSPECTION (<i>inspection requested for Sept. 3, 2019 before USMS execution sale Sept. Corrected Cover Page Only and Exhibits filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell</i>

		<i>Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Replies due by 9/6/2019. (Attachments: # <u>1</u> Exhibit Exhibits to Objections to Report and Recommendation Doc. No. 250)(Lindsay, Glen) (Entered: 08/30/2019)</i>
08/30/2019	<u>254</u>	ORDER adopting <u>250</u> report and recommendation; denying <u>239</u> expedited motion regarding stay of sale. Signed by Judge Robert N. Scola, Jr. on 8/30/2019. <i>See attached document for full details.</i> (kbe) (Entered: 08/30/2019)
08/30/2019	<u>255</u>	Amended Notice of Appeal as to <u>254</u> Order on Expedited Motion, Order on Report and Recommendations by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Filing fee \$ 505.00. No Filing Fee Required. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Lindsay, Glen) (Entered: 08/30/2019)
08/30/2019	<u>257</u>	OBJECTIONS to <u>250</u> Report and Recommendations by Samark Jose Lopez Bello. (ls)(See Image at DE #253) (Entered: 09/04/2019)
09/04/2019		Transmission of Notice of Appeal, Order under appeal and Docket Sheet to US Court of Appeals re <u>255</u> Notice of Appeal, Notice has been electronically mailed. (apz) (Entered: 09/04/2019)
09/04/2019	<u>256</u>	Clerks Notice to Filer re <u>252</u> Response in Opposition to Motion,,. Docket Text Does Not Match Document ; ERROR – The Filer failed to enter a title in the docket text that matches the title of the document. It is not necessary to refile the document. (ls) (Entered: 09/04/2019)
09/04/2019	<u>258</u>	Clerks Notice to Filer re <u>253</u> Response in Opposition to Motion,,. Wrong Event Selected ; ERROR – The Filer selected the wrong event. The document was re-docketed by the Clerk, see [de#257]. It is not necessary to refile this document. (ls) (Entered: 09/04/2019)
09/04/2019	<u>259</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell <i>of Completion of U.S. Marshal's Sales (Vessels)</i> (Korvick, Tony) (Entered: 09/04/2019)
09/04/2019	<u>260</u>	PAPERLESS ORDER denying as moot <u>238</u> Expedited Motion. Docket Order Signed by Magistrate Judge Edwin G. Torres on 9/4/2019. (abu) (Entered: 09/04/2019)
09/04/2019	<u>261</u>	OBJECTIONS to <u>248</u> Report and Recommendations by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Attachments: # <u>1</u> Exhibit)(Lindsay, Glen) (Entered: 09/04/2019)
09/09/2019	<u>262</u>	RESPONSE TO OBJECTION to <u>248</u> Report and Recommendations <i>Plaintiffs' Response to Claimants' Objections [DE 261] to Report and Recommendation [DE 248]</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Porter, Newton) (Entered: 09/09/2019)
09/09/2019	<u>263</u>	US Marshal's NOTICE of LEVY as to SEPT. 4, 2019 SALE OF MV WAKU Trinity (Korvick, Tony) (Entered: 09/09/2019)
09/09/2019	<u>264</u>	US Marshal's NOTICE of LEVY as to SEPT. 4, 2019 SALE OF MV HAWK Sunseeker (Korvick, Tony) (Entered: 09/09/2019)
09/09/2019	<u>265</u>	MOTION to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Melissa E. Byroade. Filing Fee \$ 75.00 Receipt # 113C-11966310 by SIX Sis Ltd.. Attorney Euyelit Adriana Moreno Kostencki added to party SIX Sis Ltd.(pty:dft). Responses due by 9/23/2019 (Attachments: # <u>1</u> Certification of Melissa E. Byroade, # <u>2</u> Text of Proposed Order)(Moreno Kostencki, Euyelit) (Entered: 09/09/2019)
09/10/2019	<u>266</u>	MOTION to Intervene by Satori Fine Linens. Attorney Michael T. Moore added to party Satori Fine Linens(pty:intvp). (Attachments: # <u>1</u> Exhibit Intervening Complaint, # <u>2</u>

		Exhibit Verification, # <u>3</u> Exhibit Outstanding Invoices)(Moore, Michael) (Entered: 09/10/2019)
09/12/2019	<u>267</u>	Acknowledgment of Receipt of NOA from USCA re <u>255</u> Notice of Appeal, filed by 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 63-F LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Date received by USCA: 9/12/19. USCA Case Number: 19-11415-HH. (hh) (Entered: 09/12/2019)
09/12/2019	<u>268</u>	TRANSCRIPT INFORMATION FORM by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello re <u>255</u> Notice of Appeal,.. No Transcript Requested. (Lindsay, Glen) (Entered: 09/12/2019)
09/12/2019	<u>269</u>	RESPONSE in Opposition re <u>266</u> MOTION to Intervene filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 9/19/2019. (Korvick, Tony) (Entered: 09/12/2019)
09/13/2019	<u>270</u>	Plaintiff's MOTION to Intervene by Newmil Marine, LLC. Attorney Anny Marie Martin added to party Newmil Marine, LLC(pty:intvp). (Attachments: # <u>1</u> Exhibit Verified Intervening Complaint, # <u>2</u> Exhibit Verification, # <u>3</u> Exhibit Invoices)(Martin, Anny) (Entered: 09/13/2019)
09/13/2019	<u>271</u>	RESPONSE in Opposition re <u>270</u> Plaintiff's MOTION to Intervene filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 9/20/2019. (Korvick, Tony) (Entered: 09/13/2019)
09/13/2019	<u>272</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell of <i>Filing U.S. Marshal's Notice of Mailing</i> (Attachments: # <u>1</u> Exhibit Notice of Sale for Oct. 23, 2019, # <u>2</u> Exhibit USM 285 DE 51 for levy on 2-26-19, # <u>3</u> Exhibit Plaintiffs' Affidavit pursuant to Fla Stat 56.27) (Korvick, Tony) Modified Text on 9/16/2019 (ls). (Entered: 09/13/2019)
09/17/2019	<u>273</u>	NOTICE of Compliance <i>Affidavit of Publication of USM Notice of Sales for Sept 4, 2019 vessel sales publication dates 7/29/19; 8/5/19; 8/12/19; 8/19/19</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Korvick, Tony) (Entered: 09/17/2019)
09/19/2019	<u>274</u>	REPLY to Response to Motion re <u>266</u> MOTION to Intervene filed by Satori Fine Linens. Attorney Anny Marie Martin added to party Satori Fine Linens(pty:intvp). (Attachments: # <u>1</u> Exhibit OFAC License application, # <u>2</u> Exhibit Terrorism Claim, # <u>3</u> Exhibit Notice of Sale)(Martin, Anny) (Entered: 09/19/2019)
09/20/2019	<u>275</u>	RESPONSE in Opposition re <u>270</u> Plaintiff's MOTION to Intervene <i>Amended</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 9/27/2019. (Korvick, Tony) (Entered: 09/20/2019)
09/20/2019	<u>276</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell of <i>Filing of Withdrawal of Verified Claims</i> (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit) (Korvick, Tony) (Entered: 09/20/2019)
09/23/2019	<u>277</u>	PAPERLESS ORDER granting <u>265</u> Motion to Appear Pro Hac Vice, Consent to Designation, and Request to Electronically Receive Notices of Electronic Filing for Attorney(s) Melissa E. Byroade. The Clerk shall add pro hac counsel as co-counsel of record for intervenor Six Sis Ltd. The Court also Directs local counsel for the movant to review and update her admission name. All filings in the Court must be filed under the name currently authorized by the Florida Supreme Court. Signed by Magistrate Judge Edwin G. Torres on 9/23/2019. (EGT) (Entered: 09/23/2019)
09/24/2019	<u>278</u>	RESPONSE to Motion re <u>266</u> MOTION to Intervene , <u>270</u> Plaintiff's MOTION to Intervene filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Replies due

		by 10/1/2019. (Lindsay, Glen) (Entered: 09/24/2019)
09/26/2019	<u>279</u>	ORDER ADOPTING REPORT AND RECOMMENDATIONS ; denying <u>97</u> Motion to Dissolve Writ of Garnishment; denying <u>103</u> Motion to Dissolve Writ of Garnishment ; denying <u>109</u> Motion for Summary Judgment; denying <u>109</u> Motion to Dissolve Writ of Execution; denying <u>112</u> Motion to Dissolve Writ of Garnishment ; denying <u>123</u> Motion to Dissolve Writ of Garnishment; denying <u>125</u> Motion to Dissolve Writ of Garnishment; denying <u>134</u> Motion to Dissolve Writ of Garnishment; adopting Report and Recommendations re <u>248</u> Report and Recommendations. Signed by Judge Robert N. Scola, Jr. on 9/25/2019. <i>See attached document for full details.</i> (ls) (Entered: 09/26/2019)
09/27/2019	<u>280</u>	REPLY to Response to Motion re <u>270</u> Plaintiff's MOTION to Intervene filed by Newmil Marine, LLC. (Attachments: # <u>1</u> Exhibit OFAC License Application, # <u>2</u> Exhibit [DE 86] Terrorism Victim Judgment Creditors Verified Claim, # <u>3</u> Exhibit [DE 238-1] Notice of Execution of Sale)(Martin, Anny) (Entered: 09/27/2019)
09/30/2019	<u>281</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell <i>of Improper Case Number Filing in [DE 156] Motion for Preliminary Injunction</i> (Korvick, Tony) (Entered: 09/30/2019)
10/02/2019	<u>282</u>	EXPEDITED MOTION to Allow Pre-Sale Inspection of the Vessel by Michael Karcher. Attorney Michael Ramer Karcher added to party Michael Karcher(pty:mov). (Attachments: # <u>1</u> Exhibit A)(Karcher, Michael) Modified Text on 10/2/2019 (ls). (Entered: 10/02/2019)
10/04/2019	<u>283</u>	Notice of Appeal as to <u>279</u> Order on Report and Recommendations,,, Order on Motion for Miscellaneous Relief,,,,, Order on Motion for Summary Judgment,,,,,,,,,,,,, <u>254</u> Order on Expedited Motion, Order on Report and Recommendations by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Filing fee \$ 505.00 receipt number 113C-12039206. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Lindsay, Glen) (Entered: 10/04/2019)
10/07/2019	<u>284</u>	"STRICKEN" STATUS REPORT <i>Plaintiffs' Status Report on Pending Turnover Motions</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Porter, Newton) Modified on 10/9/2019 (ls). (Stricken per DE #288) (Entered: 10/07/2019)
10/07/2019	<u>285</u>	Renewed EXPEDITED MOTION To Allow Pre-Sale Inspection of Vessel by Michael Karcher. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Text of Proposed Order)(Karcher, Michael). Added MOTION for Hearing on 10/8/2019 (ls). (Entered: 10/07/2019)
10/07/2019		Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>283</u> Notice of Appeal. Notice has been electronically mailed. (hh) (Entered: 10/07/2019)
10/07/2019	<u>286</u>	"STRICKEN" STATUS REPORT <i>by Intervenors in Response to Plaintiffs' Status Report</i> by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation (Lindsay, Glen) Modified on 10/9/2019 (ls). (Stricken per DE #288) (Entered: 10/07/2019)
10/08/2019	<u>287</u>	Clerks Notice to Filer re <u>285</u> Renewed EXPEDITED MOTION To Allow Pre-Sale Inspection of Vessel . Motion with Multiple Reliefs Filed as One Relief ; ERROR – The Filer selected only one relief event and failed to select the additional corresponding events for each relief requested in the motion. The docket entry was corrected by the Clerk. It is not necessary to refile this document but future filings must comply with the instructions in the CM/ECF Attorney User's Manual. (ls) (Entered: 10/08/2019)
10/08/2019	<u>288</u>	PAPERLESS ORDER STRIKING <u>284</u> Status Report filed by Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Michael Janis, Christopher T. Janis, <u>286</u> Status Report, filed by 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 63-F LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation.

		<p>These "status reports" are procedurally improper attempts to circumvent the requirements of Rule 7.1. They are therefore stricken.</p> <p>Signed by Magistrate Judge Edwin G. Torres on 10/8/2019. (EGT) (Entered: 10/08/2019)</p>
10/09/2019	289	<p>PAPERLESS ORDER denying as moot <u>282</u> Expedited Motion for Allow Inspection.</p> <p>Signed by Magistrate Judge Edwin G. Torres on 10/9/2019. (EGT) (Entered: 10/09/2019)</p>
10/09/2019	290	<p>PAPERLESS ORDER granting in part <u>285</u> Expedited Motion to Allow Inspection; denying <u>285</u> Motion for Hearing.</p> <p>Any interested party who seeks to inspect the vessel seized by the U.S. Marshal, M/V WAKU, is Granted leave to do so on 10/17/2019 in the hours of 10:00 a.m. to 1:00 p.m. The Marshal is Directed to make the vessel available for inspection by persons/entities that the Marshal permits to board the vessel and under conditions imposed by the Marshal and/or the custodian. No other inspection of the vessel shall be permitted outside of this period of time.</p> <p>Signed by Magistrate Judge Edwin G. Torres on 10/9/2019. (EGT) (Entered: 10/09/2019)</p>
10/09/2019	<u>291</u>	<p>MOTION Omnibus Motion Seeking to Preclude Issuance of an Order On Plaintiffs Motions For Summary Judgment, Motion to Preclude Treble Damages, and Motion for Accounting by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Attachments: # <u>1</u> Memorandum, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 10/09/2019)</p>
10/10/2019	292	<p>PAPERLESS ORDER denying <u>291</u> Motion "to Preclude Issuance of an Order."</p> <p>The motion is facially meritless. The Court decides when and how it adjudicates motions pending before it and subject to its jurisdiction over an action. Defendants believe that their filing of a notice of an appeal of a non-final Order "divests" this Court of jurisdiction, notwithstanding the fact leave to file an interlocutory appeal has not yet been granted by the Court of Appeals nor properly filed in this District. See 28 U.S.C. 1292. The Court will proceed to adjudicate any matters that are subject to the Court's jurisdiction. If Defendants disagree, and a final Order is entered, an appeal may lie.</p> <p>To the extent the motion is a motion to stay through creative captioning, both the District Court and the Court of Appeals previously denied motions to stay related rulings in the action. The pending document sets forth no good cause why Defendants are entitled to another bite at the same rotten apple. The motion, if intended to be another motion to stay, is Stricken.</p> <p>Counsel in this case are reminded that frivolous or vexatious filings in this action may be sanctioned under 28 U.S.C. s. 1927 and the Court's inherent powers. Motions such as this, or the "status reports" unilaterally filed on the docket by counsel, fall in that category.</p> <p>Signed by Magistrate Judge Edwin G. Torres on 10/10/2019. (EGT) (Entered: 10/10/2019)</p>
10/17/2019	<u>293</u>	<p>MOTION to Vacate 292 Order on Motion for Miscellaneous Relief,,,,, <i>Objections Pursuant to Rule 72</i> by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Responses due by 10/31/2019 (Lindsay, Glen) (Entered: 10/17/2019)</p>
10/18/2019	<u>294</u>	<p>Acknowledgment of Receipt of NOA from USCA re <u>283</u> Notice of Appeal, filed by 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 63-F LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Date received by USCA: 10/7/19. USCA Case Number: 19-13957-H. (hh) (Entered: 10/18/2019)</p>
10/18/2019	<u>295</u>	<p>NOTICE of Pending Motions by Satori Fine Linens re <u>266</u> MOTION to Intervene , <u>270</u> Plaintiff's MOTION to Intervene (Martin, Anny) Modified Text on 10/21/2019 (ls). (Entered: 10/18/2019)</p>

10/23/2019	<u>296</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell <i>of Receipt of Sale Proceeds from September 4, 2019 U.S. Marshal Vessel Sales</i> (Korvick, Tony) (Entered: 10/23/2019)
10/23/2019	<u>297</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell <i>of Completion of October 23, 2019 U.S. Marshals Vessel Sale</i> (Korvick, Tony) (Entered: 10/23/2019)
10/23/2019	<u>298</u>	Plaintiff's MOTION to Withdraw Document <u>270</u> Plaintiff's MOTION to Intervene by Newmil Marine, LLC. Responses due by 11/6/2019 (Martin, Anny) (Entered: 10/23/2019)
10/23/2019	<u>299</u>	Plaintiff's MOTION to Withdraw Document <u>266</u> MOTION to Intervene by Satori Fine Linens. Responses due by 11/6/2019 (Martin, Anny) (Entered: 10/23/2019)
10/24/2019	<u>300</u>	TRANSCRIPT INFORMATION FORM by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation re <u>283</u> Notice of Appeal,,,. No Transcript Requested. (Lindsay, Glen) (Entered: 10/24/2019)
10/24/2019	<u>301</u>	RESPONSE in Opposition re <u>293</u> MOTION to Vacate 292 Order on Motion for Miscellaneous Relief,,,,, <i>Objections Pursuant to Rule 72</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 10/31/2019. (Porter, Newton) Modified Link on 10/25/2019 (ls). (Entered: 10/24/2019)
10/25/2019	302	PAPERLESS ORDER granting <u>298</u> Motion to Withdraw motion; granting <u>299</u> Motion to Withdraw motion; denying as moot <u>266</u> Motion to Intervene ; denying as moot <u>270</u> Motion to Intervene. Signed by Magistrate Judge Edwin G. Torres on 10/25/2019. (EGT) (Entered: 10/25/2019)
10/29/2019	<u>303</u>	REPLY to Response to Motion re <u>293</u> MOTION to Vacate 292 Order on Motion for Miscellaneous Relief,,,,, <i>Objections Pursuant to Rule 72</i> filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, Samark Jose Lopez Bello, Yakima Trading Corporation. (Lindsay, Glen) (Entered: 10/29/2019)
10/30/2019	<u>304</u>	United States Marshal Return on Order of Sale, Sale Date 10/23/2019 (ls) (Entered: 10/30/2019)
10/30/2019	<u>305</u>	Notice of Supplemental Authority re <u>301</u> Response in Opposition to Motion, by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Korvick, Tony) (Entered: 10/30/2019)
11/01/2019	<u>306</u>	NOTICE of Compliance <i>Affidavit of Publication of USM Notice of Sales for October 23, 2019 vessel sale—publication dates 9/16/19, 9/23/19, 9/30/19 and 10/7/19</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Korvick, Tony) (Entered: 11/01/2019)
11/12/2019	<u>307</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell <i>NOTICE OF RECEIPT OF SALE PROCEEDS FROM OCTOBER 23, 2019 U.S. MARSHAL VESSEL SALE</i> (Korvick, Tony) (Entered: 11/12/2019)
01/08/2020	<u>308</u>	Notification of Ninety Days Expiring <i>LOCAL RULE 7.1(b)(4) NOTICE REGARDING PENDING MOTIONS</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Korvick, Tony) (Entered: 01/08/2020)
01/09/2020	309	Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Southern District of Florida certifies that the record is complete for purposes of this appeal re: <u>283</u> Notice of Appeal, Appeal No. 19-13957-HH. The entire record on appeal is available electronically. (hh) (Entered: 01/09/2020)
01/22/2020	<u>310</u>	Notice of Supplemental Authority <i>REGARDING ELEVENTH CIRCUITS JANUARY 21, 2020 AFFIRMANCE OF DISTRICT COURT</i> by Marc Gonsalves, Thomas Howes,

		Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Attachments: # <u>1</u> Exhibit 11th Circuit decision Jan. 21, 2020 affirming district court) (Korvick, Tony) (Entered: 01/22/2020)
02/27/2020	<u>311</u>	NOTICE of Attorney Appearance by Kerry Anne Zinn on behalf of UBS Financial Services Inc.. Attorney Kerry Anne Zinn added to party UBS Financial Services Inc.(pty:gar). (Zinn, Kerry) (Entered: 02/27/2020)
03/05/2020	<u>312</u>	ORDER of Dismissal of USCA, in light of the responses to the Jurisdictional Question, this appeal is DISMISSED for lack of jurisdiction. The district court did not enter a final decision in these proceedings because the district court did not enter turnover judgments or direct the disposition of property (see order for details) as to <u>283</u> Notice of Appeal, filed by 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 63-F LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. USCA # 19-13957-HH (hh) (Entered: 03/05/2020)
03/16/2020	<u>313</u>	Writ of Execution issued as to Samark Lopez Bello and/or MFAA Holdings, Ltd. (ls) (Entered: 03/16/2020)
03/16/2020	<u>314</u>	Defendant's MOTION to Stay re <u>155</u> Plaintiff's MOTION for Judgment / <i>Tria Turnover Judgment on Garnishee Branch Banking and Trust Company Answer [DE 71] and Memorandum of Law</i> , <u>120</u> Plaintiff's MOTION for Judgment <i>Tria Turnover Judgment on Garnishee RJA Financial Services, Inc. Answer [DE 61]</i> , <u>116</u> Plaintiff's MOTION for Judgment <i>Motion for TRIA Turnover Judgment on Garnishee UBS Financial Services, Inc. Sealed Answer DE 58</i> , <u>177</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE CITIBANK, N.A. ANSWER [DE 87]</i> , <u>170</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE SAFRA NATIONAL BANK OF NEW YORK ANSWER [DE 78]</i> by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, Samark Jose Lopez Bello. Responses due by 3/30/2020 (Attachments: # <u>1</u> Memorandum, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 03/16/2020)
03/18/2020	<u>315</u>	US Marshal's NOTICE of LEVY as to Writ of Execution DE 313 on Blocked Real Property at 325 Leucadendra Drive, Coral Gables FL (Korvick, Tony) (Entered: 03/18/2020)
03/18/2020	<u>316</u>	RESPONSE in Opposition re <u>314</u> Defendant's MOTION to Stay re <u>155</u> Plaintiff's MOTION for Judgment / <i>Tria Turnover Judgment on Garnishee Branch Banking and Trust Company Answer [DE 71] and Memorandum of Law</i> , <u>120</u> Plaintiff's MOTION for Judgment filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 3/25/2020. (Korvick, Tony) (Entered: 03/18/2020)
03/18/2020	<u>317</u>	NOTICE of Striking <u>316</u> Response in Opposition to Motion, filed by Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Michael Janis, Christopher T. Janis for <i>Scrivener's Error</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell (Korvick, Tony) (Entered: 03/18/2020)
03/18/2020	<u>318</u>	RESPONSE in Opposition re <u>314</u> Defendant's MOTION to Stay re <u>155</u> Plaintiff's MOTION for Judgment / <i>Tria Turnover Judgment on Garnishee Branch Banking and Trust Company Answer [DE 71] and Memorandum of Law</i> , <u>120</u> Plaintiff's MOTION for Judgment <i>CORRECTED FOR SCRIVENER'S ERROR</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 3/25/2020. (Korvick, Tony) (Entered: 03/18/2020)
03/19/2020	<u>319</u>	Writ of Execution Returned (ls) (Entered: 03/19/2020)
03/20/2020	<u>320</u>	NOTICE of Attorney Appearance by Glen Matthew Lindsay on behalf of Leucadendra 325, LLC. Attorney Glen Matthew Lindsay added to party Leucadendra 325, LLC(pty:clm). (Lindsay, Glen) (Entered: 03/20/2020)
03/20/2020	<u>321</u>	AFFIDAVIT PURSUANT TO FLORIDA STATUTE § 56.16 signed by: Jeffrey M. Scott, Esq. re <u>315</u> Notice of Levy/Deed, <u>319</u> Writ of Execution Returned by Leucadendra 325, LLC (Lindsay, Glen) (Entered: 03/20/2020)

03/23/2020	<u>322</u>	<p>REPORT AND RECOMMENDATIONS re <u>155</u> Plaintiff's MOTION for Judgment /<i>Tria Turnover Judgment on Garnishee Branch Banking and Trust Company Answer [DE 71] and Memorandum of Law</i> filed by Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Michael Janis, Christopher T. Janis, <u>168</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE MORGAN STANLEY SMITH BARNEY LLC ANSWER [DE 76]</i> filed by Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Michael Janis, Christopher T. Janis, <u>120</u> Plaintiff's MOTION for Judgment <i>Tria Turnover Judgment on Garnishee RJA Financial Services, Inc. Answer [DE 61]</i> filed by Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Michael Janis, Christopher T. Janis, <u>116</u> Plaintiff's MOTION for Judgment <i>Motion for TRIA Turnover Judgment on Garnishee UBS Financial Services, Inc. Sealed Answer DE 58</i> filed by Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Michael Janis, Christopher T. Janis, <u>170</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE SAFRA NATIONAL BANK OF NEW YORK ANSWER [DE 78]</i> filed by Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Michael Janis, Christopher T. Janis:</p> <p><i>Recommending Motions be GRANTED; Objections to R&R extended through 4/13/2020 for good cause shown.</i></p> <p>Signed by Magistrate Judge Edwin G. Torres on 3/23/2020. <i>See attached document for full details.</i> (EGT) (Entered: 03/23/2020)</p>
03/23/2020	<u>323</u>	<p>REPORT AND RECOMMENDATIONS re <u>174</u> MOTION to Dismiss for Lack of Jurisdiction <u>126</u> Answer to Complaint,, Crossclaim,, Counterclaim, MOTION to Change Venue filed by Samark Jose Lopez Bello, Yakima Trading Corporation, <u>177</u> Plaintiff's MOTION for Judgment <i>MOTION FOR ENTRY OF TRIA TURNOVER JUDGMENT ON GARNISHEE CITIBANK, N.A. ANSWER [DE 87]</i> filed by Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Michael Janis, Christopher T. Janis, <u>152</u> Plaintiff's MOTION to Dismiss <u>126</u> Answer to Complaint,, Crossclaim,, Counterclaim, filed by Keith Stansell, Marc Gonsalves, Jonathan N. Janis, Judith Janis, Thomas Howes, Michael Janis, Christopher T. Janis:</p> <p><i>Recommending <u>152</u> Motion to Dismiss Interpleader Claims be DENIED as moot; <u>174</u> Motion to Transfer Writ and Interpleader Claims to SDNY be GRANTED; <u>174</u> Motion to Dismiss be DENIED as moot; <u>177</u> Motion for Entry of TRIA Turnover Judgment be DENIED as moot; Objections to R&R extended through 4/13/2020 for good cause.</i></p> <p>Signed by Magistrate Judge Edwin G. Torres on 3/23/2020. <i>See attached document for full details.</i> (EGT) (Entered: 03/23/2020)</p>
03/24/2020	<u>324</u>	Writ of Execution Returned (ls) (Entered: 03/24/2020)
03/26/2020	<u>325</u>	MOTION to Declare FL Stat. 56.16–56.20 as applied to TRIA unconstitutional or in alternative to Waive Bond Provisions re <u>319</u> Writ of Execution Returned by Leucadendra 325, LLC, Samark Jose Lopez Bello. (Attachments: # <u>1</u> Memorandum, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 03/26/2020)
03/26/2020	<u>326</u>	DEMAND for Trial by Jury by Leucadendra 325, LLC, Samark Jose Lopez Bello (Lindsay, Glen) (Entered: 03/26/2020)
04/03/2020	<u>327</u>	MOTION to Strike <u>313</u> Writ of Execution <i>and Remove the Levy on 325 Leucadendra Drive</i> by Leucadendra 325, LLC. Responses due by 4/17/2020 (Attachments: # <u>1</u> Memorandum, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 04/03/2020)
04/09/2020	<u>328</u>	RESPONSE in Opposition re <u>327</u> MOTION to Strike <u>313</u> Writ of Execution <i>and Remove the Levy on 325 Leucadendra Drive</i> , <u>325</u> MOTION to Declare FL Stat. 56.16–56.20 as applied to TRIA unconstitutional or in alternative to Waive Bond Provisions re <u>319</u> Writ of Execution Returned <i>CONSOLIDATED</i> filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 4/16/2020. (Attachments: # <u>1</u> Exhibit OFAC License, # <u>2</u> Exhibit OFAC License, # <u>3</u> Exhibit OFAC License, # <u>4</u> Exhibit OFAC Blocking Notice to Leucadendra 325 LLC, # <u>5</u> Exhibit Property Appraiser Report, # <u>6</u> Exhibit Miami–Dade Property Tax Bill, # <u>7</u> Exhibit Lopez Bello Application Letter, # <u>8</u> Exhibit MFAA Share Certificate, # <u>9</u> Exhibit MFAA relocation–renaming, # <u>10</u> Exhibit MFAA 100% owner of Leucadendra

		325 LLC)(Korvick, Tony) (Entered: 04/09/2020)
04/13/2020	<u>329</u>	OBJECTIONS to <u>323</u> Report and Recommendations <i>Regarding Citibank Account</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Korvick, Tony) (Entered: 04/13/2020)
04/13/2020	<u>330</u>	OBJECTIONS to <u>322</u> Report and Recommendations by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Leucadendra 325, LLC, Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Lindsay, Glen) (Entered: 04/13/2020)
04/16/2020	<u>331</u>	REPLY to Response to Motion re <u>327</u> MOTION to Strike <u>313</u> Writ of Execution <i>and Remove the Levy on 325 Leucadendra Drive</i> , <u>325</u> MOTION to Declare FL Stat. 56.16-56.20 as applied to TRIA unconstitutional or in alternative to Waive Bond Provisions re <u>319</u> Writ of Execution Returned filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Leucadendra 325, LLC, Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Lindsay, Glen) (Entered: 04/16/2020)
04/17/2020	<u>332</u>	MANDATE of USCA (certified copy). AFFIRM Orders of the district court with court's opinion re <u>255</u> Notice of Appeal, filed by 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 63-F LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation, <u>144</u> Notice of Appeal, filed by 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 63-F LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation; Date Issued: 4/17/2020; USCA Case Number: 19-11415-HH. (apz) (Entered: 04/17/2020)
04/27/2020	<u>333</u>	RESPONSE to Motion re <u>323</u> REPORT AND RECOMMENDATIONS re <u>174</u> MOTION to Dismiss for Lack of Jurisdiction <u>126</u> Answer to Complaint,, Crossclaim,, Counterclaim, MOTION to Change Venue filed by Samark Jose Lopez Bello, Yakima Trading Corporation, <u>177</u> Pl filed by Citibank N.A.. Replies due by 5/4/2020. (Campbell, Dennis) (Entered: 04/27/2020)
04/27/2020	<u>334</u>	OBJECTIONS to <u>323</u> Report and Recommendations by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Lindsay, Glen) (Entered: 04/27/2020)
04/27/2020	<u>335</u>	RESPONSE TO OBJECTION to <u>322</u> Report and Recommendations by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Porter, Newton) (Entered: 04/27/2020)
04/27/2020	<u>336</u>	RESPONSE TO OBJECTION to <u>323</u> Report and Recommendations (<i>selected filing event corrected</i>) by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Lindsay, Glen) (Entered: 04/27/2020)
04/27/2020	<u>337</u>	RESPONSE TO OBJECTION to <u>323</u> Report and Recommendations by Citibank N.A.. (ls)(See Image at DE #333) (Entered: 04/28/2020)
04/28/2020	<u>338</u>	Clerks Notice to Filer re <u>333</u> Response to Motion,. Wrong Event Selected; ERROR – The Filer selected the wrong event. The document was re-docketed by the Clerk, see [de#337]. It is not necessary to refile this document. (ls) (Entered: 04/28/2020)
04/29/2020	<u>339</u>	ORDER Adopting <u>322</u> Report and Recommendation, and it grants the Plaintiffs' motions seeking entry of final turnover judgments (ECF Nos. 116, 120, 155, 168, 170). Certificate of Appealability: No Ruling. Signed by Judge Robert N. Scola, Jr on 4/29/2020. <i>See attached document for full details.</i> (scn) (Entered: 04/30/2020)
04/29/2020	<u>340</u>	ORDER Affirming and Adopting <u>323</u> Report and Recommendation. Certificate of Appealability: No Ruling. Signed by Judge Robert N. Scola, Jr on 4/29/2020. <i>See attached document for full details.</i> (scn) (Entered: 04/30/2020)
05/06/2020	<u>341</u>	Notice of Appeal <i>Order dated April 30, 2020 ECF NO. 339 (attached hereto as Exhibit A) Adopting Report and Recommendation (ECF NO. 322) (attached hereto as Exhibit B) granting Plaintiffs motions seeking entry of final turnover judgments (ECF Nos. 116, 120,</i>

		155, 168, 170); (ii) Order dated September 26, 2019 ECF NO. <u>279</u> (attached hereto as Exhibit C) Adopting Report and Recommendation (ECF NO. 248)(attached hereto as Exhibit D) denying six motions seeking dissolution of writs of garnishment (ECF Nos. 97, 103, 112, 123, 125, 134) and a motion for summary judgment (ECF No. 109); (iii) Order Dated August 21, 2019 ECF No. <u>247</u> (denying Motion to Administratively Terminate this Matter Pending Appeal)(attached hereto as Exhibit E); and all other interlocutory and collateral orders that preceded the April 30, 2020 Order. by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Filing fee \$ 505.00 receipt number AFLSDC-12848068. Within fourteen days of the filing date of a Notice of Appeal, the appellant must complete the Eleventh Circuit Transcript Order Form regardless of whether transcripts are being ordered [Pursuant to FRAP 10(b)]. For information go to our FLSD website under Transcript Information. (Lindsay, Glen) (linked docket entry) Modified text on 5/6/2020 (apz). (Entered: 05/06/2020)
05/06/2020		Transmission of Notice of Appeal, Orders under appeal and Docket Sheet to US Court of Appeals re <u>341</u> Notice of Appeal, Notice has been electronically mailed. (apz) (Entered: 05/06/2020)
05/06/2020	<u>342</u>	Unopposed MOTION for clarification <u>339</u> Order on Report and Recommendations, by Safra National Bank of New York. Responses due by 5/20/2020 (Attachments: # <u>1</u> Exhibit A)(Puggina, Daniela) (Entered: 05/06/2020)
05/06/2020	<u>343</u>	TRANSCRIPT INFORMATION FORM by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation re <u>341</u> Notice of Appeal,,,,,. No Transcript Requested. (Lindsay, Glen) (Entered: 05/06/2020)
05/06/2020	<u>344</u>	EXPEDITED MOTION Motion to Stay and Waive Bond or Security Pending Appeal of May 6, 2020 (<i>seeking Relief by 5/11/2020</i>) re <u>341</u> Notice of Appeal,,,,, Transmission of Notice of Appeal and Docket Sheet to USCA by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Lindsay, Glen) (Entered: 05/06/2020)
05/07/2020	345	Clerks Notice to Filer re <u>344</u> EXPEDITED MOTION Motion to Stay and Waive Bond or Security Pending Appeal of May 6, 2020 (<i>seeking Relief by 5/11/2020</i>) re <u>341</u> Notice of Appeal,,,,, Transmission of Notice of Appeal and Docket Sheet to USCA. Proposed Order Docketed as Main Document ; CORRECTIVE ACTION REQUIRED – Filer must File a Notice of Striking, then resubmit the proposed order as instructed in the CM/ECF Administrative Procedures (ls) (Entered: 05/07/2020)
05/07/2020	<u>346</u>	NOTICE of Striking <u>344</u> EXPEDITED MOTION to Stay and Waive Bond or Security Pending Appeal of May 6, 2020 (seeking Relief by 5/11/2020) re <u>341</u> Notice of Appeal,,,,, Transmission of Notice of Appeal and Docket Sheet to USCA by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation, Yakima Trading Corporation (Lindsay, Glen) Modified Link on 5/7/2020 (ls). (Entered: 05/07/2020)
05/07/2020	<u>347</u>	NOTICE of Striking <u>344</u> EXPEDITED MOTION Motion to Stay and Waive Bond or Security Pending Appeal of May 6, 2020 (<i>seeking Relief by 5/11/2020</i>) re <u>341</u> Notice of Appeal,,,,, Transmission of Notice of Appeal and Docket Sheet to USCA filed by 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 63-F LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation <i>to be refiled per Order of Clerk</i> by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation, Yakima Trading Corporation (Lindsay, Glen) (Entered: 05/07/2020)
05/07/2020	348	Clerks Notice to Filer re <u>346</u> Notice of Striking,. Incorrect Document Link ; ERROR – The filed document was not correctly linked to the related docket entry. The correction was made by the Clerk. It is not necessary to refile this document but future filings must

		comply with the instructions in the CM/ECF Attorney User's Manual. (ls) (Entered: 05/07/2020)
05/07/2020	<u>349</u>	Expedited Motion to Waive the Bond Requirement by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Attachments: # <u>1</u> Text of Proposed Order # <u>2</u> Affidavit EX A. Declaration of Lopez, # <u>3</u> Affidavit EX B. Declaration of Jeffrey M. Scott, # <u>4</u> Exhibit Ex C. OFAC Program Description)(Lindsay, Glen) Modified Relief on 5/7/2020 (ls) (Entered: 05/07/2020)
05/07/2020	350	Clerks Notice to Filer re <u>349</u> EXPEDITED MOTION Motion to Stay and Waive Bond or Security Pending Appeal of May 6, 2020 <i>corrected filing</i> re <u>347</u> Notice of Striking,,, <u>344</u> EXPEDITED MOTION Motion to Stay and Waive Bond or Security Pending Appeal of May 6, 2020 (<i>see. Motion with Multiple Reliefs Filed as One Relief; ERROR – The Filer selected only one relief event and failed to select the additional corresponding events for each relief requested in the motion. The docket entry was corrected by the Clerk. It is not necessary to refile this document but future filings must comply with the instructions in the CM/ECF Attorney User's Manual. AND Incorrect Document Link; ERROR – The filed document was not correctly linked to the related docket entry. The correction was made by the Clerk. It is not necessary to refile this document but future filings must comply with the instructions in the CM/ECF Attorney User's Manual.</i>) (ls) (Entered: 05/07/2020)
05/07/2020	351	Expedited MOTION to Stay the Enforcement of the Judgment pending Appeal re <u>341</u> Notice of Appeal,,,,, by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation. Responses due by 5/21/2020 (ls)(See Image at DE #349) (Entered: 05/07/2020)
05/07/2020	352	PAPERLESS ORDER: <i>granting</i> Safra National Bank's motion for clarification <u>342</u> , and clarifies the following: (1) the account referenced in the order is account XXX5131 in the name of Mr. Bello with a balance of \$8,911,320.71; (2) final judgment of garnishment was only entered on account XXX5131; (3) Safra National Bank should not turn over the funds in account XXX5158 in the name of PYP International LLC; (4) upon turnover of the funds in the accounts subject to garnishment, Safra National Bank is authorized to close such account(s) and (5) Safra National Bank and its counsel are fully and finally released, discharged, and absolved from any liability under the Writ. Signed by Judge Robert N. Scola, Jr. (dka) (Entered: 05/07/2020)
05/08/2020	<u>353</u>	RESPONSE in Opposition re 351 MOTION to Stay re <u>341</u> Notice of Appeal,,,,, <u>349</u> Expedited Motion to Waive the Bond Requirement <i>filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 5/15/2020. (Porter, Newton)</i> (Entered: 05/08/2020)
05/09/2020	<u>354</u>	REPLY to Response to Motion re 351 MOTION to Stay re <u>341</u> Notice of Appeal,,,,, <u>349</u> Expedited Motion to Waive the Bond Requirement <i>filed by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Leucadendra 325, LLC, Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Lindsay, Glen)</i> (Entered: 05/09/2020)
05/13/2020	<u>355</u>	Acknowledgment of Receipt of NOA from USCA re <u>341</u> Notice of Appeal, filed by 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 63-F LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. Date received by USCA: 5/6/2020. USCA Case Number: 20-11736-G. (apz) (Entered: 05/14/2020)
05/15/2020	<u>356</u>	TRANSCRIPT INFORMATION FORM by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, Yakima Trading Corporation re <u>341</u> Notice of Appeal,,,,,. No Transcript Requested. (Lindsay, Glen) (Entered: 05/15/2020)
06/02/2020	<u>357</u>	CERTIFICATE OF SERVICE by Keith Stansell <i>U.S. Marshal's Certificate of Mailing under Fla Stat 56.21</i> (Attachments: # <u>1</u> Exhibit Notice of Sale, # <u>2</u> Exhibit USM 285 levy, # <u>3</u> Exhibit Plaintiffs' Affidavit Pursuasnt to Fla Stat 56.27)(Korvick, Tony) (Entered: 06/02/2020)

06/02/2020	<u>358</u>	ORDER Denying Motion for Stay Pending Appeal denying <u>349</u> Expedited Motion to Waive the Bond Requirement ; denying 351 Expedited Motion to Stay the Enforcement of the Judgment pending Appeal. Signed by Judge Robert N. Scola, Jr. on 6/2/2020. <i>See attached document for full details.</i> (ls) (Entered: 06/03/2020)
06/09/2020	359	PAPERLESS ORDER: <i>denying as moot</i> the Defendants' motion to vacate Judge Torres's paperless order denying their motion to preclude issuance of an order. <u>293</u> . In light of the Court's order adopting Judge Torres's report and recommendation granting the Plaintiffs' motion for entry of final turnover judgment, the motion to vacate (styled as objections) Judge Torress paperless order is moot. Signed by Judge Robert N. Scola, Jr. (dka) (Entered: 06/09/2020)
06/10/2020		SYSTEM ENTRY – Docket Entry 360 [motion] restricted/sealed until further notice. (522115) (Entered: 06/10/2020)
06/12/2020	<u>361</u>	MOTION for Reconsideration re <u>358</u> Order on Motion for Miscellaneous Relief,, Order on Motion to Stay, by 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Samark Jose Lopez Bello, MFAA Holdings Limited, Yakima Trading Corporation. (Attachments: # <u>1</u> Memorandum, # <u>2</u> Text of Proposed Order)(Lindsay, Glen) (Entered: 06/12/2020)
06/15/2020	<u>362</u>	RESPONSE in Opposition re <u>361</u> MOTION for Reconsideration re <u>358</u> Order on Motion for Miscellaneous Relief,, Order on Motion to Stay, filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. Replies due by 6/22/2020. (Porter, Newton) (Entered: 06/15/2020)
06/15/2020	<u>363</u>	NOTICE of Attorney Appearance by Adam Seth Fels on behalf of 1425 Brickell Ave 63–F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC, 200G PSA Holdings LLC, EPBC Holdings, Ltd., Leucadendra 325, LLC, Samark Jose Lopez Bello, Yakima Trading Corporation. Attorney Adam Seth Fels added to party 1425 Brickell Ave 63–F LLC(pty:intv), Attorney Adam Seth Fels added to party 1425 Brickell Ave 64E LLC(pty:intv), Attorney Adam Seth Fels added to party 1425 Brickell Ave Unit 46B LLC(pty:intv), Attorney Adam Seth Fels added to party 200G PSA Holdings LLC(pty:intv), Attorney Adam Seth Fels added to party EPBC Holdings, Ltd.(pty:intv), Attorney Adam Seth Fels added to party Leucadendra 325, LLC(pty:clm), Attorney Adam Seth Fels added to party Samark Jose Lopez Bello(pty:crd), Attorney Adam Seth Fels added to party Samark Jose Lopez Bello(pty:intv), Attorney Adam Seth Fels added to party Yakima Trading Corporation(pty:intv), Attorney Adam Seth Fels added to party Yakima Trading Corporation(pty:crd). (Fels, Adam) (Entered: 06/15/2020)
06/15/2020	<u>364</u>	NOTICE by UBS Financial Services Inc. of <i>Withdrawal as Counsel Alise Johnson Henry, Esq. as Counsel for Garnishee</i> (Zinn, Kerry) Modified Text on 6/15/2020 (ls). (Entered: 06/15/2020)
06/15/2020	365	Clerks Notice to Filer re <u>364</u> Notice (Other). Docket Text Does Not Match Document; ERROR – The Filer failed to enter a title in the docket text that matches the title of the document. The correction was made by the Clerk. It is not necessary to refile the document. (ls) (Entered: 06/15/2020)
06/15/2020		Attorney Alise Meredith Johnson terminated. (ls)(per DE #364) (Entered: 06/15/2020)
06/15/2020	<u>366</u>	ORDER denying <u>361</u> Motion for Reconsideration. Signed by Judge Robert N. Scola, Jr on 6/15/2020. <i>See attached document for full details.</i> (scn) (Entered: 06/15/2020)
06/17/2020		SYSTEM ENTRY – Docket Entry 367 [order] restricted/sealed until further notice. (mc) (Entered: 06/17/2020)
06/17/2020		SYSTEM ENTRY – Docket Entry 368 [misc] restricted/sealed until further notice. (mc) (Entered: 06/17/2020)
06/17/2020		SYSTEM ENTRY – Docket Entry 369 [misc] restricted/sealed until further notice. (mc) (Entered: 06/17/2020)
06/17/2020		SYSTEM ENTRY – Docket Entry 370 [misc] restricted/sealed until further notice. (mc) (Entered: 06/17/2020)
06/17/2020		SYSTEM ENTRY – Docket Entry 371 [misc] restricted/sealed until further notice. (mc) (Entered: 06/17/2020)

06/19/2020	<u>372</u>	EXPEDITED MOTION To Allow Pre-Sale Property Inspection by Right Meow LLC. Attorney Christopher B Spuches added to party Right Meow LLC(pty:ip). (Spuches, Christopher) (Entered: 06/19/2020)
06/22/2020	<u>373</u>	NOTICE by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell of <i>Filing Eleventh Circuit Opinion Denying Lopez Bello Claimants' Emergency Motion to Stay and to Waive Bond</i> (Attachments: # <u>1</u> Exhibit June 19, 2020 Opinon 11th USCA Denying Emergency Motion to Stay and to Waive Bond) (Porter, Newton) (Entered: 06/22/2020)
06/22/2020	<u>374</u>	NOTICE of Compliance <i>GARNISHEE RAYMOND JAMES & ASSOCIATES, INC.s COMPLIANCE & SATISFACTION OF TURNOVER JUDGMENT & DISCHARGE</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell re <u>339</u> Order on Report and Recommendations, (Korvick, Tony) (Entered: 06/22/2020)
06/22/2020	375	PAPERLESS ORDER: <i>granting</i> the potential bidder Right Meow Funding LLC's expedited motion to allow pre-sale property inspection. The potential bidder may inspect the property 325 Leucadendra Drive in Coral Gables prior to the July 7, 2020 auction sale date. Signed by Judge Robert N. Scola, Jr. (dka) (Entered: 06/22/2020)
06/23/2020	<u>376</u>	EXPEDITED MOTION for Paperless Order to Enforce Turnover Judgment against Garnishee UBS Financial Services, Inc. re <u>339</u> Order on Report and Recommendations, by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Korvick, Tony) Modified Text on 6/23/2020 (ls). (Entered: 06/23/2020)
06/23/2020	<u>377</u>	EXPEDITED MOTION for Paperless Order to Enforce Turnover Judgment against Garnishees Morgan Stanley Smith Barney LLC and Safra National Bank of New York re <u>339</u> Order on Report and Recommendations, by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Korvick, Tony) (Entered: 06/23/2020)
06/23/2020	<u>378</u>	MOTION for Discharge from Liability re <u>339</u> Order on Report and Recommendations, by UBS Financial Services Inc.. (Attachments: # <u>1</u> Text of Proposed Order)(Zinn, Kerry) (Entered: 06/23/2020)
06/23/2020	<u>379</u>	RESPONSE in Support re <u>378</u> MOTION for Discharge from Liability re <u>339</u> Order on Report and Recommendations, filed by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell. (Porter, Newton) (Entered: 06/23/2020)
06/23/2020	380	PAPERLESS ORDER: <i>granting</i> the Plaintiffs' motion to enforce turnover judgment against garnishee UBS Financial Services, Inc. <u>376</u> . Garnishee UBS FINANCIAL SERVICES, INC. shall turnover to Plaintiffs' counsel the subject assets described in the final turnover judgment (ECF No. 339) within 48 hours, including the sale proceeds of the liquidated securities in the UBS account. Garnishee shall be discharged from liability under the writ and judgment after full turnover to Plaintiffs in compliance with the Court's April 30, 2020 turnover judgment. Signed by Judge Robert N. Scola, Jr. (dka) (Entered: 06/23/2020)
06/23/2020	<u>381</u>	NOTICE of Compliance <i>GARNISHEE BRANCH BANKING & TRUST CO. COMPLIANCE & SATISFACTION OF TURNOVER JUDGMENT & DISCHARGE</i> by Marc Gonsalves, Thomas Howes, Christopher T. Janis, Jonathan N. Janis, Judith Janis, Michael Janis, Keith Stansell re <u>339</u> Order on Report and Recommendations, (Korvick, Tony) (Entered: 06/23/2020)
06/23/2020	382	PAPERLESS ORDER: <i>granting</i> the Plaintiffs' motion to enforce final turnover judgment against the Garnishees Morgan Stanley Smith Barney LLC and SAFRA National Bank of New York. <u>377</u> . The Garnishees MORGAN STANLEY SMITH BARNEY LLC and SAFRA NATIONAL BANK OF NEW YORK shall turnover to Plaintiffs' counsel the subject assets described in the final turnover judgment (ECF No. 339) within 48 hours, including the sale proceeds of any liquidated securities in the subject accounts. Garnishees shall be discharged from liability under the writs and judgments after full turnover to Plaintiffs in compliance with the Court's April 30, 2020 turnover judgments. Signed by Judge Robert N. Scola, Jr. (dka) (Entered: 06/23/2020)

06/24/2020	383	PAPERLESS ORDER: <i>denying as moot</i> the garnishee UBS Financial Services, Inc.'s motion for discharge from liability. <u>378</u> . Consistent with the Court's prior order 380 , "the Garnishee shall be discharged from liability under the writ and judgment after full turnover to Plaintiffs in compliance with the Court's April 30, 2020 turnover judgment." Signed by Judge Robert N. Scola, Jr. (dka) (Entered: 06/24/2020)
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-20896-CR-SCOLA

KEITH STANSELL, et al.,

Miami, Florida

Plaintiff(s),

February 14, 2019

vs.

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

Defendant(s).

EX PARTE HEARING
BEFORE THE HONORABLE ROBERT N. SCOLA, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Newton P. Porter, Esquire
Tony P. Korvick, Esquire
Porter & Korvick
9655 South Dixie Highway
Suite 208
Miami, Florida 33156

REPORTED BY: Tammy Nestor, RMR, CRR
Official Court Reporter
400 North Miami Avenue
Miami, Florida 33128
tammy_nestor@flsd.uscourts.gov

1 Thereupon,

2 the following proceedings began at 5:12 p.m.:

3 THE COURT: Good afternoon. Welcome.

4 MR. PORTER: Good afternoon, Your Honor.

5 THE COURT: Please be seated. We are here for, I
6 guess, an ex parte hearing on Keith Stansell and others against
7 the Revolutionary Armed Forces of Colombia.

8 So I had asked you to come in because I haven't had
9 one of these cases before. I know that you all have had pretty
10 similar cases. It seems like what you are asking for in the
11 initial order is more than what you are allowed to do under the
12 Stansell case where you are allowed to attach property without
13 notice but not execute, and it seems your order is executing.
14 So explain that to me.

15 MR. PORTER: Your Honor, Newton Porter on behalf of
16 the plaintiffs from Porter & Korvick. I'm here with
17 Mr. Korvick, my partner.

18 Your Honor, we are at the attachment phase of this
19 case only. As the Stansell opinion indicates, there is a
20 distinction between attachment and execution. So we are here
21 today making our proffer under the safeguards of the Stansell
22 opinion, one, identifying that the assets are OFAC block under
23 the Foreign Narcotics Kingpin Designation act, and two, are
24 evidentiary submissions that the blocked parties are agencies
25 or instrumentalities of the FARC.

1 At that point, if the Court were to issue that order,
2 we would attach the assets with the United States Marshal, some
3 by writ of execution for real property, the vessels and the
4 aircraft, and one writ of garnishment for a bank account that
5 we have identified.

6 Under the two Florida statutes, Chapter 56 for
7 execution and Chapter 77, once the marshal has levied in the
8 case of real property or vessels or served the writ of
9 garnishment on the banks, then the marshal would send by
10 certified mail notice to the judgment debtor, in this case, the
11 agencies or instrumentalities of the FARC.

12 We, under chapter 77, would send notice of the writ
13 to, again, the judgment debtor agencies or instrumentalities.
14 At that point they would appear, if they did appear, and they
15 would have a right to challenge that.

16 So this is not an execution phase or turnover of the
17 asset. It is just an attachment phase, Your Honor.

18 THE COURT: Okay. So then you go to paragraph 7 which
19 says that U.S. marshals can use force including drilling,
20 breaking, grinding, locksmith to gain access to the three
21 condos, the two yachts, any safes and lockboxes located
22 therein.

23 So why do you have to like -- let's stay with the
24 condo.

25 MR. PORTER: Your Honor, this is language that we had

1 before where the U.S. marshal may have needed to drill into a
2 safety deposit box. It is not necessary for the condos. The
3 way we would envision an execution to proceed is he would take
4 his 285 and go to the condo association, enter the building,
5 and post it on the door of each of the three condos. There's
6 no reason to enter or break in in that set of circumstances.

7 THE COURT: We can eliminate where it says gain access
8 to the three condominiums in paragraph 7?

9 MR. PORTER: Yes, sir, you can.

10 THE COURT: I know in admiralty cases people say,
11 Judge, we want you to seize this for whatever reason, then
12 don't you have appointed a custodian or something or that's
13 later?

14 MR. PORTER: In this case under the Terrorism Risk
15 Insurance Act, a TRIA execution, the marshals here would -- I
16 guess they would speak with the dockmaster where we have
17 located at least one of these vessels. They would enter the
18 pier which again would be locked. But I think the dockmaster
19 with the United States Marshal with a writ of execution could
20 get on and even post the vessel.

21 Again, I don't think that is necessary in this case.
22 The yacht storage units, Your Honor, we have an idea where they
23 are in Fort Lauderdale. They may be locked. When we say drill
24 and break, what we have done in the past with the Southern
25 District marshals in executions of this nature is we bring a

1 locksmith to pick the lock if necessary, and so that would
2 be --

3 THE COURT: When you say if necessary, let's assume
4 there is stuff of value in the lot. You just put a different
5 lock on it?

6 MR. PORTER: We would if they ended up picking it,
7 Your Honor. Otherwise, they would just post it, again, on the
8 door of the storage unit.

9 The part of the execution that would be -- there are
10 four vehicles that we have asked for writ of executions on.
11 They are located in two houses in Dade County that are blocked.
12 Those houses are behind gates. And the two cars we are
13 assuming are in the garages there. That would be a question of
14 whether the marshal needs to pick the lock on the gate to post
15 this on the vehicle.

16 THE COURT: Okay. So we could eliminate the three
17 condos. We leave in the two yachts and the yacht storage unit.
18 Do we need to have safes and lockboxes?

19 MR. PORTER: No, sir.

20 THE COURT: But you do want to have the cars? There's
21 three vehicles?

22 MR. PORTER: Four vehicles, Your Honor.

23 THE COURT: So we will add the four vehicles. To gain
24 access to the two yachts and the yacht storage, so the four
25 vehicles. And then there's also a plane?

1 MR. PORTER: There is an aircraft, Your Honor. And
2 obviously, nobody would be flying it. They would just post the
3 fuselage.

4 THE COURT: So if we change paragraph 7 to say the
5 U.S. Marshal for the Southern District of Florida or his
6 designee is authorized and directed to use necessary force
7 including drilling, breaking, grinding, or the use of a
8 locksmith to gain access to the two yachts and the yacht
9 storage units, the four vehicles, and the aircraft, or any
10 other location where such tangible property is being stored in
11 the presence of plaintiff's counsel to locate and levy upon the
12 subject tangible assets.

13 MR. PORTER: That will work.

14 THE COURT: Is levy the right word?

15 MR. PORTER: Levy is the right word for the writ of
16 execution, Your Honor. Service would be for the writ of
17 garnishment.

18 THE COURT: Okay. And then the other proposed writs
19 of execution and the one writ of garnishment, the language
20 would remain the same.

21 Okay. Give me one second.

22 MR. PORTER: Yes, sir.

23 THE COURT: Okay. So I will get the order out, and
24 then the mayhem will happen.

25 MR. PORTER: Thank you very much.

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(Thereupon, the hearing concluded at 5:20 p.m.)

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C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

6/5/19

s/ Tammy Nestor
Tammy Nestor, RMR, CRR
Official Court Reporter
400 North Miami Avenue
Miami, Florida 33128
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United States District Court
for the
Southern District of Florida

Keith Stansell, and others,)
Plaintiffs,)
v.)
Revolutionary Armed Forces of)
Columbia, Defendant.)

Case No. 10-mc-22724-Civ-Scola
SEALED

SEALED Order

Upon due and careful consideration of the Plaintiffs’ Ex Parte Expedited Motion for Issuance of a Post-Judgment Writs of Garnishment and Execution (ECF No. 18), and all legal authorities cited therein, including the Terrorism Risk Insurance Act of 2002 (“TRIA”), §201(a), 28 U.S.C. §1610 note; the Anti-Terrorism Act (“ATA”), 18 U.S.C. §2333(a) and (e); *Stansell v. FARC*, 771 F.3d 713 (11th Cir. 2014); the Plaintiffs’ supporting expert witness affidavits and appendix; Fed. R. Civ. P. 69(a) and the applicable Florida statutes governing procedures on post-judgment garnishment and execution; it is

Ordered and adjudged as follows:

(1) This Court has subject matter jurisdiction to conduct post-judgment execution proceedings of a plaintiff’s final judgment under a federal statute (ATA), rendered by a U.S. district court and properly registered in this district pursuant to 28 U.S.C. §1963, with post-judgment execution under the ATA and TRIA §201.

(2) The Court **grants** the Plaintiffs’ motion (**ECF No. 18**).

(3) Based upon the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) factual findings and the Plaintiffs’ supporting expert witness testimony and appendix, the Court finds that the OFAC Kingpin Act designated members of the “EL AISSAMI & LOPEZ BELLO NETWORK” (identified on OFAC Chart, ECF No. 18-1) are each an agency or instrumentality of the FARC, and their blocked assets are therefore subject to attachment and execution pursuant to TRIA and 18 U.S.C. 2333(e).

(4) The Court concludes that the Plaintiffs, through their extensive submissions, have adequately established that (1) they have obtained an Anti-Terrorism Act judgment against a terrorist party (the FARC) that is based on an act of international terrorism, (2) the assets which the Plaintiffs seek to execute on are “blocked assets” as that term is defined under the TRIA and the ATA, 18 U.S.C. §2333(e), (3) the total amount of the executions does not exceed the

amount outstanding of the Plaintiffs' ATA Judgment, and (4) the Kingpin Act blocked parties and owners of the subject blocked assets identified in OFAC Chart (ECF No. 18-1) are each an agency or instrumentality of the FARC.

(5) The Clerk of this Court is directed to issue the one writ of garnishment and seven writs of execution in the form attached to Plaintiffs' motion (ECF No. 18) as exhibits 11 through 18 so that the Plaintiffs may promptly attach the blocked assets to perfect their judgment liens. Pursuant to Fla. Stat. §56.031, these writs of executions "shall be in full force throughout the state."


(6) The U.S. Marshal for The Southern District of Florida is directed to execute and levy upon and sell the four subject parcels of real property, vessels, aircraft and automobiles under TRIA and pursuant to the procedures for post-judgment execution, levy and judicial sale set forth in Fla. Stat. §§56.061, 56.21, 56.22, 56.25 and 56.27.

(7) The U.S. Marshal for the Southern District of Florida, or his designee(s), is authorized and directed to use necessary force, including drilling, breaking, grinding, or the use of a locksmith to gain access to the two yachts and the yacht storage units, the four vehicles, and the aircraft, or any other location where such tangible property is being stored, in the presence of Plaintiffs' counsel, to locate and levy upon the subject tangible assets.

(8) The Clerk of the Court is authorized and directed to issue such further writs in aid of execution as warranted under, and in accordance with, Rule 69 of the Federal Rules of Civil Procedure, consistent with the Court's Order.

(9) The Plaintiffs are ordered to notify the Court immediately once they have attached all assets that are subject to this order. Upon the earlier of the filing of that notice or **thirty days from the date of this order**, whichever occurs first, the Clerk of the Court is directed to **unseal** the sealed filings in this case, including the Plaintiffs' motion (**ECF No 18**), the order setting a hearing on the motion (**ECF No. 20**) and this order.

Done and ordered in chambers, at Miami, Florida, on February 15, 2019.



Robert N. Scola, Jr.
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

CASE NO.: 19-cv-20896-RNS

KEITH STANSELL, et al.,)
)
 Plaintiffs,)
 v.)
)
 REVOLUTIONARY ARMED FORCES)
 OF COLOMBIA,)
)
 Defendant.)
 _____/

June 10, 2019

Pages 1 - 41

TELEPHONIC STATUS HEARING
BEFORE THE HONORABLE EDWIN G. TORRES
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On behalf of the Plaintiffs:

PORTER & KORVICK
9655 S Dixie Highway
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BY: NEWTON P. PORTER, ESQ.
BY: TONY P. KORVICK, ESQ.
BY: RICHARD ROSENTHAL, ESQ.

1 APPEARANCES CONTINUED:

2 On behalf of the Intervenors:

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7 BY: GLEN M. LINDSAY, ESQ.

8 CAMPBELL LAW FIRM PLLC
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10 Suite 602,
11 Coral Gables, FL 33134
12 BY: DENNIS M. CAMPBELL, ESQ.

13 DAVIS POLK & WARDWELL LLP
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16 BY: CRAIG T. CAGNEY, ESQ.

17 ARCHER & GREINER P.C.
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22 BY: JERFFEY M. SCOTT, ESQ.
23 BY: JEFFREY M. KOLANSKY, ESQ.
24 BY: KERRI E. CHEWNING, ESQ.

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BY: ALISE M. JOHNSON, ESQ.

1 APPEARANCES CONTINUED:

2 On behalf of the Intervenors:

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1 (Thereupon, the following proceeding was held:)

2 THE COURTROOM DEPUTY: The United States District
3 Court for the Southern District of Florida is now in session.
4 The Honorable Edwin G. Torres presiding.

5 Calling the case of Keith Stansel, et al. versus
6 Revolutionary Armed Forces of Colombia; Case Number
7 19-cv-20896.

8 Counsel, please state your appearances for the record.

9 MR. PORTER: Newton Porter for the Plaintiffs.

10 MR. CORVICK: Tony Corvick for the Plaintiffs.

11 MR. ROSENTHAL: Richard Rosenthal for the Plaintiffs.

12 MR. LINDSAY: Glen Lindsay for the intervenors.

13 MR. SCOTT: Jeffery Scott for the intervenors.

14 MS. CHEWNING: Kerri Chewing on behalf of the
15 intervenors.

16 MR. KOLANSKY: Jeffery Kolansky for the intervenors.

17 MS. FESANTE: Adriana Fesante (phonetic) for the
18 intervenors.

19 MR. : (Inaudible) for the intervenors.

20 MR. CAMPBELL: This is Dennis Campbell on behalf of
21 CitiBank and with me is Mr. Craig Cagney on behalf of CitiBank.

22 MS. JOHNSON: Alise Johnson on behalf of UBS Financial
23 Services.

24 MS. FONSECA: Daniela Fonseca Puggina and Jessica
25 Marroquin on behalf of Safra Bank of New York.

1 MR. WOLFSON: Josiah Wolfson on behalf of Morgan
2 Stanley.

3 THE COURT: Okay. Anybody else on the phone that
4 hasn't made an appearance? No?

5 Okay. Good afternoon, everybody. Thank you for
6 appearing. This is a status conference that was requested, I
7 believe, by the Plaintiff. And it seemed like a good idea in
8 advance of the hearing tomorrow on the pending garnishment
9 motion.

10 I take it that the reason the intervenor requested the
11 hearing is to come up with a game plan on what is going to
12 happen tomorrow. It seems to me that it would be a good idea
13 to see what evidence primarily the intervenor wanted to put on.

14 So I will turn to you, Mr. Lindsay. What did you
15 envision in terms of evidence that you wanted to put on?

16 MR. LINDSAY: Thank you, Your Honor.

17 I am going to move forward to Jeff Scott and let him
18 take the lead on this while we are all here together.

19 THE COURT: Okay. Sure.

20 MR. SCOTT: Your Honor, Jeffrey Scott. Excuse my
21 voice. It will be better tomorrow.

22 So we were wondering exactly what was going to happen
23 with the evidentiary hearing on all the outstanding motions as
24 you said.

25 You know we have a pending appeal in the Eleventh

1 Circuit that addresses all the issues in both the garnishment
2 and the other half of this case which is still active, which is
3 the execution piece.

4 And we had also requested, if the case would go
5 forward, with a jury trial on the garnishment side. And so we
6 were interested to know what issues the Court had with regard
7 to what evidence the Court is going to need that would allow
8 the Court to frame the issues for a jury trial and that is the
9 reason for the status call.

10 We also have some jurisdictional issues that are
11 outstanding with regard to the banks, such as CitiBank's issue
12 that is a very important issue to CitiBank.

13 And so there is going to be other evidence from other
14 parties who is probably going to be present tomorrow. I don't
15 want to speak on behalf of any of the banks, but there is going
16 to be a need perhaps for -- we don't know how long the Court is
17 going to have a hearing.

18 Is it going to be all day? Is it going to be two
19 days? Is it going to be three days? And so that is sort of
20 where we are and we were asking for this conference.

21 THE COURT: Sure. So let's take it one step at a
22 time. In terms of you mentioned the issue of a jury trial.

23 My understanding of Florida law at least is that for
24 purposes of most garnishment proceedings they are primarily
25 adjudicated on a bench trial basis.

1 Do you disagree with that?

2 MR. SCOTT: No. I think the statute allows for a jury
3 trial with all the issues and not a bench trial, Your Honor,
4 once the disputed issues are identified.

5 THE COURT: I mean, what is the Plaintiffs' position
6 on that, Mr. Porter or Mr. Corvick?

7 MR. ROSENTHAL: Your Honor, this is Richard Rosenthal
8 for the Plaintiffs. I will take that if that is okay.

9 THE COURT: Sure. Absolutely.

10 MR. ROSENTHAL: Thank you, Your Honor.

11 We have briefed Your Honor on this specific issue.
12 And we agree with the statement Your Honor made previously that
13 Florida law says that notwithstanding the statutory language in
14 Chapter 77 of the Florida Statutes, Florida law is fairly clear
15 that these matters can be resolved by a trial judge as the
16 fact-finder.

17 As Your Honor is aware, one of the outstanding motions
18 that we have filed is a motion for turnover judgment,
19 essentially, based on the papers that have been submitted.

20 So the Plaintiffs' submission is -- and perhaps this
21 is just to preserve the appellate record, but the Plaintiffs'
22 position is that the record, as presently constituted, neither
23 necessitates or justifies even the evidentiary hearing.

24 Obviously, we are happy to participate if Your Honor
25 wants us, but as for a jury trial, we think the cases that have

1 been cited -- and I am referring now to our filed Docket Entry
2 119. The Eleventh Circuit in the case called *Zelaya* talks
3 about how notwithstanding Florida Statute 77.08 and it
4 references a jury trial. I am now quoting from that case:

5 "The right to a jury trial in a garnishment action is
6 not absolute notwithstanding the statute's meaning of the word
7 shall."

8 I can continue on.

9 "A jury trial is not required. For example, it would
10 serve no purpose." **

11 And there is additional basis cited there by the
12 Eleventh Circuit.

13 Our position is that Your Honor, first of all, could
14 decide all these things on paper, but if you want to go forward
15 with tomorrow's evidentiary hearing, that suffices.

16 You could take evidence and make determinations as the
17 fact-finder as many Florida courts and other District Courts in
18 these previous garnishment actions have done, both in the
19 Middle District and the Southern District of Florida, Your
20 Honor.

21 MR. SCOTT: Your Honor, if I may?

22 We are in a different position. We are not judgment
23 debtors. We are third parties who were brought in. We are
24 strangers to this action. The statute says shall. The Court
25 can certainly have an evidentiary hearing based on the papers

1 or at a hearing to find that there is disputed issues of fact.

2 In fact, we have summary judgment that is outstanding
3 that hasn't been decided yet. And so we believe that we are
4 entitled to jury trial. The statute says we are entitled to a
5 jury trial and so that is our position.

6 THE COURT: What about that issue, Mr. Rosenthal, with
7 respect to whether or not a third party whose assets are being
8 seized upon is in a different position than Mr. Zelaya?

9 MR. ROSENTHAL: Your Honor, that was answered by the
10 Eleventh Circuit in the 2014 *Stanse11* opinion who we were the
11 Plaintiffs in that, I believe, as well which is the *Stanse11*
12 case, which is 771 F.3d of 713, 2014 opinion of the Eleventh
13 Circuit.

14 And what they said is under the Florida statute where
15 you have the third party, the process is that there is an
16 initial *ex parte* showing the Plaintiffs have to go before the
17 District Judge. As you know, it was Judge Scola.

18 And we had made an *ex parte* showing for an initial
19 determination that there is an agency or instrumentality status
20 and, then, they have the opportunity to rebut that. And I use
21 the word rebut because that is what Chapter 77 talks about and
22 what the *Stanse11* opinion talks about.

23 In every one of those, I believe it was six instances
24 in the *Stanse11* 2014 opinion, there was no jury trial. There
25 was a finding by the District Judge of agency or

1 instrumentality confirming the initial determination. Even
2 though there was an invocation of a, quote unquote, right to a
3 jury trial.

4 So we think that we are walking the exact same
5 footsteps that the Eleventh Circuit has laid out in the 2014
6 *Stanse11* opinion.

7 MR. SCOTT: Your Honor, it is our belief that the
8 *Stanse11* opinion that Mr. Porter knows so well says that
9 Chapter 77 applies. Chapter 77.08 requires a jury trial.

10 In fact, the reason why we are here at this stage is
11 because they told Judge Scola that they needed a finding of
12 agency and instrumentality *ex parte*, which is not the case.

13 All they needed to do was show that the property was
14 blocked and they could have received an attachment. They went
15 in there and now the burden shifted to us, which we believe is
16 improper.

17 It is the Plaintiffs' burden to show at a jury trial
18 whether or not the assets are blocked and whether or not we are
19 agents of instrumentalities. It is not the other way around.

20 And again, I think you know our position. As long as
21 there are issues of disputed fact we are entitled to a jury
22 trial on all the issues. And the other one that --

23 THE COURT: Didn't the Eleventh Circuit in the
24 *Stanse11* opinion assert that if that was the case, though,
25 given the particular proceedings that they were dealing with at

1 that point?

2 MR. SCOTT: Your Honor, I believe all those cases were
3 all -- actually no one showed up and filed timely motions to
4 dissolve. No one filed motions for summary judgment.

5 All those defendants, those third party defendants we
6 will call them, were late to the game and they were all
7 defaulted. So all those cases were under Rule 16 ** and that
8 is what happened in the 2014 case and that is what is again
9 happening.

10 We are the only party that we are aware of that when
11 we received notice we asked for a Rule 16 conference. We asked
12 to have a Judge's order motion to amend so it only has four
13 attachments. We filed summary judgment, which was not ruled
14 on. And as a result, we lost the property.

15 So we are in a much different position than any other
16 intervenor or third party that we are aware of to date. We are
17 just like somebody who has been included into the case. And
18 under the case law, we are entitled actually to some discovery
19 of what their experts are saying and we are entitled, I think,
20 to a jury trial under 77.08.

21 MR. ROSENTHAL: Your Honor, this is Richard Rosenthal.

22 I was appellate counsel in the *Stanse11* 2014 appeal in
23 the Eleventh Circuit and I just need to correct a factual fact,
24 which is to say that some of those appellants did indeed appear
25 prior.

1 They did not appear quite as early in the proceedings
2 as some of these claimants have, but it is not correct to say
3 that they all appeared all late and that they did not request a
4 right to a jury trial. Point in fact, some of them did. I'm
5 not clear on the name. It may have been Siede Jar **, but the
6 record will come out from whatever the 2014 opinion says.

7 But it is simply not correct to say that all those
8 folks came in late and did not request jury trials. They did.
9 And notwithstanding that request, the Eleventh Circuit affirmed
10 the turnover judgment saying that this was not required by due
11 process or by the statute.

12 FEMALE UNIDENTIFIED SPEAKER: We disagree with that.

13 MALE UNIDENTIFIED SPEAKER: We disagree with that
14 position.

15 FEMALE UNIDENTIFIED SPEAKER: It speaks for itself.

16 THE COURT: Let's table that issue because one of the
17 things that I think that I am going to do is I don't feel the
18 need to have to resolve every single legal issue and all the
19 proceedings before we get to that point.

20 One of the things that I think is clear is that a
21 party can move to dissolve in a garnishment proceeding based
22 upon whatever particular interests are at stake. And
23 typically, third parties are typically heard on garnishment
24 proceedings all the time and there isn't a jury trial afforded
25 them in that situation in most cases.

1 Now let's assume that you are right that your position
2 is different. That still can be -- we still can litigate that
3 issue, it seems to me, at the appropriate time. And you,
4 obviously, have preserved your argument, but one of the things
5 that my inclination is to go ahead and proceed on a, what I
6 consider to be, the pretty established process of adjudicating
7 a motion to dissolve where I think, I believe initially, at the
8 initial stage the Court may have to make an initial
9 determination.

10 And since you are the party requesting the opportunity
11 to put on evidence in connection with your motions to dissolve,
12 it strikes me that what I should do is initially grant you some
13 way to make your case. And obviously, the record already
14 contains some evidentiary support for the motion to dissolve.

15 But, in addition to the existing record, the question
16 that I have is what else would you want to put on? And then,
17 assuming the Court were to grant that motion, obviously, if the
18 Court agreed with the evidentiary showing that the intervenor
19 made and dissolved the writs, then, obviously that would
20 arguably moot the request for jury trial and everything else.

21 If the Court were to deny it and find that they were
22 appropriate, then obviously before a final judgment is entered
23 there is going to have to be a legal call on everything else.

24 And so it strikes me that we are probably in a
25 position where we can proceed since these matters were referred

1 to me to try to move the ball forward on this. It seems to me
2 that I can do that because it is certainly possible. And if
3 the Court makes a finding along the lines of the intervenor's
4 position it may move a lot of other things.

5 It may not because especially, as I said, if the Court
6 believes that further proceedings are warranted, then at some
7 point the Court has to make a call one way or another on the
8 legal arguments that you are making. And that includes on the
9 summary judgment issues, and discovery, and everything else.

10 And it seems to me that there is an essential call
11 that needs to be made on the motion to dissolve and that is
12 what I would do in almost every case. So assuming that is the
13 case, then, do you want to put on -- let me ask you this
14 question.

15 Do you want to put on any live testimony in support of
16 your motion to dissolve? Because I know you filed a couple of
17 expert reports or affidavits. Do you want to put on any live
18 testimony in support of your motion to dissolve?

19 MALE UNIDENTIFIED SPEAKER: Yes, Your Honor.

20 We did put into evidence in our motion to dissolve
21 affidavits of three experts.

22 We have an affidavit of Mr. Lopez. We have two
23 affidavits from Mr. Lopez. We have considered putting on live
24 testimony related to the OFAC issue and we have another witness
25 that we could put on.

1 It is going to be duplicative of our affidavits, but
2 it could be additional and it could be helpful to the Court in
3 terms of a motion to dissolve, which is sort of seems to me a
4 motion to dismiss standard.

5 And then, if we get to the next step, I hope I am not
6 going too far, it would be then the Plaintiffs' motion for
7 turnover and that is when it would shift. And I would imagine
8 they would have our witnesses show up for a hearing on that,
9 whether it is a jury trial or a bench trial.

10 THE COURT: Okay. So if I said the hearing is going
11 to begin and end tomorrow, let's just say that for the sake of
12 a hypothetical, who would you want to put on?

13 MR. SCOTT: We would put on Mr. Marcart and Mr.
14 Carasco and we would submit is the affidavits of Mr. Lopez.

15 THE COURT: Okay. Do you want to put on Mr. Lopez?

16 MR. SCOTT: Mr. Lopez will not be available tomorrow.

17 THE COURT: Okay. And remind me of the two
18 individuals that we ** the expert affidavits?

19 MR. SCOTT: Yes.

20 THE COURT: The expert affidavits?

21 MR. SCOTT: Yes.

22 THE COURT: So let me ask counsel for the Plaintiffs.

23 Do you wish to cross-examine the experts or do you
24 wish to simply stand on your legal objections to their
25 testimony?

1 MR. ROSENTHAL: Your Honor, this is Richard Rosenthal.
2 If the experts are going to testify live we would like
3 the opportunity to cross-examine them.

4 THE COURT: That is what I'm saying.

5 In other words, the one option I can do in this
6 situation is just accept the expert report or affidavit and
7 accept it at face value. The other option is for me to allow
8 supplementation of the affidavit and then cross-examination of
9 those experts.

10 MALE UNIDENTIFIED SPEAKER: Your Honor, I hope this
11 answers your question, but we have witnesses, live witnesses
12 who are here. In support of our motion for turnover, Judge, we
13 have three witnesses here.

14 With respect to just the defense witnesses if they are
15 going to appear live we would like the opportunity, of course,
16 to cross them. If they are just going to submit them by
17 affidavit, then, we don't necessarily have to cross-examine an
18 affidavit.

19 But I want to be candid with Your Honor that we
20 brought our witnesses to town, whether it is in support of our
21 motion for turnover judgment or in response to their witnesses.
22 But if they don't want to bring live witnesses that is their
23 choice and that is their decision. We have no problem with
24 that.

25 THE COURT: Okay.

1 MR. SCOTT: Your Honor, so it is my understanding,
2 tomorrow will be sort of a probable cause type hearing where we
3 will present our evidence in a motion to dissolve. And if we
4 present live witnesses, they have the opportunity to
5 cross-examine them. And then, tomorrow's court proceeding will
6 be concluded?

7 THE COURT: Well, hold that thought.

8 Let me ask you this question. If you had to summarize
9 in a nutshell what your strongest, of the two people you wanted
10 to call live or have available to call live, where would you
11 say the factual finding you would say testimony supports for
12 the most part?

13 MR. SCOTT: Mr. Marcart ** will testify that there is
14 no evidence. There is no data. There has never been any
15 evidence or data that links or associates Mr. Lopez, or any of
16 his 13 companies with FARC.

17 In other words, there is no association or link
18 between Mr. Lopez and the FARC by United States Government. It
19 appeared that there is nothing in that press release and so
20 that is what Mr. Marcart would testify about.

21 That is a lynchpin in all these cases where the
22 Government has ** and isn't afraid to always link individuals
23 with certain terrorist organizations. In this case that has
24 never happened. Never happened. That is the first step.

25 And the Court knows from the record that when OFAC has

1 information it will not hesitate to link and associate
2 individuals with terrorist organizations. And that is based
3 upon OFAC's own data that is available publically and that was
4 available publically when this action was filed in February.

5 Mr. Carasco ** will testify that he was a former
6 prosecutor in Colombia and currently involved in these types of
7 an investigations. He will testify that Mr. Lopez has never
8 been associated with the FARC.

9 He has never been targeted for prosecution of
10 narcotics activity. And in no way, shape, or form, is
11 associated with the FARC and that imparts ** directly
12 Plaintiffs' application for the writs.

13 THE COURT: How long do you think his -- these two
14 individuals that you would be calling, how long do you
15 anticipate for your direct?

16 MR. SCOTT: So Mr. Marcart should be able to get his
17 opinion out on direct after qualifications.

18 Probably within 30 to 35 minutes. Mr. Carasco, he
19 might be a little bit longer. Perhaps 45 and of course, not
20 including cross or any redirect.

21 THE COURT: Okay. I'm looking at my calendar here.
22 Well, we have a hearing at this point set for 9:30. Why don't
23 I move it up. I am going to set it for 9:00.

24 Okay. And so we will take the morning through lunch.
25 You put on your two experts. I will allow cross-examination of

1 those two experts. In the afternoon I will allow the
2 Plaintiffs to put on -- who do you want to put on? You have
3 three witnesses. Who would you need to call if you were just
4 directly rebutting these two witness, Mr. Rosenthal?

5 MR. ROSENTHAL: Your Honor, I am going to turn it to
6 Mr. Porter who will tell you the three witnesses.

7 MR. PORTER: Your Honor, we will call the three
8 witnesses of Paul Crane **, the former DEA Regional Director,
9 Colonel Cokay **, the retired Chief of Staff of Marine Corp,
10 and we will call Doug Fero **, a national security consultant
11 and DOD's subject matter expert on the FARC.

12 THE COURT: Okay. All right.

13 MR. SCOTT: Your Honor, I don't mean to interrupt, but
14 Mr. Crane had not provided an expert report in this case.

15 MR. PORTER: Newton Porter, Your Honor.

16 I can respond to that. Judge Scola has entered two
17 orders for determining agency or instrumentality for purposes
18 of attachment; one in the *Stanse11* case and one in the
19 *Pescatore* ** case.

20 Mr. Crane forms the basis of part of the order. And
21 the *Pescatore* case, the claimants, the intervenors here are on
22 notice and are familiar with Mr. Crane's testimony.

23 THE COURT: Let me interrupt you real quick.

24 Given that position, are you arguing fact witness as
25 much as an expert witness or is it entirety an expert type of

1 witness given his past position?

2 MR. PORTER: He's an expert witness, but part of his
3 background clearly was while he was in DEA and investigating
4 the narco terrorist organization of FARC.

5 THE COURT: Right. That is what I am saying.

6 In other words, doesn't some of his testimony arguably
7 come in from his personal knowledge, as opposed to expert
8 knowledge that he gained from him reviewing other people's
9 materials?

10 I think it could be both, Your Honor, but he is
11 tendered as an expert witness because he retired in 2017.

12 THE COURT: Right.

13 Well, I have no problem adding him into the -- we will
14 make him third. And depending on how long the other two go and
15 the crosses on that, you know, I think we might be able to
16 squeeze all of them in.

17 MR. SCOTT: So, Your Honor, I just wanted to make the
18 record clear.

19 When the Plaintiffs move to consolidate the *Pescatore*
20 case in this case, they never filed a motion to consolidate in
21 this case. We were not aware of it. We had to comb the
22 documents and Mr. Crane's affidavit is attached to the
23 *Pescatore* case. And so --

24 THE COURT: I see where you (inaudible).

25 MR. SCOTT: No, because that case has not yet been

1 consolidated with this case and we filed an opposition in that
2 case. And on top of that --

3 THE COURT: What prevents you from (inaudible)?

4 MR. SCOTT: Oh, absolutely nothing, Your Honor.

5 THE COURT: Okay. All right. Then, I think the best
6 probably then, if that is all the evidence that the intervenor
7 wants to put on, I think we can just do that tomorrow morning.

8 I want to make sure he puts that on. Then I could **
9 the credibility of the witness. And then, I will have the
10 Plaintiffs put on his rebuttal witnesses, assuming we have
11 time. And then, we will see where we are at the end of the day
12 tomorrow.

13 And then, this may not be the only hearing,
14 evidentiary hearing that we need, but it sounds to me that we
15 might be able to get significant progress done tomorrow. And
16 then, that might aid in the resolution of some of the issues
17 that are pending now before the Court.

18 We will start at 9:00 and I will basically give the
19 intervenor the morning and the Plaintiffs the afternoon. That
20 is the idea and then we will see where we are.

21 MR. SCOTT: Your Honor, we can choose not to call the
22 witnesses live is right if we decide to do that if we only
23 addressing the motion to dissolve? We can only address our
24 motion to dissolve and then we could rest of our affidavits as
25 is in terms of proceeding.

1 Because since we are just discussing this now, I think
2 we would want to go back and discuss it among ourselves quickly
3 and get back to the Court and to the parties on what we are
4 planning on doing if it is just a motion to dissolve.

5 THE COURT: As opposed to whatever motion -- I mean,
6 the primary issues that we have pending are the motions to
7 dissolve, right?

8 And then, you have the turnover motion which, of
9 course, is related to the motion to dissolve. So the problem
10 that you have is that if you decide not to put on any live
11 testimony and, then, the Court choose to pick -- since I have a
12 cold record and choose to adopt findings from the defendants, a
13 lot of the argument that you are making in the pleadings up to
14 now that you were denied due process, you are basically going
15 to make that argument a nullity because the process will have
16 been had and you (inaudible) it.

17 So it is entirely up to you if you want to waive your
18 right to a hearing, then, tomorrow I will just hear from the
19 defendant's experts and consider their credibility. It is
20 entirely up to you.

21 But, just so you know, the reason I set the hearing is
22 because, notwithstanding anything that happened before, I saw a
23 running argument that the intervenors had been denied due
24 process.

25 And so, therefore, the easiest way to cure that in my

1 view is to give you process. And that means, then, that you
2 can put on a witness to support your position. And if you
3 choose to waive that, then, I am sure the appellate court will
4 not consider your arguments that you were denied due process.

5 If you want to make other arguments, then, we could
6 hear other arguments obviously, but then that issue basically
7 becomes moot. I will look forward to hearing, just hearing
8 from the Plaintiffs' experts because Plaintiffs have three
9 witnesses they wish to call and I will hear them and so you can
10 think about that today.

11 MR. SCOTT: Okay.

12 THE COURT: And just let, I think you should call
13 Mr. Porter and Mr. Rosenthal before tomorrow morning in the
14 event you that you do not intend to call them, so they know to
15 bring their witnesses first thing in the morning.

16 Because my assumption is the intervenor's motions of
17 experts will be heard in the morning and the plaintiffs in the
18 afternoon. So I am just telling you let Mr. Rosenthal and his
19 team know.

20 MR SCOTT: We will let them know.

21 Your Honor, that goes to the whole appellate issue and
22 the issue of jurisdiction whether or not the Court has
23 jurisdiction to have the hearing tomorrow in terms of the due
24 process issue because the due process issue has a couple of
25 components to it.

1 The first one was the order of execution was issued
2 *ex parte* and the transcript indicates that Judge Scola even,
3 himself, in the transcript indicated that it was supposed to be
4 attachment only. So that is one part of it.

5 The second part of it is we haven't been given an
6 opportunity to contest agency and instrumentality, but that
7 finding has already been made. And from what I am hearing is
8 that you are saying that is not the final order, correct?

9 THE COURT: Well, you will have to explain that a
10 little bit more to me so I understand.

11 Because my understanding is this is, basically, a post
12 judgment action where you are going to have multiple writs
13 issued and ** issued, right?

14 And theoretically, any time somebody files a writ and
15 they create appealable orders this case is a closed case. So
16 this is a post judgment collection action involving
17 supplementary proceeding because your position is you are a
18 third party to the original judgment.

19 So, you know, there is no -- from what I see, I have
20 to dispose of pending motions to dissolve garnishment and a
21 motion for a turnover judgment. And the issues on appeal are
22 certainly ** but they are not dispositive of it. And so as
23 best as I can tell, I don't know if there is anything for me to
24 stay at this point.

25 So, in other words -- I'm sorry, Your Honor, it is

1 hard on the telephone.

2 THE COURT: Sure.

3 MR. SCOTT: In other words, the due process, we are
4 entitled to due process before the agency and instrumentality
5 finding and before the writ of execution was issued. That
6 didn't happen.

7 As a result of that we have lost three condominiums
8 because the hearing didn't happen before that. So I understand
9 that Your Honor is saying that for --

10 THE COURT: Mr. Scott? Did we lose Mr. Scott?

11 THE COURTROOM DEPUTY: I think we might have lost him.

12 THE COURT: Okay.

13 THE COURTROOM DEPUTY: He will probably call back in.

14 MR. ROSENTHAL: Your Honor, the Plaintiffs are still
15 on the line.

16 THE COURT: Okay. Can we wait on the line for Mr.
17 Scott?

18 FEMALE UNIDENTIFIED SPEAKER: Yes, Your Honor.

19 THE COURT: Okay. He just got disconnected and let's
20 see if he calls back in.

21 His next sentence I believe the Eleventh Circuit is
22 staying the case and then lost the call. If I was so lucky it
23 would be great, but I doubt that is what happened.

24 Let's see if he comes back on here. Hold on.

25 THE COURT: Was he on a cell phone, Maedon?

1 THE COURTROOM DEPUTY: I see his phone number.

2 I can call his office and see.

3 THE COURT: If he was on a cell phone it could be the
4 reason the phone died.

5 THE COURTROOM DEPUTY: Mr. Scott?

6 MR. LINDSAY: Your Honor --

7 THE COURT: Mr. Scott?

8 MR. LINDSAY: This is Glen Lindsay.

9 We called back on the cell. I think we lost you from
10 our main connection.

11 THE COURT: Oh, okay.

12 MR. LINDSAY: My apologies.

13 THE COURT: That is a switch. I figured it was that
14 your cell phone died.

15 MR. SCOTT: You missed the best part of it, Your
16 Honor.

17 THE COURT: I am sure it was very compelling. You are
18 about to say something before you got cutoff.

19 MR. SCOTT: Yes. I'm sorry about that.

20 I don't know if you heard us, but we wanted to let the
21 Court know that we will have an interpreter for Mr. Curasco **
22 tomorrow.

23 THE COURT: That is fine.

24 And then, the last thing we were talking about was
25 whether or not you needed to stay anything in these proceedings

1 based upon the pending appellate proceedings.

2 MR. SCOTT: Your Honor, I am on the cell now.

3 So the appeal is related to both the garnishment side
4 and the property sides. The appeal addresses the proprietary
5 of the order as it relates to finding agency or instrumentality
6 and issuing a writ of execution and the writs of garnishment
7 prior to notice and an opportunity to be heard.

8 It is our position is that mere attachment is not
9 necessary for notice, but any writ of execution that goes
10 forward has to have notice and hearing. And that encompasses
11 agency and instrumentality.

12 So our motion, had this gone further under 5629, I
13 believe, once they got the attachment, the notice to appear
14 would have gone out to all the interested parties. And then,
15 under the case law, which is now briefed with the Eleventh
16 Circuit, we would have been entitled to some discovery as to
17 the proof that the Plaintiffs had.

18 In other words, we would be able to get the documents
19 that the Plaintiffs' experts relied upon. We would be able to
20 perhaps do a little discovery and then we would have the
21 hearing on the motion to dissolve.

22 And if the Court found that there were issues of fact,
23 then, I guess the motion on the turnover judgment would be
24 next. And then, Plaintiffs would then have to go first because
25 it is summary judgment in a way and they would have to present

1 their case as well as the plenary side. **

2 And so that is why we are suggesting and maintaining
3 that the appellate proceedings is directly related to this
4 Court's jurisdiction. And on top of that, right now there is
5 no sales in place. Right now there is nothing going forward.
6 The property is blocked. The writs of attachment are in place.

7 And if the Eleventh Circuit agrees with us, they are
8 going to vacate the Court's order and we are going to start
9 over. So I really do believe that this proceeding is part and
10 parcel of the appeal.

11 And I understand the Court's position that this is a
12 garnishment proceeding, but none of what they are doing is
13 basically in aid of execution because right now everything is
14 *status quo*.

15 And the property isn't going anywhere and because the
16 Plaintiffs have an attachment, no matter what happens to Mr.
17 Lopez, whether he or not he is delisted or removed from the
18 list, the Plaintiffs still have an attachment and the current
19 case law is that that attachment would take precedence over any
20 subsequent listing.

21 So no one is going to be injured. And basically, the
22 Eleventh Circuit is going to decide this issue, whether or not
23 the writ of execution was issued improperly without prior
24 notice and an opportunity to be heard.

25 And that is why we believe that the Eleventh Circuit

1 appeal encompasses all of this. And we think it is improper
2 for the Court to go forward until we hear back from the
3 Eleventh Circuit.

4 THE COURT: Right. I see your point.

5 Obviously, if the Eleventh Circuit were to stay all
6 litigation that would be one thing, but since my interpretation
7 of the record that this is a post judgment supplementary
8 proceeding where you are going to have a variety of sub
9 proceedings that are going to follow from that.

10 And even though the issues are related, I still in
11 many respects, the fact that they are related does not
12 necessarily stay or require a stay. And so, as a result, my
13 inclination at this point is we will just proceed.

14 And then, you know, we will proceed with the
15 jurisdiction that I believe I have. And then, obviously, if it
16 turns out that we were wrong, obviously, at the appropriate
17 time somebody will say so. Either directly or indirectly from
18 the Eleventh Circuit.

19 But for now, I will proceed with the hearing tomorrow
20 based upon the game plan that we just articulated. And again,
21 there may be additional proceedings that may be required, but
22 for purposes of tomorrow, we are going to move forward at least
23 on the garnishment issues with the intervenors' evidence and
24 then the Plaintiffs' evidence and then I will see where I am.

25 If, of course, at that point I feel that there is not

1 much else I need to do before adjudicating the pending motions,
2 then that is what we will do. And then, any legal issues that
3 I am going to have to cross if I am moving in favor of the
4 Plaintiffs, I will just have to cross them.

5 If obviously that becomes moot if I am going to rule
6 in favor of the intervenor, to some extent maybe I will be able
7 to moot some things, but we will know a little bit more
8 tomorrow and we will take it from there.

9 MR. SCOTT: Your Honor, we do have a motion to stay
10 the proceedings that is out there.

11 And in addition to that, I believe CitiBank is on the
12 line and they have witnesses that they intended to produce
13 based upon the jurisdiction question of the bank account. So I
14 don't know where they fall into in tomorrow's hearing.

15 THE COURT: Let me -- Mr. Campbell, did you want to
16 chime in on that?

17 MR. CAMPBELL: Yes, Your Honor.

18 Just in terms of this case management, CitiBank is
19 really a new party to this entire proceeding and we don't
20 really take a position on the merits of anybody's claims here.

21 What we do have is concern, number one, spending costs
22 in the matter when we really don't have a dog in this fight.
23 Although, we are certainly prepared to put on some very limited
24 exhibits.

25 There are like two or three documents and only to

1 prove that this account, that is the subject of the garnishment
2 writ, is okay to do in New York. That should be uncontested by
3 way if there is any posture we need to bring in a witness from
4 New York to be able to testify to the basic fact.

5 And to tell you the truth, I think the Judge and I
6 have a very ** on behalf of perhaps some of the other
7 garnishees and maybe perhaps prudent to excuse the garnishees
8 from this proceeding and let these parties fight out whether or
9 not Mr. Lopez, or any of the other entities that are involved
10 in this, are agencies or instrumentalities.

11 We don't take any position on that whatsoever. And
12 anything we do would does not have any impact on that either.

13 THE COURT: Tell me a little bit more on your
14 jurisdictional -- I haven't focused on this too much.

15 Tell me more on what CitiBank's position is with
16 respect to why a court in Miami couldn't garnish the account of
17 CitiBank even though the account may have been opened in New
18 York.

19 MR. CAMPBELL: Because the case law in the State of
20 Florida, Your Honor, and as a matter of fact, even this case,
21 Judge Rosario ** in the Middle District had entered an opinion
22 in this very case stating that absent the account being located
23 in the State of Florida, there is one jurisdiction over the --
24 I will call it ** corre in-rem jurisdiction and that has been
25 extensively briefed.

1 There has probably been -- I have to count for four or
2 five cases that we have cited in our moving papers to that
3 effect that are consistent with what Judge Rosario had ruled
4 concerning the Court's jurisdiction.

5 Anyway, that is the basis for what we are saying is
6 the fact that case law has developed along those lines. And
7 that is a position that we asserted because it is, again, the
8 nature of the jurisdiction that is being asserted.

9 It is really not *in personam* over us. It is a hybrid.
10 It is essentially ** pro in-rem jurisdiction that you are
11 dealing with here and you need to also have jurisdiction over
12 the place ** the bank account that is located in New York.

13 So, anyway, that is a long answer to a short question.

14 THE COURT: Okay. Mr. Rosenthal, what is your
15 client's position on that?

16 MR. ROSENTHAL: Your Honor, I am going to hand it to
17 Mr. Corvick who will address this.

18 THE COURT: Sure.

19 MR. CORVICK: Good afternoon, Your Honor.

20 The Plaintiffs' position on that particular ** has
21 briefed in detail in Docket Entry 115. Our Plaintiffs'
22 response to supplemental brief on jurisdiction. In a nutshell,
23 Your Honor, Judge Rosario's decision was wrongly decided.

24 More importantly, Judge Moreno in the ** *Trivie*
25 opinion cited in that brief expressly made the point that

1 Florida has never recognized the separate entity doctrine. All
2 six of the garnishees are subject to the Court's jurisdiction.

3 All six of the business here. None of the six,
4 including CitiBank, have challenged personal jurisdiction of
5 this Court. Therefore, the Court has the owners of the assets
6 are subject to jurisdiction, that being the intervenors that
7 has all the garnishees that hold these assets here in the
8 United States.

9 Our position is that all six of the accounts are, in
10 fact, located in Florida because the garnishees are located in
11 Florida. And we cite to a U.S. Supreme Court case, 1951, at
12 Page 10, the Standard Oil case where it references that the
13 location of an intangible asset is fictional that control over
14 parties, et cetera, is what **. And that is also been affirmed
15 by the ** Appeals Fifth Circuit.

16 I don't want to get into -- I could get into a
17 detailed discussion about why Judge Rosario's ruling is
18 incorrect primarily because it relies on a case, the lynchpin
19 of Judge Rosario's ruling that bank accounts are tangible
20 assets and that is flat out false.

21 Then, you have Judge Moreno's decision pointing out
22 that Florida does not recognize the separate entity doctrine
23 where -- and that is an outdated doctrine back to the days when
24 we had passbooks and account cards. Now in the press of a
25 button, CitiBank can tell you exactly what is in that account.

1 If the Court were to order CitiBank right now to turn
2 over that money or produce an account, they could do that with
3 a push of a button because they do business here in they are
4 subject to jurisdiction here.

5 And one other issue that was never raised, litigated,
6 or decided in Judge Rosario's ruling was the issue of a
7 nationwide service of process under the Antiterrorism Act.

8 And our briefs also cites some cases which are
9 bankruptcy cases, which just like the Antiterrorism Act, the
10 bankruptcy rule gives the trustee nationwide service of
11 process.

12 So there is a case out of the Middle District of
13 Florida. I think it is called In Re: Premiere where the Middle
14 District said that the bankruptcy trustee could use the Florida
15 garnishment statute to garnish out-of-state accounts.

16 And just like bankruptcy trustees can do it on a
17 nationwide service of process, so too can terrorism victims
18 under the ATA, but again we will defer to more detailed
19 authorities that are laid out in our briefs on that point.

20 THE COURT: For purpose of tomorrow, then, can we
21 agree that the jurisdictional issue with Mr. Campbell's reading
22 and, frankly, maybe other parties as well. Not just CitiBank.
23 We are not going to have time tomorrow.

24 And so, therefore, why don't we have it so that any of
25 the other parties who do not want to appear tomorrow, they

1 don't have to bring witnesses tomorrow, I am not going to
2 adjudicate the jurisdictional challenge tomorrow.

3 And then, obviously, before a final disposition we are
4 going to have to, but maybe that can be done just simply on the
5 papers. As you tell me you are going to brief Mr. Campbell's
6 position is briefed. And then, if I find that there are
7 evidentiary issues that make a difference, then obviously we
8 can revisit this.

9 But, for now, does anybody have a problem proceeding
10 that way I will just deal with the intervenors and the
11 Plaintiffs. The garnishee entities don't have to appear and
12 they are welcome to appear, but they are not going to bring any
13 witnesses tomorrow?

14 Do the Plaintiffs agree?

15 MR. ROSENTHAL: Your Honor, Plaintiffs agree with
16 that, Your Honor.

17 MR. SCOTT: Jeffery Scott.

18 I think we should excise or server the CitiBank issue
19 from the motion because if the Court does not have jurisdiction
20 over the properties, then there can't be any proceedings as it
21 relates to that particular piece of property or other
22 properties. It is a threshold question.

23 So if the Plaintiffs are willing to agree to server
24 that bank account. And so the Court also knows there is in
25 this particular case there is a motion to dismiss the

1 interpleader for lack of subject matter jurisdiction because of
2 the property.

3 And in addition to that, the Plaintiffs have filed an
4 action in New York where us -- Mr. Lopez has actually filed a
5 motion to pursuant to Judge Carter's request, a motion to
6 dismiss in New York. And that is part of the -- that is a
7 CitiBank issue as well.

8 So the Plaintiffs aren't losing out if the CitiBank is
9 excise or severed from this case because they have another
10 jurisdiction and they have a remedy.

11 So we would feel much more comfortable having anything
12 related to the CitiBank not be part of tomorrow's proceeding.

13 MR. ROSENTHAL: Your Honor, this is Richard Rosenthal
14 for the Plaintiffs.

15 I just want to clarify something, which is Mr.
16 Corvick's answer was in response to what we thought your
17 question was are we okay with holding the jurisdictional
18 question and dealing with that second perhaps for a later date
19 with tomorrow's hearing to be focused on the agency or
20 instrumentality issue and the implications of that.

21 I think we just heard from Mr. Scott is bringing
22 questions of severance and interpleader in the Southern
23 District of New York. That is a whole different question on
24 what I think you asked us, which is are we okay of having the
25 question of jurisdiction over particular accounts dealt with at

1 a later date later than tomorrow and the answer to that is yes.

2 But as to all the matters that you just heard about
3 severance and interpleader and the Southern District of New
4 York, as I understood it, that was sort of beyond the scope of
5 Your Honor's question.

6 THE COURT: I hear what you are saying, but ultimately
7 whether I server it or grant permission to dismiss, either way
8 I am not going to adjudicate the issues particular to the
9 garnishees' particular position for CitiBank or anybody else
10 tomorrow in terms of an evidentiary process at least.

11 So as long as everybody understands that is what is
12 going to happen tomorrow, then each individual garnishee entity
13 can decide for itself if it wants to appear or to let me just
14 read the transcript.

15 So I won't be adjudicating any final turnover thing
16 until I have heard from any of them and dispose of any pending
17 motions to dismiss, obviously.

18 And if that requires an additional hearing, I will set
19 it, but just so everybody is comfortable, tomorrow I will be
20 focusing on issues more particular to the intervenors and the
21 Plaintiffs.

22 Okay. I think we have probably accomplished as much
23 as we can do. Anybody else want to chime in on anything else
24 separately?

25 MS. FONSECA: Yes, Your Honor. This is --

1 THE COURT: Can you say that again? You are breaking
2 up a little bit.

3 MS. FONSECA: Daniela Fonseca Puggina on behalf of one
4 of the garnishees Safra Bank of New York.

5 Just so I confirm my understanding, tomorrow the
6 motion to dismiss will be addressed. The issue of
7 instrumentality will be addressed.

8 Some garnishees raised some issues in the answers and
9 those issues will be addressed later on and not tomorrow.

10 So, for example, one of the issues that Safra has
11 raised is the fact that they are six related cases in different
12 jurisdictions.

13 THE COURT: Right.

14 MS. FONSECA: And the different groups of garnishment
15 over the same funds. And the garnishee wants to ensure that
16 whichever order with respect to these assets, it follows that
17 it will include all the other related cases and the other
18 Plaintiffs.

19 We understand that there is an execution agreement,
20 but we have not been provided access to it. And so, there is
21 no chance that an order this case will result in a final
22 resolution with respect to the same funds as they are addressed
23 in other cases.

24 THE COURT: Well, let me ask you this question
25 actually along those lines.

1 Your representing as the garnishee, have you filed
2 motions to transfer proceedings related to your client to a
3 different jurisdiction?

4 MS. FONSECA: No, Your Honor. We just filed it
5 unanswered.

6 THE COURT: In other words --

7 MS. FONSECA: But we did say that there is another
8 Plaintiff has claimed which is --

9 THE COURT: Right.

10 MS. FONSECA: -- which is in a different proceeding
11 that has claimed against the same funds.

12 And we understand there is a joint prosecution
13 agreement that has been entered between this authority and
14 Stansell, which is the Plaintiff in this case --

15 THE COURT: Right.

16 MS. FONSECA: -- which supposedly would resolve any
17 issues, but we have not been given access to the agreement
18 itself.

19 So, you know, my client just wants to make sure that
20 it is not subject to the other clients' claims if it agrees
21 with this Court's decision or abides by this Court's decision
22 in this case.

23 THE COURT: I see.

24 MS. FONSECA: We just wanted to make sure that the
25 Court would rule at some point address and that it is not going

1 to be at the hearing tomorrow.

2 THE COURT: I will add, though, that to the extent
3 that they believe that any joint proceeding be undertaken,
4 there is a remedy under the rules for transfer and
5 consolidation.

6 So I just throw that out there to the extent that
7 those rules are relevant to your client's position. Now, they
8 may not be. I am just throwing that out there, but anything
9 related to that we will obviously not going to be dealing with
10 tomorrow. You can rest assured of that.

11 MS. FONSECA: Thank you. Understood.

12 THE COURT: You understand that as well, Mr. Campbell,
13 that you don't have to bring your witnesses from New York?

14 MR. CAMPBELL: Yes. And there will be no argument on
15 the motion that will effect us, if I understand it correctly as
16 well; is that correct?

17 THE COURT: Correct.

18 I will certainly either adjudicate things on your
19 motion on the papers or otherwise set a hearing on your
20 particular issues.

21 MR. CAMPBELL: Thank you.

22 MR. SCOTT: Your Honor, Jeffery Scott.

23 On the question of has any garnishee filed a motion to
24 transfer --

25 THE COURT: Yes.

1 MR. SCOTT: We actually filed a motion to dismiss or a
2 motion to transfer the CitiBank matter to New York.

3 THE COURT: Okay.

4 MR. SCOTT: Mr. Campbell's client CitiBank joined in
5 that motion. So there is a transfer motion in place right now.

6 THE COURT: Got you. And that is only as to the
7 CitiBank proceeding, correct?

8 MR. CAMPBELL: That's correct, yes.

9 THE COURT: Okay. We will look at that.

10 Okay. All right. I think we have probably done the
11 best we can on a telephone hearing.

12 So we will go ahead and adjourn and I will see you all
13 tomorrow at 9:00 and see what progress we can make.

14 MR. ROSENTHAL: Thank you very much, Your Honor.

15 THE COURT: Thank you all very much.

16 (Thereupon, the proceedings concluded.)

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CERTIFICATE

I hereby certify that the foregoing telephonic transcript is an accurate transcript of the audio recorded proceedings in the above-entitled matter.

06/14/19

Bonnie Joy Lewis,
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 19-20896-CR-SCOLA

KEITH STANSELL, et al.,
Miami, Florida
Plaintiff(s),
June 11, 2019
vs.

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

HEARING
BEFORE THE HONORABLE EDWIN G. TORRES
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Newton P. Porter, Esquire
Tony P. Korvick, Esquire
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Richard Rosenthal, Esquire
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	I-N-D-E-X				
	WITNESS	DIRECT	CROSS	REDIRECT	RE CROSS
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4	WILLIAM C. MARQUARDT				
5	BY MR. SCOTT	5			
6	BY MR. KORVICK		23		
7	ERNESTO CARRASCO RAMIREZ				
8	BY MS. CHEWNING	30			
9	BY MR. PORTER		46		
10	DOUGLAS FARAH				
11	BY MR. KORVICK	57			
12	BY MR. SCOTT		88		
13	LUIS M. COTE GOMEZ				
14	BY MR. PORTER	103			
15	BY MR. SCOTT		119		
16	PAUL CRAINE				
17	BY MR. PORTER	145			
18	BY MS. CHEWNING		176		192
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1 Thereupon,
2 the following proceedings began at 9:19 a.m.:

3 THE COURTROOM DEPUTY: Calling case Keith
4 Stansell, et al. versus Revolutionary Armed Forces of Colombia,
5 case No. 19-20896-Civil-Judge Scola. Counsel, please state
6 your appearances for the record.

7 MR. PORTER: Newton Porter from the law firm of
8 Porter & Korvick on behalf of the Stansell plaintiffs.

9 MR. KORVICK: Tony Korvick from the law firm of
10 Porter & Korvick on behalf of the Stansell plaintiffs and local
11 counsel for Pescatore.

12 MR. ROSENTHAL: Richard Rosenthal on behalf of the
13 plaintiffs, Your Honor, good morning. Good morning.

14 MR. TARNAR: Nathaniel Tarnar on behalf of the
15 Pescatore plaintiffs.

16 MR. SCOTT: Jeffrey Scott, Your Honor, behalf of
17 Mr. Lopez.

18 MS. CHEWNING: Good morning, Your Honor. Kerri
19 Chewning from Archer and Greiner also on behalf of Mr. Lopez
20 and his related companies.

21 MR. KOLANSKY: Good morning, Your Honor. Jeffrey
22 Kolansky on behalf of Mr. Lopez and Mr. Scott's boys.

23 MR. LINDSAY: Good morning, Your Honor. Glen Lindsay
24 on behalf of Mr. Lopez.

25 THE COURT: Good morning, everybody.

1 I take it we have some garnishees present. Any
2 garnishee counsel present?

3 MR. SCOTT: I don't believe so.

4 MS. ZINN: Kerry Zinn on behalf of UBS Financial
5 Services, Inc..

6 THE COURT: Thank you. Good morning.

7 Have a seat, everybody. We'll maximize our time today
8 on what we discussed yesterday at yesterday's hearing. We will
9 start with Mr. Scott. Do you want to put on your witness?

10 MR. SCOTT: Yes, Your Honor. I will do my best with
11 my voice and keep it up. So we would call William Marquardt.

12 WILLIAM C. MARQUARDT

13 Having been first duly sworn on oath, was examined and
14 testified as follows:

15 THE COURTROOM DEPUTY: Please have a seat, sir, and
16 state and spell your last name for the record.

17 THE WITNESS: It's William Charles Marquardt. The
18 last name is M-A-R-Q-U-A-R-D-T.

19 DIRECT EXAMINATION

20 BY MR. SCOTT:

21 Q Good morning, Mr. Marquardt. Where are you currently
22 employed?

23 A Berkeley Research Group.

24 Q Is it BRG for short?

25 A It is BRG for short.

1 Q What is your position at BRG?

2 A I'm a director.

3 Q What are some of your responsibilities as a director?

4 A I usually assist clients in conducting forensic accounting
5 exercises --

6 (Thereupon, there was an interruption by the court
7 reporter.)

8 THE WITNESS: I usually assist clients in conducting
9 forensic accounting investigations aimed at corporate
10 malfeasance theft, that type of activity.

11 BY MR. SCOTT:

12 Q Before we get into a little bit more detail about that, I
13 would like to talk about some of your education and
14 professional background, okay, Mr. Marquardt?

15 A Okay.

16 Q Why don't you tell the court a little bit about your
17 educational background.

18 A I have an undergraduate degree from the University of
19 Cincinnati in accounting and real estate and an MBA from the
20 University of Miami in 1992 and 2005 respectively.

21 Q After you graduated, where was your first job?

22 A Arthur Andersen, which unfortunately no longer exists.

23 Q Right. Just a little bit of background. What did you do
24 for Arthur Andersen?

25 A I was in the attest side, which means public accounting.

1 Q And after Arthur Andersen, where did you move on?

2 A I moved on to two corporations where I was doing internal
3 audit work as opposed to external audit work.

4 Q Could you explain a little bit about what internal audit
5 work is?

6 A Sure. Those jobs, which were --

7 THE COURT: You need to slow down if you are going to
8 use proper names.

9 THE WITNESS: Sorry. I will skip the proper names
10 then.

11 So I was performing internal audit work which
12 essentially involved reviewing the internal control environment
13 of publicly traded companies to ensure that the controls were
14 operating effectively for controls over financial reporting.

15 BY MR. SCOTT:

16 Q Were you using a set of standards?

17 A Yes.

18 Q What were those standards?

19 A Usually, they were the company's official policies and
20 procedures, and then those are subject to public reporting
21 standards.

22 Q Where was your next job?

23 A I moved on from those positions to AB Volvo, and from
24 there to Dantzler, Inc. where I held executive level positions
25 at both companies.

1 Q At Volvo, is that the same Volvo?

2 A That is the same Volvo.

3 Q And exactly what did you do for them?

4 A Numerous positions at Volvo. I ended up in the final
5 position being president and CEO of two Indian finance
6 companies in Peru.

7 Q When you were in Peru, what were some of your
8 responsibilities and duties?

9 A I essentially ran the finance companies which provided
10 internal or captive financing on behalf of the market company
11 which is the Volvo you were referring to.

12 Q Okay. And so we all are on the same page, that's the auto
13 maker, right?

14 A It's the auto maker, but it's much more than that. It's
15 trucks, buses, construction equipment, Penta Marine, et cetera.

16 Q How long did you hold that position?

17 A From 1998 to 2003 I was with Volvo.

18 Q It indicates on your CV that when you were at Dantzler,
19 you were the CFO, the chief financial officer?

20 A That is correct.

21 Q And what were your responsibilities as the CFO?

22 A That was privately held company, so it was oversight of
23 all financial reporting to the owners.

24 Q Was that a medium sized, a large sized couple?

25 A A hundred million U.S. in annual revenue.

1 Q I see that you moved on from there in 2005 to KPMG?

2 A Yes.

3 Q What kind of company is K?

4 A It's one of the big four, so back to public accounting;
5 although, this time it was in the advisory services, so not on
6 the attest side.

7 Q On the advisory services, can you describe the type of
8 work you did?

9 A That was typically doing internal controls reviews with
10 respect to SOX 404 compliance.

11 Q And what does that mean?

12 A Again, it's basically insuring that a company's internal
13 control environment is as laid out in their compliance policies
14 and procedures. It's a verification exercise.

15 Q Are those policies and procedures also governed by other
16 standards?

17 A Yes, generally accepted accounting principles being the
18 primary one.

19 Q We refer to those as GAAP principles?

20 A We do.

21 Q Is GAAP principles different than forensics accounting?

22 A No.

23 Q It's the same. Okay. You were there for approximately
24 two years?

25 A Correct.

1 Q And then you went to a company called FTI Consulting?

2 A I went to FTI Consulting, yes.

3 Q What did you do when you were at FTI?

4 A The same type of service, forensic accounting services on
5 behalf of our clients primarily internal investigations.

6 Q Doing the same type of work?

7 A The exact same type of work, yes.

8 Q How long did you stay at FTI?

9 A About six years in total. I was at FTI. I left to become
10 CFO of an operational consulting firm and then returned, latest
11 was from 2003 to 2015.

12 Q So I forgot to ask you, you were working in Peru for
13 Volvo, right?

14 A Correct.

15 Q Did you move back to the states?

16 A I did.

17 Q Everything after Volvo, you were back in the states?

18 A Yes.

19 Q And I see that you were the chief financial officer for a
20 company called Highland Consulting?

21 A Highland Consulting Group.

22 Q What did they do?

23 A Operational consulting, so process improvement at mining
24 companies or other manufacturing entities.

25 Q All right. And as the CFO, who did you report to?

1 A The CEO and owner.

2 Q And what were some of your responsibilities as a CFO?

3 A To prepare the financial statements to ensure that we were
4 in compliance with the internal controls and policies of that
5 company as well as our covenants with our financiers.

6 Q And I see you, after that, for approximately two years you
7 went back to FTI?

8 A Yes.

9 Q And did something change in your responsibilities at FTI
10 on the second time?

11 A No.

12 Q And again, could you just explain to us what you were
13 doing and what services you were providing.

14 A It's a global business advisory firm. I was primarily
15 involved in investigations and forensic accounting for them.

16 Q On your CV it indicates that you were advising on behalf
17 of law firms and corporations?

18 A That's correct.

19 Q And government clients as well?

20 A Correct.

21 Q What were some of the government clients?

22 A They weren't government clients. They were companies that
23 were interacting with the government pursuant to an FCPA
24 investigation or an --

25 (Thereupon, there was an interruption by the court

1 reporter.)

2 THE WITNESS: FCPA, U.S. Foreign Corrupt Practices
3 Act, and the Securities and Exchange Commission.

4 BY MR. SCOTT:

5 Q I was just about --

6 A Financial statement --

7 (Thereupon, there was an interruption by the court
8 reporter.)

9 BY MR. SCOTT:

10 Q And how long did you stay at FTI?

11 A Until 2015.

12 Q Then where did you move on to?

13 A Berkeley Research Group.

14 Q So let's talk a little bit what you do at BRG. What is
15 your position again?

16 A Director.

17 Q All right. And what type of services do you provide?

18 A The same type of services, forensic accounting and
19 investigative support services.

20 Q Is it also focused on FCPA?

21 A It is.

22 Q All right. And have you had the opportunity to work in
23 conjunction with OFAC system?

24 A Yes.

25 Q How long have you been doing that?

1 A Since I returned to FTI in 2013.

2 Q And just so we are all clear, what is your understanding
3 of what OFAC does? What is their mission?

4 A OFAC is part of the U.S. Treasury Department or Office of
5 the U.S. Department of Treasury. They administer economic and
6 trained sanctions on behalf of U.S. foreign policy and national
7 security goals.

8 Q All right. So I see in your CV that you have some
9 certifications.

10 A Yes.

11 Q Let's run through this. I see that you are a certified --
12 you are CPA?

13 A I am a CPA.

14 Q Where are you licensed?

15 A Connecticut.

16 Q I also see you are certified in financial forensics?

17 A Yes.

18 Q And what does that mean to be certified?

19 A It means that the AICPA offers a certification in
20 financial or forensic accounting and I have passed the
21 requisite requirements to have that certification.

22 Q What does the organization stand for, the acronym?

23 A It's the American Institute of Certified Public
24 Accountants.

25 Q And do they have a set of standards?

1 A Yes.

2 Q And as a certified financial forensic accountant, are you
3 required to follow those standards?

4 A Yes, I am.

5 Q Did you follow those standards in this project?

6 A Yes.

7 Q And I see that you are also certified in risk management
8 assurance?

9 A Correct.

10 Q And what is that?

11 A That is the certification for reviewing internal
12 compliance controls and programs for corporations.

13 Q And I see that you are also a certified fraud examiner?

14 A Correct.

15 Q And how do you become a certified fraud examiner?

16 A You have to pass a test, which I believe is now in four
17 parts, and also have a minimum number of experience, years of
18 experience.

19 Q So when did you get certified as a fraud examiner?

20 A It's been a while, probably 2008. I'm not a hundred
21 percent certain.

22 Q Is there something you need to do to keep up your
23 certification?

24 A Yes. Most of the certifications you are reading out
25 require an annual --

1 (Thereupon, there was an interruption by the court
2 reporter.)

3 THE WITNESS: Most of the certifications require an
4 annual continuing professional education minimum which is a
5 number of hours that you must complete. The CPA exam for, for
6 example, as 40 hour requirement per year.

7 BY MR. SCOTT:

8 Q And the certified financial forensic, again, the same type
9 of certification?

10 A Uh-huh.

11 Q And you are current, correct?

12 A With the CPA exam, yes.

13 Q I also see that you are certified in anti money laundering
14 specialist. What does that mean?

15 A That is the controls around money laundering for financial
16 institutions. It's through ACAMS, the Association of Certified
17 Anti Money Laundering Specialists.

18 Q And TRACE anti-bribery specialist accreditation, what does
19 that stand for?

20 A TRACE is a company that offers a certification to
21 understand bribery controls and processes and how it occurs and
22 why it occurs.

23 Q And I see also that you are certified as a financial crime
24 specialist. What does that mean?

25 A It is basically a derivative of anti money laundering in

1 the BSA.

2 Q And again, you have to keep those credits going every --

3 A There are membership dues and CPE requirements for these,
4 yes.

5 Q I also see that you are a lead auditor?

6 A Yes.

7 Q Okay. And I see you have a certification. You have to
8 keep that up as well?

9 A That is relatively new. That is the ISO standard, the
10 international standard for anti-bribery.

11 Q When did you receive that certification?

12 A That's two years ago.

13 Q All right.

14 MS. CHEWNING: At this time, Your Honor, I would offer
15 Mr. Marquardt as an expert in forensic accounting.

16 THE COURT: Any objection?

17 MR. KORVICK: No objections, Your Honor.

18 THE COURT: Go ahead.

19 BY MR. SCOTT:

20 Q Mr. Marquardt, were you asked to review some records and
21 form an opinion in this case?

22 A Yes, I was.

23 Q Could you just inform the court what you were asked to do?

24 A We were asked to conduct a review to determine if OFAC has
25 ever associated or designated Samark Jose Lopez Bello or any

1 individual entity or organization owned or controlled by him as
2 associated with the FARC.

3 Q And then using all your certifications and your experience
4 and your background, were you able to form an opinion as to
5 whether or not Mr. Lopez or his related entities were linked or
6 associated with the FARC?

7 A Yes.

8 Q And what does your analysis conclude?

9 A That he was not.

10 Q Let's go back now. What did you do to form your opinion?

11 A We received or were provided a list of entities and the
12 associated directors, officers, shareholders, and managers if
13 they were available from Mr. Lopez, and we took that list and
14 compared it against the current OFAC SDN list.

15 Q So let's talk about the information that you received from
16 Mr. Lopez. Approximately -- or exactly how many related
17 companies' shareholders were you provided with?

18 A We looked at a list of 68 entities or vehicles. Some of
19 them were trust agreements, but we included them for
20 completeness.

21 Q Okay. Is that list included in your report?

22 A It is.

23 Q And is that at appendix 3?

24 A It is.

25 MR. SCOTT: Your Honor, that is actually document

1 No. 112-1. If the Court would like me to hand you a copy of
2 the report, I can, to follow along.

3 THE COURT: Sure.

4 BY MR. SCOTT:

5 Q So let's go back to the appendix 3, Mr. Marquardt.

6 A Okay.

7 Q I see it's a chart that was prepared. And again,
8 approximately how many different entities did you compare
9 against?

10 A 68.

11 Q Okay. And then I want to take you to appendix 4. What is
12 appendix 4?

13 A Appendix 4 is the -- contains a list of the directors,
14 officers, shareholders, and managers of those entities.

15 Q All right. Are some of the entities in appendix 3 and
16 appendix 4 -- do any of those overlap?

17 A Yes, they do.

18 Q Okay. And so you used that information. What other
19 information did you use?

20 A This is the primary source of the information we used from
21 the client, and then we compared that with the SDN list as
22 provided by OFAC as of March 5.

23 Q Let's talk a little bit about that list. First of all,
24 where is that information? Where can you get that information?

25 A It's available on OFAC's website, publicly available.

1 Q Was it publicly available in February of 2017?

2 A Yes, sir.

3 Q To your knowledge, how far back would that information go
4 back that would have been publicly available?

5 A I'm not exactly certain as to that, but OFAC started in
6 1950, so it's been around since I have been a professional.

7 Q Okay. And you talked about something called an SDN list?

8 A Yes.

9 Q What is an SDN list?

10 A It's a list of specially designated nationals which is a
11 list of people, organizations, or vessels sometimes with whom
12 U.S. citizens or permanent residents are prohibited from doing
13 business.

14 Q All right. And you also mentioned the SDN list. Are
15 certain people in one group or are there different groups?

16 A There are approximately 62 program tags, I believe, within
17 the SDN list that are provided in detail on OFAC's website as
18 well.

19 Q Which program tags did you concentrate on?

20 A We did a little bit of public research, open source Google
21 research, and identified five program tags out of the 62 we
22 thought were relevant for conducting the comparison requested.

23 Q Right. And are those program tags identified in the
24 appendix 3 and 4?

25 A Yes, sir.

1 Q All right. And I see -- why don't you tell us which
2 program tags you looked at.

3 A Sure. There are five program tags that were reviewed.
4 The first one is SDGT which is global terrorism sanctions
5 regulations. The second one is SDNT which is narcotics
6 trafficking sanctions regulations. The third one is SDNTK
7 which is the foreign narcotics kingpin sanctions regulations.
8 The fourth one is SDT which is terrorism sanctions regulations.
9 And the final and fifth one was FTO which is foreign terrorist
10 organization sanctions regulations.

11 Q Why did you pick those particular tags?

12 A Because they could have been associated with the FARC on
13 open source research.

14 Q Understood. Now, were you also provided with a press
15 release?

16 A Yes.

17 Q Is that part of your expert report?

18 A Yes.

19 Q After you reviewed the press release itself, were you able
20 to determine if Mr. Lopez or any of his companies were
21 associated or linked to FARC?

22 A No.

23 Q Why not?

24 A It doesn't mention the FARC in the press release.

25 Q Is that press release dated February -- is it 13 or 14?

1 A It is incorporated into the report, and it's dated
2 February 13, 2017.

3 Q So now you have some data from Mr. Lopez, the companies,
4 and the shareholders, then you have the OFAC data. How did you
5 go about using both sets of data to determine whether or not
6 Mr. Lopez or any of his entities were associated or linked to
7 the FARC?

8 A We essentially just compared those two lists using an SQL
9 database.

10 Q And could you explain for the Court what an SQL database
11 is?

12 A I will try. I am not the data expert within BRG. But an
13 SQL server is a relational database that is developed by
14 Microsoft that allows us to compare a list or data sets and
15 determine whether or not there is a match between two lists
16 easily.

17 Q Okay. And is that what BRG did in this case?

18 A It is.

19 Q Is that something you would normally rely upon in forming
20 your opinions?

21 A Yes.

22 Q And so let's go through this. By the way, did you also do
23 an analysis of individuals who were identified as associated
24 with FARC?

25 A Using just the SD analyst alone, we encountered 11

1 individuals who were specifically identified with FARC, and
2 they were characterized as international FARC commission
3 members.

4 Q During your analysis, were you able to link any one of
5 those individuals who were associated with FARC to Mr. Lopez or
6 any of his companies?

7 A No, sir.

8 Q All right. So let's back up a second. Tell us what you
9 did with regard to looking at the SDN list and the information
10 you received from Mr. Lopez, and tell us what your results
11 were.

12 A Okay. The results are in the conclusions and opinion
13 section. We essentially found no link between any other
14 individual and any of the five program tags with Mr. Lopez or
15 his entities individuals.

16 Q How did your company actually search the data?

17 A We downloaded the OFAC list into the SQL database, and we
18 up loaded the list of companies provided by Mr. Lopez as well
19 as the directors, officers, shareholders, and managers. All
20 three of those lists were in the database. We did a comparison
21 to look for any matches.

22 Q When you say looked for comparisons, what type of searches
23 were run?

24 A We run the searches based on the names, individually and
25 as a string or together, and determine whether or not there's a

1 match by reviewing results of those searches.

2 Q All right. Did you reach an ultimate opinion as to
3 whether any of the persons, companies, who OFAC directly linked
4 to the FARC were also connected linked or associated with
5 Mr. Lopez or any of his companies?

6 A We did.

7 Q And what was your opinion?

8 A They are not.

9 Q Are all your opinions today to a reasonable degree of
10 forensic certainty?

11 A Yes.

12 MR. SCOTT: That's all the questions I have on direct.

13 THE COURT: Thank you.

14 Cross-examination.

15 MR. KORVICK: Thank you, Your Honor. Tony Korvick.

16 CROSS EXAMINATION

17 BY MR. KORVICK:

18 Q Good morning, Mr. Marquardt?

19 A Good morning.

20 Q Do you recall approximately when you were retained in this
21 case?

22 A No.

23 Q You don't know what year it was?

24 A I believe it was 2018.

25 Q Were you involved in any work for Mr. Lopez Bello with

1 respect to any petition submitted to OFAC to be removed or
2 delisted from OFAC?

3 A No, sir.

4 Q Let me understand what you did exactly. First let me come
5 to the SDN list. You have been to the treasury website, right,
6 and seen the SDN search tool?

7 A Yes.

8 Q So anyone in this courtroom could do a Google search,
9 OFAC, SDN search, and there's a link, and it takes you to the
10 search tool, correct?

11 A That is correct.

12 Q You don't need an SRQ (sic) database to do that, right?

13 A You do not need an SQL database to do that, no.

14 Q You could have done that one by one by just typing in
15 those entity names, hit search, and it will tell you whether or
16 not there is a hit, and if so, under what program tags it comes
17 up?

18 A Yes.

19 Q So the SQL database just makes it a little faster; you
20 don't have to do it one by one, right?

21 A Correct.

22 Q And let me ask you about Exhibit 3. I think it's
23 Exhibit 3. Appendix 3, excuse me.

24 A Okay.

25 Q That actual list of entities, who gave you that?

1 A I was provided that by the client through counsel.

2 Q Okay. And appendix 4, who gave you that?

3 A That was information provided in the same manner.

4 Q So your understanding of who the officers and/or
5 shareholders or directors or managing members or members of the
6 various entities on appendix 4, that's based on this document
7 that came from Lopez Bello's lawyers, right?

8 A No. That's based on incorporation documents and other
9 information that was provided by Mr. Lopez's lawyers which we
10 extracted to create the list that you see now as Exhibit 4.

11 Q Where are those records, sir?

12 A Those records are in my office.

13 Q Do you have corporate records on each and every one of the
14 entities that is on appendix 3?

15 A Yes, sir.

16 Q Do you have articles of incorporation for those that are
17 corporations?

18 A Yes, sir.

19 Q And do you have the LLC members agreement operating
20 agreement for any of the LLC entities on that list?

21 A I don't know how many I have, but those that were made
22 available to me, I did use, yes, sir.

23 Q Do you still have all of those records in your possession?

24 A Yes, sir.

25 Q We would ask that you retain those.

1 A Understood.

2 Q Did you look at the OFAC chart for the El Assimi, Lopez
3 Bello network?

4 A Yes, sir.

5 Q Just by looking at that chart, you can see which of the
6 entities OFAC has designated, right?

7 A Yes, sir.

8 Q As I understand it, you took the Lopez Bello list of 68
9 entities and determined that the ones that are not on the chart
10 are not blocked under these various programs, right?

11 A That's correct.

12 Q Okay. You don't dispute any of the FARC's role in
13 narcotics trafficking, correct? You are not here giving any
14 opinions on the FARC's role in narcotics?

15 A Correct, I have no knowledge of the FARC's role in
16 narcotics.

17 Q You are not disputing or opining on the role of the Cartel
18 of the Soles or Venezuelan officials in the FARC's cocaine
19 trafficking, right?

20 A No, sir.

21 Q Can you name any of the cartels that the FARC was using to
22 transport cocaine and traffic cocaine over the past two
23 decades?

24 A I can name the ones that you were provided in the press
25 release, but other than that, no, sir.

1 Q Okay. Are you aware that the federal court in Tampa in
2 this case has previously determined the Norte de Valle Cartel
3 and its member networks to be an agency or instrumentality of
4 the FARC?

5 A No, sir.

6 Q Are you aware that the appellate court has affirmed that
7 connection of the Norte de Valle Cartel and its networks?

8 MR. SCOTT: Objection. This is outside of his
9 testimony, Your Honor.

10 THE COURT: I will give him a little bit of leeway.
11 Overruled.

12 BY MR. KORVICK:

13 Q Did Mr. Lopez Bello's attorneys ever inform you that the
14 appellate court in this case, in the Stansell case,
15 specifically affirmed multiple turnover judgments where OFAC
16 had never linked the appellants directly to the FARC. They had
17 only linked them to the Norte de Valle Cartel?

18 MR. SCOTT: Objection. I think any communication
19 between an attorney and a consultant is privileged whether it
20 happened or not.

21 THE COURT: Overruled.

22 BY MR. KORVICK:

23 Q Is that something they ever told you?

24 A I'm sorry, what was the question?

25 Q Did Mr. Lopez Bello's lawyers ever inform you that the

1 appellate court in this case had previously upheld multiple
2 turnover judgments where the appellants had been linked by OFAC
3 only to the Norte de Valle Cartel leader but never directly
4 linked to the FARC itself?

5 A No, sir.

6 Q Did the lawyers ever tell you that in that case, the Norte
7 de Valle Cartel leaders, there was no evidence of them being
8 shareholders or officers in the various entities that the
9 appellants held?

10 A No, sir.

11 Q Did you get any bank statements from Mr. Lopez Bello or
12 his lawyers for any of those entities?

13 A We didn't review bank statements for this declaration,
14 sir.

15 Q Did you ask for them?

16 A No, sir.

17 Q Why not?

18 A They are not part of a list of direct source officers,
19 shareholders, or managers as applicable, nor are they a list of
20 entities which is what we were asked to do as part of the
21 mandate here.

22 Q You were not asked to review records beyond the corporate
23 records; you were not asked to review banking records of any of
24 the blocked entities, correct?

25 A As part of this declaration, no, sir.

1 Q Wouldn't that be the type of records that normally a
2 forensic accountant would review?

3 A Yes, a forensic accounting exercise usually involves
4 financial records.

5 MR. KORVICK: That's all I have. Thank you, Your
6 Honor.

7 THE COURT: I have a question.

8 Did you do any verification that the list that you
9 have been provided on appendix 3 is the entire set of entities
10 or companies that Mr. Bello has an interest in or controls in
11 some form or fashion?

12 THE WITNESS: No, sir, we did not do any independent
13 validation.

14 THE COURT: So you can't tell me whether there are
15 additional companies that are not on appendix 3; you didn't
16 independently verify that?

17 THE WITNESS: Correct.

18 THE COURT: Okay. Any redirect?

19 MR. SCOTT: I don't think so.

20 THE COURT: Thank you very much for your appearance.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 MS. CHEWNING: Good morning, Your Honor. We call
24 Ernesto Carrasco Ramirez to the stand.

25 For the Court's information, Mr. Carrasco will be

1 testifying with an interpreter.

2 THE COURTROOM DEPUTY: Raise your right hand.

3 ERNESTO CARRASCO RAMIREZ

4 Having been first duly sworn on oath, was examined and
5 testified as follows:

6 THE COURTROOM DEPUTY: Please have a seat, sir, state
7 and spell your name for the record.

8 THE WITNESS: My name is Ernesto Carrasco Ramirez.

9 THE COURTROOM DEPUTY: Could you spell that for us,
10 please.

11 THE WITNESS: E-R-N-E-S-T-O C-A-R-R-A-S-C-O
12 R-A-M-I-R-E-Z.

13 DIRECT EXAMINATION

14 BY MS. CHEWNING:

15 Q Good morning, Mr. Carrasco?

16 A Good morning.

17 Q Are you currently employed?

18 A Yes, that's right.

19 Q And who is your employer?

20 A I work for Berkeley Research Group, BRG.

21 Q How long have you worked for BRG?

22 A Three and a half years approximately.

23 Q And what is your job title at BRG?

24 A I'm manager and director currently in Mexico. I manage
25 the office in Mexico, and I participate in several

1 investigations in Latin America.

2 Q And so your office is located where?

3 A My office is in Mexico City.

4 Q And were you asked -- what were you asked to do in
5 relation to this case?

6 A I was asked based on my knowledge, my experience, and my
7 studies my knowledge about Colombia because I am Colombian, I
8 lived several years in Colombia, and I became an attorney in
9 Colombia. I was asked to provide expert testimony regarding
10 Samark Lopez and any connections with FARC.

11 Q You prepared a report with respect to your findings?

12 A Yes, that's right, I prepared a report. And it was
13 prepared in Spanish, and it was translated into English. I had
14 the opportunity to read it in English. I have knowledge of the
15 English language. And my report is signed on each one of these
16 pages.

17 Q So let's talk a little bit about what makes you qualified
18 to render the opinion today.

19 A Well, like I said before, I'm Colombian. I am an attorney
20 who specialized in penal law and criminology.

21 Q Where did you go to college?

22 A I went to the University of Externado University in
23 Colombia where I received my attorney's, my lawyer's degree and
24 also my specialty.

25 Q Okay. After you graduated law school, what did you do?

1 A At first I worked as an assistant in criminal courts in
2 Colombia. After that, I worked for the solicitor general in
3 Colombia. The solicitor general office in Colombia, to explain
4 it, is an entity in charge of investigating public officials.
5 In that office where I worked initially as a professional
6 grade 19, it's called office of special investigations, that
7 office in Colombia is in charge of investigating the most
8 delicate cases concerning unjust enrichment of public officials
9 and also the most delicate cases regarding violations of human
10 rights.

11 Well, public officials would allegedly be involved such as
12 armed forces officers, police officers, state intelligence
13 agencies, and in those cases, there's usually an aspect related
14 to gorilla groups who in a certain way want to validate the
15 violations of human rights.

16 Q So in the course of that job, you mentioned gorillas. Is
17 that where you encountered or learned about the FARC?

18 A Yes, that was my first experience I'm referring to. I
19 worked for the solicitor general since 1991 through 1994. And
20 as you asked, it was the first time I came to know about
21 matters related to FARC and other gorilla organizations such as
22 ELN and EPL, to cite a couple.

23 Q We will talk in a little bit more detail about the FARC a
24 little bit later, but did there come a time that you moved from
25 the procuraduria to another job within the Colombian

1 government?

2 A Yes, that's right. I went from the procuraduria or
3 solicitor general to the attorney general office.

4 Q And what is the difference between those two offices?

5 A The attorneys general's office is in charge of any crimes
6 committed by any person, and the procuraduria or solicitor
7 general only investigates crimes or investigates public
8 officers. And usually the sanctions imposed by the
9 procuraduria are at an administrative level which are called
10 disciplinary sanctions.

11 Q And so when you moved to the fiscalia, what was your job
12 responsibility there?

13 A I was initially appointed director of international
14 affairs. As such, my responsibilities had to do with matters
15 of international judicial cooperation, support also to
16 intelligence operations that had to do or related to
17 individuals in Colombia. And that support was usually provided
18 through international intelligence agencies.

19 Another one of the important functions of that office is
20 to provide support to the attorney general, what relates to
21 arrest warrants for extradition.

22 Q And in that capacity, did you have occasion to prosecute
23 members of the FARC?

24 A Not prosecute directly. I didn't have those functions. I
25 would say I would provide support to the prosecutors of the

1 office in Colombia as support in their investigations, not
2 judicial functions.

3 Q Okay. So you were involved in the investigations though,
4 is that right?

5 A In the office of international affairs, in everything that
6 had to do with the analysis of evidence that were attached for
7 the extradition requests.

8 After that position, I moved because I was appointed for a
9 very short time, about three months, as director of regional
10 prosecutor's office in Bogota. This office did have contact
11 with the investigation. And in these years that I'm referring
12 to, 1994 to 1998, Colombia had a special justice system which
13 was called justicia sin rostro or justice without a face
14 because the judges and the prosecutors were secret. No one
15 knew their identity for safety reasons.

16 It was a time of terrorism caused precisely by drug
17 trafficking individuals and gorilla groups such as FARC. I
18 said it was a short period of time of three months because I
19 was promoted to director of the national prosecutors offices.

20 After the state attorney and the vice state attorney, it
21 was the highest position in the attorney's office. The
22 director of national prosecutors office had the control over
23 the central directors of all the prosecution offices and direct
24 control over the specialized national units. One of those
25 units was the terrorist unit where, of course, one of the

1 subjects constantly under investigation were FARC.

2 Q So that was a supervisory position?

3 A It was a supervisor position, and it had to do with
4 knowledge of investigations. I had to have knowledge of the
5 most delicate investigations in order to report to the attorney
6 general of the nation, those cases that were being investigated
7 and before making any decisions to have an opportunity to
8 analyze them in a high ranking prosecutors office committee.

9 Q So would you say that in that period of time, you were
10 involved in investigations in supervising investigations of the
11 FARC?

12 A Yes, that's right.

13 Q So is it fair to say that you have a deep knowledge of the
14 FARC and its activities in Colombia during the time that you
15 were holding these positions?

16 A Yes, that's right.

17 Q And how long were you in this position with fiscalia?

18 A I was there until the end of 1997, beginning of 1998.

19 Q And where did you go? What was your next employment after
20 that?

21 A I was afterward appointed by the mayor of Bogota, the
22 capital of Colombia, in an institution that's called the
23 (speaking in Spanish). This entity is charged with doing prior
24 control of the officers who are linked at the district level
25 for the city of Bogota in matters related to prevention of

1 corruption.

2 I held that position for approximately three years until
3 2001 or 2002 where I was appointed by the then president of
4 Colombia. I was appointed to be the head of an office that
5 would supervise all the matters related to casinos and games to
6 control all the different taxes that gambling companies had to
7 pay the state.

8 THE COURT: Let me stop you there.

9 Next question. Do you want to get to the point?

10 MS. CHEWNING: I was just going through his history,
11 Your Honor, for the qualifications so we could qualify him as
12 an expert in all matters related to the Colombian prosecutions
13 and the history of the FARC and associations with the FARC. So
14 I --

15 THE COURT: You can get to the point.

16 MS. CHEWNING: Sure.

17 BY MS. CHEWNING:

18 Q After you left your job with the mayor of Bogota, did you
19 go to work for Kroll?

20 A Yes. After working for the public sector, when all that
21 was done, I moved to the private sector working for entities --
22 investigation in entities as a consultant. I first spent many
23 years as a subcontractor of Kroll.

24 Q In that capacity, did you continue to have exposure to
25 issues related to the FARC?

1 A That's right. Yes, the reason I continued being in
2 contact with matters related to FARC as being director of
3 Kroll, because after being a subcontractor, I moved to be
4 director of a startup. It was because on several occasions we
5 had clients whose companies were investigated due to their
6 alleged financing to groups of outside the law such as FARC.

7 Normally, these kind of entities were associated with the
8 agricultural sector of Colombia. And our role in those cases
9 was trying to establish if those clients had, indeed,
10 voluntarily provided money to FARC or if they had been under
11 extortion.

12 Q And did you -- you eventually moved to another company
13 called ON Partners, is that right?

14 A Yes. After working at Kroll until 2011, I was promoted or
15 I was requested to head the Kroll office in Mexico City. I
16 spent there two years approximately. In 2013 I had the
17 opportunity to work, as you mentioned, at ON Partners. That
18 company was director or created by Oscar Naranjo Trujillo who
19 was police general, director of the national police of
20 Colombia.

21 Q And in that capacity, did you continue to have occasion to
22 investigate issues related to the FARC?

23 A We had cases that had to do with Colombia, with Colombian
24 clients, but our market, it was basically the Mexican market.

25 Q And then after you left ON Partners, what was your next

1 position?

2 A Then I spent one year as an independent consultant in
3 Mexico and in Colombia during that year. And then about three
4 years ago, I started in the BRG office in Mexico.

5 Q And in your position with BRG, do you still have contact
6 with officials in Colombia?

7 A Yes. I still had contact with Colombia. As a matter of
8 fact, I was in charge of the office in Colombia at the end of
9 2018 through the end of March of this year.

10 Q In your position with BRG, do you still maintain contacts
11 with sources within the Colombian government who have
12 information related to the FARC?

13 A Yes. In our activities or doing our work, it is natural,
14 normal, to use human sources. And in Colombia I have
15 confidential sources that have been verified and that I have
16 had for like 20 years who provide me support, and they are
17 matters related to FARC.

18 MS. CHEWNING: Your Honor, at this time we would offer
19 Mr. Carrasco as an expert in Colombian affairs specifically
20 with respect to the investigation and prosecution of the FARC
21 and persons who assist the FARC.

22 MR. PORTER: No objection, Your Honor.

23 THE COURT: All right. Very well. Go ahead.

24 BY MS. CHEWNING:

25 Q Mr. Carrasco, let's go back to the question that you were

1 asked to review in this case.

2 A I was requested to provide a report of some expert to see
3 if there were direct or indirect links between Samark Lopez
4 Bello and FARC. I want to mention that, although other
5 companies were mentioned, what I was asked, my job was
6 concentrated on Samark Lopez Bello.

7 Q And were you able to form an opinion with respect to that
8 question?

9 A That's right.

10 Q And what was your opinion?

11 A My opinion is based on my personal knowledge and
12 experience together with human sources which I consulted in
13 order to be able to prepare to do my job. I was unable to
14 establish any direct or indirect link between Samark Lopez
15 Bello and FARC.

16 Q You mentioned that you consulted some sources.

17 A Yes, that's right.

18 Q Okay. And how do you know that the sources that you
19 contacted were reliable sources?

20 A I can say categorically, based on all the years I have
21 been working with the sources, some of them are even still
22 linked to investigation in institutions of the Colombian
23 government such as the attorney general's office and others who
24 are active agents of police or the military.

25 Q Is it fair to say that these are the types of

1 professional -- that this is the type of information that a
2 professional in your field would routinely contact to learn
3 information such as the information we asked you to
4 investigate?

5 A Yes. We even complied with protocol and confidentiality
6 requirements, and it's the activity that any person working for
7 a private investigation consulting company, corporate, would
8 do.

9 Q Okay. Let's have a very brief discussion, we will try to
10 keep it short, since you have some information about the FARC.
11 Can you give me a very short history of how the FARC began in
12 Colombia?

13 A The history of FARC goes back to the '60s as a group that
14 would present itself as revolutionary following the guidelines
15 of the Cuban revolution and supporting the communist party of
16 Colombia. From the 1960s to the '80s, FARC remained as a rural
17 group with the ideological objective of abolishing the
18 Colombian government. In the decades of the '80s, towards the
19 end of the '80s, the FARC began to become a terrorist group,
20 and they began participating in drug trafficking.

21 Initially the role played by the FARC was to watch over
22 the farming and to allow the movement of the drugs through
23 third parties which were drug trafficking groups. Then FARC
24 understood that they could be a direct part of the business,
25 and they became a group or a drug cartel.

1 Q And there was violence, I assume, associated with their
2 activities?

3 A Yes, because in addition to financing their gorilla
4 activities through drug trafficking, they never stopped being a
5 terrorist group, which affected the population in Colombia,
6 through placing bombs and attacks on Colombians. In Colombia,
7 the first approaches to peace agreements with FARC occurred in
8 1982 when Belisario Betancur was president.

9 THE COURT: Let me stop you there.

10 Next question.

11 BY MS. CHEWNING:

12 Q I understand there were several attempts at peace. Did
13 there come a time when the UN became involved in peace talks in
14 Colombia between the FARC and the Colombian government?

15 A That's right. The peace process which ended up in the
16 demobilization of FARC occurred between 2010 and 2018 with the
17 support of the United Nations and having as warranters about 15
18 countries.

19 Q And did Colombia create government offices to oversee the
20 peace process?

21 A Yes. One of them was the high peace commissioner office.

22 Q And what did -- were members of the FARC obligated to
23 perform certain commitment acts in order to become a part of
24 the peace process?

25 A Yes. Several of them were -- well, the most important one

1 was the turning over of weapons which was certified by the
2 United Nations. The FARC also was asked to or was required to
3 provide a list of members of the FARC.

4 Q And did members of the FARC turn over property other than
5 weapons?

6 A That is part of -- they did turn over some properties, and
7 that's being processed currently in Colombia. That was part of
8 a judicial -- the special peace jurisdiction.

9 Q And did the Colombian government at some point in time
10 confiscate computers that belonged to the FARC?

11 A The matter of the computers, the FARC computers that were
12 confiscated was more a result of military operational
13 activities.

14 Q So do you know whether there was a single computer, were
15 there multiple computers? Do you have any information about
16 how many computers?

17 A There were several. There is word of one because there
18 was one that was particularly important or symbolic one, but
19 the armed forces, the prosecutors office, the intelligence
20 office have several computers.

21 Q And the peace process in Colombia was eventually
22 concluded, is that right?

23 A Yes. The peace process ended by signing a peace agreement
24 with a demobilization of over 8,000 gorilla members and weapon
25 turnover, as I mentioned before.

1 Q That was approximately in June of 2017?

2 A Yes, because it was before the end of President Santos's
3 administration.

4 Q And does the FARC still exist as an entity in Colombia?

5 A Legally it became a political party and continued using
6 the same acronym as a legal political group.

7 Q So the FARC has a formal role in the government in
8 Colombia?

9 A Yes. They had the right to elect some congressmen in each
10 one of the houses of the Colombian congress. These people have
11 the right to give an opinion but not vote because they were not
12 elected by the people.

13 Q Is the FARC still today involved in drug trafficking in
14 Colombia?

15 A It is possible that some dissidents are still
16 participating. I can't deny or confirm that.

17 Q But they would be enemies of the government?

18 A And in a way, also enemies of FARC as a political group.

19 MS. CHEWNING: I will be getting to the end here
20 shortly, Your Honor.

21 BY MS. CHEWNING:

22 Q Mr. Carrasco, do you have some familiarity with the Cartel
23 of the Suns or Cartel de la Soles?

24 A Yes, yes, I know them.

25 Q And what do you know about it?

1 A It's a group of Venezuelan generals and probably high
2 ranking officers of the Chavez regime or Maduro currently who
3 are dedicated to drug trafficking.

4 Q And does the Cartel of the Suns work -- -- strike that.

5 Could you give me some information about what cartels or
6 drug entities that the Cartel of the Suns works with in its
7 drug trafficking?

8 A It is known that they work as a partner or with Mexican
9 cartels such as Cartel of the Zeta, Z-E-T-A. Also, that they
10 have relations with drug trafficking groups in Colombia, and
11 they probably -- and also probably with FARC before FARC would
12 be demobilized and signed a peace agreement. There is a very
13 close link between FARC and the Chavez regime with the Cartel
14 de la Soles at an intellectual and political level.

15 Q So in the course of what you were asked to do for the
16 investigation that you were asked to perform in this case, were
17 you able to gain any information as to whether Samark Lopez
18 Bello had some connection to the Cartel of the Suns?

19 A Even though my assignment was to investigate any
20 connections between Samark Lopez Bello and FARC, in doing my
21 investigation and consulting sources and doing all the analysis
22 with all these scenarios, drug trafficking scenarios, in
23 Colombia, I did not identify the connection between Samark
24 Lopez Bello and Cartel de la Soles.

25 Q So your answer is there is not a connection between

1 Mr. Lopez and the Cartel of the Suns?

2 A Not that I know of.

3 Q And in terms of the question you were asked for this case,
4 is there a connection in any way direct or indirect between
5 Mr. Lopez and the FARC?

6 A There, I have to categorically say that in my
7 investigation of the reviews or based on my knowledge and the
8 consultations that I made, that there is no connection between
9 Samark Lopez Bello and FARC.

10 Q And you mentioned the consultations that you made. Those
11 consultations were with individuals who would have access to or
12 have information related to help you answer that question
13 definitively?

14 A Definitely, yes, because they are people who are active
15 and currently participate in activities of -- judicial
16 activities or intelligence activities, and they are human
17 sources to which I have made reference during today here.

18 Q Is it fair to say that you hold this opinion about
19 Mr. Lopez and the lack of a connection to the FARC to a
20 reasonable degree of certainty?

21 A Yes, just as I said today and as I informed in my expert
22 opinion.

23 MS. CHEWNING: Thank you, Your Honor. No further
24 questions.

25 THE COURT: Cross-examination.

CROSS EXAMINATION

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BY MR. PORTER:

Q Good morning, sir. Newt Porter.

You would agree with me that the FARC remains a U.S. designated foreign terrorist organization, correct?

A As far as I know, the status has not changed in the United States.

Q You would also agree with me that the FARC remains a designated kingpin by the United States under the Foreign Narcotics Kingpin Designation Act, correct?

A I say again that, according to what I know of designations that the United States made of those entities, they may continue being designated as such.

Q Your background, sir, if I may, in around 1991, you were with the procuraduria, correct?

A Yes, for the general la procuraduria, general of the nation.

Q You later were with the fiscalia, correct?

A That's right.

Q Where was that break where you left one office to another, in what year?

A It was -- I stopped at the procuraduria in '94, and I started at the fiscalia in '95. I'm sorry, immediately, in the same year, '94.

Q In your first job that you described to us, were you a

1 prosecutor or an investigator?

2 A Investigator.

3 Q And in your second job, were you a prosecutor or an
4 investigator?

5 A In the second position that I held in the fiscalia
6 general, I was the director of all prosecutors in Colombia.

7 Q And so you were a prosecutor in that capacity, correct?

8 A What happened is I didn't have judicial functions, and
9 that's what I clarified. So instead, supervision all the
10 investigations because it's a hierarchy structure.

11 Q You investigated public corruption, correct?

12 A At some point I did in the procuraduria, I investigated
13 public corruption.

14 Q Did you also investigate public corruption in the
15 fiscalia?

16 A I had to do or participate in investigations that had to
17 do with public corruption also.

18 Q Public corruption would be elected officials, prosecutors,
19 members of the judiciary, mayors, those type of people,
20 correct?

21 A Yes, that's right.

22 Q And in that time period, if you were to have investigated
23 a public official receiving support from the FARC, would you
24 agree with me that was illegal?

25 A Yes. That would be the case for any public official who

1 would be found that he or she took money or any kind of support
2 from any person or organization outside the law.

3 Q When you were in your capacity from 1991 to 1997, you
4 describe the words and your testimony describes the words of
5 faceless prosecution units. Am I correct in the way I'm
6 describing that?

7 A Yes, that was the name, prosecutors without a face.

8 Q And the reason that you would be faceless or secret is to
9 protect your security, correct?

10 A Yes. Because of the violent situation in the country at
11 that time, there were not only prosecutors, judges, magistrates
12 faceless or without a face, but also witnesses.

13 Q One of the groups that you were protecting against was the
14 FARC because they were terrorists, correct?

15 A Yes, that's what I said, and that's right.

16 Q You retired in 1997 from public service in Colombia,
17 correct?

18 A Yes, I did retire from any investigation regarding
19 criminal in administrative activities and other matters that
20 are not relevant here, and I eventually retired from public
21 service in Colombia in 2003.

22 Q What year was that, 2006, sir?

23 A '3.

24 Q 2003. And you then went to work for Kroll?

25 A There was a time frame where I worked independently as a

1 consultant, but then, yes, I went to work for Kroll.

2 Q And so by 2014, you were already in Mexico, am I correct?

3 A That's correct. In 2014, I was already in Mexico.

4 Q Were you also there in 2013?

5 A In 2013, I was also in Mexico, living in Mexico.

6 Q So you were not attending any meetings in the United
7 States embassy in Colombia until 2013, '14, or 15, correct?

8 A No, that's correct.

9 Q And you were not attending any intelligence briefings at
10 the ministry of defense in Colombia in 2014, 2015, or 2016,
11 correct?

12 A Not directly attending to matters in the ministry of
13 defense, but yes, I did participate in several cases in
14 Colombia.

15 Q You were not attending any intelligence meetings with the
16 Drug Enforcement Administration in 2014, '15, or '16, correct?

17 A No, I have not personally attended any of those meetings.

18 Q So let me ask you this, sir. If someone were to from, for
19 example, the DEA or, for example, from the Colombian military
20 or, for example, the United States Department of Defense, if
21 they were to say that they were in an intelligence meeting in
22 2015 and they were aware that Samark Lopez Bello was supporting
23 the FARC, you would not disagree with that, correct?

24 THE COURT INTERPRETER: I'm sorry, the very last part?

25

1 BY MR. PORTER:

2 Q You wouldn't disagree with that, correct?

3 A I couldn't agree or disagree because I didn't participate
4 in any of those meetings, so I couldn't confirm or deny.

5 Q Your opinions on the Cartel de la Soles are not contained
6 in your affidavit, am I correct?

7 A No, it is not included in the written report.

8 Q When did you decide to add that?

9 A I just answered a question from the attorney.

10 Q You testified here today the Cartel de la Soles is a group
11 of Venezuelan generals.

12 A Yes. Based on my knowledge, I said that they were
13 generals and high rank officers connected with the Chavez and
14 Maduro regime.

15 Q When you use the word funcionarios, are you including
16 elected officials in Venezuela?

17 A I am referring to high ranking officials of the Venezuelan
18 government.

19 Q You also testified here, sir, that the Cartel de la Soles
20 had a relationship with the FARC, correct?

21 A Yes, I did say that. Even though it was not the original
22 assignment that I received, I had, after doing an analysis of
23 the context, I had identified based on the information that I
24 collected from intelligence sources in order to have an
25 understanding of this matter.

1 Q Has the FARC ever tried to kill you?

2 A Not that I know of precisely.

3 Q Have you ever been on a list for assassination by the
4 FARC?

5 A Not that I know.

6 MR. PORTER: No further questions, Your Honor. Thank
7 you.

8 THE COURT: Thank you very much.

9 I have a question. In connection with your opinion,
10 did you meet with or interview Mr. Bello?

11 THE WITNESS: No, Your Honor.

12 THE COURT: Did you interview or meet with anybody
13 associated with him?

14 THE WITNESS: No, Your Honor.

15 THE COURT: Do you recall when the very first time you
16 would have ever heard of him in any way?

17 THE WITNESS: I actually learned about Samark when I
18 was requested this mission, because Samark is not a person that
19 is publicly known in the Colombian context.

20 THE COURT: Thank you.

21 Any redirect?

22 MS. CHEWNING: No further questions, Your Honor.

23 THE COURT: Thank you very much for your appearance.

24 Any additional witnesses for Mr. Lopez Bello?

25 MR. SCOTT: Your Honor, we would not have any live

1 witnesses. We would submit Mr. Lopez's two affidavits into the
2 record. The first one was dated April 3rd, and the second one
3 was dated April 16th. And we would also move in Mr. Gregory's
4 affidavit as well. They are all part of the records. And so
5 we at this time would -- I hate to say rest because it's
6 basically a motion on the testimony, but at this point, we have
7 no further witnesses today. And if it's necessary, we reserve
8 the right to call Mr. Lopez. And later on, maybe we can
9 explain to the Court his situation.

10 THE COURT: Okay.

11 MR. PORTER: Your Honor?

12 THE COURT: Mr. Porter.

13 MR. PORTER: I would object to the admission of the
14 affidavits of Lopez Bello, both of them, and Mr. Gregory. The
15 Court scheduled this evidentiary hearing 28 days ago. There
16 was sufficient time to have the witnesses here to testify live
17 in person, as plaintiffs have done with their witnesses. The
18 rules indicate that live testimony is preferred. There has
19 been no motion or request by the Court to be excused for that
20 or to prepare some other logistics for good cause. So
21 plaintiffs object to the admission of that.

22 THE COURT: Your objection is overruled. I will allow
23 it to be admitted into the record. It is already part of the
24 record, frankly. As to the effect of Mr. Lopez Bello's
25 nonappearance at the evidentiary hearing, I will deal with that

1 later.

2 Okay. So why don't we -- do you want to call your
3 next witness? Who do you want to call on your side?

4 MR. ROSENTHAL: Your Honor, can I confer with
5 co-counsel for two or three minutes?

6 THE COURT: Let's take a 15-minute break, and we can
7 come back. If you have any witnesses, we can call them, we can
8 start now. And if not, then you will let me know. Okay.
9 We'll take 15 minutes now.

10 MR. ROSENTHAL: Very well, Your Honor.

11 (Thereupon, a recess was taken at 11:00 a.m.)

12 THE COURT: Have a seat.

13 Mr. Porter or Mr. Rosenthal?

14 MR. ROSENTHAL: Thank you, Your Honor. Now that the
15 claimants have concluded their presentation, just a couple of
16 housekeeping items with Your Honor's indulgence for purposes of
17 preserving the record.

18 First of all, as Your Honor is aware, during
19 yesterday's telephonic status conference to discuss the
20 procedure for today, we preserved our position that today's
21 evidentiary hearing was unnecessary in light of the written
22 submissions that had been made.

23 We, of course, maintain that position now as well.
24 But in the course of making that presentation to Your Honor
25 yesterday, I made a representation to the Court about being

1 appellate counsel to the 2014 Stansell opinion. And in so
2 doing, I mentioned that some of the appellants there had come
3 in earlier and raised a motion to dissolve similar to the one
4 here. I referenced in the call the Ziad Jerrar people. My
5 memory was faulty. I've gone back to look at the opinion from
6 2014. And in point of fact, it was partnerships who were the
7 claimants, referring to page 741 of the Stansell opinion at 771
8 Fed 3d 713 at page 741 those partnerships I just wanted to be
9 clear with Your Honor that that was my misrecollection. It was
10 the wrong party that I was referring to yesterday.

11 THE COURT: Just so understand the relevance of it, my
12 recollection was that the claimant, we will call him claimant,
13 was arguing that in that case the material difference is that
14 there was nobody who stepped up to dissolve the post-judgment
15 remedy in that case which I think was attachment or something.

16 MR. ROSENTHAL: Yeah, it was both garnishment as to
17 both intangible assets and some real property.

18 THE COURT: Right. So his argument was that nobody
19 had appeared to object and so, therefore, the record on appeal
20 that the Eleventh Circuit was dealing with was dealing with, in
21 effect, a defaulted claimant. Is that correct?

22 MR. ROSENTHAL: That's my understanding as well. Just
23 to be clear, with Your Honor's indulgence, I will read two
24 sentences from the Stansell opinion. Again, this is 771 Fed 3d
25 713 at page 741. Quote, the partnerships were not prevented

1 from taking advantage of Florida law specifically providing for
2 third party challenges to garnishment proceedings. See Florida
3 statute 77.07(2). The third party can move to dissolve the
4 writ of garnish, et cetera, et cetera, et cetera.

5 The next sentence, the partnerships followed this
6 procedure. And the district court, comma, after due
7 consideration of their argument, concluded that the agency or
8 instrumentality allegation was, quote, proved to be true, end
9 quote.

10 I just want to be clear on the record about my
11 misrecollection yesterday as to which party had moved to
12 dissolve in 2014.

13 THE COURT: Okay.

14 MR. ROSENTHAL: The second item is in the nature, I
15 suppose, of a motion for directed verdict. I understand this
16 is just an evidentiary hearing, but picking up on the theme
17 from yesterday where we said we did not think this evidentiary
18 hearing was justified or required based on the paper
19 submissions, as was the case in Stansell 2014, now that you
20 have heard the testimony, we don't think anything has changed.
21 And I will be very brief about this. But specifically, you
22 heard from Mr. Marquardt that all he did was compare the SDM
23 lists with the list of shareholders, directors, et cetera.

24 The Eleventh Circuit in Stansell specifically rejected
25 that sort of analysis saying that when you are talking about

1 money laundering and TRIA enforcement proceedings, money
2 launderers do not typically list all the people who are
3 actually involved. I am referring now to the Stansell opinion
4 at page 732. Again, I will read two sentences to Your Honor,
5 and then I will stop.

6 Quote, on the other hand, terrorist organizations such
7 as FARC operate in the shadows out of necessity. For example,
8 a corporation organized under Florida law will almost certainly
9 not list FARC as a shareholder of record. Instead, it will
10 operate through layers of affiliated individuals and front
11 companies, end quote.

12 That's the same situation we have here.

13 As to Mr. Carrasco Ramirez, his testimony was always
14 couched in terms of what he knew or what his opinion was. I
15 think I have this close to verbatim. The testimony was, I have
16 to -- I was, quote, unable to establish any link direct or
17 indirect between Samark Lopez Bello and the FARC.

18 Then he said, I have to categorically say that, based
19 on my knowledge and my insights, I believe it was, no link
20 between Samark Lopez Bello and the FARC. And, quote, I did not
21 identify the connection between Samark Lopez Bello and the
22 Cartel de la Soles, not that I know of, end quote.

23 That's just what he knows, the fact that he hasn't
24 heard it or he doesn't know it does not establish the absence
25 of a link or rebut the evidence we've presented. We would move

1 for in the nature of directed verdict at this time, Your Honor.

2 THE COURT: I think it's a fact question, so I will
3 deny it. Okay.

4 MR. KORVICK: With that, Your Honor, the plaintiffs
5 would call Mr. Douglas Farah to the stand.

6 THE COURT: Thank you.

7 DOUGLAS FARAH

8 Having been first duly sworn on oath, was examined and
9 testified as follows:

10 THE COURTROOM DEPUTY: Please have a seat, sir, and
11 state and spell your name for the record.

12 THE WITNESS: Yes, ma'am. My name is Douglas Farah,
13 D-O-U-G-L-A-S. Last name Farah, F-A-R-A-H.

14 DIRECT EXAMINATION

15 BY MR. KORVICK:

16 Q Good morning, Mr. Farah. Could you please tell us your
17 current occupation and your business address?

18 A I'm president of IBI Consultants and a senior visiting
19 fellow at National Defense University, the Center for Strategic
20 Studies. And my address is 7721 Garland Avenue, Takoma Park,
21 T-A-K-O-M-A Park, Maryland 20912.

22 Q What is your occupation, sir?

23 A I am a nation security consultant and run a national
24 security consulting company.

25 Q Are you a recognized subject matter expert by the

1 Department of Defense and the United States Congress?

2 A Yes, sir. I have testified in congress more than 14 times
3 relating to security threats in Latin America, and I also work
4 directly with the deputy assistant secretary for counter
5 narcotics and global threats in the Department of Defense.

6 Q Okay. Tell us briefly about where you grew up, where you
7 went to school before college.

8 A I grew up in Bolivia through my graduating from high
9 school. Then I went back for a few years. And then I traveled
10 the world for a few years. And then I eventually went to the
11 University of Kansas.

12 Q And what formal degrees did you get?

13 A I have a BS in journalism and a BA in Latin American
14 studies, both with highest honors.

15 Q And what did you do for work after college?

16 A Immediately after college, I went to work for United Press
17 International as a foreign correspondent covering the wars in
18 Central America, primarily the civil war in El~Salvador.

19 Q And where did you work next?

20 A From there I went to work for the Washington Post. I
21 covered, again, the wars in Central America. And then
22 following -- in early 1990, I was asked to move to Colombia to
23 begin covering the drug wars there. It was the worst of the
24 wars with Pablo Escobar. The FARC was just becoming a major
25 factor in the different conflicts. Paramilitary groups were

1 becoming very active, and I covered the Andean region which
2 included Venezuela, Ecuador, Bolivia, and Colombia.

3 Q Did your career -- would it be fair to describe those
4 positions as war correspondent and/or investigative journalist?

5 A I was the bureau chief, after that position in Bogota, I
6 was the bureau chief for the Washington Post for the Central
7 American and Caribbean region, and that was a foreign
8 correspondence post. My next job at the Washington Post was
9 international investigative reporter where I specialized in --

10 (Thereupon, there was an interruption by the court
11 reporter.)

12 THE WITNESS: I'm sorry. I thought I was going slow.
13 I apologize. Where did I stop?

14 THE COURT: Investigative reporter of Washington.

15 THE WITNESS: My next job after being bureau chief for
16 Central America and the Caribbean was international
17 investigative reporter for the Washington Post. And from
18 there, in 2000, I became the West Africa bureau chief for the
19 Washington Post.

20 After that position, I was on the investigative team
21 of the Washington Post in Washington looking at transnational
22 threats and terrorist financing.

23 BY MR. KORVICK:

24 Q In total, how many years did you work either as an
25 investigative journalist or war correspondent for those groups?

1 A 20 years, sir.

2 Q Okay. And did your work involve studying narcotics
3 trafficking in South and Central America?

4 A I spent a great deal of time covering narcotics
5 trafficking, particularly in the early days of when it was
6 being born, when the drug trafficking as we know it was being
7 born.

8 I did a lot of work on the, seminal work, on the Medellin
9 Cartel and Pablo Escobar, the Cali Cartel, the emergence of the
10 FARC as a major drug trafficking structure, corruption in
11 Venezuela, the FARC presence in Ecuador, the heroin trade,
12 Russian organized crime in Central America, and the Caribbean
13 related to drug trafficking.

14 Q Have you won any professional awards during your career as
15 a journalist?

16 A I was given the Sigma Delta Chi award which is a
17 prestigious award from Columbian University for international
18 reporting for a series on right wing death squads in
19 El Salvador.

20 I won the Maria Morris Cabot award, which is also from
21 Colombia University, School of Journalism for outstanding
22 career in Latin American coverage. It's not a one-event award.
23 It's sort of a lifetime achievement award. And I was awarded
24 from Johns Hopkins University an award for covering drug
25 trafficking financing of the 1992 Colombian elections and the

1 election of Ernesto Samper.

2 Q Can you briefly tell us about some of the tools and
3 methods that would be routinely used by you during your career
4 as a journalist?

5 A Essentially, as a journalist, I felt there were several
6 vital things. One was to be on the ground and go to places to
7 see for one's self what was going on, so I spent a lot of time
8 in the field. Second was talking to as many people as one
9 could who knew stuff about what we wanted to find out about so
10 I was able to deal directly ---

11 (Thereupon, there was an interruption by the court
12 reporter.)

13 THE WITNESS: Secondly, I felt it was important to
14 talk to as many people as one could who had knowledge about the
15 issues one wanted to find out about. So we would talk -- I
16 would talk with whoever was necessary including drug
17 traffickers and police, military intelligence, anyone who could
18 help with that.

19 We learned to try to put together organizational
20 charts because people overlapped into different structures as
21 they morphed into criminal enterprises. We relied a great deal
22 on documents if we could get them. Drug traffickers are not
23 known for keeping extensive records that are easy to get, but
24 we were occasionally able to obtain documents that would show
25 certain flows of money or drugs. And a constant awareness that

1 the situation adapts and changes very quickly and that one
2 needed to stay directly involved with one's sources over time
3 to get an adequate picture of what was really happening.

4 Q What did you do after you left the post and left your
5 career as a journalist?

6 A I wrote a book about the blood diamond trade in Africa and
7 ties to Al-Qaeda financing. And then I went to work as a
8 national security consultant looking at, initially, a project
9 on intelligence reform in U.S. government following 9-11, the
10 attacks, and how to reform the U.S. intelligence structure how
11 to make it more adaptive and responsible. It's called the --

12 (Thereupon, there was an interruption by the court
13 reporter.)

14 THE WITNESS: Consortium for the Study of
15 Intelligence.

16 And then from there, I moved on to establishing my own
17 company and engaging in security issues in Latin America again.

18 BY MR. PORTER:

19 Q When did you start your own consulting firm?

20 A I believe it was December 2004.

21 Q Have you been a national security consultant ever since?

22 A Yes.

23 Q Tell us briefly, what does a national security consultant
24 do?

25 A In my current iteration, I provide direct support to the

1 office of the deputy secretary for counter narcotics and global
2 threats at the Department of Defense. I work for the office of
3 conflict and stabilization at the Department of State. I work
4 with customs and border parole looking at migrant flows from
5 Central America. I also work a little bit with private clients
6 if they have deep dive intelligence they want on a particular
7 business they may be going into.

8 Q Can you tell us about some of your current or recent
9 national security projects that would be related to, for
10 example, the FARC or narcotics trafficking?

11 A We presented to the deputy assistant secretary in a
12 classified setting our assessment of the current FARC dissident
13 structures and why that structure is directly related to the
14 FARC as a drug trafficking entity to this day, how that group
15 now operates primarily in Venezuela under the protection of the
16 Venezuelan government.

17 They allowed us to publish last month a study called
18 Maduro's last stand looking at how the government, the regime
19 of Nicolas Maduro in Venezuela derives its income to survive to
20 the state primarily through illicit activities in cocaine
21 trafficking and illicit gold trafficking.

22 THE COURT: When you say you work for these agencies,
23 you are a contractor for various Department of Defense,
24 Department of State agencies?

25 THE WITNESS: Yes, sir. They contract me and my

1 company to do specific tasks.

2 BY MR. KORVICK:

3 Q Do you also give lectures?

4 A I'm frequently asked to lecture at military installations
5 primarily related to the U.S. Southern Command which is
6 responsible for Latin America.

7 I also have been invited to lecture at Yale University,
8 Brown University, American University, Georgetown University on
9 issues of transnational organized crime in the hemisphere,
10 histories of the FARC, how the FARC developed, the peace
11 process and why it has devolved into something that is much
12 more of a failure than a success, looking at how drug
13 trafficking enterprises when protected by the state morph into
14 entirely different entities than drug trafficking groups that
15 fighting against the state looking primarily at Venezuela as an
16 example of a state that operates directly in conjunction with
17 organized crime. Those are the general topics I lecture on.

18 Q And how many times approximately have you been invited to
19 testify on those topics before congress?

20 A I believe I have been to the hill 14 times to testify, not
21 all related to those specific topics. A couple of them were
22 related to Africa and blood diamond trafficking.

23 Q Okay. Have you published any other books or peer review
24 articles?

25 A I have published two books. One is called Blood From

1 Stones which was in 2004. The second one was called Merchant
2 of Death, which was about a Russian weapons trafficker who
3 supplied armed groups around the world in the post cold war era
4 including the FARC.

5 And then I have published multiple peer reviewed articles
6 on transnational organized crime on the concept which I began
7 writing about years ago as criminalized states, how states
8 become criminal actors, things like that.

9 Q Have you been recognized with any fellowship positions
10 over the years?

11 A I have been a senior fellow at the Center for Strategic
12 and International Studies known as CSIS in Washington, one of
13 the major think tanks in the capital founded by former national
14 security advisors and others who do a lot of products for
15 helping to orient U.S. policy and provide information.

16 I have been a senior fellow now for the last three years
17 at the National Defense University, so yes.

18 Q What is the National Defense University?

19 A National Defense University is the University that works
20 for the pentagon, does research for the pentagon. It also
21 provides courses for generals, for colonels who want to become
22 generals, for foreign students of allied countries who want to
23 come and study specific topics.

24 Q Do you have a security clearance, sir?

25 A I do. I have an active top secret security clearance.

1 Q Does the U.S. Southern Command here in Florida also
2 recognize you as a subject matter expert in your field?

3 A Yes, sir. I often, multiple times a year, will brief the
4 U.S. Southern Command on our research findings that are funded
5 by the office of the deputy assist secretary for counter
6 narcotics and global threats.

7 They also have contracted me directly to do specific tasks
8 for them and have given me past performance reviews that I have
9 done very well and they were pleased with the product and have
10 hired me again.

11 Q Have you worked with Southern Command specifically related
12 to the FARC and Venezuelan trafficking?

13 A Yes, sir, I have.

14 Q In addition to your open source research and other public
15 source methods, do you have access to classified materials in
16 some of these research projects?

17 A Yes, sir. If I would like to read it, I can.

18 Q Okay. And do you also have experience working with
19 confidential informants in South and Central America?

20 A Yes, sir. I have been in the region for more than 30
21 years and have been privileged to work across a range of actors
22 in the region and develop sources in transnational organized
23 criminal groups, in police, in intelligence, in the military,
24 among investigative journalists, NGOs that do --
25 nongovernmental agencies that do a lot of investigative work in

1 the field lobbying in diamonds, natural resource work.

2 So I would say I have a very extensive network of
3 informants or sources across the region. Some of them are, I
4 would say, truly confidential sources that I rely on for
5 specific information where they operate at some risk,
6 particularly in Venezuela.

7 Most of my research is in the field, and I have a group
8 of -- team of researchers that work for me in different
9 countries.

10 Q In forming your opinions here today, have you relied on
11 your past education, training, and experience?

12 A Yes, sir.

13 Q Have you also relied on information that you have obtained
14 from U.S. and foreign law enforcement military intelligence
15 officials?

16 A Not on the classified side, sir, but yes, I have discussed
17 it for publication and in open source settings at length, the
18 situation in Venezuela, the involvement of Mr. Lopez Bello in
19 the structure of the Cartel of the Suns and other issues, yes.

20 Q Are you familiar with any of the former Venezuelan
21 officials who have defected, for lack of a better term, and are
22 not cooperating with the United States?

23 A I follow the trail of the supreme court justice and the
24 bodyguard of Diosdado Cabello and others who have reached the
25 United States, but they are in witness protection, and I have

1 not had the opportunity to debrief them myself directly.

2 Q Have there been any public statements made by some of
3 those cooperating witnesses?

4 A There's been an extensive public record that they have
5 established about how the Venezuelan government works and who
6 is involved and what the Cartel of the Suns is.

7 I have also had the opportunity separately to deal with
8 other low-level defectors from Venezuela who have approached me
9 and, after validating some of the information, I have been able
10 to put them with the Drug Enforcement Administration, with the
11 DEA or HSI, Homeland Security Investigations at the Department
12 of Homeland Security because the information they provided on
13 the structures inside Venezuela, their ties to the FARC, and
14 their ties to other Central American groups that we are looking
15 at have proved very useful.

16 Q The sources of information and your background and data
17 and methods that you have used and you have described, have you
18 used those same methods and sources in forming your opinions in
19 this case?

20 A Yes, sir. Those are the -- that's the toolbox I have and
21 I think in the last few years is part of my contract. I have
22 been working with a group that does open source data mining, so
23 we have been able to do much more extensive link analysis and
24 corporate registry linkages of people, so we have a much
25 clearer understanding now of different networks in Latin

1 America, criminal networks than we had before.

2 BY MR. KORVICK:

3 Q Slowly, can you please tell us a little bit about the
4 history of the relationship between the FARC and the Cartel of
5 the Suns?

6 A The Cartel of the Suns actually begins in 1993 when two
7 generals of the national guard in Venezuela were caught
8 trafficking major amounts of cocaine. This was pre Hugo Chavez
9 pre Bolivarian revolution.

10 It really begins to morph into a different entity in 2002
11 when two things happen simultaneously.

12 The peace talks with the FARC in Colombia which had been
13 ongoing for two years and where they had a large area of
14 control during the peace talks, those peace talks collapsed.

15 The FARC had become a major drug trafficking organization
16 in the 2000 to 2002 period. And when the peace process broke
17 down, the military of Colombia drove the FARC to the Venezuelan
18 border. So they were much more engaged in that geographic
19 sector than they had been previously.

20 At the same time, Hugo Chavez underwent an attempted coup
21 to throw him out of office. He survived the coup attempt but
22 decided at that point that he could only trust the military.
23 He began giving the military what were traditional civilian
24 roles, control of food, control of food distribution, control
25 of the oil companies, the major oil company, the state oil

1 company, control of gasoline distribution, anything that was of
2 significant strategic value to the country fell into the hands
3 of the military at that point because President Chavez had come
4 out of the military as a lieutenant colonel, and he only
5 trusted him and close classmates. And many was those people
6 are still in positions of power today in Venezuela.

7 Q Okay. Are you familiar with the term agency or
8 instrumentality of a terrorist party?

9 A Yes, sir. It means that if someone --

10 MR. SCOTT: Objection. It's a legal question.

11 THE COURT: He has answered the question. Let me let
12 him lay a foundation. Overruled for now.

13 Ask your next question.

14 BY MR. KORVICK:

15 Q Have you been provided a copy of the Court's standard in
16 determining what an agency or instrumentality of a terrorist
17 party is?

18 A I have.

19 Q Have you relied on that exact standard in formulating your
20 opinions to today?

21 A I have to the best of my ability.

22 THE WITNESS: Could I get a glass of water?

23 Thank you

24 BY MR. KORVICK:

25 Q When were you retained by our law firm, and what did we

1 ask you to do?

2 A I was retained in March of 2018 to look at the Cartel de
3 la Soles and the relationship of the FARC to the Cartel de la
4 Soles and the relationship of FARC to drug trafficking.

5 Q And did you eventually prepare an affidavit setting forth
6 your opinions in this case?

7 A I did.

8 Q Can you briefly describe some of the materials that you
9 reviewed in formulating your opinions?

10 A I reviewed an extensive amount of open source research on
11 the FARC. I have reviewed the OFAC listing of those who have
12 been designated by the FARC -- of the FARC and of the
13 Venezuelan officials. I relied on verdicts that have come out
14 of people who have been found guilty of their relationship to
15 the FARC and drug trafficking and Venezuelan officials. I
16 relied on affidavits that the agents who brought the cases
17 submitted and explained why and how the process worked,
18 essentially anything I could get my hands on that I do also as
19 part of my regular -- my other day job to look at that.

20 Q And are those materials, the types of materials, that
21 experts in your field would routinely review and rely upon?

22 A Yes, they are. And I also consulted extensively with
23 sources who directly know the FARC. I have consulted with FARC
24 deserters myself who I have been given access to through the
25 Colombian police for other questions as well. So in addition

1 to just reviewing documents, I have spent a lot of time talking
2 to people who have done field work with the FARC, FARC
3 dissidents, people in the Colombian and U.S. intelligence
4 structures who work with the FARC to be able to form an
5 opinion.

6 MR. KORVICK: Your Honor, we would now proffer
7 Mr. Farah as an expert in national security consulting issues,
8 specifically the FARC's narco-trafficking and their relations
9 with the Venezuelan Cartel de la Soles.

10 THE COURT: Any objection?

11 MR. SCOTT: If it's limited to that, no objection.

12 THE COURT: All right. Go ahead.

13 BY MR. KORVICK:

14 Q Please tell us what expert opinions you have reached in
15 this case.

16 A My expert opinion is that the Cartel de la Soles is the
17 primary drug trafficking or drug moving organization in
18 Venezuela, that the FARC is the primary provider of the drugs
19 and illicit gold that the regime currently relies on to survive
20 as an entity, and that within that group, Mr. Tarek El
21 Assimi --

22 (Thereupon, there was an interruption by the court
23 reporter.)

24 THE WITNESS: -- Mr. Tarek, T-A-R-E-K, El, E-L, Assimi
25 A-S-S-I-M-I, and Mr. Lopez Bello are key players in moving that

1 money.

2 BY MR. KORVICK:

3 Q Who is Tarek El Assimi?

4 A Mr. Tarek El Assimi is a former vice president. He is
5 currently minister of industries in Venezuela and the key
6 player in the Cartel de la Soles structure which revolves
7 around different clans, two different structures within the
8 Cartel de la Soles.

9 The one is Diosdavo Cabello, D-I-O-S-D-A-D-O, Diosdavo,
10 Cabello, C-A-B-E-L-L-O, and Mr. Tarek El Assimi are the two
11 sort of centers of gravity in that structure. Both rely on a
12 lot of family members because this is a trust-based
13 organization.

14 And one of the things, I think, that is important to
15 understand as one talks about the relationship between the
16 Cartel de la Soles and the FARC and amongst themselves is that
17 you are talking about groups that have been engaged in criminal
18 activity together for multiple decades and, therefore, they
19 rely on a few trusted individuals that they believe can get the
20 job done. And, therefore, over time, you see very little
21 change in the upper levels of those structures because it's
22 very hard to replace somebody who you have been associated with
23 for 30 years and know and can trust and in some cases have
24 married into each other's families. So the trust-based concept
25 and what we are looking at with the Cartel de la Soles and

1 their relationship to the FARC is fundamental.

2 Q In formulating your opinions, did you also review the OFAC
3 fact findings and the chart on the El Assimi and Lopez Bello
4 network?

5 A I did.

6 Q Does your opinion include the entities that are on that
7 network chart?

8 A Yes, sir. I think that there is a chart that clearly
9 shows the direct link between Mr. Tarek El Assimi and Mr. Lopez
10 Bello.

11 Q Okay. Now, were you familiar with the El Assimi, Lopez
12 Bello network before they were designated by OFAC in
13 February 2017?

14 A Yes, sir. One of our primary taskings with the work we do
15 with the U.S. government to map criminal organizations both in
16 Central and South America.

17 And in mapping out the Cartel de la Soles and particularly
18 focusing on the FARC and the dissidents and the FARC structures
19 in Central America and the Cartel de la Soles structures in
20 Central America is where we first came across -- Mr. El Assimi
21 was much more well known as a Venezuelan official. He had been
22 vice president. He had held multiple cabinet positions.

23 Mr. Lopez Bello was not, but his name began surfacing in
24 our contacts with our sources who were describing different
25 drug trafficking structures and how they were laundering money.

1 We were particularly focusing on how money was moving into
2 the United States. And in that context, beginning in 2016, we
3 came across Mr. Lopez Bello's name as a key actor in those
4 structures.

5 Q The opinions that you gave about the Cartel de la Soles,
6 Messrs El Assimi and Lopez Bello, were those your opinions even
7 before they were designated by OFAC in February of 2017?

8 A Yes, sir. We had mapped out that further into other
9 groups that continued to operate after that designation, some
10 of which were just taken down with the arrest of Victor Mones
11 Coro, an associate of Mr. Lopez Bello, was arrested here in
12 Miami just two months ago. We had identified him several years
13 earlier as well as part of the structure that was operating
14 with Lopez Bello and Tarek in the moving of money out of
15 Venezuela.

16 Q Would it be fair to say that the OFAC fact findings in
17 February 2017 confirmed your opinions that you already held
18 prior to that date?

19 A Yes, it confirmed it and added some details to what we
20 didn't know, but certainly we understood the general structure.

21 Q Did OFAC specifically link El Assimi to another trafficker
22 by the name of Daniel Barrera Barrera?

23 MR. SCOTT: Objection. He's leading the witness.

24 THE COURT: Overruled.

25 MR. KORVICK: I will rephrase it.

1 THE COURT: Okay. Rephrase.

2 BY MR. KORVICK:

3 Q Did OFAC link Mr. El Assimi to narcotics trafficking with
4 any particular Colombian drug traffickers?

5 MR. SCOTT: Objection, relevance.

6 THE COURT: Overruled.

7 THE WITNESS: He did. The OFAC has designated
8 multiple people with drug trafficking histories in Venezuela.
9 They designated a gentleman Daniel Loco Barrera who had been a
10 paramilitary operator and commander in Colombia and then began
11 working with the FARC and then moved to Venezuela under the
12 protection of the government there to continue his drug
13 trafficking, and they did designate him, yes.

14 BY MR. KORVICK:

15 Q Did OFAC specifically designate Mr. Barrera -- I'm sorry,
16 is he also known as El Loco Barrera?

17 A Yes, he is El Loco Barrera.

18 Q Was he eventually extradited and tried in the United
19 States and convicted on narcotics trafficking charges?

20 A Yes, he was.

21 Q And was his conviction based on trafficking FARC cocaine?

22 A Yes, sir.

23 Q Did OFAC specifically designate Lopez Bello -- I'm sorry,
24 Barrera Barrera as a FARC drug trafficking partner when they
25 designated Barrera Barrera as a kingpin?

1 A I believe so, yes.

2 Q And did OFAC directly link El Assimi to Barrera Barrera
3 when they designated him as a kingpin in February 2017?

4 A Yes, they did.

5 Q What is the role of a front man or testaferro in a
6 criminal organization such as the Cartel de la Soles?

7 MR. SCOTT: Objection. He has no foundation. He
8 hasn't laid a foundation that he actually knows what it means.
9 It was OFAC's words. It should come from OFAC, not from a
10 witness.

11 THE COURT: Why don't you ask a predicate question?

12 BY MR. KORVICK:

13 Q Are you familiar with the role generally of a front man or
14 testaferro in criminal organizations like the FARC or the
15 Cartel de la Soles?

16 A I think in my 30 years of doing this, there has never been
17 a major criminal organization that did not have front men who
18 were able to move their money for them. I think one of the
19 fundamental issues in moving illicit funds derived from illicit
20 activities is you don't want to put your name on it. You want
21 to have someone unknown off the radar who can move to the
22 United States, operate in Panama, operate across the Caribbean,
23 operate perhaps in Europe, set up a series of structures that
24 allow you to move money through those structures without any
25 unrelying economic activity but which make trailing that money,

1 tracking that money, especially when you are dealing with
2 offshore entities or in Panama or countries that allow bearer
3 shares whoever is holding the shares of that company own that
4 company at that moment make it very difficult for the money to
5 be traced back eventually.

6 So I think front men are fundamental. They are key cogs
7 in any major criminal enterprise if the purpose of that
8 enterprise is to generate illicit funds and then move the funds
9 back as legitimate funds so they can be spent in the
10 international financial system.

11 Q I may have missed this earlier going through your
12 background briefly. Did your years as an investigative
13 journalist involve the study and research of money laundering
14 networks, front men, and testaferros?

15 A Extensively. And some of the awards I won in my
16 journalism were a result of following the money. As I said, in
17 the campaign of Ernesto Samper in Colombia where he took
18 \$3 million from the Cali Cartel, we tracked back the front men
19 to that structure, and that is what allowed us to write a story
20 showing that the president of Colombia was elected with money
21 derived from drug trafficking.

22 Q As a national security consultant, after you started your
23 own firm in 2004, did you continue with experience,
24 involvement, researching, studying money launderers, front
25 companies, testaferros?

1 A I hope I got much better at it as time went on, sir, but,
2 yes, I continued to rely on that and continued to understand or
3 try to understand how quickly these organizations can be formed
4 and dissolved in an attempt to disguise what they are actually
5 doing.

6 Q In your opinion, sir, does Mr. Lopez Bello meet the
7 criteria of a testaferro or a front man?

8 A Yes, he does.

9 Q Can you describe the basis for that opinion.

10 A The basis for that opinion is that there are multiple
11 companies around which for which there appear to be no
12 justifiable economic foundation for the money that they receive
13 and that they move.

14 I think that to operate in Venezuela in this environment
15 and in the last ten years, if you are going to make money in
16 Venezuela, you have to be tied to the Venezuelan regime. There
17 is simply no other way for any business to operate in Venezuela
18 and make the amount of money somebody like Lopez Bello was
19 making to buy properties in Miami, yachts, aircraft, et cetera.

20 The money from the -- that Venezuela lives on,
21 particularly since 2016, 2015 going forward, is the drug
22 trafficking from the FARC that moves through Venezuela which is
23 taxed by the Venezuelan government of which Mr. Tarek El Assimi
24 is one of the main characters, one of the strongest
25 influencers, and one of the persons who collects the money

1 directly for the survival of the state.

2 So if there is going to be money movement and you are
3 going to generate money in Venezuela, there is no way to do
4 that without being directly tied and under the protection of
5 someone in the Cartel de la Soles.

6 MR. SCOTT: Your Honor, I move to strike his
7 testimony. It is all speculation, and it's what I believe, I
8 believe, I believe. He hasn't presented any foundation for any
9 of this other than surmising that someone who has money is
10 connected with some kind of drugs and lives in Venezuela. I
11 move to strike it.

12 THE COURT: Overruled.

13 Go ahead. Can you answer that question.

14 THE WITNESS: I'm sorry, what was the question?

15 THE COURT: Ask your next question.

16 MR. KORVICK: I will move on to the next question.

17 BY MR. KORVICK:

18 Q In your opinion, could the Cartel of the Suns operate
19 without these front men and money launderers?

20 A No criminal organization can function very long without
21 front men because if you identify yourself as a member of the
22 Cartel de la Soles or FARC or any other criminal organization,
23 you will automatically have the financial doors closed to you.
24 And the objective is to move money out and then move it back in
25 ways that you can use. So you will clearly be relying on front

1 men who do not declare who they are truly representing. It has
2 to be that way.

3 Q Are you aware that Mr. Lopez Bello was recently indicted
4 for violating the Kingpin Act along with Tarek El Assimi?

5 MR. SCOTT: Objection, relevance, and it's not the
6 indictment, Your Honor.

7 THE COURT: Overruled.

8 BY MR. KORVICK:

9 Q Would the use of both cash to pay for charter jet travel
10 by El Assimi and Lopez Bello be consistent with the pattern of
11 front men and testaferros?

12 MR. KOLANSKY: Objection, not the indictment, Your
13 Honor.

14 THE COURT: Overruled.

15 Actually, what was your answer to the initial
16 question, are you aware that Mr. Lopez Bello was recently --

17 THE WITNESS: Yes.

18 THE COURT: -- indicted for violating the Kingpin Act?

19 THE WITNESS: Yes, sir, I am.

20 THE COURT: What is your understanding of that
21 indictment?

22 THE WITNESS: My understanding is that indictment
23 dealt with a series of flights that were paid for in violation
24 of the sanctions that went to Turkey and the flights went to
25 Turkey, Russia, and elsewhere, sir.

1 THE COURT: Where is that indictment pending, do you
2 know?

3 THE WITNESS: I don't know off the top of my head. I
4 think it's Miami, but I'm not sure.

5 BY MR. KORVICK:

6 Q My question is simply, is the use of bulk cash to pay for
7 private chartered jet service between a testaferro and his
8 principal, is that consistent with your understanding of the
9 traditional role of a testaferro?

10 A Bulk cash is the preferred method of payment because it
11 leaves no paper trail; therefore, it's impossible to trace to
12 show that the money has ever moved. So yes, bulk cash shipment
13 is a favorite methodology of moving money.

14 MR. KORVICK: Bear with me, Your Honor, one second.

15 BY MR. KORVICK:

16 Q Do you have an opinion as to whether Mr. Lopez Bello and
17 the members of the El Assimi and Lopez Bello network are an
18 agency or instrumentality of the FARC?

19 MR. SCOTT: Objection.

20 THE COURT: Overruled.

21 Do you have an opinion?

22 THE WITNESS: I do. Did you overrule? I'm sorry, I
23 didn't hear.

24 THE COURT: Yes.

25 THE WITNESS: Yes. Thank you.

1 I think that FARC provided direct support to the
2 structure of Lopez Bello and Mr. Tarek El Assimi, and in that
3 were agents and instrumentalities because they provided -- the
4 money that was eventually moved out was derived from a product
5 produced by the FARC which was illegal, cocaine.

6 BY MR. KORVICK:

7 Q Did the El Assimi and Lopez Bello network also support the
8 FARC's trafficking activities?

9 A The FARC has to have territory in which they can operate,
10 and they operate under the protection of the Venezuelan
11 government which is --

12 (Thereupon, there was an interruption by the court
13 reporter.)

14 THE WITNESS: Which means he's under the protection of
15 Mr. Tarek El Assimi.

16 BY MR. KORVICK:

17 Q Is it your opinion that the El Assimi and Lopez Bello
18 network is involved with trafficking FARC cocaine?

19 A It is my opinion that their money that they derived is
20 directly derived from the trafficking of FARC-produced cocaine.

21 Q Have you been able to independently corroborate through
22 your own research and during your work with DOD the OFAC
23 factual findings with respect to the El Assimi and Lopez Bello
24 network?

25 A We have corroborated most of it, yes. We have not gone

1 into extensive detail on the companies because it was already
2 done.

3 Q Is the FARC still a foreign terrorist organization?

4 A Yes, it is.

5 Q Are they still designated a significant foreign narcotics
6 trafficker under the Kingpin Act?

7 A Yes, they are.

8 Q In addition to the FARC 50 indictment -- first, are you
9 familiar with the FARC 50 indictment?

10 A Yes.

11 Q Has several of the FARC members been extradited and either
12 pled guilty to or been convicted at trial of narcotics
13 trafficking charges?

14 A Certainly.

15 Q In addition to the FARC 50 indictment -- withdraw that
16 question.

17 Are many of those FARC members still designated kingpins
18 by OFAC?

19 A Yes, they are.

20 Q Let me shift to the peace deal quickly, and I will close.

21 A Okay.

22 Q Are you familiar with the history and implementation of
23 the peace deal with the FARC?

24 A Yes. It began in 2012 and culminated in 2016 through a
25 series of negotiations over four years between the government

1 and the FARC in Havana, Cuba leading to what was supposed to be
2 the demobilization of some \$7,500 FARC members and the
3 constitution of the FARC as a political party.

4 Unfortunately, the peace process, at the end of the peace
5 process, fewer than half of the FARC members actually
6 demobilized. More than 3,500 are now back in the field. They
7 kept most of their best and new weapons, and they immediately
8 continued to control and expand territory related to illicit
9 commodities they could make money off of.

10 Q Can you give us an example of one of the FARC leaders who
11 never entered the peace process and continued trafficking in
12 narcotics?

13 A Gentil Duarte, that's G-E-N-T-I-L is the first name,
14 Duarte, D-U-A-R-T-E, who operates on the Colombian Venezuelan
15 border is one who was at the negotiating table, was a FARC
16 negotiator, and then as soon as the peace agreement was signed,
17 went to live in Venezuela and continued cocaine trafficking.

18 Another of the negotiators is a man named Jesus, that's
19 J-E-S-U-S, Santrich, S-A-N-T-R-I-C-H, who was also a chief
20 negotiator in the peace process who in 2017 more than a year
21 after the peace process was signed was grabbed trying to ship
22 ten tons of cocaine to the United States via Venezuela.

23 He had been a key player in the peace process, was
24 supposed to have demobilized, was supposed to become a
25 political actor, and he clearly continued to be involved, not

1 only in cocaine trafficking, in very large sums of cocaine
2 trafficking.

3 Ivan Marquez, that's I-V-A-N, Marquez, M-A-R-Q-U-E-Z, who
4 was the chief FARC negotiator at the table for four years now
5 lives in Venezuela under the protection of the Maduro regime
6 and continues to lead the exportation of cocaine to the outside
7 world.

8 Q Does the signing of that peace agreement between the
9 Colombian government and the FARC in 2016 in any way change any
10 of the opinions you have given in this case?

11 A No, sir. And I think -- it does not.

12 Q Is Mr. El Assimi and Mr. Lopez Bello, in your opinion, are
13 they still members of the Cartel de la Soles?

14 A The Cartel de la Soles has not changed its structure, yes,
15 sir.

16 THE COURT: Do you know if there is any personal
17 relationship between those individuals?

18 THE WITNESS: Between which two, sir?

19 THE COURT: Lopez Bello and El Assimi.

20 THE WITNESS: Yes, they do know each other.

21 THE COURT: How do you know that?

22 THE WITNESS: We know that from talking to people in
23 Venezuela who know them very well. Their relationship
24 apparently began sometime in 2004 and then evolved since then.

25

1 BY MR. KORVICK:

2 Q How does Mr. Lopez Bello in his role in the cartel, how
3 does he materially assist the FARC in its trafficking
4 activities?

5 MR. SCOTT: Objection.

6 THE COURT: Overruled.

7 THE WITNESS: If you view it as a structure, there are
8 multiple things that have to happen for the cocaine to be
9 produced, moved through Venezuela, sold outside, and the money
10 moved back, which would be the same process with illicit gold
11 or any other illicit product.

12 The FARC needs territorial control which is provided
13 by the Venezuelan political structure, and Mr. Tarek and
14 Diosdavo, and the other members of the Cartel de la Soles.

15 Once the product is moved abroad, that money has to be
16 brought back, turned into cash and brought back. That is the
17 role that Mr. Lopez Bello plays in the financial side as part
18 of a broader structure of multiple actors moving FARC cocaine
19 to money to being returned to the country as cash or being kept
20 abroad. It's often not returned to Venezuela. It often stays
21 where one can buy luxury apartments or where one can buy one's
22 private banks or do multiple other things.

23 MR. KORVICK: Thank you very much. I don't have
24 anything further.

25 Thank you, Your Honor.

1 THE COURT: Thank you.

2 Okay. Why don't we go ahead and take our lunch break
3 before we begin the cross-examination. So we will come back at
4 10 after 1:00 for the cross-examination.

5 (Thereupon, a recess was taken at 12:04 p.m.)

6 THE COURT: Have a seat. When we broke, we were about
7 to begin the cross-examination of the witness.

8 CROSS EXAMINATION

9 BY MR. SCOTT:

10 Q Mr. Farah, excuse my voice.

11 A Good morning, sir.

12 Q So your background is in journalism, correct?

13 A That is correct.

14 Q How many years were you a journalist?

15 A 20, a little more.

16 Q Okay. And one of the most important things about
17 journalism is getting the facts accurate, correct?

18 A That's correct.

19 Q And one of the things about journalism is making sure your
20 facts are accurate before you write something, correct?

21 A That is correct.

22 Q And before you say something?

23 A Yes, sir.

24 Q And that is also gathering information to help you support
25 your writings, correct?

1 A Sure.

2 Q And we have heard the term fake news, correct?

3 A We have.

4 Q And we want to make sure that that's not happening in this
5 courtroom, isn't that correct?

6 A Sure.

7 Q So let's take a look at how much you know about Mr. Lopez
8 and his family. How many children does Mr. Lopez have?

9 A I have not studied his personal life, sir.

10 Q You don't know anything about his personal life?

11 A I know how he became connected --

12 Q My question is simple. Do you know anything about his
13 personal life?

14 A Just that he owns aircraft, he owns apartments, he owns
15 jets, and he has a lot of money that he spends outside of --

16 Q So there's a lot of people who have money who own aircraft
17 and jets as well, isn't that true?

18 A Sure.

19 Q Let's talk about his U.S. companies. What are the names
20 of his U.S. companies?

21 A He has Profit. He has PSAG, I believe, and several
22 others.

23 Q Profit is a U.S. company?

24 A I'm trying to recall, sir. I don't have the information
25 in front of me.

1 Q Do you have your report in front of you?

2 A I do not.

3 Q Where is it?

4 MR. SCOTT: Would you hand him his report so he can
5 refresh his memory?

6 MR. PORTER: You can.

7 Your Honor, can you direct counsel to hand him his
8 report? No?

9 THE COURT: I assume you have it.

10 MR. SCOTT: May I approach?

11 THE COURT: Yes.

12 BY MR. SCOTT:

13 Q Here you are, Mr. Farah. So let me ask you again, what
14 are some of his U.S. companies?

15 A Can I look at my affidavit, please?

16 Q Sure.

17 A I'm not sure I listed them here. Can you tell me what
18 page they are on, or can I look at the OFAC chart which listed
19 them all?

20 Venezuela; Panama; UK; 1425 Brickell Avenue, Unit 46B;
21 1245 Brickell Avenue, 63F, LLC; Augusta Grand, LLC; and two 200
22 GPSA Holdings, LLC; U.S. Aircraft N200V4.

23 Q Profit is actually a Venezuelan company, correct?

24 A That's correct.

25 Q Grupa Sahect --

1 (Thereupon, there was an interruption by the court
2 reporter.)

3 MR. SCOTT: Grupa S-A-H-E-C-T, CA.

4 BY MR. SCOTT:

5 Q That's a Venezuelan company as well, correct?

6 A That's correct.

7 Q All right. And so what moneys did Brickell, LLC give to
8 the FARC?

9 A I haven't examined the financials. I don't think it's
10 been made available.

11 Q Let me ask you a question. Before you began your
12 exercise, your affidavit, did you request all the relevant
13 documents from counsel?

14 A From my counsel?

15 Q No, from the plaintiff's counsel.

16 A From plaintiff's counsel. I asked to review what was
17 relevant to the information, yes.

18 Q All right. So you were talking about financial
19 transactions earlier in your testimony, about how money travels
20 across borders, correct?

21 A That's correct.

22 Q So financial transactions would be important, correct?

23 A That is correct.

24 Q Did you ask for any documents related to financial
25 transactions of any of the 13 companies?

1 A No, I did not. I was asked to look at --

2 Q That's fine. So you didn't ask for that.

3 Were you provided with that by counsel?

4 A No, I was not.

5 Q So you have no information sitting here about any of the
6 financial transactions of any of these companies, correct?

7 A Not of the specific transactions, no.

8 Q That's fine. And you heard some testimony from
9 Mr. Marquardt today, correct?

10 A Yes.

11 Q And you also heard that Mr. Lopez has more than 13
12 companies, correct?

13 A Correct.

14 Q In fact, he has a lot of employees as well?

15 A Sure.

16 Q You heard that, right?

17 Okay. So what about those companies, were you aware of
18 those companies?

19 A Some of them, sir, I would have to look at my other
20 reports, but yes, we have other companies identified of his.

21 Q Okay. Did you ask for those financial transactions for
22 those companies?

23 A I don't have access to the financial transactions, sir.

24 Q Did ask you for them?

25 A No, I did not.

1 Q Let me ask you another question. So you indicated that
2 there is large amounts of money, right, that was being
3 transferred? Now, some of the money -- much of the money is in
4 the United States, correct?

5 A I would assume so, yes.

6 Q In banks, right?

7 A I don't know for sure.

8 Q Were you provided any reports with regard to anything --
9 you know what the Bank Secrecy Act is?

10 A Yes, I do.

11 Q Did you ask for any reports related to any reports filed
12 by any of the U banks as it relates to Mr. Lopez's companies?

13 A I did not. They are not publicly available.

14 Q Did you ask for them in discovery?

15 A I'm not running this case, sir, no.

16 Q Is that relevant, in your opinion, as to the financial
17 transactions?

18 A It's not relevant to the opinion as to whether the FARC is
19 engaged with the Cartel of the Suns and whether that is --

20 Q That, I understand. Now I'm talking about the money and
21 how it transfers.

22 So you don't have any information one way or the other
23 whether the -- you know about the know your customer rules?

24 You know about that?

25 A Yes, I do.

1 Q What are the know your customer rules?

2 A That you are supposed to do due diligence on your
3 customers when they deposit in banks before you do business
4 with them.

5 Q Right. And if one of the banks thought that there was a
6 problem with regard to Mr. Lopez's deposits, whether it's his
7 money or whether or not his company's, there would be a report
8 generated, correct?

9 A Not necessarily, sir. There are hundreds of millions of
10 dollars in fines to banks who don't do their due diligence.

11 Q So the bank is not doing its due diligence?

12 A In many cases that's true. And if a person is not
13 criminally flagged -- there would be transactions now because
14 he's flagged --

15 Q I'm sorry to cut you off, but there is a threshold with
16 regard to transactions, is there not?

17 A There is usually \$10,000 for reporting, yes, sir.

18 Q So it doesn't matter whether or not they have been
19 sanctioned or designated, does it?

20 A That's not -- it does matter as far as how a bank will
21 flag a transaction going through, yes.

22 Q But it's going to get flagged, correct?

23 A Not necessarily, no.

24 Q You are not a banking expert, are you?

25 A No, I'm not.

1 Q Did you -- and I will move off from this. Do you know
2 what a profit and loss statement is?

3 A Yes, I do.

4 Q Did you review any profit and loss statements?

5 A No, I did not.

6 Q Did you review any of the U.S. tax returns related to
7 Mr. Lopez's companies?

8 A I was not asked to do that.

9 Q Did you ask for that information?

10 A No, I didn't.

11 Q And that, again, would be relevant to finances as well,
12 just finances, correct? Tax returns show profit and loss?

13 A They do.

14 Q And they also show income statements?

15 A Generally.

16 Q But you didn't investigate that part of this case?

17 A That was not part of my investigation.

18 Q Now, you relied upon some documents from OFAC, correct?

19 A Yes.

20 Q Now, would you agree with me that OFAC, when it has
21 information, does not hesitate to link individuals to certain
22 terrorist organizations?

23 A That's not always true, no.

24 Q So you wouldn't agree with me on that?

25 A I would not.

1 Q Isn't it a fact that OFAC has designated individuals who
2 are related to FARC in their press releases?

3 A Yes.

4 Q And you, in fact, in your report mention those, correct?

5 A Yes, I do.

6 Q And I think they are perhaps on page -- let's go back
7 here, starting with paragraph 19.

8 A Paragraph 19. Hang on one second.

9 Okay.

10 Q Is that page 8? Correct?

11 A That is page 13. I'm not back far enough yet.

12 Okay. Page 8.

13 Q Right. So you start out with the OFAC in paragraph 19 and
14 then you mention on September 12, 2008 that OFAC actually
15 connected or linked targets, right --

16 A Yes.

17 Q -- to the FARC, correct?

18 A Yes, sir.

19 Q So that was a case where that happened, right?

20 A That is correct.

21 Q Okay. And then the next page, you go to September 8,
22 2011, correct?

23 A Right, that's correct.

24 Q And in that case, OFAC did the same thing.

25 A Yes.

1 Q They had information, and when they had the information,
2 they linked it to the FARC, correct?

3 A That's correct.

4 Q And that information was about certain individuals,
5 correct?

6 A That's correct.

7 Q And in this one, it has to do with the Kingpin Act,
8 correct?

9 A Yes.

10 Q Just like this case, right?

11 A This has to do with the Kingpin Act too, yes, sir.

12 Q So in this one, OFAC didn't hesitate to link them to FARC,
13 correct?

14 A That is correct.

15 Q Then on the next page, August 21, 2013, this discusses
16 individuals who are linked to Mexican drug cartels, correct?

17 A Yes.

18 Q And so this is another example when OFAC has information
19 about individuals that are connected to organizations, they
20 will not hesitate to connect it, correct?

21 A In this case they did not.

22 Q Okay. And then let's look at page 11 of your report.

23 A Okay.

24 Q This has to do with the press release dated February 13,
25 2017, correct?

1 A Yes.

2 Q And this is the press release related to Mr. Lopez,
3 correct?

4 A Yes.

5 Q And yes or no, OFAC in this press release that you have
6 cited in your report, I believe, verbatim does not link
7 Mr. Lopez or his companies to the FARC?

8 A No, it does not.

9 Q Now, I believe you testified that sometime in 2016, you
10 began to hear the name -- Mr. Lopez's name?

11 A Yes, sir.

12 Q Right. And you said that you were with a group. Were
13 they your friends, your colleagues? What were they?

14 A My investigators, sir.

15 Q And what were their names?

16 A I'm not going to tell you.

17 Q Why not?

18 A Because they operate at great risk in different places,
19 and I'm not going to reveal them here.

20 Q I wouldn't be able to speak to them because I could not
21 find out who they are, correct?

22 A That's correct.

23 Q So we have to take your word for it?

24 A As we had to take your word for your witness on who his
25 sources were in Colombia.

1 Q So you would agree that that is an okay thing to do in
2 this case, is take the word of sources, right?

3 A Yes.

4 Q You and Mr. Carrasco actually disagree whether or not
5 Mr. Lopez and his companies are linked to the FARC, correct?

6 A That is correct.

7 Q Right. And that's an issue of fact in dispute, isn't it?

8 A It's an issue of fact, yes.

9 Q Now, you also indicated that you were working with top
10 security clearance. Is that from the United States of America?

11 A Yes, sir.

12 Q And during your testimony, you talked about creating a
13 chart with certain individuals on it. And I think you said
14 that Mr. Lopez may have been on that chart?

15 A We have created different charts with different
16 organizations as we understand them to be, yes, sir.

17 Q Where is the chart that you prepared linking Mr. Lopez to
18 the FARC? It's not in your report, is it?

19 A It is not in the report.

20 Q It's nowhere in your expert opinion, is it?

21 A No, because the -- that was not the question I was asked
22 to address, sir.

23 Q Let's just wrap this up. That chart doesn't appear
24 anywhere in your expert report?

25 A No, it does not.

1 Q Now, you don't speak for the Department of Justice,
2 correct?

3 A I do not speak for the U.S. government in any way, shape,
4 or form.

5 Q Correct. And you don't speak for OFAC, correct?

6 A I never claimed to.

7 Q I also understand that you relied on some indictments to
8 form your opinions, correct?

9 A Sure.

10 Q And there was not one indictment of Mr. -- at least in
11 your report of Mr. El Assimi with regard to drug trafficking,
12 correct?

13 A That is correct, yes.

14 Q And there's not one single indictment related to drug
15 trafficking related to Mr. Lopez or any of his companies,
16 correct?

17 A That is correct.

18 Q And there's not one single thing mentioned in your report
19 about any criminal prosecution about Mr. El Assimi in Colombia,
20 correct?

21 A That is correct.

22 Q And in some cases, it's not unusual for people who are in
23 Venezuela or different countries to actually be indicted in
24 Colombia, correct?

25 A I don't know, sir.

1 Q You don't know about that?

2 A I don't know how Colombia indicts foreigners, no.

3 Q So you don't have any understanding of how the criminal
4 justice system works there, correct?

5 A No, that's not what I said, sir. I said I don't know how
6 they indict foreigners. I have a great deal of knowledge of
7 how they operate internally because I work with them.

8 Q There is not one thing in your report that indicates
9 somebody provided you with a copy of a current indictment
10 against Mr. Lopez, correct?

11 A The indictment occurred after the affidavit --

12 Q Yeah, but the indictment was not related to narcotics
13 trafficking, was it?

14 A That's not what your question was, sir.

15 Q Now I'm asking a new one. That indictment that you just
16 mentioned had nothing to do with narcotics trafficking?

17 A No, it did not.

18 Q Now, you also relied, I believe, on some OFAC charts,
19 correct?

20 A Yes, sir.

21 Q Now, those charts are, I like to call them artwork, where
22 they kind of have boxes of people linked together, right?

23 A Yes, sir.

24 Q And there is not one single OFAC chart that links Tarek
25 El Assimi to the FARC, correct?

1 A That is correct.

2 Q There is not one single OFAC chart that links Mr. Lopez to
3 the Cartel of the Suns?

4 A That is correct.

5 Q And the Cartel of the Suns is not considered an FTO, isn't
6 that right?

7 A No, but there is a chart linking Mr. Lopez Bello to Tarek,
8 and Mr. Tarek is a member of the Cartel of the Suns.

9 Q Right, but my questions wasn't that. My question is,
10 there is not chart --

11 A Not by OFAC, no, sir.

12 Q You have to let me finish because the court reporter can
13 only take us one down at a time.

14 A Excuse me. I apologize.

15 Q There is no OFAC chart that links Mr. Lopez or any of his
16 companies to the FARC, correct?

17 A That is correct.

18 Q But OFAC has prepared charts with individuals on it that
19 actually have their picture and link them directly to the FARC?

20 A Yes.

21 Q You also indicated that you reviewed Mr. Cote's report
22 from 2011?

23 A Whose report, sir?

24 Q Mr. Cote's.

25 A Yes.

1 Q That report makes no mention of Mr. El Assimi, correct?

2 A I believe that is correct, sir.

3 Q And that makes no mention of Mr. Lopez, correct?

4 A I believe that's correct, sir.

5 Q But it does make mention people who are related to the
6 FARC, correct?

7 A Yes, sir.

8 MR. SCOTT: That's all the questions I have, Your
9 Honor.

10 THE COURT: Any redirect?

11 MR. ROSENTHAL: No, no questions, Your Honor.

12 THE COURT: Thank you very much, sir. Thank you for
13 your appearance.

14 Call your next witness.

15 MR. PORTER: Thank you, Your Honor. The plaintiffs
16 calls Mr. Luis Cote.

17 THE COURTROOM DEPUTY: Please raise your right hand.

18 LUIS M. COTE GOMEZ

19 Having been first duly sworn on oath, was examined and
20 testified as follows:

21 THE COURTROOM DEPUTY: Please have a seat, sir, and
22 state and spell your name for the record.

23 THE WITNESS: My name is Luis Miguel Cote Gomez.

24 DIRECT EXAMINATION

25

1 BY MR. PORTER:

2 Q Sir, where are you from?

3 A Colombia.

4 Q Sir, is it more comfortable for you to testify with an
5 interpreter today?

6 A Yes.

7 Q Can you tell us a little bit about your background.

8 A I served the Miami courts in -- marine courts in Colombia
9 during 31 years. I retired two years ago as chief of staff and
10 second in command of the marine corps in Colombia.

11 Q Can you give us an overview of your military service, sir?

12 A During my 31 years, I fought against all terrorist groups
13 of drug traffickers, criminal organizations. I carried out
14 intelligence and counterintelligence operations against these
15 criminal organizations and terrorists at a national level.

16 Q Did one of those terrorist groups include the FARC?

17 A Yes.

18 Q What does that acronym FARC mean to you?

19 A The FARC are the Revolutionary Armed Forces of Colombia.
20 It's a terrorist organization. It has been designated as such
21 by the government of the United States and other countries and
22 by security agencies. It's the biggest drug trafficking
23 organization of cocaine hydrochloride.

24 Q Sir, you have been in the courtroom and you have heard
25 testimony about the FARC both before and after the Colombian

1 peace process, is that correct?

2 A Yes, of course.

3 Q Does the FARC still produce and distribute cocaine?

4 A Yes.

5 Q And is that true today?

6 A Yes.

7 Q Is the FARC also conducting terrorist activities in
8 Colombia today?

9 A Yes.

10 Q Can you briefly give us some examples?

11 A There are some recent examples. Just yesterday in the
12 Tame, Arauca region, that's in the east of Colombia in the
13 border with Venezuela, an army patrol of Colombia was ambushed
14 by FARC terrorists and they murdered three soldiers.

15 And at the end of May, in Tecun, north of Santander, also
16 border with Venezuela in the northwest of Colombia, commission
17 of judges and judicial officers of Colombia and the police or
18 the military who was providing protection to these officers,
19 they murdered two people from these groups, and they hurt or
20 injured 11 more. And they have carried out countless number of
21 terrorist activities.

22 Q And you are speaking about the FARC, correct, sir?

23 A I am referring to FARC.

24 Q How many years have you operated against the FARC?

25 A 31 years and a little more carrying out operations and

1 planning operations against FARC terrorists.

2 Q Have you captured members of the FARC, sir?

3 A During my 31 years, my career of 31 years, I captured more
4 than 300 terrorists.

5 Q Have you interviewed either members of the FARC who have
6 been captured or those who have surrendered?

7 A Yes.

8 Q How did you conduct these interviews? Were they
9 personally conducted?

10 A These interviews are carried out personally, face to face.
11 And the procedure that is followed is the same one that the
12 investigation organisms (sic) of Colombia follow such as the
13 national police, the technical body of judicial investigations,
14 and the same as it's done by the security agencies of the
15 United States such as the FBI, the DEA, the ATF.

16 Q Did your official duties when you were on active duty in
17 Colombia include gathering information from the FARC?

18 A Yes, it included collecting, analyzing, and interpreting
19 information that was collected from FARC.

20 Q How did you use that information, Colonel Cote?

21 A Information found in campsites or cocaine labs belonging
22 to FARC or that was seized from captured terrorists or
23 terrorists who were demobilized. That information was quickly
24 analyzed to continue operations in the battlefield. And after
25 that, the analysis process was expanded to be shared with

1 investigative or intelligence agencies.

2 Q Colonel Cote, you retired as a colonel, correct?

3 A Yes.

4 Q Did you routinely attend meetings with high-level
5 Colombian officials in the equivalent of the Department of
6 Justice, the military, and the intelligence community of
7 Colombia?

8 A Yes. I participated in many meetings during my career,
9 the strategic, tactical, or operational nature.

10 Q Did you also attend meetings at a strategic level with
11 agencies of the United States, for example, the FBI, the ATF,
12 the DEA, the CIA?

13 MR. SCOTT: Objection. He's just testifying.

14 THE COURT: Overruled.

15 THE WITNESS: Yes, sir.

16 BY MR. PORTER:

17 Q Can you tell us other sources besides captured or
18 demobilized FARC that you would obtain information about FARC
19 activities?

20 A From analysis of documents, intelligence meetings with
21 other agencies where information was shared, also many hours of
22 intercepting FARC communication, radio communication, to
23 leaders.

24 Q Was one of your responsibilities your duties to determine
25 who the FARC worked with?

1 A Yes, of course. One of the missions or objectives of all
2 military police and investigational organizations in Colombia
3 is to establish the logistical and support networks for the
4 terrorists.

5 Q Can you give us some examples of who may support the FARC?

6 A There are governments and criminal organizations who
7 support FARC depending on the interests they may have. One
8 example of that is the Venezuelan government, a few years ago,
9 the Ecuadorian government when Correa was president, and like
10 that, other types of organizations.

11 Q From your experience and from your sources of information,
12 did there come a time that you understood what support
13 Venezuela provided the FARC?

14 A Of course.

15 Q Can you tell us what some of that support might be, sir?

16 A Let's go back to, I had the opportunity to command several
17 combat units in the border with Venezuela. And during those
18 operations, we were able to capture some of the fighters who
19 some of them were Venezuelan citizens.

20 We seized munitions and weapons that came from the armed
21 forces of Venezuela. In those border areas, it's very hard to
22 gain access from the center of Colombia to those borders areas
23 in order to get food and medication supplies. And the FARC
24 terrorists use the order areas from Venezuela in order to
25 supply themselves what they needed for their terrorist

1 activities.

2 Q Was any of this support -- strike that.

3 Did this support of Venezuela involve FARC drug
4 trafficking?

5 A Of course it links to the Venezuelan government and some
6 of the officers of the armed forces, and the government would
7 provide the use of Venezuelan territory in order to move
8 cocaine hydrochloride and export it to other places.

9 Q Did there come a time when you had a name for the group of
10 people in Venezuela who supported the FARC?

11 A Yes. That group of people was called the Cartel of the
12 Suns.

13 Q Are you familiar with the Cartel of the Soles?

14 A Yes, of course.

15 Q And briefly describe to us how the relationship began with
16 the Cartel of the Soles?

17 A In order to explain this, I have to go back a little bit
18 in history.

19 Q Briefly, please, sir.

20 A When Hugo Chavez attempted his first coup d'etat in 1992
21 and failed, he went to jail in Venezuela. And in the year
22 1996, he got amnesty from his country. During this period of
23 time, '92 to '96, that he was in prison, the FARC would see in
24 him like an ally in order to get support for their military
25 financing and drug trafficking interests.

1 So in 1996 when Mr. Chavez or Colonel Chavez at that time,
2 he moved to Colombia and stayed with the leftist groups of
3 Colombia for a while. And here the FARC terrorists provided
4 him with \$150,000 for him to use in his political agenda to
5 become president of Venezuela.

6 Q Let me just interrupt you, Colonel Cote, for a minute.

7 Can you describe the parts of the Cartel de la Soles?

8 A Yes. The Cartel de la Soles includes members of the armed
9 forces of Venezuela and officers from the government of
10 Venezuela and some people who are not visible in the political
11 or military aspects of Venezuela.

12 Q Colonel Cote, in your responsibilities as a Colombian
13 military officer investigating the FARC, did you also
14 investigate front persons for the FARC?

15 A Of course. The financing networks of the FARC and the
16 terrorists of the FARC require front men.

17 Q Can you describe for us generally what are some of the
18 elements that you would investigate to determine whether a
19 person is a front person or a front company?

20 MR. SCOTT: Your Honor, objection. I'm not sure if
21 this is fact, if this is expert testimony. He hasn't qualified
22 him. It's starting to sound a lot like direct testimony and
23 not credentials.

24 THE COURT: As to that question, I don't think there
25 is any objectionable -- this may be a hybrid-type witness.

1 Overruled.

2 Go ahead.

3 THE WITNESS: May I continue?

4 BY MR. PORTER:

5 Q Yes, please.

6 THE COURT: Do you remember the question?

7 THE WITNESS: Would you mind repeating it, please?

8 BY MR. PORTER:

9 Q Yes. Colonel Cote, during your time as a military officer
10 investigating the FARC in its drug trafficking activities, did
11 you have, generally speaking, did you have a list of what would
12 comprise a front person or a front company? What did you look
13 for?

14 A Normally, what we do is try to determine what they do to
15 help move or hide these proceeds from the illegal activity
16 because a front man is a person that uses his or her identity,
17 be it as a person or as a company, in order to evade
18 investigative controls to be able to move that money or those
19 resources from the illegal activity.

20 And within the strategic plan from the FARC, it was to buy
21 or to look for people who would be able to hide these proceeds
22 from the sale of drugs, and that's also called money
23 laundering.

24 Q During your official duties, Colonel Cote, did you author
25 or write documents on FARC narcotrafficking?

1 A Yes, of course.

2 Q Were those documents reviewed by agencies within the
3 Colombian government?

4 A Yes, not only Colombian security agencies, but also U.S.
5 security agencies.

6 Q So those documents and the information that you obtained
7 in your investigation was shared with the United States?

8 A Yes, it was shared during meetings of a strategic nature
9 with agencies of the United States.

10 Q Colonel Cote, can you tell us about your military awards,
11 please.

12 A Throughout my career, I received like 25 or 30 awards.
13 Among them, I received the metal of honor twice by the
14 Department of Defense and the military command. And seven
15 times I received a metal for public order which is awarded by
16 the Colombian government.

17 Q Have you taught in the United States, Colonel Cote?

18 A Yes, I have taught in the United States, and I have also
19 been trained in the United States.

20 Q Can you tell us about being selected as a teacher and
21 mentor at the Organization of the American States?

22 A I was a consultant for the defense --

23 (Thereupon, there was an interruption by the court
24 reporter.)

25 THE WITNESS: I was advisor for the Inter-American

1 Defense College in the academic program they have for
2 hemispheric defense and security where all these threats are
3 studied and analyzed in the hemisphere, among those, FARC.

4 MR. PORTER: Plaintiffs would tender Colonel Cote as
5 an expert on the FARC and Cartel de la Soles.

6 MR. SCOTT: No objection.

7 THE COURT: Go ahead.

8 BY MR. PORTER:

9 Q Colonel Cote, when did we first retain you?

10 A The first time, it was in 2011 as an expert in a case
11 against the Cartel North of the Valley, North Valley.

12 Q Did you provide an affidavit for us in 2011?

13 A Yes, I did prepare an affidavit.

14 Q What is your understanding of what that affidavit was used
15 for?

16 A It was utilized to approve the indirect nexus or links
17 between people or companies from the Cali Cartel to the FARC
18 terrorists.

19 Q Have you reviewed materials in this case?

20 A Yes, of course.

21 Q Can you tell us briefly what those are?

22 A My expert report of 2011, the result obtained from that by
23 the Department of Justice, documents such as investigate
24 results that came out of OFAC, also newspaper, media articles,
25 think tank results, among others.

1 Q What were you asked to do in this case, Colonel Cote?

2 A My expert opinion about how people or organizations are
3 indirectly linked with FARC.

4 Q And have you reached an opinion in this case?

5 A Yes, of course.

6 Q What is that opinion, sir?

7 A My opinion is that FARC uses Venezuelan territory
8 government officers and some military people from Venezuela who
9 are part of Cartel de la Soles.

10 Q Does your opinion include front persons or companies of
11 Cartel of the Soles?

12 A Yes.

13 Q Are you familiar with the name El Assimi and Lopez Bello
14 network?

15 A Yes.

16 Q How are you familiar with that phrase?

17 A There is an OFAC document from February of 2017 where
18 after a very in-depth investigation by the OFAC, they
19 established that Tarek El Assimi is a drug trafficker and has a
20 person who supports his organization, his criminal organization
21 whose name is Lopez Bello.

22 Q Does your opinion that the Cartel de la Soles is an agency
23 or instrumentality of the FARC include the El Assimi and Lopez
24 Bello network?

25 A Yes.

1 Q Can you describe for us, Colonel Cote, the basis of your
2 opinion that Samark Lopez Bello is an agency or instrumentality
3 of the FARC?

4 A My 31 years of experience fighting and studying carrying
5 out interviews, interrogatories, captures, participating in
6 meetings of strategic nature to see the link between FARC to
7 Cartel de la Soles, from Cartel de la Soles to the Tarek
8 El Assimi, and from Tarek El Assimi to the Lopez Bello, yes, it
9 does allow me to issue the opinion that he is a front man.

10 Q Is it your opinion, sir, that El Assimi is a member of the
11 cartel of the souls?

12 A Undoubtedly.

13 Q Is it your opinion that Samark Lopez Bello is a member of
14 the Cartel of the Soles?

15 A Also, yes.

16 Q Explain for us, sir, we hear discussion here today in the
17 courtroom of Cartel de la Soles being military generals, the
18 national guard, and elected officials, how is it that a
19 civilian businessman like Mr. Lopez Bello can be a member of
20 the Cartel de la Soles?

21 A What happens is in all the drug trafficking cartels in the
22 world and in all the financing models of the criminal
23 organization worldwide, there are always going to be people who
24 are not visible publicly in order to be able to carry out these
25 activities as front men or money laundering. That's why we

1 have the FARC here.

2 We have the Cartel de la Soles, which is military men. We
3 also have government officials. We are now mentioning Tarek
4 El Assimi, but there is a lot more. They are all visible. But
5 in the case that we are seeing here, we see that Lopez Bello is
6 not publicly visible, but he's part of the Cartel de la Soles.

7 Q Sir, you heard me question Mr. Carrasco Ramirez about the
8 years 2014, '15, and '16 earlier, did you not?

9 A Yes.

10 Q You retired when, July of 2016?

11 A In July 2016, I started my retirement.

12 Q Before you retired, were you aware, in your position as
13 chief of staff conducting intelligence and information,
14 gathering information on the FARC, were you aware of the name
15 Samark Lopez Bello?

16 A Yes. Since many years before 2014, 2015, even 2013, you
17 would already hear during meetings of strategic nature the
18 links of FARC with members of Venezuelan government and
19 military forces and the close link that existed with Tarek
20 El Assimi and Lopez Bello in business relations and as friends.
21 And we see it's an opinion or a decision from OFAC where they
22 determined that Tarek El Assimi and Lopez Bello network have a
23 commercial link, and that commercial relationship has part of
24 bonds or links with drug trafficking.

25 Q So you knew about Samark Lopez Bello and had the opinion

1 that he was involved as a front man before the OFAC
2 designation, correct?

3 MR. SCOTT: Objection.

4 THE COURT: Sustained as to the form of the question.

5 BY MR. PORTER:

6 Q Did the OFAC February 13, 2017 designation confirm what
7 you already knew about Samark Lopez Bello?

8 MR. SCOTT: Objection.

9 THE COURT: Sustained as to the form of the question.

10 BY MR. PORTER:

11 Q Do you hold the opinion that Samark Lopez Bello was an
12 agency or instrumentality of the FARC before February 13, 2017?

13 A Yes.

14 Q When you hear or when you saw the word network on the OFAC
15 designation, what does that mean to you in terms of your
16 background of investigating FARC narcotrafficking, front men
17 for the FARC, and what you taught in the InterAmerican Defense
18 College international money laundering, drug trafficking the
19 word network?

20 MR. SCOTT: Objection. Your Honor, the OFAC
21 unilateral designation is irrelevant.

22 THE COURT: He's just asking about the word network.
23 Overruled.

24 THE WITNESS: That reminded me of the Cali Cartel in
25 the '90s where the Cali Cartel had a business group which was

1 the Grajales group. Nowadays, that network group is a business
2 group. And when the criminal organizations want to launder
3 money, never, ever in the history of what I know have ever used
4 one company alone or just one front man because they know the
5 moment that that single front man is captured or they see it's
6 their only company where they are laundering money, they would
7 lose every work they have done in drug trafficking in the
8 history of what they have done.

9 And that's why today the government of Colombia and
10 the investigation agencies of the United States and Colombia
11 are still trying to connect all the front men in the world that
12 the narco -- that the FARC drug trafficking network has. This
13 is what they did with officers, with military, with government,
14 with criminal organizations, and companies from other countries
15 in order to be able to launder the money of 30 years of drug
16 trafficking.

17 MR. PORTER: I have no further questions. Thank you,
18 sir.

19 THE COURT: Thank you.

20 MR. SCOTT: Your Honor, can we take a five-minute
21 comfort break?

22 THE COURT: Sure.

23 (Thereupon, a recess was taken at 2:20 p.m.)

24 THE COURT: Have a seat.

25 Cross-examination.

1 MR. SCOTT: Yes, Your Honor.

2 CROSS EXAMINATION

3 BY MR. SCOTT:

4 Q Mr. Cote, you do understand that OFAC's designation is
5 done without any input -- it was done without any input or
6 information from Mr. Lopez. You understand that, correct?

7 A Yes, but many of the investigations done at the federal
8 level, at the level of security agencies of the United States
9 and other countries, they don't require to have the victim or
10 the responsible party sit in front. I don't know if that has
11 changed in the past two years, but in my 31 years of service, I
12 never saw that.

13 Q Okay. So was the answer yes?

14 A The answer is very clear. I'm expanding my answer.

15 Q All right. I hear you.

16 So you do understand that OFAC can change its mind at any
17 given time, correct?

18 A Yes, but it hasn't changed it.

19 Q I understand. But something could happen and OFAC could
20 change its designation, correct?

21 A Let's say OFAC changed the designation. It will not
22 change what we have learned in the five or six years in the
23 security agencies of Colombia and the United States of the
24 relationship between Tarek El Assimi, Lopez Bello, Cartel de la
25 Soles, and the FARC. That will not change.

1 Q So if I had a DEA agent come in and testify that Lopez,
2 Mr. Lopez, is not a narcotics trafficker, your opinion would
3 change, wouldn't it?

4 A It would not change. It wouldn't change.

5 Q If I had a government witness, a DEA agent, come in and
6 testify that Mr. Lopez is not a narcotics trafficker, your
7 opinion would not change?

8 A If that DEA person has participated in interagency
9 meetings of all the agencies of Colombia and the United States,
10 I would have to check, but I don't think so because I know the
11 people who have participated.

12 Q So your expert report, do you have a copy of it on your
13 table there?

14 A No.

15 MR. SCOTT: May I approach?

16 BY MR. SCOTT:

17 Q Mr. Cote, I handed you a Spanish version of your
18 affidavit.

19 A Yes.

20 Q Okay. And there is no date on this report, correct?

21 A Yes, there is a date here that says docket 02/12/19.

22 Q All right. When was your report prepared? My question
23 is, did you date your report next to your signature?

24 A No, there is no date by the signature.

25 Q Now, you said that you were contacted by counsel over here

1 to my right in front of you, Mr. Cote?

2 A Yes.

3 Q That was in 2011?

4 A I have been as an expert --

5 Q Is that the --

6 A -- and for this specific case in August of last year.

7 Q I apologize.

8 Is that the only time that you have provided a report for
9 Mr. Porter?

10 A No.

11 Q Okay. So you prepared one in 2011. What other reports
12 have you prepared for Mr. Porter?

13 A We prepared another case related to the Cuban government
14 and this one.

15 Q And how much do you charge? What is your hourly rate?

16 A I charge \$2,000 per day plus travel expenses.

17 Q And for the -- who paid you, by the way?

18 A It was paid by the office of Tony Korvick.

19 Q So you said you charge 2,000 a day. That's for your
20 testimony, correct?

21 A Not for my testimony, for my investigation and study that
22 I have to conduct related to this document.

23 Q How many days did you spend looking at the OFAC -- looking
24 at the OFAC investigation that resulted in the press release of
25 February 13, 2017?

1 A The press release, to read it, I read it in a short time.

2 Q Because the press release is what, a page, two pages?

3 A The press release is two or three pages, and I don't have
4 it here.

5 Q My question wasn't about the press release. I'm sorry if
6 you misunderstood me. My question is how much time, how many
7 days did you spend reviewing the OFAC investigation that led to
8 the findings in this press release?

9 A Well, the investigation you can read in a short time, but
10 to relate it to all the criminal organizations in the FARC,
11 that doesn't take one day.

12 Q That's not my question. My question is, did you read the
13 investigation that resulted in this report?

14 A Yes.

15 Q Where are those documents?

16 A Those documents I don't have here.

17 Q So let me understand this. You actually got a copy of
18 OFAC's underlying documents that led to this February 2017
19 press release?

20 A We read them translated. There is a translation done, and
21 I read it -- we read them translated.

22 Q Where did you read them?

23 A I read them when I arrived here to the United States. I
24 read them for the first time -- when I came to the United
25 States three or four days ago for the second time. The first

1 time, I read it one or two months ago. Let me see. No, it was
2 August or September of last year when I received them.

3 Q Are those documents listed in your report?

4 A In which one, this one?

5 Q Yes.

6 A No.

7 Q So you reviewed documents, but you didn't indicate that
8 you reviewed them in your report?

9 A The same way I watched TV yesterday and I heard that FARC
10 drug traffickers have carried out a terrorist attack.

11 Q Right. So what was the name of the OFAC official who
12 shared the OFAC investigation with you?

13 A No. From OFAC, no officer.

14 Q Oh, where did you get the OFAC investigation from?

15 A I read the OFAC investigation here in the United States.

16 Q How many pages?

17 A Translated, there are two, I think, two or three pages.

18 Q Two or three pages?

19 A Yes, like two pages. Translated, they are three. I don't
20 remember very well.

21 Q So your entire investigation -- let me show you. Is this
22 the investigation that you reviewed?

23 MR. SCOTT: May I approach?

24 THE WITNESS: It is not an investigation. This is a
25 document related to an investigation made by OFAC.

1 BY MR. SCOTT:

2 Q So my question was, you didn't review the documents that
3 underlie that piece of paper?

4 A You mean all the documents that give origin to this
5 document?

6 Q Yes.

7 A No, just this one.

8 Q Just the piece of paper, just the press release?

9 A Yes.

10 Q Now, the press release doesn't indicate that the United
11 States of America has connected Mr. El Assimi to the FARC,
12 correct, yes or no?

13 THE COURT INTERPRETER: I'm sorry, you said doesn't?

14 BY MR. SCOTT:

15 Q Does not connect Mr. El Assimi to the FARC, yes or no?

16 A No, it doesn't associate it in any part. My 31 years'
17 experience studying the FARC criminal organization and their
18 logistical network support and all the meetings I have attended
19 where they have spoken about Tarek El Assimi, Samark Lopez
20 Bello and Cartel de la Soles allow me to say that.

21 Q Let me ask you one more time. Does this document indicate
22 that OFAC connected Mr. El Assimi to FARC, yes or no?

23 A No, it doesn't connect it.

24 Q And then this document, the OFAC press release, does not
25 connect Mr. Lopez or his companies to the FARC, correct?

1 A No, but it connects them with the drug trafficking which
2 is the finance sources of FARC, and the main logistical cartel
3 of FARC is Cartel de la Soles.

4 Q All right. I'm only ask you about what the release says,
5 not about what your opinion is. Okay? I'm asking you about
6 the release. The press release doesn't -- I'm sorry.

7 I'm only asking you whether or not the press release says
8 in the press release that Mr. Lopez or his companies are linked
9 or connected or associated with the FARC. That's a yes or no.

10 A No, the document does not say it.

11 Q How much money have you received from Mr. Porter since
12 2011?

13 A I honestly don't remember. It has been 40 days that I
14 have worked in the investigation process.

15 Q So you definitely -- you got a check, correct? You know
16 how much you got paid. Somewhere there's a record, right?

17 A Yes, I did receive a check.

18 Q And on the 2011 case, how much hours did you work on that
19 case?

20 A No, I don't remember.

21 Q You don't remember. And how many hours did you work on
22 this case?

23 A In this case I worked -- last year I worked like six days;
24 this year, two or three weeks.

25 Q Two or three weeks. That's in number of days. So what,

1 20 days, 30 days?

2 A No, because some days I worked hours, and others I worked
3 days.

4 Q All right. So how much money have you received so far in
5 this case?

6 A About \$10,000.

7 Q Right. And how much money are you expecting to receive
8 after you get off the stand today?

9 A No, that my expenses, my fees, are already paid for, and
10 the travel expenses are being paid directly by them.

11 Q All right. So overall, how much in this case have you
12 received?

13 A About \$10,000.

14 Q So your expert report, who drafted that?

15 A Who drafted this report?

16 Q Yes.

17 A I, I dictated it myself.

18 Q The entire report you dictated yourself?

19 A Yes, I did do it.

20 Q Is there a draft of the report?

21 A Well, a draft of this report? I prepared it so that it
22 could be translated into English.

23 Q Well, is that the final version of the report? That's the
24 final version of the report, correct?

25 A Yes, this is the final version.

1 Q Before you reached the final version, did you have a
2 draft?

3 A I don't have a draft. I go along and I correct it and I
4 delete and I add.

5 Q Are there any previous versions of that report?

6 A When I start preparing it, I go back, and there are some
7 errors, grammar errors or drafting errors, and I go over the
8 same document and I correct it as I go.

9 Q When you finished your draft or your final report, did you
10 transmit it to counsel, Mr. Porter?

11 A Yes, so that they could translate it into English.

12 Q Did he make any changes to your report that you wrote?

13 A None.

14 Q All right. And by the way, did you --

15 A I'm sorry, if they had made any changes, I wouldn't have
16 signed it.

17 Q Did you speak to Mr. Farah. Do you know Mr. Farah?

18 A No, I don't know who he is.

19 Q Did you see him testify this morning?

20 A Farah?

21 Q No?

22 A Farah?

23 Q You were in the courtroom all day today, weren't you?

24 A Yes, but I don't know.

25 Q Douglas Farah.

1 A Farah, Farah, no, I don't know who Mr. Farah is.

2 Q Are you able to read English?

3 A Yes, but I don't understand very well.

4 MR. SCOTT: Your Honor, may I approach the witness?

5 MR. PORTER: May I see what that is, please?

6 MR. SCOTT: It's the affidavit of Mr. Farah.

7 MR. PORTER: Okay.

8 BY MR. SCOTT:

9 Q Mr. Cote, I'm showing you an expert report from Douglas
10 Farah, and I would like to draw your attention to paragraph 52
11 which is on page 28 of Mr. Farah's report. Are you there?

12 A Yes.

13 Q All right. And then I want to draw your attention to your
14 report which is at paragraph 50. All right. Now, would you
15 agree with me that paragraph 52 of Mr. Farah's report and
16 paragraph 50 of your report are identical?

17 A It's just that the criminal organization is the same one.

18 Q I'm sorry? Could you repeat that?

19 THE COURT INTERPRETER: The criminal organization is
20 the same one.

21 BY MR. SCOTT:

22 Q Let's try it this way. Is it not, is it not, those two
23 paragraphs, word for word for word?

24 A Well, I don't know because it's in English over here and
25 in Spanish over here.

1 Q All right. So let's do this then. Here is your English
2 version.

3 MR. PORTER: May I see that, please, counsel.

4 BY MR. SCOTT:

5 Q Let me show you the English version of your report. All
6 right. And that report -- let me add this. I'm sorry.

7 And that report is translated from Spanish to English,
8 correct? And it was translated by the translator's company, I
9 believe?

10 A Yes, this is certified by a translation agency.

11 Q So now that you have both English versions, wouldn't you
12 agree with me that those two paragraphs, the paragraph in your
13 report and the paragraph in Mr. Farah's report, are word for
14 word?

15 A Yes. The first paragraph is different in some things, but
16 the rest is the same.

17 Q Identical, the rest. All right. So how is it possible,
18 if you wrote your own report, that Mr. Farah's report and
19 yours, except for that sentence you said, are identical?

20 A He also has knowledge of the criminal organization.

21 Q All right. That's not my question. My question, is if
22 you wrote your own report, how is it that your report and
23 Mr. Farah's report are identical?

24 A Well, I don't know if they are identical because there is
25 is one sentence that is different, but other than that, the

1 list of criminals and businesses linked are all the same.

2 Q And you and Mr. Farah never shared your reports together,
3 correct?

4 A No.

5 Q No. So it's a coincidence that the words are the same?

6 A Well, the names are the same. My name is Luis Miguel Cote
7 in the United States and I'm Luis Miguel Cote in Colombia.

8 Q All right. The bullet points on paragraph 52 of Mr. Farah
9 are identical. Let's go through your bullet points.

10 So paragraph 52 says the Cartel -- of Mr. Farah's report
11 in English, the Cartel of the Suns and the followings persons,
12 companies, front companies, front men, financial networks, and
13 associates and, in parentheses, including all aliases set forth
14 and amended in U.S. government documents and SDN list, end
15 paren, are all agencies or instrumentalities of the FARC and
16 its members.

17 Your paragraph, I believe, 49 is identical to that,
18 correct?

19 A Well, I don't have the English version, but I don't know
20 if it's the same thing that it says here.

21 Q You have the English version of your report, do you not?

22 A It's here, yes. What page is it?

23 MR. SCOTT: May I approach?

24 BY MR. SCOTT:

25 Q I think it's page 11.

1 A This one with which one? Page 11, page 11.

2 Q Mr. Cote, it's page 11, and it has a stamp on it,
3 certified translation.

4 A Oh, then it's this one.

5 Q Okay. Are you with me?

6 A Yes.

7 Q Would you agree with me that I read paragraph 52 of
8 Mr. Farah's report correctly?

9 A 52 with 50?

10 Q Yes. Paragraph 52 of Mr. Farah's report and then
11 paragraph 50, Mr. Cote, of your report is identical?

12 A Yes, they are identical, but that's what the Cartel de la
13 Soles does.

14 Q But the exact language including the parentheses and
15 what's included in the parentheses is identical, correct?

16 A Yes.

17 Q Who wrote paragraph 50 of your report?

18 A I wrote it in Spanish.

19 Q All right. And so Mr. Farah copied yours, is that what
20 happened?

21 A I don't think he copied it because he's referring to the
22 same amount of companies here that are associated with the
23 association.

24 Q Let me try one more time. It's not about the bullet
25 points. It's about the language of paragraph 50 versus

1 paragraph 52. Those words, unique words, the way they are
2 stated are identical?

3 A The paragraphs are the same and the order in which they
4 are referred. I don't think it means anything because if you
5 put it first, second, or third, it's the same organization.

6 Q So you don't know whether or not Mr. Farah copied your
7 report?

8 A No.

9 Q All right. And so let's go to the next bullet point.
10 Under paragraph 50 of your report, it says the Cartel of the
11 Suns and its members, correct?

12 A Yes.

13 Q Right. And the next bullet point has a person by the name
14 of Hugo, correct?

15 A Yes.

16 Q So who -- so do you know if Mr. Farah copied this section
17 from your report?

18 A No, I don't know.

19 Q All right. And the next bullet point starts with Henry
20 deJesus. Do you see that?

21 A Yes.

22 Q And do you know whether or not Mr. Farah copied that
23 bullet point?

24 A I don't know if he copied it, but Henry deJesus, he may
25 know him the same way I do.

1 Q Let's move on a little bit from this. I think we
2 understand what happened here.

3 So you indicated in your report that you reviewed audio
4 recordings, correct?

5 A Recordings from FARC, intercepting FARC.

6 Q And you also reviewed, according to your report,
7 information contained on computers, correct?

8 A Yes.

9 Q And you also indicate that you had reviewed buried
10 records, correct?

11 A Yes.

12 Q And you don't have a date in your report when those audio
13 recordings were made, correct?

14 A No. The dates are not there, but the fact that I listened
15 to them and I read them, that's something I have present. Some
16 of those documents become classified and they become -- they
17 have -- they take on strategic character. It's ultrasecret.
18 It cannot it be divulged.

19 Q Now, if any of those records that you reviewed, the buried
20 records, the computers, the audio recordings, contained the
21 name of Tarek El Assimi on them, you would have noted that in
22 your report, correct?

23 A Yes and no, because at the moment that we started
24 obtaining information from Cartel de la Soles and its members,
25 it was very risky, very delicate to associate them until they

1 were already recognized in the lines of investigation. That's
2 why when I indicated this group of people here in my report, it
3 was already public in the lines of investigation that they
4 belong to Cartel de la Soles.

5 Q So you wrote a report in 2011, correct?

6 A Yes.

7 Q And nowhere in that report in 2011 did you mention the
8 name El Assimi?

9 A No, not at that time.

10 Q I'm sorry. And you never mentioned the name of Lopez,
11 Samark Lopez, in that report, correct?

12 A No.

13 Q And that report had to do with the FARC, correct?

14 A In 2011, it had to do with the links to Cartel Cali. It
15 had to do with the agencies and people who indirectly -- the
16 Cali Cartel. It had absolutely nothing to do with Venezuela.

17 Q But your report contains information that's linked to the
18 FARC, does it not?

19 A Of course.

20 Q So my question again, you didn't put -- you didn't put
21 Mr. El Assimi's name in your 2011 report, did you?

22 A No, because in 2011 when we started getting information on
23 Tarek El Assimi, it was after 2011, and the same with Cartel de
24 la Soles.

25 Q So you also indicated that you wrote another report for

1 Mr. Porter which was related to Cuba, correct?

2 A Regarding the terrorist organizations as it relates to
3 Cuba and the support they have received.

4 Q Now, you also indicated in your report that you conducted
5 interviews of FARC members, correct?

6 A Many.

7 Q You did that before 2011, correct?

8 A No. Some were before 2011. Others were after 2011. It
9 was throughout my career.

10 Q So some of it was past 2013?

11 A Yes, participated after 2013 in many meetings of a
12 strategic nature.

13 Q And some were past 2015?

14 A After 2015, yes, of course.

15 Q And some were past 2017?

16 A Not after 2017, because after 2017, I was already retired.

17 Q And what exact date was your retirement date?

18 A I left by resolution July 16, 2016, and I continued six
19 more months in service while I finished recovery of an accident
20 in an operation against FARC terrorists.

21 Q So with those interviews, you don't include in your report
22 that people that you interviewed during all those years
23 mentioned Mr. Lopez by name, correct?

24 A No, they don't mention him directly. They mention the
25 links of Cartel de la Soles within the logistic and the support

1 to the FARC drug trafficking and in meetings, intelligence
2 meetings, I participated with security agencies of Colombia.
3 In many of those meetings, it was -- there was talk about
4 Lopez.

5 Q Let me ask you a question. It was a yes or no question.

6 THE COURT: Don't interrupt the witness. You got to
7 let the translator translate; otherwise, it's not going to
8 work.

9 MR. SCOTT: Got it. I apologize.

10 BY MR. SCOTT:

11 Q Now, let's go back to my question. Of the folks that you
12 interviewed for all those years, your report, your expert
13 report in this case, that's all I'm asking about, does not
14 indicate that any of those people that you spoke to spoke
15 directly about Mr. Lopez?

16 A Not him directly, but Tarek El Assimi and Cartel de la
17 Soles and his connection to Lopez Bello.

18 Q Whose connection to Lopez Bello?

19 A In the meetings where I took part, in the strategic
20 meetings, they would discuss how Lopez Bello was front man of
21 Cartel de la Soles because of his commercial relationship and
22 longtime friendship with Tarek El Assimi --

23 Q All right. So --

24 A -- the same as a group of other front men that exist in
25 Venezuela.

1 Q Right. And who were the people that you spoke to?

2 A Those people belong to -- they were intelligence meetings,
3 and they were with security agencies of the United States and
4 Colombia.

5 Q Right. And did you take notes during those meetings?

6 A You were not allowed to take notes.

7 Q Any documentation other than what you are saying today
8 about those communications?

9 A The documents from those meetings -- you can't take
10 pictures, you can't record anything, you can't take documents
11 with you because those meetings are highly classified. It
12 involves diplomatic relationships between countries.

13 MR. SCOTT: I'm sorry, Your Honor, one moment.

14 BY MR. SCOTT:

15 Q So you were still employed by the government while you
16 were also providing services, for example, to Mr. Porter in
17 court, correct?

18 A Yes, of course.

19 Q So you were writing about secret information in your
20 expert reports, correct?

21 A No, because it was information where the classified
22 designation had been already lifted because they were already
23 in judicial process.

24 Q Well, OFAC had already issued their press release in 2017,
25 correct?

1 A Yes. It came up in February 2017.

2 Q So your testimony is the first time you ever disclosed
3 Mr. Bello's name was after February of 2017?

4 A No. I had heard the name Lopez Bello in many meetings for
5 years in security agencies with the FBI, the ATF, the DEA, and
6 security agencies of Colombia.

7 Q So now we have the ATF is involved in these secret
8 meetings, right?

9 A What happens is there are meetings in which they
10 participate. They are called interagency. And what is -- what
11 they try is within the cooperation agreement between the
12 countries, Colombia and the United States, it's to work
13 together synchronized especially in these type of cases with
14 Venezuela, Cuba, and FARC because there is a criminal triangle
15 between Cuba, Venezuela, and FARC whose only objective is to
16 destabilize the government of the United States because they
17 are their enemy and the government of the Colombia. One of the
18 ways of creating destabilizing --

19 MR. SCOTT: Your Honor --

20 THE WITNESS: -- the United States or to create
21 problems is to distribute cocaine in the streets of the United
22 States because that causes a social problem and within the
23 world criminal system. The money laundering makes a circle.
24 With that money, they buy weapons, ammunition.

25 THE COURT: I think you answered the question.

1 Next question.

2 BY MR. SCOTT:

3 Q Yeah, so Mr. Lopez has never been charged with narcotics
4 trafficking, has he?

5 THE COURT: Is that a no or a yes, to your knowledge?

6 THE WITNESS: It's in OFAC and it's in meetings that I
7 attended, there was talk about the links of drug trafficking of
8 FARC in Venezuela and the name of the --

9 THE COURT: Just so we are here clear, to your
10 knowledge, has he ever been charged, Mr. Bello, with drug
11 trafficking in any formal complaint, criminal complaint?

12 THE WITNESS: He is in intelligence reports. It is
13 known that what happened is, in the drug trafficking
14 organization, there are people that are invisible to us. Lopez
15 Bello is one of them.

16 BY MR. SCOTT:

17 Q My question was and the Court's question was, are you
18 familiar with, are you personally aware of any criminal charges
19 that resulted in an indictment against Mr. Lopez for narcotics
20 trafficking?

21 A Not drug trafficking, but yes, of being a front man of the
22 resources received from --

23 Q So Mr. --

24 A -- cocaine trafficking.

25 Q I'm sorry.

1 A Allow me to explain something.

2 THE COURT: Don't interrupt the translation, okay,
3 because we can't then take it down properly.

4 Next question.

5 BY MR. SCOTT:

6 Q Mr. Lopez has not been charged or criminally indicted for
7 being a front man --

8 THE COURT: You asked that question already.

9 MR. SCOTT: -- in narcotics trafficking? I added the
10 word front man. He added the word front man.

11 THE COURT: Okay. Has Mr. Lopez Bello been charged
12 formally with any money laundering charge?

13 THE WITNESS: Formally, that I have knowledge of, no,
14 in judicial investigations. But his participation is known in
15 the drug trafficking structure because allow me to explain.

16 THE COURT: Let him ask the next question.

17 BY MR. SCOTT:

18 Q Is that a no?

19 THE COURT: He answered your question.

20 MR. SCOTT: He did?

21 One moment, Your Honor.

22 That's it for today, Your Honor.

23 THE COURT: Okay. Any redirect?

24 MR. PORTER: No, sir.

25 THE COURT: Thank you very much, sir. You may step

1 down.

2 MR. PORTER: Your Honor, might we have a brief few
3 moments before we call Mr. Craine?

4 THE COURT: Okay. We will take ten minutes.

5 (Thereupon, a recess was taken at 3:22 p.m.)

6 THE COURT: Have a seat?

7 MS. CHEWNING: Your Honor, if I may, before
8 Mr. Craine, my understanding is that plaintiffs intend to call
9 Mr. Craine to the stand.

10 THE COURT: Actually, are you going to call
11 Mr. Craine?

12 MR. PORTER: I am, Your Honor.

13 MS. CHEWNING: That was my understanding. At this
14 time I thought it was appropriate for us to restate the
15 objections to Mr. Craine's involvement this these proceedings.
16 We did touch on this briefly during the call yesterday but
17 wanted to reiterate the objection to Mr. Craine's participation
18 because he did not produce an expert report related to this
19 matter in this case.

20 The expert report from Mr. Craine was produced only in
21 the Pescatore matter which has not been formally consolidated.
22 And in that matter, the Lopez parties have not even been
23 granted formal intervention status at this time. So we are in
24 a very different procedural posture in terms of their being no
25 papers files, no motions filed, no opposition filed whatsoever,

1 no opportunity yet in the Pescatore matter to address
2 Mr. Craine's report.

3 THE COURT: You have seen the report though?

4 MS. CHEWNING: I have seen the report, yes, Your
5 Honor.

6 THE COURT: Okay.

7 MS. CHEWNING: One other thing, if I could mention it,
8 Your Honor. Just yesterday, there are also ongoing proceedings
9 in Washington, D.C. where the Pescatore plaintiffs filed first.
10 It was part of the objection that we filed in the Pescatore
11 matter on Friday alerting the Court to the plaintiff's motion
12 to enforce the judgment that is pending that we filed
13 opposition to just yesterday in front of Judge Collier in the
14 District of Columbia. So that court has first filed
15 jurisdiction over those proceedings that are absolutely
16 duplicative, from what I can gather, from the docket, the
17 available information on the docket in the Pescatore matter in
18 this case.

19 So, Your Honor, yes, we have seen the report, but in
20 terms of Mr. Craine's testimony, 4:00 yesterday afternoon was
21 the first time we heard of his participation in these
22 proceedings. So we believe that it's -- his participation and
23 testimony here is premature, that it's prejudicial to the
24 interveners in this matter to respond at this point in time.

25 And so subject to those objections, Your Honor, we

1 thought it was appropriate to raise them again before
2 Mr. Craine takes the stand.

3 THE COURT: The objection will be overruled simply
4 because it's a post-judgment matter. I didn't require a
5 witness or exhibit list to be done in advance. So technically,
6 there's no real rule that applies.

7 To the extent that he's being offered as an expert, my
8 understanding is he's kind of a hybrid as well, he may have
9 some factual knowledge, and may have some expertise. I guess
10 we will cross that bridge when we get there as far as what his
11 expertise is to render any opinion. And since you have a copy
12 of the report that he did file, obviously you can still use
13 that even if it wasn't filed in this case.

14 Given that it's an evidentiary hearing, I don't think
15 I need to strike the witness, but I will certainly take it into
16 account in terms of your cross-examination.

17 MS. CHEWNING: Your Honor, I think not necessarily
18 that the witness would need to be stricken, but just that it
19 would be more appropriate to take testimony from him at some
20 later time when an actual motion is filed in the Pescatore
21 matter as opposed to this one was really sort of the objection.
22 So I don't think it needs to be stricken entirely but taken at
23 a more appropriate time.

24 THE COURT: Well, since this is probably going to be
25 the only evidentiary hearing I have other than anything having

1 to do with the jurisdictional challenge by the garnishee, which
2 I probably don't need an evidentiary hearing on, it's kind of
3 like this is it so...

4 MS. CHEWNING: I guess my follow-up question to that,
5 Your Honor, if I may, is in terms of Mr. Craine's testimony in
6 the Pescatore matter, is it the Court's position that this is
7 essentially going to be dispositive of whatever motions will
8 eventually be filed in the Pescatore matter? My understanding
9 is they are different plaintiffs, different claims and so --

10 THE COURT: My understanding is I don't think that's
11 been formally consolidated.

12 MS. CHEWNING: That sort of underscores my objection,
13 Your Honor, to that --

14 THE COURT: My understanding of the hearing is this is
15 limited to the Stansell case.

16 MS. CHEWNING: That's exactly right. But Mr. Craine
17 has not opined at all in the Stansell case. He's only opined
18 in the Pescatore case, which is why, in our position, it's
19 prejudicial for him to be allowed to testify to support the
20 claims of these plaintiffs when he hasn't produced any kind of
21 report related to this case at all. He's not opined anything
22 related to the Stansell plaintiffs. It's solely as to
23 Pescatore plaintiffs.

24 THE COURT: Well, it could be that his opinion is
25 irrelevant, so obviously I will consider that at the

1 appropriate time. For now, I will deny your motion with leave
2 to reconsider based upon whatever happens.

3 So go ahead and call your witness.

4 MR. PORTER: Thank you, Your Honor. Plaintiffs will
5 call Paul Craine.

6 PAUL CRAINE

7 Having been first duly sworn on oath, was examined and
8 testified as follows:

9 THE COURTROOM DEPUTY: Please have a seat, sir, and
10 state your name for the record.

11 THE WITNESS: Yes, my name is Paul Craine,
12 C-R-A-I-N-E.

13 THE COURTROOM DEPUTY: Thank you.

14 DIRECT EXAMINATION

15 BY MR. PORTER:

16 Q Mr. Craine, can you please tell us about your background,
17 sir.

18 A Yes. I retired from DEA approximately two years ago after
19 serving for 27 years as a DEA special agent.

20 Q And what was your last assignment?

21 A My last assignment from 2012 to 2017 was as the regional
22 director and special agent in charge of the North American and
23 Central American region for DEA.

24 Q Can you describe your duties as a regional director,
25 please.

1 A Yes. I was based in Mexico City and oversaw 20 separate
2 DEA offices located throughout Mexico, Central America, and
3 Canada with the majority being in Mexico and Central America.
4 And I oversaw all aspects of the operation of DEA to include
5 oversight of investigations, operations, administrative issues,
6 things to keep the lights on, all aspects of DEA functioning in
7 those areas.

8 Q And did your region also cover the northern part of South
9 America?

10 A Not directly, but obviously it was significantly impacted
11 regularly by activities occurring in Venezuela, Colombia, and
12 other parts of South America.

13 Q And what type of groups did you investigate in DEA?

14 A We concentrated on the most significant drug trafficking
15 organizations operating internationally and that had the most
16 significant impact on the United States.

17 Q If I were to use the phrase foreign-based drug
18 trafficking, what would that mean to you?

19 A That most, if not all, of the significant drug trafficking
20 groups are based outside of the U.S., are based on foreign
21 soil.

22 Q And do you also investigate groups that are, not just drug
23 trafficking groups, but narcoterrorist groups?

24 A Yes.

25 Q Who might that be?

1 A Groups like the FARC, the Sendero Luminoso in Peru, the
2 Taliban, and other groups that are either designated terrorist
3 groups or who also get funding from drug trafficking.

4 Q Are you familiar with the FARC?

5 A Yes.

6 Q What is the FARC?

7 A The FARC was originally a gorilla movement Forces Armades
8 Revolucionaries de Colombia was a gorilla movement that started
9 probably over 50 years ago in Colombia, and over time mutated
10 into a significant criminal organization that made money
11 through control of cocaine production, trafficking in cocaine,
12 kidnappings, extortion, all different types of criminal
13 activity.

14 Q Was there a time in your Drug Enforcement Agency career
15 that you became familiar with the FARC?

16 A Yes. I started with DEA in 1990. And in the beginning of
17 1997, I was transferred to Bogota, Colombia to work as a
18 special agent out of the U.S. embassy in Bogota.

19 Q And what were your duties and responsibilities when you
20 were a special agent in Bogota?

21 A We were to conduct investigations and build evidence to
22 potentially be used in U.S. court and to work with counterpart
23 agencies of the Colombian government in targeting the most
24 significant drug trafficking organizations operating in
25 Colombia which included at the time the FARC.

1 Q During your time in Colombia investigating the FARC, what
2 information did you learn about that narcoterrorist group?

3 A No, at the time, I think beginning in '97 and through
4 1998, we were able to identify that the amount of control that
5 the FARC had obtained over the cocaine trade in Colombia, they
6 controlled most aspects of the production of cocaine, the
7 cocaine laboratories, control of chemicals, so they were
8 producing the significant majority of cocaine in Colombia as
9 well as being directly involved in supplying that cocaine and
10 trafficking it to other Colombian traffickers as well as to
11 other organizations outside of Colombia.

12 Q Did one of your responsibilities involve the arrest,
13 interview, or interrogation and extradition of drug
14 traffickers?

15 A Yes.

16 Q Do you recall a large investigation called Millennium?

17 A Yes.

18 Q Describe for the Court what that was.

19 A It was an investigation into the major drug trafficking
20 groups centered around the Norte de Valle Cartel and affiliates
21 in the Medellin Cartel, the Cali Cartel, other cartels which
22 was identified as moving over ten tons of cocaine per month
23 from Colombia to Mexico and to other countries in South
24 America, south out of Peru and Ecuador as well as through
25 Venezuela and other routes.

1 During that investigation is where I received significant
2 information concerning high levels of the Venezuelan government
3 providing protection and support to drug trafficking groups
4 that were allowed to be based operations in Venezuela as well
5 as to utilize Venezuelan soil as a safe haven.

6 Q How specifically did you get that information?

7 A From a high-level cooperator who was indicted here in the
8 Southern District of Florida who ended up cooperating and
9 providing detailed information concerning past drug trafficking
10 activity with the protection of high-level government officials
11 in Venezuela.

12 Q What year was this?

13 A This would have been 1988, 1999 (sic).

14 Q Do you remember the name of that drug trafficker, that
15 cooperator?

16 A Yes, the name was Carlos Ramon.

17 Q After your assignment in Bogota, where did you go in DEA?

18 A I was promoted and transferred to be a supervisory special
19 agent in Houston for three years. And in 2003, I was
20 transferred to our DEA Special Operations Division that's
21 located outside of DC in Virginia where I worked in the
22 narcoterrorism section of our Special Operations Division.

23 Q And when you first arrived in Virginia, did you say that
24 was the Special Operations Division?

25 A Yes.

1 Q What was the responsibility of Special Operations
2 Division, DEA?

3 A One part of it was to coordinate and support
4 investigations, high-level investigations throughout DEA, and
5 another part of SOD had several enforcement groups that were
6 tasked with going after the most significant drug trafficking
7 groups in Latin America.

8 Q When you arrived there, what was your rank?

9 A I was a GS-14, supervisory special agent.

10 Q And when you left in the 2008?

11 A I was actually the GS-15 section chief over the
12 narcoterrorism group.

13 Q And that narcoterrorism group principally investigated
14 which organization?

15 A The main organization was the FARC, and so we, out of that
16 section, coordinated all the investigations within DEA as well
17 as in some of the other federal agencies that targeted FARC.

18 Q During that period in Special Operations Division, would
19 you also look at money laundering aspects surrounding FARC's
20 drug trafficking?

21 A All aspects. Money laundering, drug trafficking, arms
22 trafficking were the three main things that we looked at
23 concerning the FARC.

24 Q I see in your report here, Mr. Craine, at paragraph 8, you
25 are a recognized subject matter expert within the United States

1 government for the Office of Foreign Assets Control, is that
2 correct?

3 A Yes, I have a significant involvement with OFAC going back
4 over 20 years. And then Colombia was one of the first
5 locations where OFAC actually had representatives stationed
6 that worked out of our office, our DEA office in Bogota.

7 Q Your report on your background here also says that you are
8 a subject matter expert within the United States government for
9 anti money laundering. Is that correct?

10 A Yes, for drug-related anti money laundering, yes.

11 Q Would that include the analysis of whether a person is a
12 front person or an entity is a front company?

13 A Yes.

14 Q And from your experience, what are some of the criteria
15 that you look at?

16 A Depending upon the type of financial services, illicit
17 financial services, that are being offered, generally, you
18 look -- or just to go back, because of the vast amounts and
19 significant amounts of money that is generated by drug
20 trafficking out of Colombia and Venezuela, generally you have
21 to have an entity that is moving illicit funds or significant
22 amounts of funds as well in order to hide the movement of
23 illicit funds.

24 So one of the things you look at is large corporations
25 that have corrupt connections, individuals, high wealth

1 individuals, that have connections to, whether it's corrupt
2 government or corrupt criminal organizations that utilize their
3 companies and their connections of international finance to
4 move large amounts of money.

5 Q Is there a particular environment in which corruption and
6 the use of front companies flourish?

7 A Yes. It's the same place that major criminal
8 organizations flourish are in areas that have very little rule
9 of law and high levels, very high levels of corruption from the
10 government institutions that are working with the criminal
11 organizations.

12 Q After you left SOD in 2008, what was your next assignment?

13 A I was then moved to Houston where I was the head of the
14 organized crime strike force in Houston.

15 Q And after that?

16 A After that, I was promoted to the senior executive service
17 within the Department of Justice to be the regional director
18 and special agent in charge from Mexico City.

19 Q And you held that position until your retirement?

20 A Yes.

21 Q As a regional director, what is your interface with the
22 Office of Foreign Assets Control?

23 A I would regularly meet with leadership elements from OFAC
24 either when I was in Washington or when they visited Mexico to
25 discuss ongoing investigations as well as potential OFAC

1 designations based on investigations DEA was conducting.

2 So I had regular interaction as well as I was on the chain
3 of approval of OFAC designations going forward or being
4 publicized in order to ensure that they wouldn't compromise an
5 ongoing investigation.

6 Q Let's neckdown on that part right there. Would a regional
7 director have to sign off before OFAC published a designation?

8 A Yes.

9 Q Is it instantaneous? What I mean by that is, DEA has an
10 investigation, they provide the information to OFAC, and
11 immediately OFAC designates someone?

12 A Generally, no.

13 Q Is there a lag?

14 A Yes, depending upon the type of the investigation or the
15 amounts of information. OFAC has access to details of ongoing
16 investigations as well as historical information. And OFAC
17 takes that information and then uses further analysis to
18 identify connections financially to targets of the
19 investigation, to companies identified during the investigation
20 and to build out the financial structure connected to targets
21 and connected to the organization.

22 Q Could an OFAC designation include investigation that has
23 occurred within DEA for years and years?

24 A Yes.

25 Q It says here in your report that you are also a recognized

1 subject matter expert in the Bank Secrecy Act, correct?

2 A Yes.

3 Q Can you tell us about special training that you might have
4 had within the Drug Enforcement Administration to investigate
5 drug trafficking?

6 A Beginning with my attending the special agent academy in
7 Quantico, Virginia, that was in 1990 for 14 weeks. And then
8 throughout my career, there was continual training at different
9 levels of DEA as well as, I guess you would call it significant
10 on-the-job training based upon experience and continuing
11 investigations and prosecutions in different parts of the world
12 and in the U.S.

13 Q Were you taught in the Drug Enforcement Administration as
14 a special agent how to analyze information?

15 A Yes.

16 Q Describe that for us, that process for us, please.

17 A Well, I had brought significant experience from my
18 previous occupation as a police officer and detective in the
19 Atlanta area from 1984 to 1990, so I already had a lot of that
20 skill. But upon joining DEA, the investigations were a lot
21 more complex. You had to be able to organize the information
22 effectively in order to identify significant connections as
23 well as to be able to present the information in a coherent
24 manner to U.S. Attorney's offices in order to get prosecutions
25 or begin prosecution efforts.

1 Q Have you applied that type of methodology to any opinions
2 you may render here in this case today without telling me what
3 they are?

4 A Yes.

5 Q Let's go back to OFAC if we can, please. Who provides
6 OFAC information about whether to designate a person or an
7 entity?

8 A Well, OFAC is provided information. They make their own
9 independent determination whether or not they are going to
10 doing a designation. But they receive information from ongoing
11 investigations, from public source -- I mean public
12 information, open source information. They have access to
13 banking databases and suspicious activity reports generated by
14 banks to the FinCEN databases in the U.S. as well as
15 connections with foreign FIUs, which are financial
16 investigative units which each country maintains in order to
17 share financial information to prevent and target criminal
18 activity. So they have a lot of different sources of their
19 own.

20 Q From your experience as a regional director, would OFAC
21 also use information developed by the foreign intelligence
22 services of an allied nation or the foreign military?

23 A Yes. A lot of information and just from my experience in
24 Colombia, we utilized incredible amounts of information
25 directly from the Colombian national police and other sources

1 in Colombia in prosecutions here in the Southern District.

2 Q You also have been recognized as an expert in
3 transnational organized crime, is that correct?

4 A Yes.

5 Q And in counterterrorism, is that correct?

6 A Yes.

7 Q Can you describe transnational organized crime for us,
8 please?

9 A Right. It is by definition organized crime that crosses
10 borders and impacts more than one country and has nexuses
11 internationally.

12 Q Tell us a little bit about your educational background,
13 please.

14 A I graduated with a bachelor's in business from Georgia
15 State University in 1997 -- in 1987 with a degree in computer
16 information systems, and then I had continuing education within
17 DEA with courses at Johns Hopkins University, Notre Dame, and
18 other institutions.

19 Q Have you received any awards within the Drug Enforcement
20 Administration?

21 A Yes, I have received several of the highest level awards
22 within DEA, the DEA award of honor. I also received the U.S.
23 Attorney General's award for investigative excellence from the
24 Department of Justice, the National Association of Police top
25 cop award for investigations, for significant investigations as

1 well which were recognized at the White House with President
2 Obama.

3 Q Do you hold a security clearance?

4 A Yes, top secret clearance.

5 Q Is it active?

6 A Yes.

7 Q And what do you do today, sir?

8 A I have my own security, international security, consulting
9 company.

10 Q And can you tell us briefly what you do in that?

11 A Well, it covers a wide area, but I provide counsel and
12 advice mostly to international companies, U.S.- and
13 foreign-based companies in risk management and crisis
14 management based upon many times threats from criminal
15 organizations or to conduct internal investigations as well
16 based upon potential infiltration by criminal organized crime
17 groups in those countries.

18 Q You said that in 1997, you were a special agent assigned
19 to Bogota, and you investigated the FARC, correct?

20 A Yes.

21 Q And that revealed some information about the FARC's
22 relationship with a neighboring country, correct?

23 A Yes.

24 Q Describe in detail what information your duties as special
25 agent in your investigation had in 1997 with respect to

1 Venezuela.

2 A Again, upon immediate arrival in Colombia, I was assigned
3 to work on FARC-related investigations as well as support
4 operations in the field against FARC-controlled drug
5 laboratories and other locations where they were facilitating
6 the production of cocaine.

7 So actual, besides interviews of persons associated with
8 the FARC, developing sources who had significant knowledge of
9 the FARC to going on air assault operations out in helicopters
10 in the Amazon basin to raid and disrupt FARC-controlled cocaine
11 labs.

12 Q Did your investigation of the FARC in Colombia in the 1997
13 and 1998 time frame tell you anything about how the
14 relationship with FARC and Venezuela started?

15 A Well, yes. From the beginning of the Chavez
16 administration in Venezuela, which I believe he took office in
17 1998, there were immediate intelligence and information was
18 developed concerning his direct support for the FARC. When
19 there was significant efforts by the Colombian government to
20 target the FARC and disrupt the FARC, they maintained a lot of
21 their bases as well as their cocaine production areas in areas
22 very close to the Venezuelan border from inside Colombia but
23 very close to the Venezuela border. And they used the
24 Venezuela border in order to -- when there was pressure put on
25 them to move over into Venezuela to prevent the Colombian

1 government from impacting them as well as they used the border
2 to facilitate transport of drugs across into Venezuela and
3 chemicals and weapons from Venezuela into Colombia.

4 Q Do you have personal experience investigating Hugo Chavez?

5 A I have personal experience investigating persons who told
6 me that they were being protected by Hugo Chavez in their
7 criminal activities.

8 Q Did your investigation as a special agent in DEA tell you
9 the level of the relationship of the FARC and Venezuela?

10 A Yes.

11 Q Describe that for us if you could.

12 A Going back to when my time -- my time in Colombia moving
13 forward to my time in the Special Operations Division, during
14 that time, the amount of direct criminal participation by
15 high-level ranking members of the government and Venezuela had
16 increased exponentially to them providing and really not trying
17 to hide their relationship with the FARC and their support for
18 the FARC's criminal activities and facilitating the movements
19 of cocaine through Venezuela as well as, you know, supporting
20 weapons trafficking and chemical trafficking back into
21 Colombia.

22 And there was a specific case of a high-ranking FARC
23 representative whose name was Bianco. His last name was, I
24 believe, Coredor who was the main facilitator for the FARC for
25 drugs going through Venezuela and being trafficked out and

1 money and weapons coming back in from other countries.

2 He was captured in Venezuela by some of the local forces.

3 He was housed in the main prison which was run by the

4 intelligence service in Venezuela. And he -- we started

5 receiving immediate intelligence that he had access to

6 computers, fax machines, telephones, visitation. And he

7 subsequently escaped in the middle of the day, walked out of

8 the jail and absconded out of the most secure jail in

9 Venezuela. And all the information was that that was

10 facilitated -- his escape was facilitated by high-ranking

11 members of the Venezuelan government.

12 Q Is there a single-word or a two-word phrase how you would

13 describe the level of support that Venezuela had for the FARC?

14 A Unprecedented.

15 Q And how would you describe -- who were the people that

16 were supporting the FARC in Venezuela?

17 A It ran the gamut from, if you look at it from a criminal

18 organizational view, which in my opinion the Venezuelan

19 government is a criminal organization, operates like a criminal

20 organization, that the -- you know, from the highest levels

21 who, if you look at the classic la cosa nostra model, the

22 higher-level officials, let's say the top ten level officials

23 within the government are the godfathers, and then all the

24 other parts of the government that are involved in criminal

25 activity report up to the godfathers as well as pass up

1 proceeds from illicit activities. They have to pay portions of
2 the moneys that they are earning up to the top members.

3 MS. CHEWNING: Your Honor, I must object. The witness
4 responded that he was offering opinion testimony. He has not
5 been qualified as an expert, accepted by the Court, or subject
6 to any potential objection on that front.

7 THE COURT: Overruled. I think it's more factual from
8 my --

9 MR. PORTER: That's where I'm at, Your Honor, asking
10 about his background.

11 BY MR. PORTER:

12 Q So you continued to have information in your role after
13 you left Bogota about Venezuela's support to the FARC, is that
14 right?

15 A Yes.

16 Q And that occurred during your time at Special Operations
17 Division?

18 A Yes.

19 Q Did you also continue to have that type of information as
20 regional director as to intelligence or reports as to what
21 level of FARC -- what level of support Venezuela was providing
22 the FARC?

23 A Yes, because when continued -- and I continued to oversee
24 investigations being run out of my region that had direct
25 connections into Venezuela, Colombia that, you know, that those

1 were the main source countries for cocaine coming north into
2 Mexico and into the Caribbean and into the U.S.

3 Q How did you refer to the group of people in Venezuela who
4 supported drug trafficking?

5 A No, they were -- they were referred to as a group, the
6 Cartel de la Soles.

7 Q Why is that?

8 A Originally, I believe it was because of the significant
9 involvement of high level military officials, and because of
10 their emblems on their epaulets were the big gold stars or
11 suns, that that's where that name was generated from.

12 Q Let me ask you that, during your experience in DEA and
13 during your investigations of the FARC, did you come across a
14 name Tarek El Assimi?

15 A Yes.

16 Q Describe for the Court how you came about knowing his
17 name.

18 A No, I would say over the past probably from 2009 on, there
19 was obviously significant efforts by DEA to target criminal
20 groups that were operating out of Venezuela. And many of those
21 investigations implicated high-level officials in the
22 government.

23 And over that time also, I think there was numerous
24 designations under OFAC of, I think there's probably over 20
25 designations, maybe more, of high-level government officials

1 designated by OFAC for their involvement in supporting drug
2 trafficking and, you know, supporting the money laundering and
3 drug trafficking.

4 So Tarek El Assimi is one of the main, you know, leaders,
5 government officials, high-ranking government officials, in the
6 areas where he controlled. He was the governor of one of the
7 main states that had control of the main port where a lot of
8 the cocaine was being shipped out of. He was in the minister
9 of interior. So he was in key positions to have significant
10 involvement and control over the drug trafficking occurring out
11 of Venezuela.

12 Q In your capacity as a drug enforcement agent and as a
13 supervisor, did you ever investigate a drug trafficker by the
14 name of Walid Makled?

15 A I was involved in those investigations, yes.

16 Q Describe for the Court who Walid Makled is, please.

17 A Walid Makled is a Venezuelan. He was probably the most
18 significant Venezuelan trafficker in the history of Venezuela,
19 specifically being Venezuelan. He had significant connections
20 and bases within Colombia. He had very strong relationship
21 with the FARC. And it was through FARC sources that he
22 received the majority of his cocaine.

23 He was moving, you know, five to ten tons a month of
24 cocaine hydrochloride from Colombia into Venezuela. And then
25 the shipments were then facilitated by high-level government

1 officials to be shipped out of Venezuela either by air or
2 maritime.

3 Q During your time with DEA, did you ever investigate a drug
4 trafficker by the name of Daniel Barrera Barrera?

5 A Yes.

6 Q Can you share with the Court who Mr. Barrera Barrera is?

7 A He's probably one of the most interesting drug traffickers
8 in the history of Colombia because he was involved -- he was
9 Colombian based, but he was involved in buying cocaine based
10 directly from the FARC in huge quantities. So he was working
11 with the FARC on obtaining the paste.

12 He then worked AUC with the paramilitaries who were direct
13 enemies of the FARC, and he paid the AUC to protect the actual
14 conversion labs where he converted the cocaine. And then he
15 had contacts within Venezuela, and regularly he was based out
16 of Venezuela to coordinate the shipments from Colombia through
17 Venezuela and then transported out of Venezuela.

18 Q Do you know whether OFAC ever designated Barrera Barrera
19 as a kingpin?

20 A Yes.

21 Q Do you have that chart in front of you?

22 A Yes.

23 MS. CHEWNING: Objection, Your Honor. There's no
24 exhibits attached to Mr. Craine's report, so I'm not sure what
25 chart he's referring to and why the witness is referring to it.

1 THE COURT: That's a good point. You are going to
2 have to use a particular document or mark it as an exhibit;
3 otherwise, we don't know what you are talking about.

4 MR. PORTER: I will do that, Your Honor.

5 Let me mark for identification OFAC's March 2, 2010
6 chart.

7 BY MR. PORTER:

8 Q Is that the one you have in front of you, sir?

9 A Yes.

10 MS. CHEWNING: Your Honor, if I may interpose an
11 objection. There is nothing in the report that I have that
12 references Daniel Barrera Barrera. So now we are going further
13 afield from the report that, again, we only learned was going
14 to be at issue today at 4:00 yesterday afternoon and dealing
15 with an OFAC chart that is not even referenced in Mr. Craine's
16 report.

17 THE COURT: Overruled.

18 BY MR. PORTER:

19 Q So do you have that in front of you, sir?

20 A Yes.

21 Q Okay. And that chart was created when by the Office of
22 Foreign Assets Control?

23 A In March of 2010.

24 Q How did OFAC characterize Mr. Barrera Barrera in terms of
25 the FARC?

1 A He's directly associated with the FARC.

2 MR. PORTER: Your Honor, may I approach the bench?
3 Public record, OFAC, December 10.

4 THE WITNESS: No, he was directly associated with the
5 FARC and specific FARC leadership who he coordinated with in
6 order to obtain cocaine base to then convert into cocaine
7 hydrochloride.

8 BY MR. PORTER:

9 Q And Mr. Barrera Barrera's organization utilized Venezuela
10 for the transport route for FARC cocaine, correct?

11 A Yes. He was also based there before he was arrested, and
12 there was significant pressure in Colombia against him and his
13 organization. He actually moved over into Venezuela to utilize
14 Venezuela as a safe haven.

15 Q I want to ask you a question about Samark Lopez Bello.
16 And my question is, in your capacity during your investigations
17 with DEA as a DEA special agent, when did you become aware of
18 the name Samark Lopez Bello?

19 A Probably around 2014 or '15.

20 Q And can you share with the Court in what context you
21 became familiar with his name?

22 A In the context of, again, in focusing on criminal activity
23 that was being generated out of Venezuela and Colombia, we
24 began looking at the financial aspects of the criminal
25 organizations and specifically looking at ultrahigh wealth

1 individuals who were in the area in Central America, Mexico,
2 Venezuela, Colombia that were information intelligence
3 investigative information indicated were providing illicit
4 financial support and money laundering to criminal
5 organizations in the region. And so he was one of the persons
6 that was identified.

7 Q And what capacity was he identified in the Drug
8 Enforcement Administration investigations?

9 A Specifically as having very close relationships with
10 high-ranking officials in Venezuela. And he also had business
11 association directly with the Venezuelan government, was
12 receiving numerous contracts directly from the Venezuelan
13 government to companies he controlled. He was being contracted
14 to provide services in the oil industry, many different parts
15 of government operations there.

16 Q So why would that by itself put Mr. Lopez Bello on DEA's
17 radar?

18 A Well, first, because the people that he was associated
19 with and that were -- there was information he was laundering
20 money -- were developed most -- or the most significant source
21 of illicit funds for those persons was drug trafficking.

22 And so that was being focused on as well as we also had
23 intelligence information funds from the corrupt contracts and
24 the diversion of government funds for theft and a kleptocracy.
25 They were also being -- Lopez Bello was also facilitating

1 laundering of those funds as well.

2 MR. PORTER: Your Honor, at this time I would tender
3 Mr. Craine as an expert witness on the FARC, on the FARC's
4 support, and on Venezuela support to the FARC.

5 THE COURT: Any objection?

6 MS. CHEWNING: Your Honor, subject to the objections
7 we made before Mr. Craine took the stand and as long as it's
8 limited to the time frame he was actually working in Colombia
9 with respect to the FARC, then we have no objection.

10 THE COURT: All right. Go ahead.

11 BY MR. PORTER:

12 Q Have you reviewed some material in this case?

13 A Yes.

14 Q Can you tell us what that is?

15 A I have reviewed open source information, obviously the
16 OFAC designation and the details surrounding that, as well as I
17 utilized my knowledge and experience.

18 Q Did you review the February 13, 2017 OFAC designation in
19 this case?

20 A Yes.

21 Q Do you have the factual findings, the press release before
22 you?

23 A Yes.

24 Q Let's take a look at that if we may.

25 MS. CHEWNING: Your Honor, it's unclear. Counsel

1 referenced factual findings and a press release. Is it more
2 than just the press release? I don't know what the witness is
3 looking at.

4 MR. PORTER: He's looking at the press release,
5 February 13.

6 THE COURT: Where in the record is that, by the way?
7 Since he doesn't have a report, I think you should mark
8 anything you want to use with him.

9 MR. PORTER: Your Honor, it's listed as document 18-2
10 filed in the Stansell case. It's the February 13, 2017 OFAC
11 press release on the sanctions of Tarek El Assimi and his
12 primary front man Samark Lopez Bello.

13 THE COURT: 18-2?

14 MR. PORTER: Yes, sir.

15 THE COURT: Okay.

16 BY MR. PORTER:

17 Q Do you have that in front of you, sir?

18 A Yes.

19 Q Okay. If you would go down and look at that, at the third
20 full paragraph, read for us what OFAC's words are, and then I
21 want to ask you a few questions, please.

22 MS. CHEWNING: Your Honor, I have an objection to the
23 witness reading from a document.

24 THE COURT: Overruled.

25 THE WITNESS: Actually, can you provide me your copy

1 because the writing on here is very, very small?

2 MR. PORTER: May I approach the witness, Your Honor?

3 THE COURT: Go ahead.

4 BY MR. PORTER:

5 Q 18-2.

6 A Okay.

7 Q Paragraph 4.

8 A Beginning with Lopez Bello?

9 Q No, he also.

10 A Okay. He also facilitated, coordinated, and protected
11 other narcotics traffickers operating in Venezuela,
12 specifically El Assimi; received payments for the facilitation
13 of drug shipments belonging to Venezuelan drug kingpin Walid
14 Makled.

15 El Assimi also was linked to coordinating drug shipments
16 for Los Zetas, a violent Mexican drug cartel, as well as
17 providing protection to Colombian Drug Lord Daniel Barrera
18 Barrera and Venezuela thug trafficker -- or drug trafficker
19 Hermanagoras Gonzalez Polanco. Los Zetas, Daniel Barrera, and
20 Gonzalez Polanco are previously named in specifically
21 designated narcotics traffickers by the president and the
22 secretary of treasury under the foreign -- under the Kingpin
23 Act in April 2009, March 2010, and May 2008, specifically -- or
24 respectively.

25 Q Let me ask you some questions about that OFAC press

1 release and those findings. Is it your understanding that that
2 Daniel Barrera Barrera is the same Daniel Barrera Barrera
3 referenced in the December 2010 OFAC chart?

4 A Yes, Loco Barrera, yes, the same person.

5 Q And Barrera Barrera was a FARC drug trafficking partner,
6 is that correct?

7 A Yes.

8 Q And so do you have an opinion as to what OFAC has said
9 with respect to El Assimi and his link to Daniel Barrera
10 Barrera?

11 MS. CHEWNING: Your Honor, again, I have to object to
12 the witness opining about what OFAC meant.

13 THE COURT: That's true. Restate your question.
14 Sustained.

15 BY MR. PORTER:

16 Q Would you agree that the OFAC press release on its face
17 links El Assimi to the FARC because Daniel Barrera Barrera --

18 MS. CHEWNING: Objection, Your Honor. The document
19 doesn't say the word FARC.

20 THE COURT: What are we talking about, 18-2 again?

21 MR. PORTER: Yes, sir.

22 MS. CHEWNING: Yes, Your Honor. And the word FARC
23 does not appear anywhere in the document.

24 THE COURT: That is true. Restate your question.

25

1 BY MR. PORTER:

2 Q If OFAC links El Assimi to Barrera Barrera, what does that
3 mean to you?

4 MS. CHEWNING: Objection, Your Honor. Again, it's an
5 assumption as to what OFAC intended when they link somebody to
6 the FARC. They are different people. And counsel continues to
7 try to get the witness to state an opinion that doesn't appear
8 in his written opinion and that doesn't appear in the OFAC
9 press release.

10 THE COURT: That's a different question. Overruled.

11 THE WITNESS: No. In my opinion, based upon -- and
12 what I used to base that on is based upon Tarek El Assimi's
13 direct involvement with Walid Makled who Makled had made public
14 statements concerning his connections with El Assimi and
15 El Assimi's brother Feras paying them money for protection of
16 his criminal activity, his prior links with Daniel Barrera
17 Barrera which, again, the connections between Barrera Barrera
18 and the FARC, Makled and the FARC being the sources of the
19 cocaine that they were moving through Venezuela, I agree that
20 Tarek El Assimi is directly coordinating with the FARC and has
21 knowledge that the intermediaries that he's working with are
22 receiving their cocaine from the FARC.

23 BY MR. PORTER:

24 Q Thank you for that.

25 THE COURT: To your knowledge, was the FARC ever

1 actually designated specifically by OFAC as a drug trafficking
2 organization?

3 THE WITNESS: Yes.

4 BY MR. PORTER:

5 Q Did you have an opinion on Tarek El Assimi's relationship
6 with the FARC before the February 13, 2017 OFAC designation?

7 A Yes.

8 Q And based upon all of your experience as a DEA special
9 agent and investigating the FARC and who supports the FARC and
10 foreign based drug trafficking, what is that opinion?

11 A No, my opinion is based upon information and intelligence,
12 investigative information, and my understanding of El Assimi's
13 role within Venezuela, his position as the minister of interior
14 for several years, his ascension to be the vice president of
15 Venezuela in 2017, his present role as minister of industry,
16 that he is, has, and continues to utilize his position in
17 Venezuela to facilitate the transportation of cocaine through
18 Venezuela that is sourced by the FARC and that was sourced by
19 the FARC over those years when he was in those positions.

20 Q In your report you have rendered some opinions, is that
21 correct?

22 A Yes.

23 Q Let's go through those opinions if we may, please.

24 A Sure.

25 Q What is your first opinion, sir?

1 A That Tarek El Assimi utilized his --

2 MS. CHEWNING: Objection, Your Honor. The witness is
3 reading from his report. If he has testimony to offer, he can
4 offer testimony. He can obviously use his report to refresh
5 his recollection. But the rules don't allow him to read
6 directly from his opinion.

7 THE COURT: Agree on that. Sustained. And for timing
8 purposes, Mr. Porter, I need to reserve time for
9 cross-examination, so you need to --

10 MR. PORTER: I will move it along, Your Honor.

11 THE COURT: I will give you another five minutes.

12 BY MR. PORTER:

13 Q Okay. Can you share with us your opinions today.

14 A Yes, that, one, that Tarek El Assimi was and is a
15 high-level official within the Venezuelan government and that
16 he utilized that position to materially assist and provide
17 government support and services to facilitate the movement of
18 FARC-sourced and FARC-owned cocaine through Venezuela.

19 Q And your next opinion, please?

20 A That he profited financially from his support to the FARC
21 which resulted in him gaining significant wealth.

22 Q And your next opinion, please?

23 A That he played a critical and significant role in
24 facilitating and directing the trafficking of FARC-sourced
25 cocaine through Venezuela.

1 Q What does the word network mean to you as a former DEA
2 special agent investigator of drug trafficking?

3 A It's the connections between persons and organizations,
4 specifically in DEA, in criminal organizations.

5 Q Please tell us what your opinion No. 5 is.

6 A That El Assimi in conjunction with --

7 MS. CHEWNING: The witness is reading again, Your
8 Honor.

9 THE COURT: Sustained.

10 THE WITNESS: That El Assimi in his relationship with
11 Lopez Bello and Lopez Bello in that relationship utilized his
12 business networks, his financial networks, to launder drug
13 proceeds on behalf of El Assimi and drug proceeds that came
14 from the trafficking of FARC cocaine.

15 BY MR. PORTER:

16 Q And your last opinion, please?

17 A That based upon the relationship and all of the different
18 intelligence and facts, that they were both instrumentalities
19 of the FARC.

20 Q Is it your opinion that El Assimi is a member of Cartel de
21 la Soles?

22 A Either a member or the leader, yes.

23 Q Is it also your opinion that Samark Lopez Bello is also a
24 member of Cartel de la Soles?

25 A Yes.

1 Q What is your basis for your opinion No. 5 and No. 6, that
2 Samark Lopez Bello is an agency or instrumentality of the FARC?

3 A Because if you look at it as a network, you have El Assimi
4 as a wheel with different spokes going off with different
5 criminal associates and criminal associated groups, one of them
6 being the FARC, the relationship directly between the FARC and
7 El Assimi either directly or through intermediaries like Makled
8 and Barrera, and then you have Lopez Bello providing
9 financial -- or providing and utilizing his financial networks
10 and business networks to launder money directly for El Assimi
11 which those funds or part of those funds are being derived from
12 El Assimi's support of the FARC.

13 MR. PORTER: No further questions, Your Honor.

14 THE COURT: Cross-examination.

15 CROSS EXAMINATION

16 BY MS. CHEWNING:

17 Q Good afternoon, Mr. Craine.

18 A Good afternoon.

19 Q When were you hired by the Stansell plaintiffs to render
20 an opinion in this case?

21 A I'm not exactly clear on the discussions you had on the
22 different plaintiffs, but I was contacted in January of 2019 by
23 Attorney Nathan Taner to examine information and provide an
24 affidavit and my opinion based upon the basis of the OFAC
25 designation as well as other information.

1 Q Okay. And when Mr. Taner retained you, did he disclose
2 the names of the plaintiffs for whom you would be writing a
3 report?

4 A I believe so, yes.

5 Q You would have probably run some sort of conflict check on
6 that, correct?

7 A Conflict check.

8 Q Make sure you hadn't rendered some opinion that might be
9 contrary to those plaintiffs in some other context?

10 A No, I would have known that, specifically if I had that
11 kind of conflict, based upon my knowledge of what the case
12 entailed and what had happened to the victim or the plaintiff
13 or whoever they are representing that there was no conflict.

14 Q So in terms of when you were retained, you were retained
15 to issue an opinion on behalf of what plaintiff?

16 A I believe Pescatore.

17 Q And you were not given the name Stansell at that time,
18 were you?

19 A Not that I remember, no.

20 Q So your report, I presume you were paid for authoring that
21 report?

22 A Yes.

23 Q And who is it that paid you to author the report?

24 A Nathan Taner and his law firm.

25 Q You didn't receive -- have you received any compensation

1 for your report or testimony today from the law firm of Porter
2 & Korvick?

3 A No.

4 Q All of your compensation has come from Mr. Taner's office?

5 A To date, yes. Well I have to go back on that. I have
6 received -- I believe the Porter law firm did pay for my hotel
7 room.

8 Q And what were you -- what was your compensation of your
9 hourly rate in this case?

10 A \$150 an hour.

11 Q And can you tell me what your overall compensation was for
12 the amount of time you spent preparing your report?

13 A A thousand dollars.

14 Q And is that the total of compensation you've received in
15 this matter?

16 A To date, yes.

17 Q And do you have an outstanding bill?

18 A I expect to be paid for the time that I have spent
19 supporting -- you know, attending this hearing and preparing
20 for this hearing, yes.

21 Q So let's take a look at the report that you authored. I
22 understand you do have a copy of it there in front of you?

23 A Yes.

24 Q Safe to assume this is the same report that was issued in
25 the Pescatore case that's pending in the District of Columbia?

1 A I don't have the details of that, but this is the only
2 report that I have prepared. And again, I'm not aware of where
3 it's been used or how it's been used.

4 Q So when you signed it, it didn't have a caption on the top
5 of it that indicated the names of the parties and what court it
6 was being filed in?

7 A Yes.

8 Q Did you sign two different reports with two different
9 captions?

10 A No, just the one saying Olivia Pescatore, et al.

11 Q Did you take note of the name of the Court to which it was
12 being submitted?

13 A I may have seen it, but it wasn't significant at the time.

14 Q But you only signed one report?

15 A Only one.

16 Q So you mentioned during your direct that you have some
17 expertise in OFAC?

18 A Yes.

19 Q And the only information that you have in rendering your
20 opinion that we are discussing today related to OFAC comes from
21 that page-and-a-half OFAC press release that was discussed
22 during your direct, correct?

23 A No.

24 Q You have additional information from OFAC?

25 A Oh, specifically from OFAC on that? No. That's the only

1 information I have directly from OFAC concerning this, yes.

2 Q So that's the only information you have from OFAC related
3 to Mr. Lopez, is that right?

4 A Yes.

5 Q And you have mentioned during your direct testimony, I
6 believe, that OFAC relies on a variety of different sources for
7 its designations, is that right?

8 A Yes.

9 Q You mentioned FinCEN, sometimes some DEA investigations
10 other financial records?

11 A Yes.

12 Q And you don't have -- in preparing your report, you didn't
13 have access to any such information related to Mr. Lopez,
14 right?

15 A No.

16 Q And the press release that was looked at during your
17 direct doesn't cite to any information that was located in, for
18 example, a FinCEN database, does it?

19 A I don't think it goes into the details where the
20 information was obtained from.

21 Q So just by looking at that press release, you don't know
22 the source of the information that was used to generate the
23 press release that OFAC put out?

24 A No. I don't know the totality of the sources for the
25 information in the report, no.

1 Q You don't know if it was just based upon newspaper
2 articles and generally publicly available information, is that
3 right?

4 A I don't have any specific knowledge.

5 Q So your report, looking at your declaration, it does not
6 contain a list of documents or materials that you reviewed in
7 formulating your opinions, does it?

8 A No.

9 Q You mentioned during your direct exam that you learned
10 while you were in training for the DEA to conduct
11 investigations?

12 A I had learned before that. I was a police officer before
13 that, but I had received additional training.

14 Q I think you mentioned that the investigations were more
15 complicated, is that right?

16 A Yeah, generally they were more complex.

17 Q So would you agree with me then that it would be good
18 practice if you were investigating financial support, that you
19 would have access to financial documents in order to trace
20 those financial transactions?

21 A Depending upon the circumstances, but yes, to have more
22 information is generally better.

23 Q But if you were investigating a financial crime, you would
24 want financial documents, would you not?

25 A Yes.

1 Q And you didn't have any financial documents related to
2 Mr. Lopez when you formulated your opinion in this case, did
3 you?

4 A No.

5 Q And you didn't have any financial records related to
6 El Assimi when you formulated your opinion in this case, did
7 you?

8 A No.

9 Q I believe during your direct you mentioned some knowledge
10 about individuals who had investigated Hugo Chavez. Is that
11 right?

12 A I mentioned that I was involved in an investigation that
13 cooperators in that investigation had identified high-level
14 members of the government, to include personal representatives
15 of Hugo Chavez, were involved in providing support to their
16 criminal activities in Venezuela.

17 Q But you said you had no direct information related to the
18 investigation of Mr. Chavez, is that right?

19 A I didn't say there was an investigation of Mr. Chavez. I
20 said there was an investigation that through detailed
21 information indicated that he was providing protection to drug
22 trafficking groups in Venezuela and facilitating the
23 transportation of cocaine from Venezuela.

24 Q And the source of the -- the only source that I can see in
25 your report that relates to the investigation or the

1 information related to Chavez is information that you obtained
2 from a book, is that right?

3 A No.

4 Q Where else in your report do you reference the
5 investigation?

6 A Which paragraph are you referring to?

7 Q I'm going to direct your attention to paragraphs 21, 22,
8 and 23.

9 A Right. In here, at the beginning of paragraph 21, I put,
10 much of my knowledge is based upon my work within DEA, but I
11 will note the following information. And then I noted the next
12 paragraphs were open source information.

13 Q So that information about Chavez was primarily based upon
14 the book? You weren't involved -- strike that. Let me reask
15 the question. You weren't involved in any of those interviews
16 that the author conducted --

17 A No.

18 Q -- the book?

19 A No.

20 Q While we are looking at your report, let's take a look at,
21 you mentioned during your direct that there is a connection
22 between El Assimi and Makled, is that right?

23 A Yes.

24 Q Your report, however, only mentions a connection between
25 Makled and the brother of Tarek El Assimi, Feras El Assimi,

1 isn't that right?

2 A Well, it specifically mentions payments made directly from
3 Makled to the brother, right, to the brother, Feras.

4 Q It doesn't reference payments made from Makled to Tarek
5 El Assimi, correct?

6 A No.

7 Q We heard a lot of testimony today about Daniel Barrera
8 Barrera?

9 A Right.

10 Q But your report makes no mention of Daniel Barrera Barrera
11 at all, isn't that right?

12 A Yes.

13 Q So your report then does not connect Mr. Lopez to Daniel
14 Barrera Barrera?

15 A No.

16 Q And your report doesn't connect El Assimi, Tarek
17 El Assimi, to Daniel Barrera Barrera, correct?

18 A Specifically affidavit, no.

19 Q Do you know when Tarek El Assimi became governor?

20 A I think in 2012. I'm not sure exactly, but I believe
21 2012.

22 Q Okay. And during your direct, you testified about an
23 investigation into the FARC that began in -- a DEA
24 investigation that began in approximately 2009, is that right?

25 A Can you refresh my memory specifically?

1 Q Well, it wasn't information from your report, so I just
2 have to go by my notes. But your testimony from what I have
3 written here is that the DEA began an investigation into
4 Venezuelan government officials in 2009. Is that right?

5 A No. I think I said, in reference to 2009, that around
6 that period, numerous investigations were generated based upon
7 the increase in involvement in Venezuelan government officials
8 directly in supporting criminal activity and drug trafficking
9 and other activities from Venezuela --

10 Q Okay.

11 A -- is I believe what I said.

12 Q I thought I had paraphrased that correctly, but thank you
13 for clarifying.

14 So at the time when those investigations kicked off, was
15 Tarek El Assimi in some position of power or a high-level
16 government official in Venezuela?

17 A I don't recall if he was the governor or if he was the
18 minister of interior during that time period, but yes, he was a
19 high-level official in Venezuela.

20 Q In 2009?

21 A Yes.

22 Q When you were preparing your report, did you inquire of
23 counsel as to whether they had access to any financial
24 documents related to Mr. Lopez?

25 A No.

1 Q Did you ask counsel if they could provide you with any
2 financial documents related to Tarek El Assimi?

3 A No.

4 Q During your direct testimony, sir, you testified that
5 Mr. Lopez is a member of the Cartel of the Suns, did you not?

6 A Yes.

7 Q But your report does not link Mr. Lopez with the Cartel of
8 the Suns, does it?

9 A No.

10 Q If he was actually a member of the Cartel of the Suns,
11 wouldn't it have been material to your opinion to include that
12 information in your report?

13 A Yes, potentially.

14 Q Let's take a look, if we could, at the press release that
15 you read from. And I just want to make sure that we clarify.
16 Going back to the paragraph that you read, that paragraph in
17 its entirety and the one following it references only Tarek
18 El Assimi, is that correct?

19 A Which paragraph are you talking about?

20 Q The paragraph that you read from earlier beginning --
21 counsel I think started --

22 A Right, he also facilitated --

23 Q Going back, let's make sure we include the entirety of the
24 paragraph. That paragraph begins with a sentence that says
25 El Assimi was appointed executive vice president of Venezuela

1 in 2017, correct?

2 A Okay. Yes, that's the -- there's not a break in it, but I
3 guess it's a paragraph. But yeah, there's a paragraph above
4 that where it says El Assimi was appointed executive vice
5 president in January of 2017.

6 Q And then it talks about -- I just want to make sure that
7 we are looking at the same thing. On my copy, it's the same
8 paragraph. There's not a new paragraph that begins with he
9 facilitated shipments of narcotics?

10 A On this one, there is a paragraph, there's a break. So on
11 this, it is a separate paragraph.

12 Q But the press release, before it gets to he facilitated,
13 doesn't reference anyone other than Tarek El Assimi, correct?

14 A Right.

15 Q So the he that's referenced in he facilitated shipments of
16 narcotics relates to a one-sided allegation of what OFAC
17 describes as Tarek El Assimi's activities, not Mr. Lopez?

18 A I don't know if it's one sided, but yes, it's in direct
19 reference to Mr. El Assimi.

20 Q So, Mr. Craine, your report doesn't reference -- doesn't
21 provide any details about logistical support that Mr. Lopez
22 would have provided to the FARC, does it?

23 A My report, no. My affidavit, no, it does not.

24 Q Okay. And your report does not --

25 A Well, depending upon directly to the FARC, no, not

1 logistical support directly to the FARC.

2 Q So your only assumptions are made related to the
3 relationship between Mr. Lopez and Mr. El Assimi?

4 A Right.

5 Q And you did not --

6 THE COURT: Do you know what support Mr. Lopez
7 provided to Mr. El Assimi?

8 THE WITNESS: Yes, financial support and support for
9 laundering funds, purchase of properties, generally of a
10 financial nature.

11 BY MS. CHEWNING:

12 Q But you did not review any financial records as between
13 Mr. Lopez and Mr. El Assimi, did you?

14 A No.

15 Q And you did not review any corporate records related to
16 any of Mr. Lopez's companies, did you?

17 A No.

18 Q And you did not review any documents related to any
19 corporate purchases of condominiums of houses between -- that
20 relate to Mr. Lopez, did you?

21 A No.

22 MS. CHEWNING: Your Honor, I think I may almost be
23 done if I could just have one moment.

24 Your Honor, I think I'm finished. Thank you.

25 THE COURT: No further questions?

1 MS. CHEWNING: Yes, Your Honor, no further questions.
2 Thank you.

3 THE COURT: Okay. I have a question.

4 Based on your personal knowledge, is anything set
5 forth in the press release something that you would disagree
6 with?

7 THE WITNESS: No.

8 THE COURT: You would agree that the connection
9 between Mr. Lopez Bello and FARC requires there to be a
10 connection between Mr. Lopez Bello and El Assimi because
11 there's no direct connection to your knowledge to the FARC, is
12 that correct?

13 THE WITNESS: Right. My opinion is that Mr. El Assimi
14 is directly connected to the FARC through intermediaries and
15 directly and that Mr. Bello's connection to El Assimi and his
16 providing money laundering and other financial resources to
17 Mr. El Assimi and the laundering of proceeds that come from
18 El Assimi's activities with the FARC, that that is the
19 connection.

20 THE COURT: In effect, is it correct to say that it's
21 an indirect connection then between Mr. Lopez Bello and the
22 FARC?

23 THE WITNESS: In my opinion, yes. It's, while
24 indirect in these matters, if we were looking at them
25 criminally or for prosecution, it's kind of the criminal

1 continuum of the wheel going off Mr. El Assimi where he has
2 contact with and is working with FARC and FARC-related persons,
3 he's working with Lopez Bello, and Lopez Bello is providing him
4 services and that, in my opinion, Lopez Bello, based upon his
5 position in Venezuela, his knowledge of what goes on in
6 Venezuela, how the government operates, how significant the
7 FARC is in Venezuela, and the amounts of drugs they are moving,
8 that he would have had knowledge that potentially some of the
9 funds that they were moving were derived from El Assimi's
10 activities from the FARC.

11 THE COURT: Is it not correct that Mr. El Assimi's
12 activities also relate to potential things that have nothing
13 directly to do with the FARC?

14 In other words, if Mr. El Assimi is engaged in
15 corruption, say, oh, hypothetically with respect to the oil
16 company in Venezuela and moneys that are being skimmed off of
17 the sale of oil in Venezuela?

18 THE WITNESS: Yes, potentially.

19 THE COURT: So if he wanted to then clean that money
20 or facilitate the transactions that related to that, that
21 wouldn't relate to the FARC, would it?

22 THE WITNESS: Depending on what the activity was. I
23 can't say, but in certain aspects, no.

24 THE COURT: Right. So similarly, if Mr. El Assimi is
25 engaged in other types of corruption related to embezzlement of

1 Venezuelan funds, for example, that too would not necessarily
2 relate to the FARC, right?

3 THE WITNESS: No. Embezzlement directly of government
4 funds would not directly to the FARC.

5 THE COURT: So then do you know how much Mr. El Assimi
6 was receiving or received from his FARC-related connection?

7 THE WITNESS: I would say, based on my experience and
8 knowledge, the majority of the moneys that were being received
9 by Mr. El Assimi was based on his relationship with criminal
10 activity associated or sourced by the FARC.

11 THE COURT: Oh, explain that to me. Why do you say
12 that?

13 THE WITNESS: Because if you look at the amounts of
14 money that are produced from the trafficking of cocaine through
15 Venezuela as well as the control through Venezuela and
16 Mr. El Assimi's role in that to not only facilitating but that
17 role had also evolved into where Mr. El Assimi was controlling
18 loads of cocaine, not as a facilitator, but as a controller and
19 director of loads going out of Venezuela to his own connections
20 and his own customers, that the amounts that were being
21 generated were very, very significant as over the past several
22 years, as everyone I think has seen, the amounts of -- or the
23 amounts of funds that are available in Venezuela to skim or to
24 steal from the government or divert, those funds have been
25 reduced very, very significantly. And I think you heard some

1 testimony today talking about now the trafficking of gold
2 through Venezuela and drugs are now, you know, probably the
3 most significant source of illicit revenue and has been for
4 probably the past couple years.

5 THE COURT: During the time that you were at DEA, was
6 there any consideration of charging either Mr. Lopez Bello or
7 El Assimi with direct participation in a drug trafficking
8 crime?

9 THE WITNESS: I think to Mr. El Assimi, yes. To
10 Mr. Lopez Bello, it would have been money laundering with the
11 SUA being drug trafficking, but not Mr. Lopez directing drug
12 trafficking.

13 THE COURT: Any redirect?

14 MR. PORTER: No, sir, Your Honor.

15 THE COURT: Did you have a follow-up question?

16 MS. CHEWNING: I do have a couple follow-up questions
17 based on Your Honor's inquiry.

18 THE COURT: Sure.

19 RE CROSS EXAMINATION

20 BY MS. CHEWNING:

21 Q Mr. Craine, what information do you have about
22 investigation that the DEA was conducting that would lead you
23 to conclude that Mr. Lopez would have -- was under
24 consideration for charges for money laundering?

25 A Could you repeat the question, because I don't -- yes,

1 could you repeat it.

2 Q Let me rephrase it.

3 A Sure.

4 Q Judge Torres asked you if you were aware of charges that
5 were being contemplated for either Mr. Lopez or Mr. El Assimi.
6 Do you recall that inquiry?

7 A Right.

8 Q And your answer about Mr. Lopez with respect to drug
9 trafficking was no, but then you made an assumption that there
10 was -- that he could have been subject to charges for money
11 laundering?

12 A Right. What I recall from the question from the judge was
13 he asked me concerning the culpability of Mr. El Assimi as far
14 as in relation to drug trafficking, and then the culpability or
15 the potential culpability of Mr. Lopez for drug trafficking as
16 well. And I stated no, I don't think he would be culpable for
17 drug trafficking but potentially culpable for money laundering
18 in support of drug trafficking.

19 Q So what I would like to know is, what financial
20 information did you review that could lead you to conclude that
21 the DEA could have considered charging Mr. Lopez with money
22 laundering?

23 A I would say, based upon my overall knowledge of many of
24 the aspects surrounding Mr. El Assimi and Mr. Lopez, past focus
25 on Mr. Lopez and other ultra-wealthy individuals in the region

1 being investigated for potential support for money laundering.

2 Q But there's no documents, right? The question was, what
3 documents, what financial documents did you review that would
4 lead you to that conclusion?

5 A No, there are none.

6 Q None?

7 A Right.

8 Q And the FARC is not the only drug cartel in South America,
9 is it?

10 A No.

11 Q In fact, the Mexican cartels play a very significant role
12 in drug trafficking in South America, don't they?

13 A Yes.

14 Q And probably even a much more prominent role now than the
15 FARC does, right?

16 A No. If you are -- I mean, you have to look at the aspects
17 that cocaine -- Colombia by far is the main source country for
18 cocaine. And the high percentage of the cocaine being produced
19 in Colombia is trafficked through Venezuela. So the Mexican
20 cartels on the receiving end up in Mexico, they do have direct
21 coordination with criminal groups in Venezuela and Colombia and
22 Peru to coordinate the shipments, but the FARC controls the
23 great majority of the product, which is cocaine.

24 Q Okay. But there are other significant cartels that are
25 involved in drug trafficking in South America, correct?

1 A Yes, yes.

2 Q And you never interviewed Mr. Lopez, isn't that right?

3 A No.

4 Q So you don't have any information about what he knows or
5 potentially knew about any of Mr. El Assimi's business?

6 A I have no direct knowledge, no.

7 Q You made some assumptions, Mr. Craine, when the Court was
8 asking you -- when Judge Torres was asking you about the
9 potential source -- strike that.

10 Let me start again.

11 You made some assumptions about the potential source of
12 Mr. El Assimi and Mr. Lopez's wealth, did you not? You assumed
13 that Mr. -- let me try one more time. Maybe the third time is
14 a charm.

15 You made some assumptions about the source of
16 Mr. El Assimi's wealth, isn't that right?

17 A I -- yes.

18 Q Okay. And Judge Torres asked you if it's conceivable that
19 Mr. El Assimi's wealth could be coming from sources other than
20 drug proceeds from the FARC. Do you remember that?

21 A Yes.

22 Q Okay. So if we are talking about Mr. El Assimi being
23 involved in or skimming off money from oil contracts that are
24 active in Venezuela, that would be a pretty significant source
25 of funds, would it not?

1 A Potentially, yes.

2 Q And you don't have any information whatsoever to
3 differentiate the source of any of that money, isn't that
4 right?

5 A Specifically dollar for dollar, no.

6 Q Okay. Thank you.

7 THE COURT: Any questions from the plaintiff?

8 MR. PORTER: No questions for this witness, Your
9 Honor.

10 THE COURT: Okay. Thank you very much for appearing.

11 THE WITNESS: Thank you.

12 THE COURT: Just for the record, before you go,
13 Mr. Craine, I think what I would want to do is mark his --
14 since technically the claimant is right that his report was
15 never filed in the case, I want to mark as an exhibit to the
16 hearing, we will make it Plaintiff's A, the report from
17 Mr. Craine that was filed in a different case since he referred
18 to it and questions were made of him related to that.

19 And also, you marked this Barrera Barrera chart.
20 Remember, you used this in your questioning for Mr. Craine?

21 MR. PORTER: We did, Your Honor, Plaintiff's B.

22 THE COURT: We will mark this as Plaintiff's B. Okay.
23 Thank you.

24 Any additional witnesses for the plaintiff?

25 MR. PORTER: No witnesses, Your Honor. However, we

1 have an evidentiary offer.

2 THE COURT: What does that mean?

3 MR. ROSENTHAL: May I approach the podium?

4 THE COURT: Sure.

5 MR. ROSENTHAL: Your Honor, we have a very brief
6 proffer of documentary evidence with some limited requests for
7 judicial notice. The categories of documents we seek to put
8 into evidence, most of them are already in the record in the
9 appendix that was previously filed, DE16, not all of the
10 appendix items. They fall under three categories. They would
11 be official public records, government public records from
12 either Department of State, Department of Treasury OFAC which
13 we have been discussing, some from the Department of Justice,
14 and they are admissible under the Rule 803.8 hearsay objection
15 for records describing the official activities of the
16 government office or the results of a lawful investigation.
17 They are also self-authenticating as official publications of
18 the government under Rule 902.

19 I have them in a bundle with copies for counsel, the
20 originals for the Court with an index on the top that we could
21 either go through one by one or as a bundle. I don't know how
22 Your Honor would like to proceed.

23 The first item on the list --

24 THE COURT: Is there anything there that is not part
25 of 16-1?

1 MR. ROSENTHAL: There are some items that are not part
2 of DE16, yes, not many.

3 THE COURT: Those are the ones that, if you want to
4 introduce them, you need to identify them. If they are already
5 part of 16-1, they are in the record, so I don't need to worry
6 about them at this point. But if they are not in the record as
7 of now, then unless you make them part of the record, then
8 obviously --

9 MR. SCOTT: Your Honor, this is the first time we are
10 seeing the plaintiff's exhibit list. It's extremely late. I
11 mean, we have had notice of this hearing for weeks, a few
12 weeks. And for him to just drop it on our lap now without
13 having a chance to look at it is unfair. So I suggest that if
14 he wants to submit them, give us an opportunity to look at
15 them, and then we can contact the Court and he can offer them
16 that way.

17 THE COURT: No. Again, it's an evidentiary hearing.
18 It's not a formal trial in front of a jury so the rules are
19 different. If you want to file, however -- number one,
20 obviously you will be able to object. But number two, if you
21 want to file a supplemental memorandum that relates
22 specifically to a particular document that he's intending to
23 use, I certainly would not object to doing that.

24 So let's figure out first if you are going to have any
25 objection to them. And then if you want an opportunity to

1 buttress your objection, I will certainly give you that
2 opportunity.

3 MR. SCOTT: Your Honor, could we take a look at these
4 before we go through them one by one, unless the Court wants to
5 do it right now?

6 THE COURT: We will do it now.

7 MR. ROSENTHAL: The first item is not an item
8 proffered into evidence. It's one we would request the Court
9 take judicial notice of because in the Stansell opinion, this
10 Eleventh Circuit Stansell opinion in 2014, it recited part of
11 the standard that the district court had established for an
12 agency or instrumentality of a terrorist party at footnote 6 at
13 page 724.

14 And what we have as Exhibit 1, Your Honor, is the
15 complete standard from the Middle District of Florida, it's
16 three paragraphs, of the agency or instrumentality of the FARC.
17 It's a standalone page that recites the actual standard in its
18 entirety with the official WestLaw case cite.

19 THE COURT: Is that part of a case? In other words,
20 is that part of a Middle District opinion?

21 MR. ROSENTHAL: Yes.

22 THE COURT: Then I don't need to make it evidence in
23 the record. You have obviously relied upon it.

24 MR. ROSENTHAL: We were asking the Court to take
25 judicial notice of it in case you did not have the actual

1 WestLaw cite and the matching Pacer docket cite with the
2 amended notice appeal.

3 THE COURT: I don't need to do that.

4 MR. ROSENTHAL: Fair enough. We can move on.

5 THE COURT: Judicial notice doesn't apply to court
6 opinions. Obviously that opinion is worth whatever it's worth,
7 and obviously you have cited it to me. So I don't -- it
8 doesn't relate to what we are doing.

9 MR. ROSENTHAL: Exhibits 2, 3, and 4, let me do 2 and
10 3, Your Honor. It's the Secretary of State's original
11 designation of the FARC in the federal register as an FTO,
12 foreign terrorist organization, at 1997. And Exhibit 3 would
13 be a recent printout again from the State Department showing
14 that to date the FARC remains a designated FTO. Those would be
15 2 and 3.

16 4 is a printout from OFAC's SDN sanctions list search
17 where it shows that the FARC itself is still an FTO, an SDGT
18 for specially designated global terrorist, and SDNKK for
19 specially designated narcotics trafficker under the Kingpin
20 Act. Those three are not in the appendix.

21 Exhibit 5 --

22 THE COURT: Hold on. Let me take it in batches.

23 Any objection to --

24 MR. KOLANSKY: I think we can stipulate to that as a
25 matter of fact.

1 MR. SCOTT: There is no objection because it's the
2 public record.

3 THE COURT: I understand. Just say no objection.

4 I'm going to mark those then for purposes of the
5 hearing, I guess, C, D, and E. Okay.

6 MR. ROSENTHAL: Is that a mark I should put on?

7 THE COURT: You should put it on; otherwise, we won't
8 remember.

9 Okay. Anything else?

10 MR. ROSENTHAL: There is an OFAC Kingpin Act sanctions
11 list where OFAC lists, and this is the most recent publication
12 current as of the date -- last updated April 17. It lists
13 every single entity or individual that has ever been designated
14 to date under the Kingpin Act. And it shows again that the
15 FARC itself is still designated as a kingpin. It shows all the
16 individual FARC members who are still kingpins and all the
17 various Venezuelan Cartel of the Soles members who are still
18 designated as kingpins

19 THE COURT: Any objection?

20 MR. KOLANSKY: No objection.

21 MR. ROSENTHAL: That will be marked as F.

22 THE COURT: That will be marked as F, sure,
23 Plaintiff's F.

24 MR. ROSENTHAL: Next would be the federal register
25 publication of February 2017 Kingpin Act designations listing

1 the publication -- I'm sorry, listing the designations of
2 Mr. Lopez Bello, Mr. El Assimi, and the remainder of their
3 entities that match the OFAC press release and chart that are
4 already in the appendix. The federal register publication is
5 not in the appendix, so we would mark that as G.

6 THE COURT: Any objection to G?

7 MR. SCOTT: No objection.

8 THE COURT: Okay. G will be admitted for purposes of
9 the hearing.

10 MR. ROSENTHAL: I apologize, Judge.

11 MR. SCOTT: If I may stand next to Mr. Korvick, it
12 would make it easier.

13 MR. ROSENTHAL: I believe the Barrera Barrera charts
14 were previously marked.

15 MR. PORTER: Plaintiff's B

16 THE COURT: Anything else?

17 MR. ROSENTHAL: Yes, Your Honor. There is one item
18 that is not in the appendix that would be a DOJ press release,
19 July 25, '16. This was Exhibit 18 that I had previously marked
20 as 18. And this is the --

21 MR. SCOTT: What number is that?

22 MR. ROSENTHAL: 18 here.

23 MR. SCOTT: What is it here?

24 THE COURT: Is that duplicative of an official --

25 MR. ROSENTHAL: This is an official publication from

1 the Department of Justice regarding the sentencing post trial
2 post conviction of Daniel Barrera Barrera. And it's admissible
3 under 803.8 and 803.22 as part of a record of conviction.

4 THE COURT: Any objection?

5 MR. SCOTT: It's a conviction of an unrelated party.
6 No objection.

7 THE COURT: Okay. We will mark that as H.

8 MR. ROSENTHAL: That's all we have, Judge. Thank you.

9 THE COURT: Those will be admitted for purposes of the
10 hearing.

11 I should do the same thing with respect to the
12 claimant. Anything you wish to admit into evidence?

13 MR. SCOTT: We have already informed the Judge,
14 informed you, Your Honor, that we submit Mr. Gregory's into
15 evidentiary record. It's already in there. We have
16 Mr. Lopez's two affidavits, and they are already in the record.
17 So there is no additional information that we have at this
18 time.

19 THE COURT: Okay.

20 MR. ROSENTHAL: May I approach?

21 THE COURT: Yes. Hand it up to the clerk.

22 So that concludes the evidentiary phase of the hearing
23 then.

24 MR. PORTER: Your Honor, plaintiffs rest.

25 MR. ROSENTHAL: Your Honor, I have a quick

1 administrative point, two housekeeping matters if I may.

2 Having now rested, one is a true housekeeping cleanup,
3 pardon the old habits of an appellate lawyer die hard. One is
4 that the Middle District of Florida case that my colleague
5 Mr. Korvick was referencing, that citation is 2013 WestLaw
6 1215639 just for the record. That's what he was referencing.

7 And at this time, Your Honor, I would renew the motion
8 that I made at the close of the claimant's evidence, and I will
9 be very brief.

10 As Your Honor is aware, the standard is whether they
11 have adequately rebutted Judge Scola's initial determination of
12 agency or instrumentality status. Your Honor put your finger
13 on it exactly when you asked your closing questions to
14 Mr. Craine about whether the link was direct or indirect. And
15 we have acknowledged from the outset that we were trying to
16 prove up an indirect relationship. And that's exactly what the
17 Eleventh Circuit in Stansell 2014 said was sufficient at
18 page 742 of the opinion.

19 Apologies for reading two quick sentences. The
20 Eleventh Circuit said the following: Quote, partnerships also
21 argue that there was not a sufficient evidentiary basis for the
22 agency or instrumentality determination. This argument is
23 unavailed.

24 The argument plaintiffs presented to the district
25 court was sufficient to establish the required relationship

1 between FARC and the partnerships, claimants, even if that
2 relationship was indirect, end quote.

3 So you have heard the evidence. I won't recount it.
4 We have all been here all day long. Let me just note in
5 closing a few things that you did not hear from the claimants.
6 None of this was presented or subject to cross-examination, of
7 course.

8 Mr. Lopez Bello, himself, either in person or by video
9 conference, any of his family members, any of his friends,
10 presumably some of them have contacts or live in Miami because
11 we know he has at least four homes in Miami the three luxury
12 condos at Brickell Four Seasons and the waterfront mansion at
13 Gable Estates.

14 You didn't hear anything from any of the employees,
15 the officers, the directors of any of his corporations, LLCs,
16 et cetera.

17 You didn't hear from any accountant for any of his
18 companies who might shed light on what they do or what
19 legitimacy or illegitimacy of those activities are. You didn't
20 hear from a personal accountant from Mr. Lopez Bello. You
21 didn't see any tax returns, no profit and loss statements, no
22 invoices to show that his businesses are somehow legitimately
23 generating these sorts of incomes, no explanation from anybody
24 how he accumulated these vast sums of wealth. And Your Honor
25 asked the question of Mr. Craine about couldn't some of this

1 wealth have been generated legitimately, and you heard no
2 evidence presented whatsoever from the claimants to do that.

3 Lastly, they presented no filings from Mr. Lopez Bello
4 or his counsel that he may have made to OFAC in any attempt to
5 get removed from the designation list. So we don't know what
6 documents he may have sent to OFAC, if there were any. Any
7 proof that he's a legitimate businessman making these enormous
8 sums of money, they haven't presented them.

9 With all that said and the evidence you have heard, we
10 would renew the motion we made at the close of their evidence
11 and ask for a judgment of turnover.

12 THE COURT: That motion will be denied as -- well, I
13 should back up. I'm not going grant the motion as a matter of
14 law. As to whether or not I ultimately reach the same
15 conclusion is a separate issue as a factual matter. But I
16 think technically more than a scintilla of evidence has been
17 introduced on the part of the claimant to support the
18 claimant's position. Rule 50 does not apply in this context,
19 but to the extent it did, I don't think I'm at Rule 50
20 determination stage. So I will deny that.

21 Anything you wanted to add?

22 MR. SCOTT: I don't think so, but I just wanted to let
23 the Court know if the proceedings go further, Mr. Lopez's
24 predicament is that he's under OFAC sanctions so he can't
25 travel to the United States. And so to the extent that the

1 case goes forward and to the extent that those restrictions are
2 lifted, we intend to produce him for the Court and for
3 cross-examination. And that's in process.

4 THE COURT: The problem is today was it.

5 MR. SCOTT: I understand. But we have offered the
6 affidavits. And so I just wanted to let the Court know the
7 circumstances. It's not unsimilar to the bond issue that we
8 have pending in the Eleventh Circuit where we couldn't stop the
9 property from being sold because we applied for an OFAC license
10 to get a bond. OFAC never responded so we couldn't stop the
11 sale absence a court order, of course. So it's the same
12 predicament. It's not as though we kept him unavailable. It's
13 the sanctioned program.

14 THE COURT: I understand.

15 MR. ROSENTHAL: Your Honor, if I might inquire whether
16 Mr. Lopez Bello's counsel has asked OFAC for a license to
17 permit him to come here.

18 MR. SCOTT: Yes. We asked for a license for the bond,
19 yes. Mr. Kolansky can address that.

20 THE COURT: That's fine. Either way he's not here.
21 I'm not going to hold another evidentiary hearing.

22 MR. KOLANSKY: We are not asking for one, Judge.

23 THE COURT: I understand. My intention at this point
24 is to try to dispose of the pending motions en masse, although
25 that may not be possible because I also have some additional

1 issues that certain garnishees are raising. So I may have to
2 do -- I may have to deal with that separately.

3 The motions for dissolution will probably all be
4 considered en masse through a report and recommendation to
5 Judge Scola. And then I will have to do that separately from
6 the motions for turnover. And my inclination is that at the
7 time of the motions for turnover, to the extent that I am
8 inclined to grant it, any jurisdictional issue would have to be
9 addressed in connection with those motions.

10 Now, if I need a hearing on that, obviously we will
11 cross that bridge when we get there.

12 MR. SCOTT: If the Court does find issues of fact to
13 be tried, it's our position that because we are a third party
14 and not the judgment debtor and it's not about does the
15 garnishee have the money or do I owe a debt to the judgment
16 debtor, this is a little different this is agency or
17 instrumentality, and I think under those circumstances, a jury
18 trial under 7708 is proper.

19 THE COURT: On that point, what is your best --
20 obviously you know what the primary authority that the
21 plaintiff is relying upon in the face of 7708. So what is your
22 best authority for the opposite conclusion?

23 MR. SCOTT: Our best authority is the actual statute
24 which says it shall impanel a jury. And in that case, the
25 Eleventh Circuit was discussing -- had nothing to do with these

1 types of issues. They were more about the counts and were the
2 accounts there for the garnishee. It was about money.

3 I don't disagree that if it's about the money being in
4 the bank and whether it's not owed to somebody, a court can do
5 that as a matter of law. But when we have these agencies or
6 instrumentality issues, which is really a separate liability
7 issue, that falls outside of that case that was cited. And
8 Stansell actually does say that you are to rely on chapter 77
9 for these issues. So our best case would be Stansell itself.

10 THE COURT: Is there any other jury provision within
11 chapter 77?

12 MR. SCOTT: There is a jury provision actually in
13 chapter 56, which is still pending before the Court, because we
14 have a demand for a jury trial on that. We have vessels,
15 aircraft, and other things that are subject to that order. And
16 so there's a jury demand in those issues as well.

17 So to the extent that there's issues of material fact,
18 we believe that a jury trial is necessary under the wording of
19 the statute. And we can supplement that next week, Your Honor,
20 if the Court chooses.

21 THE COURT: Haven't you already briefed the jury
22 question?

23 MR. SCOTT: It's been raised that -- once we said --
24 once we claimed the property and once we rebut it, the
25 plaintiff's application, not Judge Scola, because our job is

1 not to rebut a judge, our job is to rebut an application, and
2 once we rebut those allegations, we are entitled to, under
3 Chapter 77 and Stansell, a jury to be impaneled on those
4 issues. But we can brief it more directly.

5 MS. CHEWNING: And in very short order, Judge, in very
6 short order and very concisely, two pages, three pages at the
7 most.

8 THE COURT: I guess to some extent, the proper time to
9 deal with that would be, for example, on the motion for entry
10 of judgment for the plaintiff, if your argument is correct,
11 that motion could not be granted without the factual finding
12 from a jury, if your argument was correct.

13 MR. SCOTT: Correct. And, Your Honor, under their
14 first turnover motion, they moved under summary judgment
15 standard, which is the proper standard. And under U.S. versus
16 Stein, even the affidavit, a self-serving affidavit, in the
17 Eleventh Circuit is enough to defeat summary judgment. And we
18 have that in this case, not only for Mr. Lopez, we have it from
19 our witnesses that were presented today.

20 MS. CHEWNING: Your Honor, just to clarify, we did
21 address the jury trial issue in the context of the oppositions
22 to the motions for turnover judgment. So it is in there, but I
23 know that the Court has a gigantic mountain of paper in front
24 of it.

25 THE COURT: On the other hand, I don't want to add to

1 it.

2 MS. CHEWNING: That's why I promised it would be very
3 short.

4 THE COURT: If you feel you have already adequately
5 briefed it, the place I would look for it would be in the
6 opposition to the motion for turnover.

7 MS. CHEWNING: That's correct. Your Honor, but in the
8 context of all the other arguments that had to be made and the
9 page limitations that applied, I don't know if we've had a
10 fulsome treatment of it, so we would like the opportunity, if
11 Your Honor would so indulge us, to at least take a quick review
12 of that and to submit something very brief on the issue if we
13 think it's appropriate.

14 THE COURT: Hold on. Actually, you submitted --

15 MS. CHEWNING: Your Honor --

16 THE COURT: Hold on. You submitted -- oh, I see. Let
17 me take a quick look at your motion -- excuse me, your
18 opposition.

19 I'm reading it actually now. I think you have briefed
20 it.

21 MS. CHEWNING: I certainly know it was mentioned, Your
22 Honor. I just, as I mentioned, wasn't sure, given the other
23 arguments that needed to be made, whether it was as fulsome as
24 maybe we would have liked.

25 THE COURT: Let's put it this way. I think you have

1 made the argument. If you have got any better cases, file a
2 notice of supp authority. But in answer to my question, it
3 sounds like you were just relying on the plain text of the
4 statute. So if you have nothing better, you don't need to cite
5 anything because I think your argument is preserved.

6 MS. CHEWNING: Thank you, Your Honor. And I think it
7 supplements the jury trial demand that we put on the docket as
8 a separate entry. I believe it was document 149 that hasn't
9 been stricken or sought to be stricken so --

10 THE COURT: Okay.

11 MS. CHEWNING: -- that's also for the Court's
12 consideration as well.

13 THE COURT: I think the whole thing is adequately
14 briefed here.

15 So obviously then I will take a look at that.

16 Let me ask you, Mr. Porter or, Mr. Korvick, whoever
17 wants to address this, Mr. Rosenthal, on the question of the
18 jury trial right, if I find that there is an issue of fact on
19 the instrumentality issue, their argument is that the Zalaya
20 case doesn't help. What would you say to that?

21 MR. ROSENTHAL: Two things, Your Honor. We talked a
22 little bit about this yesterday during the telephone conference
23 call. There's two problems with that. First, there is -- the
24 fact that they are a third party claimant doesn't alter the
25 entitlement or lack of entitlement under 7708. What Zalaya

1 says, it says, and it's not limited to an individual first
2 party or second party, if you will. It's sort of distinction
3 without a difference they are trying to draw.

4 Second, even if there were some problem with Zalaya,
5 we have also cited Your Honor's opinion, forgetting the case
6 name, but it's in our papers, in which you've acknowledged that
7 7708 is not an inexorable command.

8 And lastly, and perhaps most importantly, the Stansell
9 2014 opinion talks about the ability of a district court to
10 rule as a matter of law on the agency or instrumentality
11 standard without a jury.

12 Again, I was appellate counsel on that. Mr. Klugh is
13 one the claimant's counsel, and I won't try to remember which
14 parties he represented because I'll get it wrong, was asking up
15 and down for a right to a jury trial. And if Your Honor wants,
16 we can submit appellate briefs and trial court briefs from that
17 old 2014 case to show you that, indeed, they were demanding a
18 right to a jury trial.

19 The Eleventh Circuit in Stansell paid that no credit.
20 They acknowledged -- they affirmed the district court's
21 disposition of that without a jury trial.

22 So we think under the Eleventh Circuit's ruling in
23 Stansell, Zalaya, and the opinion we cited from Your Honor,
24 this is not a viable cause for a jury trial. Your Honor was
25 sitting as the finder of fact. We have been here for eight or

1 nine hours. You have taken the testimony. You can make
2 factual findings under the garnishment statute.

3 And as Stansell also indicates, in TRIA actions,
4 incorporating through Federal Rule 69, the Florida garnishment
5 process, it's intended to be swift. It's not intended to be
6 the full range of everything with discovery. Your Honor's
7 acknowledged several times during this hearing there haven't
8 been exchange of witness lists. They have propounded no
9 discovery upon us. That's all as it should be. That's exactly
10 the footsteps that the Eleventh Circuit laid out in Stansell.

11 So just their invocation of the words jury trial and a
12 conclusory affidavit, not just self-serving, but conclusory
13 affidavit does not entitle them to a jury trial under the
14 statute or prevail in Eleventh Circuit law.

15 THE COURT: Okay. I will take that under advisement,
16 and then we will start working on disposing of what we can
17 dispose of now. If I need an additional hearing on anything,
18 obviously I will let you all know.

19 So at this point, that will conclude the evidentiary
20 phase of the hearing. Thank you all very much.

21 (Thereupon, the hearing concluded at 5:38 p.m.)

22 - - -

C E R T I F I C A T E

I hereby certify that the foregoing is an accurate transcription of the proceedings in the above-entitled matter.

6/18/19

s/ Tammy Nestor
Tammy Nestor, RMR, CRR
Official Court Reporter
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<p>MR. KOLANSKY: [5] 4/20 81/11 200/23 201/19 207/21 MR. KORVICK: [10] 4/8 16/16 23/14 29/4 57/3 72/5 75/24 80/15 82/13 87/22 MR. LINDSAY: [1] 4/22 MR. PORTER: [33] 4/6 38/21 51/5 52/10 52/12 90/5 103/14 113/3 118/16 128/4 128/6 129/2 140/23 141/1 141/11 145/3 161/8 165/3 166/1 168/1 169/3 169/8 169/13 170/1 171/20 174/9 176/12 192/13 196/7 196/20 196/24 202/14 203/23 MR. ROSENTHAL: [30] 4/11 53/3 53/9 53/13 54/15 54/21 55/13 103/10 197/2 197/4 197/25 199/6 199/20 199/23 200/3 200/8 201/5 201/9 201/20 201/23 202/9 202/12 202/16 202/21 202/24 203/7 203/19 203/24 207/14 212/20 MR. SCOTT: [57] 4/15 5/2 5/9 17/24 23/11 27/7 27/17 29/18 51/24 70/9 72/10 75/22 76/4 77/6 80/5 81/4 82/18 87/4 90/3 90/9 91/2 103/7 107/12 110/19 113/5 117/2 117/7 117/19 118/19 118/25 120/14 123/22 128/3 128/5 130/22 136/8 137/12 138/18 140/8 140/19 198/8 199/2 200/25 202/6 202/10 202/20 202/22 203/4 203/12 206/21 207/4 207/17 208/11 208/22 209/11 209/22 210/12 MR. TARNAR: [1] 4/13 MS. 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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 19-cv-20896-SCOLA/TORRES

KEITH STANSELL, *et al.*

Plaintiffs,

v.

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

Defendants.

_____ /

**ORDER ON MOTION TO ADMINISTRATIVELY
TERMINATE THE MATTER PENDING APPEAL**

Before this Court is a Motion to Administratively Terminate this Matter Without Prejudice Pending Appeal, filed by SAMARK JOSE LOPEZ BELLO, YAKIMA TRADING CORPORATION, EPBC HOLDINGS, LTD., 1425 BRICKELL AVE 63-F LLC, 1425 BRICKELL AVE UNIT 46B LLC, 1425 BRICKELL AVE 64E LLC, and 200G PSA HOLDINGS LLC (collectively, “Movants” or “Lopez Bello”) on May 11, 2019. [D.E. 207]. Plaintiffs KEITH STANSELL, MARC GONSALVES, THOMAS HOWES, and JUDITH, MICHAEL, CHRISTOPHER and JONATHAN JANIS (collectively, “Plaintiffs”) filed their Response in Opposition to the Motion on May 14, 2019 [D.E. 210], and Movants’ Reply followed on May 21. [D.E. 214]. The Motion, referred to the undersigned by the Honorable Judge Robert N. Scola is now fully briefed and ripe for disposition, and we hereby **ORDER** that it be **DENIED**.

I. BACKGROUND

This suit arrives by way of the Middle District of Florida, which entered a default judgment award in the amount of \$318,030,000 against the Revolutionary Armed Forces of Colombia (“FARC”) and in favor of Plaintiffs. That suit, brought under the Antiterrorism Act, 18 U.S.C. § 2333, stemmed from the Plaintiffs’ capture, detainment and torture by FARC forces after the latter shot down an airplane carrying the individual Plaintiffs in 2003.

On July 28, 2010, Plaintiffs registered the default judgment award with this Court. [D.E. 1]. The case remained mostly dormant for several years, until Plaintiffs moved for *ex parte*, expedited relief in February 2019, asking this Court to issue writs of garnishment and execution that would allow them to attach certain “blocked” assets owned or controlled by Lopez Bello, a Venezuelan national with purported ties to the FARC. Plaintiffs’ request was triggered by the U.S. Treasury’s Office of Foreign Asset Control’s (“OFAC”) designation of Lopez Bello and Tareck Zaidan El Aissami Maddah (“El Aissami”) as “specially designated narcotics traffickers” (“SDNTKs”) under the Foreign Narcotics Kingpin Designation Act. Plaintiffs argue that this designation allows for the writs to be issued against Lopez Bello and El Aissami as “agencies and instrumentalities” of the FARC pursuant to Section 201 of the Terrorist Risk Insurance Act of 2010 (“TRIA”). *See* 28 U.S.C. § 1610.¹ (allowing for attachment “in aid of execution...upon a judgment entered by a court of the United States” on

¹ The Secretary of State, under Section 219 of the Immigration and Naturalization Act, designated FARC a Foreign Terrorist Organization on October 8, 1997.

blocked assets belonging to an “agency or instrumentality” of a terrorist organization).

The Honorable Judge Robert N. Scola granted Plaintiffs’ *ex parte* Motion on February 15, 2019. [D.E. 22]. The Court concluded that Plaintiffs had established that Lopez Bello was an “agency or instrumentality” of the FARC, and that blocked assets belonging to Lopez Bello and located within this District were subject to attachment and execution pursuant to TRIA and 18 U.S.C. § 2333(e). *Id.* Writs of execution and garnishment issued on February 20 and 21, 2019, but Lopez Bello formally sought intervention six days later on February 27. [D.E. 55]. The Court granted Movants’ request the next day but denied any attempt to set aside the “agency or instrumentality” designation. Lopez Bello filed a Notice of Appeal with regard to Judge Scola’s Order on April 12, 2019. [D.E. 144].

The Motion before this Court asks that we administratively terminate the matter, without prejudice, pending the Eleventh Circuit’s resolution of the issues raised in Movants’ appeal. [D.E. 207]. Lopez Bello argues that the Notice of Appeal filed on April 12 divests this Court of all jurisdiction to rule on Plaintiffs’ pending Motions for Entry of TRIA Turnover Judgment on the various garnishees, in addition to the Motions to Dissolve the Writs of Garnishment filed by Lopez Bello. Movants claim that the Eleventh Circuit has exclusive jurisdiction over the case because each of the writs of execution and levy “arise directly from the February 15, 2019 Order” subject to the Notice of Appeal. *Id.* In opposition, Plaintiffs argue that this Court

retains jurisdiction over matters that are collateral to the questions presented on appeal, including those related to execution of the judgment.

We find that Plaintiffs have the better argument.

II. ANALYSIS

“The filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Showtime/The Movie Channel, Inc. v. Covered Bridge Condominium Ass’n, Inc.*, 895 F.2d 711, 713 (11th Cir. 1990) (quoting *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982)). The district court does, however, retain the authority “to act in aid of the appeal, to correct clerical mistakes or to aid in the execution of a judgment.” *Id.*; see also 11 Charles Alan Wright, et al., *Federal Practice & Procedure* § 2905 (3d ed. 2013) (“In the absence of a stay obtained in accordance with Rule 62(d), the pendency of an appeal does not prevent the judgment creditor from acting to enforce the judgment.”).

We disagree with Movants’ position and find that the pending appeal does not divest this Court of jurisdiction to rule upon the motions currently before this Court. Although we may not disturb Judge Scola’s determination with regard to Lopez Bello being an agent or instrumentality of the FARC, we do retain jurisdiction to aid in the execution of the judgment emanating from that Order. See *Showtime*, 895 F.2d 711 at 713. The merits of the underlying dispute – whether TRIA allows Plaintiffs to attach “blocked assets” owned or controlled by Movants as a result of Lopez Bello’s purported association with the FARC – have been dealt with in Judge Scola’s

February 15 Order. *See Pitney Bowes, Inc. v. Mestre*, 701 F.2d 1365, 1368 (11th Cir. 1983) (“A final decision is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.”) (quotation omitted). The only thing left to do, then, is determine whether enforcement of the judgment requires turnover of the blocked assets under TRIA (or dissolution of the writs of garnishment), which remains in our power to do.

The cases Lopez Bello cites in support of his position are unhelpful. In *Showtime*, the Eleventh Circuit heard oral argument and issued a published opinion affirming the district court’s decision to partially grant summary judgment. *Showtime*, 895 F.2d at 712. Before mandate issued, that same district court entered an order of dismissal based on a purported settlement between the parties which had not yet been signed or filed with the trial court. *Id.* The Eleventh Circuit ruled that it was error for the district court to dismiss the case because the settlement directly implicated the appellate issue before the Eleventh Circuit, which had exclusive jurisdiction to resolve that issue. *Id.*

Likewise, *Green Leaf Nursery v. E.I. DuPont de Nemours & Co.* presented a set of facts not applicable to the arguments raised by Lopez Bello here. That case stemmed from a Florida state court lawsuit brought by a plant nursery against DuPont over the latter’s production of the fungicide Benlate. *See* 341 F.3d 1292, 1296 (11th Cir. 2003). The parties settled those claims and Plaintiff executed a general release that required dismissal of the suit. *Id.* Following settlement, plaintiffs claimed they uncovered a massive scheme of perjury, falsification of evidence, and

fraudulent concealment of other evidence to induce plaintiffs and other Bentale plaintiffs to settle their claims for less than fair value. *Id.* Those plaintiffs filed suit for a second time against DuPont, this time in federal court, to assert claims of fraud and for violations of the Racketeer Influenced and Corrupt Organization Act (“RICO”). The district court dismissed Plaintiffs’ claims and entered judgment in favor of DuPont, and plaintiffs appealed to the Eleventh Circuit. *Id.*

Plaintiffs sought leave to amend their complaint in district court while the appeal remained pending. *Id.* at 1309. The proposed amendment, among other things, would have revised certain factual allegations and deleted claims upon which the district court had already ruled upon and which served as the basis of the appeal. *Id.* The Eleventh Circuit ruled the district court had correctly determined that it was without jurisdiction to grant the motion for leave to file an amended complaint; the proposed amendment “would have altered the status of the case” as it existed on appeal, and the district court would have violated the “dual jurisdiction” rule that precluded a trial court from affecting appellate claims had plaintiffs been given leave to amend. *Id.*

Diveroli is also of no use to Lopez Bello. *See United States v. Diveroli*, 729 F.3d 1339, 1341 (11th Cir. 2013). In that case, a criminal defendant who had pled guilty was given a 48-month sentence by the district court. *Id.* The defendant appealed that sentence to the Eleventh Circuit. *Id.* He then, in the district court, filed a motion to dismiss the information upon which he been charged, before the Eleventh Circuit decided the issue. *Id.* The district court denied the Motion, but the Eleventh Circuit

vacated that denial for lack of jurisdiction. *Id.* The Court found that the district court's denial violated the "dual jurisdiction" rule discussed in *DuPont* that prohibited parties from seeking relief on matters directly on appeal. *Id.* at 1342-43. Accordingly, it was error for the district judge to entertain the Motion because doing so required the government to simultaneously defend an issue before both the district court and the Eleventh Circuit. *Id.* at 1343.

Here, we are not being asked to dismiss the entirety of Plaintiffs' claim, as was the case in *Showtime* and *Diveroli*. See *Showtime*, 895 F.2d at 713; *Diveroli*, 729 F.3d 1343. And unlike *DuPont*, we are not called upon by either party to amend or alter claims and allegations found within Plaintiffs' Motion that sought *ex parte* relief. See 341 F.3d 1309. We are simply being asked to enforce the judgment stemming from Judge Scola's Order, which remains an exception to the rule that an appeal divests a district court of jurisdiction of matters pending before the appellate court.

We pause here to note that nothing prevented Lopez Bello from seeking relief under Rule 62 of the Federal Rules of Civil Procedure, which allows for a party to obtain a stay at any time after entry of judgment by providing a bond or other security. Fed. R. Civ. P. 62(b). He argues (1) posting of such a bond would have been impossible without violating various OFAC regulations, and (2) that since Judge Scola's Order merely allows for the attachment of financial accounts – but no outstanding money judgment has been entered – we have nothing before us to enforce. [D.E. 214]. We reject the latter contention because it is a position contradictory to Lopez Bello's argument before the Eleventh Circuit, where he claims

that Judge Scola's Order "is a *de facto* grant of summary judgment" finding that Lopez Bello acted as an agent or instrumentality of the FARC. *See* Appellants' Brief, Case No. 19-11415, p. 9-10. And even if we take at face value Movants' claim that OFAC regulations prohibit them from posting a bond at this juncture, nothing stopped him from asking this Court to waive Rule 62's bond requirement, an act within our discretionary authority to permit. *See Tara Prods., Inc. v. Hollywood Gadgets, Inc.*, 2011 WL 4020855, at *2 (S.D. Fla. Sept. 9, 2011) (citations omitted); *Whitesell Corp. v. Electrolux Home Products, Inc.*, 2019 WL 2448665, at *2 (S.D. Ga. June 10, 2011).²

Finally, a cursory examination of the docket in this case shows that Lopez Bello has acted inconsistently with his position that his appeal divested this Court of *all* jurisdiction over *any* pending matter. Since providing notice that he intended to appeal Judge Scola's Order, Lopez Bello has sought a ruling on a motion *in limine* filed to preclude this Court's reliance on certain exhibits contained in Plaintiffs' *ex parte* Motion; requested a telephonic conference related to a hearing on the motions currently before this Court; moved to dismiss a garnishee's interpleader complaint; and appeared before the undersigned to challenge Judge Scola's agency or instrumentality designation. While these actions are certainly not outcome-determinative, it shows Lopez Bello's willingness to seek affirmative relief from this

² For example, one circumstance in which Rule 62's bond requirement may be waived is where the judgment debtor demonstrates a present financial ability to pay the money judgment. *See Avirgan v. Hull*, 125 F.R.D. 185, 186 (S.D. Fla. 1989) (stating that a supersedeas bond is not necessary where the appellant's ability to pay the judgment is so plain that the cost of the bond would be a waste of money).

Court when it suits his own needs, while at the same time using his appeal as a shield against matters pursued by his opposing party.

Ultimately, though, Movants' shifting position makes no difference either way. The pending matters are related to enforcement of Judge Scola's February 15 Order, which is an exception to the rule that an appeal divests the district court of its control over those aspects of the case involved in that appeal. *Showtime*, 895 F.2d 711 at 713.

III. CONCLUSION

For these reasons, Movants' Motion is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 21st day of August, 2019.

/s/ Edwin G. Torres

EDWIN G. TORRES
United States Magistrate Judge

United States District Court
for the
Southern District of Florida

Keith Stansell, and others,)	
Plaintiffs,)	
)	
v.)	Case No. 19-20896-Civ-Scola
)	
Revolutionary Armed Forces of)	
Columbia, Defendant.)	

Order Adopting Report and Recommendation

This matter was referred to United States Magistrate Judge Edwin G. Torres for a ruling on all pre-trial, nondispositive matters and for a report and recommendation on any dispositive matters, consistent with 28 U.S.C. § 636 and Local Magistrate Judge Rule 1. (ECF No. 108.) Judge Torres issued a Report and Recommendation regarding six motions seeking dissolution of writs of garnishment (ECF Nos. 97, 103, 112, 123, 125, 134) and a motion for summary judgment (ECF No. 109) filed by Samark Jose Lopez Bello, Yakima Trading Corporation, EPBC Holdings, Ltd., 1425 Brickell Ave. 63-F, LLC, 1425 Brickell Ave. Unit 46B LLC, 1425 Brickell Ave 64E LLC, and 200G PSA Holdings LLC (collectively “Lopez Bello”). He recommends that the Court deny all seven motions. (ECF No. 248.) Jose Bello subsequently objected to Judge Torres’s report (ECF No. 261) and the Plaintiffs responded to the objections (ECF No. 262). Having conducted a *de novo* review of the entire record and the applicable law, the Court **overrules** the objections (**ECF No. 261**) and **denies** Lopez Bello’s motions (**ECF Nos. 97, 103, 112, 123, 125, 134, 109**).

In his objections, Lopez Bello argues that: (1) the Court lacks subject matter jurisdiction over the assets because the accounts are located outside of Florida; (2) the Magistrate improperly shifted the burden to Lopez Bello to prove that the Court lacked subject matter jurisdiction; (3) the Magistrate improperly required Lopez Bello to overcome a rebuttable presumption that he was an agent or instrumentality of the Revolutionary Armed Forces of Columbia (“FARC”); (4) the Magistrate impermissibly denied Lopez Bello’s demand for a jury trial; (5) in Terrorism Risk Insurance Act (“TRIA”) actions, writs of garnishment issued on third parties should be treated as prejudgment writs; (6) the Magistrate did not find that the owners of the financial accounts were agents or instrumentalities of the FARC; (7) Judge Torres failed to address all of his arguments from his motion for summary judgment in the report; and (8) the district court lacked jurisdiction to adjudicate whether Lopez Bello is an agent of instrumentality of the FARC. The Court will address each in turn.

First, Lopez Bello insists that Judge Torres misunderstood his argument. He contends that the Court lacks subject matter jurisdiction over the financial accounts because the bank accounts are not located in Florida, rather than

because the assets in the accounts are not located in Florida. Regardless of the accounts' locations, this Court has subject matter jurisdiction. *See Tribie v. United Development Group Intern. LLC*, 2008 WL 5120769, at *3 (S.D. Fla. Dec. 2, 2008) (Moreno, J.) (Florida has not adopted the "Separate Entity Rule, a somewhat dated and seldom-cited legal doctrine, [which] holds that each branch of a bank is a separate legal entity in the context of a garnishment action.")

Second, Lopez Bello's objection that Judge Torres improperly shifted the burden onto him to show that the Court lacked subject matter jurisdiction is unfounded. The Report and Recommendation states, "Plaintiffs have met their burden in showing that subject matter jurisdiction exists" because they "point to record evidence showing that each blocking act conducted by the U.S. Department of the Treasury's Office of Foreign Asset Control ("OFAC") pertain to assets located solely in Florida, and that all four of the levied properties are located here in Miami." (ECF No. 248 at 13-14.)

Third, Lopez Bello claims that Judge Torres improperly required him to overcome a rebuttable presumption that he was an agent or instrumentality of FARC. But Judge Torres concluded that the Plaintiffs had affirmatively proven their claims. The report stated that "Movants have failed to create a genuine dispute over a material fact [regarding the instrumentality issue] that requires a jury to resolve the conflict" and "Movants have not only failed to convince us that Plaintiffs' allegations are untrue...but Plaintiffs' claims have been proven." (ECF No. 248 at 21-23.)

Fourth, Lopez Bello argues that he was entitled to a jury trial. He is mistaken because there is no genuine dispute of material fact that requires resolution by a jury. *See Zelaya/Capital Intern. Judgment, LLC v. Zelaya*, 769 F.3d 1296, 1304 (11th Cir. 2014) (a jury trial was not necessary because no issues remained).

Fifth, Lopez Bello re-argues that, even though Plaintiffs are seeking post-judgment relief, Florida post-judgment execution laws do not apply because they do not provide adequate due process. Specifically, he argues that he needed to have received notice and an opportunity to be heard prior to Judge Scola's issuance of the writs. As Judge Torres explained, the Eleventh Circuit rejected this argument. *Stansell v. Revolutionary Armed Forces of Colombia*, 771 F.3d 713, 728 (11th Cir. 2014) (claimants were not entitled to notice and to be heard before attachment).

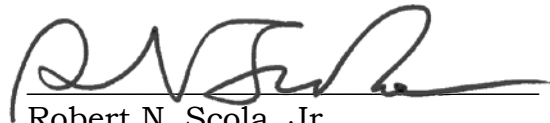
Sixth, Lopez Bello's contention that Judge Torres did not find that the owners of the accounts are agents or instrumentalities of the FARC is meritless. Judge Torres explained that the writs "are directed at two categories of accounts—those that hold assets in Bello's name only, and those that name Lopez Bello in addition to other entities." (ECF No. 248 at 23.) Moreover, the argument that a writ should be dissolved because an account also holds the assets of an entity that is not subject to TRIA attachment must be raised by that entity and not by Lopez Bello. (*Id.* at 24.) Judge Torres also noted that the entity's accounts had been blocked by OFAC, which indicates to the Court that even if these arguments were properly raised they are likely meritless.

Seventh, Lopez Bello argues that Judge Torres did not specifically address all of his arguments from his summary judgment motion (ECF No. 109). He states that the report never addressed his argument that “it is unconstitutional to treat Lopez [Bello] as if he were the underlying judgment debtor in the absence of an opportunity for a trial to adjudicate the fact issues related to that determination.” (ECF No. 261 at 22.) However, Judge Torres addressed this argument at length. (ECF No. 248 at 9-12, 21-22.) Moreover, a decisionmaker need not specifically address and reject every argument raised by one of the parties. *Guice v. Postmaster General, U.S. Postal Service*, 718 Fed. App’x 792, 795 (11th Cir. 2017).

Finally, Lopez Bello argues that the Court did not have jurisdiction to decide whether he was an agent or instrumentality of the FARC because he had filed a notice of appeal. This Court had previously denied his motion to administratively terminate the matter pending appeal. (ECF No. 247.) The Court points Lopez Bello to the analysis in that order, and re-iterates that the Court retains jurisdiction to enforce its orders and judgments. *Showtime/The Movie Channel, Inc. v. Covered Bridge Condo. Ass’n*, 855 F.2d 711, 713 (11th Cir. 1990).

Therefore, the Court **affirms and adopts** Magistrate Judge Torres’s Report and Recommendation (ECF No. 248). The motions for dissolution of writs of garnishment and for summary judgment (**ECF Nos. 97, 103, 112, 123, 125, 134, 109**) are **denied**.

Done and ordered in chambers, at Miami, Florida, on September 25, 2019.



Robert N. Scola, Jr.
United States District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 19-20896-CV-SCOLA/TORRES

KEITH STANSELL, *et al.*,

Plaintiffs,

v.

REVOLUTIONARY ARMED FORCES OF
COLOMBIA, *et al.*,

Defendants.

**OMNIBUS REPORT AND RECOMMENDATION ON
MOTIONS FOR TRIA TURNOVER JUDGMENTS**

This Omnibus Report and Recommendation pertains to five pending Motions filed by SAMARK JOSE LOPEZ BELLO, YAKIMA TRADING CORPORATION, EPBC HOLDINGS, LTD., 1425 BRICKELL AVE 63-F, LLC, 1425 BRICKELL AVE UNIT 46B LLC, 1425 BRICKELL AVE 64E LLC, and 200G PSA HOLDINGS LLC (hereinafter, “Lopez Bello” or “Movants”). These Motions seek entry of final turnover judgments on writs of garnishment issued to five separate banking/investment institutions: UBS Financial Services, Inc., RJA Financial Services, Inc., Branch Banking & Trust Co., Morgan Stanley Smith Barney, LLC, and Safra National Bank of New York. [D.E. 116, 120, 155, 168, 170]. These Motions are fully briefed and ripe for disposition. For the reasons stated below, we **RECOMMEND** that the Motions be **GRANTED**.

I. BACKGROUND

In 2003, members of the Revolutionary Armed Forces of Colombia (“FARC”) targeted a reconnaissance airplane carrying Plaintiffs, forcing the aircraft to crash land in the Colombian jungle. FARC forces immediately executed Plaintiff Thomas Janis on the day of the crash,¹ and held the other Plaintiffs in captivity for the next five years. In 2013, seeking justice for all they endured, Plaintiffs sued the FARC in federal court; FARC never appeared. The Middle District of Florida entered default judgment against the paramilitary group, and Plaintiffs were awarded \$318,030,000 in damages.

Plaintiffs registered their judgment against the FARC in this Court on June 15, 2010. [D.E. 1]. The pending Motions seek to enforce the \$318 million judgment by seizing assets owned, maintained or operated by Samark Jose Lopez Bello, a Venezuelan national, purported billionaire, and current fugitive-at-law.² To do so, Plaintiffs utilize language found within the Terrorist Risk Insurance Act of 2002 (“TRIA”), which states

Notwithstanding any other provision of law, ... in every case in which a person has obtained judgment against a terrorist party on a claim based

¹ Janis’ interests are represented by his wife and sons, the personal representatives of his estate.

² The United States Immigration and Customs Enforcement Agency recently named Lopez Bello as one of its “10 Most Wanted” fugitives. *See ASSOCIATED PRESS, Former Venezuelan VP Among 10 Most Wanted Fugitives*, ABC NEWS, July 31, 2019, <https://abcnews.go.com/International/wireStory/ice-venezuelan-vp-10-wanted-fugitives-64685419>.

upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

Pub.L. No. 107-297, § 201(a), 116 Stat. 2322.³

Plaintiffs argued that they can show that Lopez Bello's activities can be traced back to the FARC, which would allow us to deem him an "agency or instrumentality" of that organization. If bore fruit, any "blocked" assets belonging to Lopez Bello could be used to satisfy the approximately \$300 million that remains outstanding on the judgment entered against the FARC. Plaintiffs submitted that Lopez Bello's assets are "blocked" as a result of action taken by the U.S. Department of the Treasury's Office of Foreign Asset Control ("OFAC") on February 13, 2017. [D.E. 18-2]. On that date, OFAC issued a press release designating Lopez Bello and a second individual, Tareck Zaidan El Aissami Maddah ("El Aissami"), as "specially designated narcotics traffickers," or "SDNTs," under the Foreign Narcotics Kingpin Designation Act ("Kingpin Act"). *Id.* OFAC designated El Aissami for his purported ties to international drug trafficking operations throughout South America; Lopez Bello's designation stems from his alleged role as El Aissami's "primary frontman," and for providing material assistance and financial support for the narco-trafficking activities engaged in by El Aissami and his associates. *Id.* As a result of this

³ This provision is codified as a note to 28 U.S.C. § 1610. For ease of reference, we will continue to refer to the provision as Section 201 of TRIA.

designation, OFAC blocked assets belonging to Lopez Bello and thirteen companies owned or controlled by him. *Id.*

Lopez Bello has never been directly linked to FARC forces. Plaintiffs instead seek to connect Lopez Bello to FARC utilizing *indirect* connections he maintains with El Aissami. This argument zeroes in on El Aissami's association with an organization known as the "Cartel of the Suns." The cartel, led by members of the Venezuelan armed forces,⁴ allegedly traffic cocaine manufactured and produced by the FARC. To prevail, then, Plaintiffs must show that Lopez Bello can be connected to the FARC – the terrorist group on the hook for the \$318 million judgment – through El Aissami and his related affiliates, including the Cartel of the Suns.

A. District Court Proceedings

Seeking to do just that, Plaintiffs filed an ex parte motion on February 13, 2019, asking for this Court to issue post-judgment writs of garnishment and execution against assets located in the Miami area and belonging to Lopez Bello. [D.E. 18]. In support of that Motion, Plaintiffs submitted affidavits and other documents that allegedly tied Lopez Bello to El Aissami, and reflected El Aissami's connections to the FARC. As a result, Plaintiffs asked the Honorable Judge Robert N. Scola to deem Lopez Bello an "agency or instrumentality" of the FARC so that each could attach on Movant's assets, which appear to be significant.

⁴ The cartel purportedly gets its name from the yellow sun insignia decorating the uniforms worn by high-ranking military officials in Venezuela.

Judge Scola granted Plaintiffs' Motion on February 15, 2019. [D.E. 22]. The Court found that Plaintiffs' evidence supported a finding that El Aissami and Lopez Bello each served as agencies or instrumentalities of the FARC, and that the assets Stansell sought to attach were "blocked" as the term is defined by TRIA and the Antiterrorism Act ("ATA"), 18 U.S.C. § 2333. *Id.* Judge Scola then ordered that the Clerk of Court issue writs of garnishment on various bank accounts. *Id.* This was in addition to writs of execution on three parcels of real property, two vessels (yachts), an aircraft and four automobiles.

Lopez Bello, upon receiving notice of the proceedings brought against him, moved to intervene in this matter on February 27, 2019. [D.E. 55]. In doing so, he argued that the *ex parte* proceedings violated his rights to due process, and that Judge Scola erroneously declared him to be an agency or instrumentality of the FARC. *Id.* He followed this up with a Motion to Amend the February 15 Order pursuant to Rule 59(e) of the Federal Rules of Procedure, asking that the sale of four Miami-area properties and personal property be delayed until Lopez Bello could contest Judge Scola's designation. [D.E. 80]. The Motion failed to persuade the Court, and Judge Scola denied it on March 22, 2019. [D.E. 101].⁵

Lopez Bello then facially challenged Plaintiffs' attempts to execute on the bank accounts held in his name and to which the writs of garnishment had been issued.

⁵ Lopez Bello asked for reconsideration of that Order the following week, which Judge Scola again denied on March 28. [D.E. 106, 108].

He did so by filing Motions to Dissolve the Writs of Garnishment for accounts maintained with the following garnishees: (1) UBS Financial Services, Inc. [D.E. 97]; (2) Raymond James & Associates, Inc. [D.E. 103]; (3) Branch Banking & Trust Co. [D.E. 112]; (4) Morgan Stanley Smith Barney, LLC [D.E. 123]; (5) Safra National Bank of New York [D.E. 125]; and (6) Citibank, N.A. [D.E. 134]. Lopez Bello sought summary judgment on the writs [D.E. 109], relying on the same arguments he raised in his Motions to Dissolve.

The undersigned held a hearing on those Motions on June 11, 2019. [D.E. 209]. There, we heard testimony from witnesses offered by both parties, including William C. Marquardt and Ernesto Carrasco Ramirez, Movants' two experts. Marquardt, a forensic accountant, compared a list of sixty-eight entities associated with Lopez Bello, looking to see if any traced back to the FARC. He testified that no such association could be found. Ramirez, a Colombian attorney that previously practiced criminal law in that country, testified that he never met, came across, or heard of Lopez Bello during his time in Colombia, despite the time he spent investigating corruption, bribery of public officials, and the inner workings of Colombian and Venezuelan drug cartels.

The Court also heard testimony from Douglas Farah and Col. Luis Miguel Cote, Plaintiffs' proffered witnesses. According to Farah, a national security consultant who previously worked for the Washington Post as a foreign correspondent covering South America, Lopez Bello laundered money for El Aissami, a well-known affiliate of the Cartel of the Suns. Similar evidence was heard from Cote and Paul

Crain, who each connected El Aissami directly to the FARC – and Lopez Bello directly to El Aissami.

In addition to this testimony, both parties filed evidentiary materials to support their respective Motions. After due consideration of all of Lopez Bello's arguments, we found that Plaintiffs had sufficiently linked Lopez Bello to the FARC via his connection to El Aissami, such that the arguments raised in opposition to the issuance of the writs did not support dissolution. [D.E. 248]. We recommended that Lopez Bello's motions challenging the writs as a matter of law be Denied.

Lopez Bello filed objections to this Report and Recommendation. [D.E. 261]. Judge Scola, however, rejected Lopez Bello's objections, which were grounded largely on well-worn arguments that the Court lacked subject matter jurisdiction, that the burden of proof in the dispute was wrongly placed on Lopez Bello's doorstep, that fundamental due process rights like a jury trial were wrongfully denied, and ultimately that the evidence did not support a finding that the owners of the accounts at issue were agents or instrumentalities of the FARC.

Judge Scola reviewed the record and overruled those objections. [D.E. 279]. He found that the Court did have subject matter jurisdiction, at least based on Florida's rejection of the separate entity rule. He also found that no procedural error had been made and that Lopez Bello was granted all the due process legally required. And Judge Scola concluded that objections to the Court's finding that Lopez Bello was an agent or instrumentality of the FARC were meritless. Judge Scola relied in part on the extensive analysis of this issue in his prior Orders, including the Order denying

Lopez Bello's motion to stay the enforcement action pending appeal. [D.E. 247]. Accordingly, Lopez Bello's motions to dissolve the writs and for summary judgment were Denied and the objections overruled.

B. Appellate Court Proceedings

Since Plaintiffs began enforcement proceedings over their Middle District of Florida judgment, Lopez Bello and similarly situated parties have also filed multiple appeals to the Eleventh Circuit, most of which have been unsuccessful. In the first appeal, other similarly situated claimants filed an appeal from writs of execution and garnishment issued by the Middle District of Florida, arguing like Lopez Bello that this process under TRIA and Florida law was unlawful and violated their due process rights. *See Stansell v. Revolutionary Armed Forces of Colom.*, 771 F.3d 713 (11th Cir. 2014) ("*Stansell I*"). The Court affirmed the district court's finding that each claimant was in fact an agency or instrumentality of FARC, that the relevant assets were blocked assets under TRIA, and thus were subject to attachment and execution. *Id.* at 724-25. The Court also found that the claimants had a right to be heard to challenge the agency or instrumentality issue prior to execution. *Id.* at 727-29. But so long as they received actual notice and a fair opportunity to be heard so as to contest the grant of a writ of execution, due process was amply satisfied. *Id.* at 741.

After the District Court proceedings were instituted in this Southern District of Florida registration action, and after the Court's issuance of writs of execution on Lopez Bello's real and personal property, Lopez Bello also appealed those writs and the Court's Orders denying his motions to amend and motions to reconsider

referenced earlier. *See Stansell v. Lopez Bello*, No. 19-11415, 2020 WL 290423 (11th Cir. Jan. 21, 2020) (“*Stansell II*”).⁶ There, as before, Lopez Bello launched a multi-argument attack on the Court’s rulings, both in substance and on procedural and due process grounds. The Court of Appeals, however, rejected each of those theories. In the first place, the Court found that many of the due process arguments raised anew by Lopez Bello in this appeal were addressed in *Stansell I*, albeit with different claimants, where the Court found that the claimants were entitled to challenge the district court’s findings but failed to present evidence showing that those findings were incorrect. 2020 WL 290423, at *3. The panel opinion explained that Lopez Bello had received actual notice of the execution proceedings and had a full and fair opportunity to make his case such that any qualms about purported state law notice violations had no consequence. *Id.*

The *Stansell II* panel decision further affirmed this Court’s Order with respect to the constitutional challenge raised by Lopez Bello to subjecting him to TRIA and Florida post-judgment statutes in the first place. The Court found that he had not timely raised a constitutional challenge to the Court’s Orders and thus waived them for purposes of that appeal. *Id.* In short, Judge Scola’s Orders enforcing the writs of execution were affirmed.

⁶ Lopez Bello moved to stay the pending enforcement proceedings related to the writs of garnishment on the bank accounts while this appeal was being litigated. Those motions were denied. [D.E. 207, 247, 254].

This Court, upon considering this panel opinion, awaited issuance of the mandate before adjudicating the pending writs of garnishment in the interests of judicial economy. The panel decision has not resulted in a mandate, however, because Lopez Bello timely filed a petition for rehearing en banc. That petition remains pending as of this date. Given the passage of time, however, we will proceed with disposing of the pending motions related to these bank account garnishments. Obviously if the *Stansell II* opinion is vacated or otherwise modified, the Court can revisit its application at the appropriate time. For now, we need only take it as established that most of the arguments that Lopez Bello has raised to challenge these District Court proceedings have proven to be meritless. Our findings and judgments to date are now the law of the case. And we should thus proceed to adjudicate the pending writs of garnishment with that in mind.

II. APPLICABLE LEGAL PRINCIPLES

Plaintiffs obtained judgment against the FARC by way of the ATA, 18 U.S.C. § 2333, which allows any person “injured...by an act of international terrorism” to bring suit against the responsible terrorist organization in federal district court. 18 U.S.C. § 2333(a). Having done so, Plaintiffs now seek to enforce the judgment awarded in the Middle District of Florida pursuant to the Section 201 of TRIA. In order to execute against the assets of a terrorist party’s agency or instrumentality under that statute, the moving party must: (1) establish that it obtained judgment against a terrorist party for a claim based on an act of terrorism; (2) show that the assets of the terrorist party are blocked, as that term is defined by TRIA; and (3)

establish that the purported agency or instrumentality is actually an agency or instrumentality of the terrorist party. *Stansell I*, 771 F.3d at 722-23 (citations omitted).

Under Florida law:

Every person or entity who has sued to recover a debt or has recovered judgment in any court against any person or entity has a right to a writ of garnishment, in the manner hereinafter provided, to subject any debt due to defendant by a third person...and any tangible or intangible personal property of defendant in the possession or control of a third person.

Fla. Stat. § 77.01. This statute outlines specific requirements for notice and an opportunity to be heard that have been fully satisfied in this case, as both the District Court and the Court of Appeals have now finally determined. *See* Fla. Stat. § 77.055 (requiring service of garnishee’s answer to the writ on “any...person disclosed in the garnishee’s answer to have any ownership interest in the” asset); § 77.07(2) (permitting “any other person having an ownership interest in [garnished] property” to move to dissolve the writ with a motion “stating that any allegation in plaintiff’s motion for writ is untrue.”). “In a nutshell, Florida law provides certain protections to third parties claiming an interest in property subject to garnishment or execution.” *Stansell I*, 771 F.3d at 725. Those protections have been met here. We can proceed to adjudicate the merits of these turnover motions.

III. ANALYSIS

In seeking to block turnover of these accounts on the writs of garnishment, Lopez Bellow sets forth four overarching arguments: (1) Florida’s post-garnishment

statute, as applied to third party non-judgment debtors under TRIA, is unconstitutional because it violates due process; (2) this Court lacks subject matter jurisdiction over the accounts at issue because each is allegedly located outside the state of Florida; (3) the agency or instrumentality designation is erroneous or, at minimum, disputed to the point that a jury must resolve the issue; and (4) we cannot order TRIA turnover for these accounts because of other constitutional challenges that name other entities, in addition to Lopez Bello, as having an interest in those accounts. We previously rejected these arguments in denying Lopez Bello's motions to dissolve. We reincorporate that analysis here in summary fashion, except where discussed further below. For the most part, all these rehashed arguments are now final and law of the case to the extent that the Court of Appeals considered and rejected them in *Stansell II*.

A. Due Process

“Due process requires that persons deprived of a right must be afforded notice and an opportunity to be heard.” *First Assembly of God of Naples, Fla., Inc. v. Collier County, Fla.*, 20 F.3d 419, 422 (11th Cir. 1994). Lopez Bello challenges Florida's post-judgment statute, arguing that it must be deemed unconstitutional as applied to non-judgment debtors under TRIA because it fails to afford such individuals sufficient notice and an opportunity to contest an agency or instrumentality designation.

This argument misses the mark. First, we note that Bello Lopez's claim rests on faulty logic: he contends that *Stansell I* is not applicable here because it did not

involve writs issued to accounts maintained in the name of non-original defendants and non-judgment debtors. This is incorrect.

Indeed, in *Stansell I* the Court confronted due process challenges made by third parties in Lopez Bello's exact position – non-original defendants who had never been linked to the FARC by OFAC or any other judicial or executive authority. *Stansell I*, 771 F.3d at 739. To be specific:

Typically...[post-judgment motions] are directed at the judgment debtor, *not at third parties* such as Claimants. The difference – one that the district court did not appropriately consider – is crucial. Whether the owner of the asset being garnished is the judgment debtor, notice upon [commencement] of a suit is adequate to give a judgment debtor advance warning of later proceedings undertaken to satisfy a judgment. That same type of notice is not sufficient where the claimant is a *third party*, who cannot be expected to be on notice of the judgment.

...

Without notice and a fair hearing where both sides are permitted to present evidence, the third party never has an opportunity to dispute the classification as an agency or instrumentality. ... Therefore, due process entitled Claimants to actual notice of the post-judgment proceedings against them.

Id. at 726. (emphasis added; quotations and citations omitted). *Stansell I* therefore applies. *See also Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 50 (2d Cir. 2010) (“Section 201(a) of the TRIA provides courts with subject matter jurisdiction over post-judgment execution and attachment proceedings against property held in the hands of an instrumentality of the judgment debtor, even if the instrumentality is not itself named in the judgment.”).

Next, Lopez Bello erroneously claims that he should have received notice and an opportunity to be heard *prior to* Judge Scola's issuance of the original writs. *See generally* D.E. 103-1, p. 12 ("Thus, any attachment of the Moving Parties' bank accounts required pre-deprivation notice and a hearing."). Once again, Movants ignore the fact that such an argument was raised and rejected in *Stansell I*.

Mere attachment is a minimally intrusive manner of reducing these risks, especially because the blocked assets, by definition, already have more substantial restraints on their alienation. Because the factors weigh in favor of immediate attachment, *Claimants were not constitutionally entitled to a hearing before the writ issued.*

Stansell I, 771 F.3d at 729 (citations omitted; emphasis added). Lopez Bello is therefore incorrect when he argues he should have been notified of the *ex parte* proceedings initiated by Plaintiffs here. *Id.* ("In sum, Claimants were entitled to notice and to be heard before execution, though not necessarily before attachment.").

Third, Lopez Bello's due process argument entirely ignores the fact that he was, in fact, provided actual notice of these proceedings and given an opportunity to contest Judge Scola's findings. Since that time, and before any execution on the bank accounts at issue have taken place, he has (1) sought to amend the February 15, 2019 Order, (2) asked Judge Scola to reconsider that decision, (3) appeared at a special set hearing before the undersigned to refute the agency or instrumentality designation, (4) moved to dissolve the writs of garnishment issued to the various banking institutions, and (5) opposed the grant of the turnover motions for these accounts.

In *Stansell I*, the Eleventh Circuit deemed this more than sufficient:

The Partnerships were also afforded an opportunity to be heard. As discussed *supra*, the Partnerships were not entitled to a pre-writ hearing. Nevertheless, they had the opportunity to present evidence refuting the agency or instrumentality designation. They simply did not present any evidence that changed the district court's position on the agency or instrumentality determination.

...The Partnerships were [also] not prevented from taking advantage of Florida law specifically providing for third-party challenges to garnishment proceedings. *See* Fla. Stat. § 77.07(2). The third party can move to dissolve the writ of garnishment by “stating that any allegation in plaintiff's motion for writ is untrue.” *Id.* The Partnerships followed this procedure, and the district court, after due consideration of their argument, concluded that the agency or instrumentality allegations [were] “proved to be true.” *See id.* It therefore properly denied the motion to dissolve the writ.

Stansell I, 771 F.3d at 741-42 (“Any failure by the district court to conform to Florida's notice procedures was harmless because the Partnerships received actual notice and were able to contest the allegations as provided in § 77.07[.]”).

Fourth, even after all this due process, in opposition to the pending turnover motions Lopez Bello has had yet another opportunity to present evidence to support his position. We have reviewed the materials submitted in his opposition and find, apart from the legal arguments counsel has raised, no additional evidence that causes us to take a different course, either by scheduling any further evidentiary hearings or even a jury trial, or by instituting any other process to further develop the record. The same affidavits and declarations filed in support of Lopez Bello's earlier motions to dismiss the garnishment writs are being relied upon again here. [D.E. 184-5, 184-6, 184-7, 184-8, 184-11]. They are the same factual recitations of evidence that have

been repeatedly rejected as insufficient. And as evidenced by the opinion in *Stansell II* this same conclusory is not enough to defeat Judge Scola's original finding, which is now law of the case, that Lopez Bello is an agency or instrumentality of the FARC for TRIA purposes. Lopez Bello has thus failed to meet his burden, even on these final turnover motions, to show that issues of fact preclude granting summary judgment in Plaintiffs' favor.

The same is true of the additional pieces of "evidence" submitted in connection with these turnover motions. The first two items Claimants have added are two U.N. reports [D.E. 184-9, 10] designed to show that the FARC—the narco-terrorist group that killed, tortured, and/or imprisoned these Plaintiffs—are now not as bad as it used to be. But that hardly allows us to undermine that for TRIA purposes the FARC is a U.S. designated Foreign Terrorist Organization and "terrorist party" under TRIA. That was true from the outset of this process and it remains true today. These pieces of "evidence" do not alter the record that we are bound by at this point. Nor does it present any compelling factual conflict requiring further evidentiary proceedings.

The other evidence cited in the response is another fourth affidavit from Lopez Bello's lawyer, Jeffrey Scott, which fails to address the agency or instrumentality finding in any meaningful way. For our purposes that "evidence" is irrelevant. That is also true for the other "new" evidence Lopez Bello presented [D.E. 184-4] which is his second declaration in opposition to these writs of garnishment that, again, present only conclusory statements of innocence. No actual facts are presented nor any proffer of facts that could be presented to a trier of fact that would make any

difference. Lopez Bello's conclusory declarations only reinforce the totally conclusory nature of the entire evidentiary response to these writs. The best that can be said is that Lopez Bello portrays himself an innocent victim of this process who is not affiliated with Tareck El Aissami, the Cartel of the Suns, or the FARC. But the underlying factual reasons why he was deemed an agency or instrumentality are never rebutted. Conclusory allegations or legal conclusions wrapped in factual clothing will not defeat entry of a TRIA turnover judgment that is otherwise merited. *Cf. Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985) (affirming summary judgment where "[t]his court has consistently held that conclusory allegations without specific supporting facts have no probative value.") ("a party may not avoid summary judgment solely on the basis of an expert's opinion that fails to provide specific facts from the record to support its conclusory allegations."); *Buckler v. Israel*, 680 F. App'x 831, 835–36 (11th Cir. 2017) ("A plaintiff cannot survive summary judgment by merely providing hundreds of pages of investigative files supported only by an expert's general citations to those volumes.").

A relevant application of this principle is found in the Eleventh Circuit's recent treatment of taxpayer challenges to federal tax assessments. After finding *en banc* that self-serving affidavits were not barred as a matter of law in such tax challenges, *United States v. Stein*, 881 F.3d 853, 856-59 (11th Cir. 2018), and that Rule 56 principles governed that type of litigation just like any other, the case was remanded for review. On second appeal from the grant of summary judgment against the taxpayer, the Eleventh Circuit affirmed because the self-serving counter-affidavit

had to satisfy certain criteria including statements of personal knowledge and facts supported by admissible evidence to demonstrate why the presumptively accurate tax assessments were incorrect. *United States v. Stein*, 769 F. App'x 828, 832 (11th Cir. 2019). Citing *Evers*, the Court of Appeals agreed that the self-serving affidavit still failed to create an issue of fact on the validity of the assessment. So summary judgment was still appropriate, notwithstanding the taxpayer's claim that she was being denied due process. *Id.* at 832-33.

Here, the record supports the presumption that under TRIA these garnished accounts are blocked assets that may be turned over to enforce a judgment against an agent or instrumentality of the FARC. Given that record, Lopez Bello has to do more, a lot more, than file conclusory denials in a declaration that does not present any compelling new, admissible, or reliable facts that would show that his denials have a factual basis. Ironically, Lopez Bello cited the *Stein en banc* decision in support of his opposition to the turnover motions, ignoring the fact that this case did not and does not allow for conclusory and unsupported affidavits to defeat an otherwise merited motion. As the entire history of *Stein* shows, a district court must consider any self-serving affidavit but at the same time adhere to Rule 56 principles that preclude conclusory denials as a substitute for reliable facts. We agree with Lopez Bello that *Stein* is a very analogous case. The garnishment turnover motions may thus be granted on the same premise, even though technically Rule 56 procedures are not directly applicable given the summary nature of Florida's garnishment statutes. But those statutes contemplate a similar process; a summary

adjudication of the writs unless the debtor can show that further factual development is necessary. If not, then like a summary judgment order, a turnover judgment amounts to the same conclusion: that no issues of fact preclude judgment on the writs as a matter of law. We have reached that point here.

In short Lopez Bello's due process complaints ring hollow. Lopez Bello received actual notice of the proceedings, appeared, and was permitted – repeatedly – to submit evidence challenging Judge Scola's original agency and instrumentality designation. That designation has now withstood an appeal. And even after all this time, that designation has still not been sufficiently rebutted in this record to generate any issue of fact. In light of this record, the due process challenge to our enforcement of Florida's garnishment statute is unavailing. Lopez Bello's opposition to these turnover motions on due process grounds fails. Florida's summary procedure may be enforced.

B. Subject Matter Jurisdiction

Lopez Bello continues to challenge our exercise of subject matter jurisdiction over bank accounts that are not located in Florida. We fully addressed that challenge in response to the motions to dissolve the writs, and we incorporate those arguments here. Lopez Bello has presented no new authority to undermine our conclusion, as well as Judge Scola's Order affirming that conclusion that relied in part on Florida's decision not to adopt the "separate entity rule." [D.E. 279 at 2 (citing *Tribie v. United Deveelp. Grp. Int'l LLC*, 2008 WL 5120769, at *3 (S.D. Fla. Dec. 2, 2008)].

Though we fully incorporate those conclusions here, since nothing really is new, we add a few points. First, to the extent any entity or person is the real party in interest over such an argument, Lopez Bello is not it. We have subject matter jurisdiction over any demand made against him based on the registration of the judgment in this District. He cannot thus complain on anyone else's behalf that we lack power to adjudicate these matters to the extent he is concerned.

Second, the real party in interest that could raise such a challenge has done so only in the case of Citibank N.A. Though we have rejected the subject matter jurisdiction argument as to that entity as well, we have taken a different course with respect to that writ of garnishment precisely because Citibank lodged timely and persuasive opposition to the relief sought here. And we are addressing those positions in a separate Report and Recommendation that proposes transferring that proceeding to the Southern District of New York. By granting that relief, however, we are not undermining our conclusion that we have the power to adjudicate that writ as a matter of subject matter jurisdiction. And that is certainly true with respect to the accounts maintained by the banking entities at issue here that, unlike Citibank, have answered the writs and not moved to transfer or dismiss those writs on any jurisdictional challenge.

With these caveats, we hold once again that Lopez Bello has no subject matter jurisdiction challenge to make to the turnover motions addressed in this Report.

C. The “Agency or Instrumentality” Designation

Lopez Bello’s substantive challenge to the grant of these turnover motions is his claim that he cannot be deemed an agent or instrumentality of the FARC. We addressed this issue thoroughly in response to the motions to dissolve, and that analysis remains sound and is incorporated here.

To summarize, Plaintiffs have shown that they are entitled to relief on these writs of garnishments because we must grant great deference to OFAC with regard to its designation of El Aissami and Lopez Bello as SDNTs. *De Cuellar v. Brady*, 881 F.2d 1561, 1565 (11th Cir. 1989); *Paradissiotis v. Rubin*, 171 F.3d 983, 987 (5th Cir. 1999). We also note that the mere fact that OFAC designated them as SDNTs, standing alone, does not necessarily require us to grant the relief requested by Plaintiffs here; the evidence presented by Plaintiffs must link Lopez Bello to the FARC. See TRIA Section 201.

The Eleventh Circuit adopted the following definition as to who – or what – can be considered an “agency or instrumentality” of the FARC under TRIA:

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

- (1) materially assisting in, or providing financial or technological support for or to, or providing goods or services in support of, the international narcotics trafficking activities of a specially designated narcotics trafficker (FARC); and/or

(2) owned, controlled, or directed by, or acting for or on behalf of, a specially designated narcotics trafficker (FARC); and/or

(3) playing a significant role in international narcotics trafficking (related to coca leaf, paste or cocaine manufactured or supplied by the FARC).

Stansell, 2013 WL 12133661, at *2 (M.D. Fla. May 2, 2013) (emphasis added); *adopted by Stansell I*, 771 F.3d at 731-32. This definition makes several things clear: past association with the FARC can result in a finding that a person is an agency or instrumentality under TRIA; indirect connections will suffice; and a person or group may be deemed an “agency or instrumentality” of the FARC even if that individual or group does not participate in the production, trafficking, or distribution of cocaine. *See Stansell I*, 771 F.3d at 732, 742. Money laundering qualifies as an associated act. *Id.* at 732 (“Indeed, the agencies or instrumentalities here were, according to OFAC, part of FARC’s money laundering operations.”).

Based on the evidence in this record, and applying the definition approved in *Stansell I* as well as *Stansell II* that expressly affirmed Judge Scola’s original conclusion, for purposes of these turnover motions Lopez Bello and his affiliated entities are “agencies or instrumentalities” of the FARC. The incontrovertible record shows that their “agency or instrumentality” status is firmly rooted. *See Stansell I*, 771 F.3d at 741 (“The Partnerships followed [the statutory procedures] and the district court, after due consideration of their argument, concluded that the agency or instrumentality allegation was ‘proved to be true.’”) (citing Fla. Stat. § 77.07(2)).

For this reason, we again find no support for Lopez Bello's continued challenge to this designation.

The evidence in support of Plaintiffs' argument includes testimony elicited from Douglas Farah, who testified that Lopez Bello operates as the "frontman," or *testaferro*, for El Aissami, laundering and moving money flowing to El Aissami as a result of his ties to the Cartel of the Suns – an organization, in turn, that earns significant income from the sale and exportation of FARC cocaine. Farah's testimony therefore establishes an indirect link between Movants and the FARC, connecting the two through Lopez Bello's financial activities undertaken on behalf of El Aissami.

Plaintiffs also establish a link between Lopez Bello and the FARC through the testimony elicited from Col. Luis Miguel Cote, a retired member of the Colombian Marine Corps. Cote served in the military for 31 years and planned and executed numerous military operations against the FARC and its drug-trafficking operations. He testified that FARC relied on high-ranking members of the Cartel of the Suns to safeguard cocaine-producing laboratories and to help escort drug shipments from Colombia into Venezuela, where it was ultimately shipped to locations in the U.S., Europe, and Asia.⁷ According to Cote, El Aissami was a known member of the Cartel

⁷ The Court also heard testimony from Paul Craine, who worked for the DEA for 27 years and testified that he first became aware of Lopez Bello sometime in 2014 or 2015 during his investigation of El Aissami's financial activities. Crain echoed Farah's comments, testifying that Lopez Bello laundered and moved money for El Aissami that had been derived from the sale of cocaine produced and manufactured by the FARC.

of the Suns, and Lopez Bello was equally well-known as El Aissami's primary "frontman." Thus, we can draw a line from Lopez Bello to the FARC through El Aissami.

Indeed, El Aissami is the key link in the chain; his connection to the FARC, and Lopez Bello's connections to him, remain unrebutted. As but one example, Movants entirely failed to rebut Plaintiffs' submissions showing El Aissami's connection to Daniel Barrera Barrera, an individual OFAC described as "a Colombian drug lord" for whom El Aissami provided protection. In 2010, Barrera Barrera was designated as a SDNT due, in part, to *his partnership with the FARC*. See Press Release, U.S. Dept. of the Treasury, Office of Foreign Assets Control, *Treasury Targets Financial Network of Colombian Drug Lords Allied with the FARC* (Dec. 14, 2010), <https://www.treasury.gov/press-center/press-releases/Pages/tg1002.aspx>.⁸ Lopez Bello's connection to El Aissami, and El Aissami's connection to the FARC through Barrera Barrera, entirely undermines any serious argument that Lopez Bello cannot be connected to the FARC, at least indirectly. As we stated above, such indirect ties are enough to support an "agency or instrumentality" designation. See *Stansell I*, 771 F.3d at 742 ("The evidence Plaintiffs presented to the district court

⁸ From that release: "Daniel Barrera Barrera and Pedro Oliveiro Guerrero Castillo maintain a partnership with the FARC (*Fuerzas Armadas Revolucionarias de Colombia*), a narco-terrorist organization identified by the President as a kingpin pursuant to the Kingpin Act in 2003. Barrera Barrera also faces narcotics-related criminal charges in the U.S. District Courts for the Southern and Eastern Districts of New York."

was sufficient to establish the required relationship between FARC and the Partnerships, even if that relationship was indirect.”).

Again, Lopez Bello has failed to meet his burden of sufficiently raising a material factual dispute as to this indirect connection. In his submissions, Lopez Bello again relies on the testimony of William Marquardt, a forensic accountant tasked with examining the many entities owned or operated by Lopez Bello. Marquardt compared a list of 68 entities to determine whether any could be “traced back” to FARC, concluding that “none of the companies, directors, officers, shareholders and managers” of the entities disclosed as “owned or controlled by [] Lopez Bello are associated with the FARC.” But as discussed above, this is not what needs to be shown for purposes of an agency or instrumentality designation; *indirect* ties are sufficient, so simply looking at whether the companies are connected to FARC is useless for purposes of our analysis. As there is no requirement that Plaintiffs establish direct connection between the FARC and the 68 companies Marquardt was tasked with analyzing, his opinions are entirely unhelpful.⁹

Likewise, Lopez Bello’s reliance on the testimony and declarations submitted by Ernesto Carrasco Ramirez offer nothing to alter Judge Scola’s now-affirmed

⁹ This is also why we are not persuaded that a genuine issue of fact remains based on the opinions offered by Richard Gregorie. He opines that (1) Lopez Bello has never been involved with narcotics or financial transactions with the FARC; (2) he has no relationship with any members of the FARC; and (3) the Cartel of the Suns is not the FARC. What is left unsaid – and goes un rebutted – by Gregorie’s opinions is the fact that Plaintiffs tie Lopez Bello to El Aissami, and El Aissami to individuals associated with the FARC – i.e., Barrera Barrera. Such an indirect link is left unbroken by Gregorie’s report and testimony.

designation decision. Ramirez stated that he never met with, heard of, or discussed Lopez Bello during his time as an attorney in Colombia; but he also admitted was not present in Colombia in 2013 through 2016, the *exact* timeframe in which Plaintiffs' evidence suggests Lopez Bello emerged as a key player in El Aissami's orbit. [D.E. 230 at 166-67 (Testimony of P. Craine)]. This undermines the argument that this evidence presents an obstacle to the grant of immediate relief on the turnover motions.

Lopez Bello also seeks to undermine once again the Court's reliance on the OFAC designation found in the OFAC press release. Lopez Bello says that the press release is inadmissible and irrelevant to the agency or instrumentality issue. We disagree. OFAC's designation and blocking is highly relevant because it is a "factual determination by a coordinate branch" which has authority from Congress for such fact finding under TRIA. *See Weinstein v. Islamic Republic of Iran*, 609 F.3d 43, 52 (2d Cir. 2010). But any dispute about this is settled law in this case. The Eleventh Circuit in *Stansell I* already recognized the relevance and reliability of OFAC's factual findings to an "agency or instrumentality" determination. 771 F.3d at 726. Given that, we cannot and should not change course now when Lopez Bello cites zero authority that OFAC factual findings are somehow inadmissible where the undisputed public record is what it is. Lopez Bello does not argue, for instance, that the agency vacated, undermined, or changed its position via another press release or any other agency action. OFAC's position at this point is uncontroverted. So the evidentiary objection Lopez Bello makes is meritless. *See Fed. R. Evid.* 803(8).

As a result, OFAC's findings fully undermine the factual disputes that Lopez Bello purports to rely upon. For instance, this record has an unrebutted OFAC factual findings that the Lopez Bello/El Aissami Network provided protection to a Colombian drug lord, Daniel Barrera Barrera. OFAC has also designated Barrera as a "FARC Drug Trafficking Partner." El Aissami used his position as a high-ranking government official in Venezuela to protect Barrera when Barrera fled from Colombia to Venezuela. OFAC further determined that Lopez Bello's role in the Network was to act as the "front-man" for El Aissami, running the front companies and laundering the drug trafficking proceeds to help make El Aissami's transactions look legitimate. The indirect nature of the "agency or instrumentality" standard reaches precisely that kind of relationship as the Eleventh Circuit has repeatedly found. *See, e.g., Stansell I*, 771 F.3d at 739.

In the face of these governmental findings, Lopez Bello's conclusory denial that "I am not, nor have I ever been, a frontman for Tareck El Aissami" does not in any way rebut the OFAC Factual Findings because it is devoid of facts. Lopez Bello does not even attempt to explain what his relationship to El Aissami actually is, much less try to support that with any sort of actual evidence or factual detail.

The same holds true for his argument that a critical link is missing in the record, to wit that El Aissami, with Lopez Bello's knowledge, engaged in any actions that provided financial, logistical, or any other assistance to the FARC. Moreover, El Aissami was not an employee, officer or director of any of the Lopez Bello entities. But the whole purpose of having a "frontman" is to avoid the formal, traceable

evidence of shareholders, corporate officers, and the like. The Eleventh Circuit has explained that the lack of a “corporate” relationship will not disturb an “agency or instrumentality” finding, because such a formality is immaterial. *Id.* at 732 (“For example, a corporation organized under Florida law will almost certainly not list FARC as a shareholder of record. Instead, it will operate through layers of affiliated individuals and front companies.”). So all of Lopez Bello’s protestations notwithstanding, the OFAC’s designation remains essentially unrebutted in this record that provides the critical link between the FARC and Lopez Bello. That link supports granting these motions.

Lastly, at bottom of what Lopez Bello is saying to oppose these turnover motions is that his own self-serving evidence, at minimum, raises a factual dispute as to the truth of Plaintiffs’ allegations, and that the agency or instrumentality issue must be decided by a jury as per Fla. Stat. § 77.07(2) (“On such motion this issue shall be tried, and if the allegation in plaintiff’s motion which is denied is not proved to be true, the garnishment shall be dissolved.”). While it is true that Florida garnishment law provides for jury trials in such actions, *see id.*; Fla. Stat. § 77.08, the Eleventh Circuit has also held that “the right to a jury trial in a garnishment action is not absolute, notwithstanding the statute’s use of the word ‘shall.’ ” *Zelaya/Capital Intern. Judgment, LLC v. Zelaya*, 769 F.3d 1296, 1304 (11th Cir. 2014); *cf.* Fla. Stat. § 77.07(1) (“The defendant, by motion, may obtain the dissolution of a writ of garnishment *unless the petitioner proves the grounds upon which the writ was issued[.]*”) (emphasis added).

And as we discussed in the preceding section, Lopez Bello's self-serving affidavits are not reliable based on their conclusory and non-detailed nature. At best, this evidence serves as a *denial* of the allegations – not a *rebuttal*. This distinction is key; in order for a garnishment proceeding to be tried, Lopez Bello's evidence must create a genuine issue of material fact as to his status as an agency or instrumentality of the FARC, especially in the face of such strong evidence submitted by Plaintiffs together with the OFAC designation. Lopez Bello failed once again to do that. Contrary to protest that he is being held responsible under some strict liability theory, the record submitted in support of Plaintiffs' position firmly supports the relief they seek. In the face of that record, Lopez Bello had the burden to factually undermine this evidence with factual rebuttals that a reasonable fact finder could rely upon. He has not done so despite a year and a half of motion practice and multiple appeals to the Eleventh Circuit.

In short, Plaintiffs have not only alleged that Lopez Bello is an agency or instrumentality of the FARC, but shown – with competent, reliable evidence and testimony – this to actually be true. *See Fla. Stat. 77.07(1)* (dissolution of writ of garnishment must take place *unless* the petitioner proves the grounds upon which the writ was issued). The evidence establishes that (1) OFAC deemed Lopez Bello to be the “frontman” for El Aissami; (2) El Aissami had previously been connected to both Barrerra Barrera and the Cartel of the Suns; and (3) both Barrerra Barrera and the Cartel of the Suns have been accused by OFAC of supporting and assisting the FARC's narco-trafficking activities. We simply do not see anything that would allow

us to preclude Plaintiffs relief on these turnover motions. *Cf. Doug Sears Consulting, Inc. v. ATS Servs, Inc.*, 752 So. 2d 668, 669-670 (Fla. 1st DCA 2000) (reversing trial court's refusal to dissolve writ in light of "woefully insufficient" evidence submitted to prove statutory grounds for issuance of the writs).

Creatively, Lopez Bello's responses in opposition seek to undermine the law of the case here, despite two appellate court decisions that sustained agency or instrumentality findings, on the theory that they are ignoring an important temporal limitation. Lopez Bello theorizes that this "temporal limitation" to the "agency or instrumentality" standard the Eleventh Circuit adopted for non-state actors means that it does not encompass conduct that occurred before OFAC's designation. And for conduct occurring thereafter, FARC had "totally disarmed" by the time these TRIA execution proceedings commenced. So, luckily for Lopez Bello, he falls in the sweet spot of protection from the OFAC designation time period. Anything he did with the El Aissami network took place prior to the designation, so that is outside the reach of TRIA. And by the time of the designation, his relationship with the FARC was harmless because at that point FARC turned over a new leaf and stopped engaging in criminality like the ones at the heart of this case.

Not surprisingly, this concocted theory has no legal basis. *Stansell I* has already affirmed a non-state actor "agency or instrumentality" standard that reaches "past dealings with the FARC." *Stansell v. FARC*, 2013 WL 12133661, at *2 (M.D. Fla. May 2, 2013), *aff'd in relevant part*, *Stansell I*, 771 F.3d at 732. There is no "temporal limitation" on providing assistance to terrorists at least in this Circuit.

Second, all that TRIA requires is that a plaintiff establish that “she has obtained a judgment against a terrorist party . . . for a claim based on an act of terrorism.” *Id.* at 723. Plaintiffs have met that standard. There is no statutory limitation on when the underlying acts had to take place, or when those acts should be judged against any blocked asset designation, or whether the terrorists ultimately abandoned their aims. Plaintiffs have satisfied the statutory prerequisites for relief. As a result Lopez Bello’s temporal limitation theory can be discarded.

In sum, Lopez Bello’s designation as an agency or instrumentality of the FARC remains firmly rooted in this record and satisfies the legal requirements under TRIA and Florida’s garnishment statutes. We thus recommend that these turnover Motions be granted because no issue of fact remains to preclude judgment on the writs of garnishment.

D. Constitutional Challenge to “Punitive” Damages

Lopez Bello offers one final argument why these turnover motions should not be granted. He claims that, unlike the original FARC judgment debtors, parties or entities in his position are liable only to the extent the underlying judgment is for compensatory damages. Specifically, Section 201 of TRIA is what governs this case over blocked assets held by agents or instrumentalities of terrorist organizations. And as a result, the limitation found in section 201(a) applies here:

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

that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment *to the extent of any compensatory damages* for which such terrorist party has been adjudged liable.

Terrorism Risk Insurance Act of 2002, PL 107–297, November 26, 2002, 116 Stat 2322.

Lopez Bello further relies on the fact that, although the Anti-Terrorism Clarification Act of 2018 amended extended TRIA’s definition of blocked assets to foreign designated Kingpin Assets, and that amendment was intended to be retroactive under Section 3(b) of the Act, 132 Stat. 3183 (“The amendments made by this section shall apply to any judgment entered before, on, or after the date of enactment of this Act.”), it did not broaden TRIA’s limitations for only compensatory damages. Hence, Lopez Bello argues, the retroactivity provision in the 2018 amendment only applied to that section of the civil remedies statute for terrorism-related action and left all other existing components in place. As a result, and because treble damages are not “compensatory damages,” as they are instead akin to punitive damages, the only possible recovery that Plaintiffs may seek against him and his affiliated entities extends strictly to the compensatory damages element of the judgment.

Further support for Lopez Bello’s position comes from the Supreme Court doubting that punitive damage liability could be expanded retroactively in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), where the Court held in the Title VII context that Congress had to expressly prescribe a statute’s retroactive reach before

a Court could impose retroactive punitive liability. That showing had not been made in that case. And Lopez Bello makes the same claim here. Nothing in TRIA or the relevant amendments enacted prior to the date of the Middle District judgment allow for retroactive application of a punitive damage remedy against Lopez Bello. Absent such statutory authorization, any blocked assets traced to him cannot be used to satisfy anything more than the compensatory damages portion of the judgment.

Procedurally, Lopez Bello has raised this retroactivity argument in his opposition to the Court's disposition of his motions to dismiss and dissolve the writs, his objections to our Recommendations related to those motions, as well as now in filing a motion to stay disposition of the pending turnover motions. [D.E. 314]. For their part, Plaintiffs do not tackle head-on the retroactivity lynchpin of Lopez Bello's analysis, but argue nonetheless that the arguments fail, principally because treble damages under the ATA should not be treated as punitive damages as they are in fact more compensatory in nature than punitive.

We need not resolve this legal issue now, however. The amount of the underlying judgment is \$318,030,000. Even taking Lopez Bello's arguments at face value, the compensatory damages portion of that judgment is \$106,010,000.¹⁰ Based on the garnished amounts for all the bank accounts at issue here, plus the amounts already awarded to Plaintiffs through other writs, we are not yet getting close to this

¹⁰ Plaintiffs dispute this because the Middle District of Florida judgment itself reflected individual awards for each plaintiff "for compensatory damages". Thus they say this unambiguously rebuts any theory that Lopez Bello owes less than the total final judgment entered against the FARC.

“compensatory damage” ceiling. Perhaps after entry of these turnover judgments, Lopez Bello’s complaints may be further considered in the appropriate forum. But for now, this retroactivity argument does not preclude us from granting the turnover judgment relief that Plaintiffs seek in these motions.

III. CONCLUSION

It is the law of the case that an “agency or instrumentality” as the result of *indirect* ties to a terrorist organization. *Stansell I*, 771 F.3d at 742. Movants here fall squarely within that definition. And the supporting record fully supports that finding as a matter of law. We therefore **RECOMMEND** as follows:

A. Plaintiff’s Motion for TRIA Turnover Judgment on Garnishee UBS Financial Services, Inc. [D.E. 116] should be GRANTED. A final judgment of garnishment should be entered on the account identified in the Garnishee’s Answer [D.E. 58], XXX952, in the name of Samark Jose Lopez Bello, in the amount of \$28,970,462 or the existing balance, in favor of the Plaintiffs.

B. Plaintiff’s Motion for TRIA Turnover Judgment on Garnishee RJA Financial Services, Inc. [D.E. 120] should be GRANTED. A final judgment of garnishment should be entered on the account held by Raymond James & Assocs. and identified in the Garnishee’s Answer [D.E. 61], XXX540, in the name of Samark Lopez Bello, in the amount of \$2,361,839.10 or the existing balance, in favor of the Plaintiffs.

C. Plaintiff’s Motion for TRIA Turnover Judgment on Garnishee Branch Banking & Trust Co. [D.E. 155] should be GRANTED. A final judgment of garnishment should be entered on the account identified in the Garnishee’s Answer

[D.E. 71], XXX9258, in the name of Samark Jose Lopez Bello, and XXX1848 in the name of Profit Corp. CA, and XXX9323 in the name of SMT Technologia CA, in the total amount of \$1,332,859.11 or the existing balances, in favor of the Plaintiffs.

D. Plaintiff's Motion for TRIA Turnover Judgment on Garnishee Morgan Stanley Smith Barney LLC [D.E. 168] should be GRANTED. A final judgment of garnishment should be entered on the account identified in the Garnishee's Answer [D.E. 76], XXX300, in the name of Yakima Trading Corp., and XXX945 in the name of Samark Jose Lopez Bello, in the total amount of \$11,498,994.68 or the existing balances, in favor of the Plaintiffs.

E. Plaintiff's Motion for TRIA Turnover Judgment on Garnishee Safra National Bank of New York [D.E. 170] should be GRANTED. A final judgment of garnishment should be entered on the account identified in the Garnishee's Answer [D.E. 78], XXX4131, in the name of Samark Jose Lopez Bello, and XXX5158 in the name of PYP International LLC, in the amount of \$9,044,160.79 or the existing balances, in favor of the Plaintiffs.

Pursuant to Local Magistrate Rule 4(b) and Fed. R. Civ. P. 73, the parties have twenty-one (21) days from service of this Report and Recommendation within which to file written objections, if any, with the Honorable Judge Robert N. Scola. The Court finds good cause based on the existing exigent circumstances involving the national health emergency to grant additional time for the filing of objections as per Rue 4(b). Failure to timely file objections shall bar the parties from *de novo* determination by the District Judge of any factual or legal issue covered in the Report *and* shall bar

the parties from challenging on appeal the District Judge's Order based on any unobjected-to factual or legal conclusions included in the Report. 28 U.S.C. § 636(b)(1); 11th Cir. Rule 3-1; *see, e.g., Patton v. Rowell*, 2017 WL 443634 (11th Cir. Feb. 2, 2017); *Cooley v. Commissioner of Social Security*, 2016 WL 7321208 (11th Cir. Dec. 16, 2016).

DONE AND SUBMITTED in Chambers at Miami, Florida this 23rd day of March, 2020.

/s/ Edwin G. Torres
EDWIN G. TORRES
United States Magistrate Judge

United States District Court
for the
Southern District of Florida

Keith Stansell, and others,)	
Plaintiffs,)	
)	
v.)	Case No. 19-20896-Civ-Scola
)	
Revolutionary Armed Forces of)	
Columbia, Defendant.)	

Order Adopting Report and Recommendation

This matter was referred to United States Magistrate Judge Edwin G. Torres for a ruling on all pre-trial, nondispositive matters and for a report and recommendation on any dispositive matters, consistent with 28 U.S.C. § 636 and Local Magistrate Judge Rule 1. (ECF No. 108.) Judge Torres issued a Report and Recommendation on a motion to dismiss or, in the alternative, change venue (ECF No. 174) filed by Samar Jose Lopez Bello and Yakima Trading Corporation (collectively “Lopez Bello”). He recommends that the Court grant the motion in part and deny it as moot in part. (ECF No. 323.) The Plaintiffs subsequently objected to the report (ECF No. 329), and Lopez Bello responded to the objections. (ECF No. 335, 336). Having conducted a *de novo* review of the entire record and the applicable law, the Court **overrules** the objections (**ECF No. 329**) and **affirms and adopts** Magistrate Judge Torres’s report and recommendation (**ECF No. 323**). The Court **grants in part and denies as moot in part** Lopez Bello’s motion to dismiss or transfer Citibank, N.A.’s interpleader claims (**ECF Nos. 174**), and the Court **transfers** the interpleader claims to the Southern District of New York. The Court also **denies as moot** the Plaintiff’s motion for entry of a Terrorist Risk Insurance Act of 2002 (“TRIA”) turnover judgment on Citibank (**ECF No. 177**), and it **denies as moot** the Plaintiffs’ motion to dismiss Citibank’s Interpleader claims (**ECF No. 152**).

The Court agrees with the Judge Torres’s conclusion that the first filed rule requires the transfer of this motion to the United States District Court of the Southern District of New York. “Where two actions involving overlapping issues and parties are pending in two federal courts, there is a strong presumption across the federal circuits that favors the forum of the first-filed suit under the first-filed rule.” *Collegiate Licensing Co. v. Am. Cas.Co. of Reading, Pa.*, 713 F.3d 71, 78 (11th Cir. 2013). Here, the two suits have identical parties and issues,

and the New York suit was filed first. Therefore, transfer is appropriate unless the Plaintiffs can show that “compelling circumstances” warrant an exception. *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 (11th Cir. 2005). “Compelling circumstances include bad faith negotiations, an anticipatory suit, and forum shopping.” See *Belacon Palet Serv., LLC v. Amerifreight, Inc.*, 2016 WL 8999936, at *4 (N.D. Fla. Mar. 26, 2016).

The Plaintiffs argue that United States District Judge Andrew L. Carter, Jr. already found that the Southern District of Florida should adjudicate this motion, and, that conclusion constitutes compelling circumstances warranting an exception to the first-filing rule. (Objections, ECF No. 329 at 7-10.) In the referenced order, the Southern District of New York denies Lopez Bello’s motions to dismiss and to dissolve the writs of garnishment. *Stansell v. Revolutionary Armed Forces of Colombia*, Case No. 16-mc-00405, at ECF No. 67 (S.D.N.Y. Mar. 10, 2020). It does not deny a motion for final TRIA turnover judgment because of similar litigation pending in the Southern District of Florida. Instead, the Southern District of New York stayed the case pending this Court’s adjudication of the six turnover motions. The court requested that the parties submit a joint status report within two weeks of this Court’s decision on the six motions, indicating the impact of this Court’s decisions, and it noted that the “Plaintiffs’ time for filing a turnover motion in [the Southern District of New York] will remain tolled until this Court rules otherwise.” *Id.* The Southern District of New York contemplated the possible need for the Plaintiff’s to file a turnover motion in that district, and it did not find that it would be inappropriate to do so. Therefore, Plaintiffs’ argument fails.

The Plaintiffs also argue throughout their objections that further delay in re-filing the motion in the Southern District of New York would unfairly prejudice them, given the time spent adjudicating the six motions for TRIA turnover judgment in the Southern District of Florida. Any lengthy delay in adjudicating these motions is likely attributable to the Magistrate Judge’s reasonable preference to wait for the Eleventh Circuit to affirm this Court’s order affirming his report recommending that the motions to dissolve the writs be denied, before recommending that the motions for final judgment should be granted. Although the Court is sympathetic to the Plaintiffs’ concerns, it declines to find that the possibility of further delay constitutes a compelling circumstance warranting an exception to the first-filed rule.

Therefore, the Court **affirms and adopts** Magistrate Judge Torres’s report and recommendation (**ECF No. 323**). The Court **grants in part** the Defendants’ motion to transfer the interpleader claims to the Southern District of New York (**ECF No. 174**), and it **denies in part as moot** the Defendants’ motion to dismiss the interpleader claims (**ECF No. 174**). The Court **transfers** the Plaintiffs’ ex

parte application for a writ of attachment under TRIA (ECF No. 18) with respect to the CitiBank account to the Southern District of New York. The Court **denies as moot** the Plaintiffs' motion to dismiss CitiBank's interpleader claims (**ECF No. 152**), and it **denies as moot** the Plaintiffs' motion for entry of a TRIA Turnover Judgment on CitiBank (**ECF No. 177**).

Done and ordered in chambers, at Miami, Florida, on April 29, 2020.

A handwritten signature in blue ink, appearing to read 'R. N. Scola, Jr.', written over a horizontal line.

Robert N. Scola, Jr.
United States District Judge

United States District Court
for the
Southern District of Florida

Keith Stansell, and others,)	
Plaintiffs,)	
)	
v.)	Case No. 19-20896-Civ-Scola
)	
Revolutionary Armed Forces of)	
Columbia, Defendant.)	

Order Adopting Report and Recommendation

This matter was referred to United States Magistrate Judge Edwin G. Torres for a ruling on all pre-trial, nondispositive matters and for a report and recommendation on any dispositive matters, consistent with 28 U.S.C. § 636 and Local Magistrate Judge Rule 1. (ECF No. 108.) Judge Torres issued a Report and Recommendation on five motions seeking entry of final turnover judgments on writs of garnishment issued to banking institutions (ECF No. 116, 120, 155, 168, 170) filed by the Plaintiffs. He recommends that the Court grant the motions. (ECF No. 322.) The Defendants (collectively “Lopez Bello”) subsequently objected to the report (ECF No. 330), and the Plaintiffs responded to Lopez Bello’s objections. (ECF No. 335). Having conducted a *de novo* review of the entire record and the applicable law, the Court **overrules** Lopez Bello’s objections (**ECF No. 330**). The Court **affirms and adopts** Judge Torres’s report and recommendation (**ECF No. 322**), and it **grants** the Plaintiffs’ motions seeking entry of final turnover judgments (**ECF Nos. 116, 120, 155, 168, 170**).

Lopez Bello objects primarily because: (1) the agency or instrumentality designation is erroneous because his indirect ties to the FARC are insufficient to render him its agent; (2) the corporate account holders are not subject to the TRIA turnover; and (3) this Court lacks subject matter jurisdiction over the accounts at issue because each is allegedly located outside the state of Florida. None of these objections have merit.

First, this Court has already held that Lopez Bello is an agent or instrumentality of the FARC due to his indirect ties to it, and the Eleventh Circuit has concluded that “indirect” ties are sufficient to establish the required relationship. *Stansell v. Revolutionary Armed Forces of Colom.*, 771 F.3d 713, 742 (11th Cir. 2014) (“*Stansell I*”) (“The evidence Plaintiffs presented to the district court was sufficient to establish the required relationship between FARC and the Partnerships, even if that relationship was indirect.”). The Eleventh Circuit also

rejected Lopez Bello's arguments that the manner in which this Court made the "agency or instrumentality" finding violated his due process rights. *Stansell v. Lopez Bello*, -- Fed. App'x --, 2020 WL 290423 (11th Cir. Jan. 21, 2020) ("*Stansell II*") (Lopez Bello had received actual notice of the execution proceedings and had a full and fair opportunity to make his case). Therefore, the Court overrules these objections.

Second, this Court has already rejected Lopez Bello's contention that the corporate account owners are not subject to TRIA turnover even if the owners of the accounts have not been found to be agents or instrumentalities of the FARC. (ECF No. 279 at 2.) Judge Torres previously explained that the writs "are directed at two categories of accounts—those that hold assets in Bello's name only, and those that name Lopez Bello in addition to other entities." (ECF No. 248 at 23.) Moreover, the argument that a writ should be dissolved because an account also holds the assets of an entity that is not subject to TRIA attachment must be raised by that entity and not by Lopez Bello. (*Id.* at 24.) Judge Torres also noted that the entity's accounts had been blocked by U.S. Department of the Treasury's Office of Foreign Asset Control, which indicates to the Court that even if these arguments were properly raised they are likely meritless.

Third, Lopez Bello contends that the Court lacks subject matter jurisdiction over the financial accounts because the bank accounts are not located in Florida. Regardless of the accounts' locations, this Court has subject matter jurisdiction. See *Tribie v. United Development Group Intern. LLC*, 2008 WL 5120769, at *3 (S.D. Fla. Dec. 2, 2008) (Moreno, J.) (Florida has not adopted the "Separate Entity Rule, a somewhat dated and seldom-cited legal doctrine, [which] holds that each branch of a bank is a separate legal entity in the context of a garnishment action.")

To the extent that this Court did not thoroughly address every argument raised by Lopez Bello in his motion, reply, and objections, the Court notes that a decisionmaker need not specifically address and reject every argument raised by one of the parties. *Guice v. Postmaster General, U.S. Postal Service*, 718 Fed. App'x 792, 795 (11th Cir. 2017). Moreover, Lopez Bello has previously raised each of the arguments raised in his objections (or some version of these arguments), and this Court (or the Eleventh Circuit) has previously rejected each one. (See ECF No. 335 at 3-5) (citing specific orders in which the Court previously rejected Lopez Bello's objections).

Therefore, the Court **affirms and adopts** Magistrate Judge Torres's Report and Recommendation (**ECF No. 322**), and the Court further **orders** as follows:

- The Plaintiffs' Motion for TRIA Turnover Judgment on Garnishee UBS Financial Services, Inc. (**ECF No. 116**) is **GRANTED**. A final judgment of

garnishment is entered on the account identified in the Garnishee's Answer (ECF No. 58), XXX952, in the name of Samark Jose Lopez Bello, in the amount of \$28,970,462 or the existing balance, in favor of the Plaintiffs.

- The Plaintiffs' Motion for TRIA Turnover Judgment on Garnishee RJA Financial Services, Inc. (**ECF No. 120**) is **GRANTED**. A final judgment of garnishment is entered on the account held by Raymond James & Assocs. and identified in the Garnishee's Answer (ECF No. 61), XXX540, in the name of Samark Lopez Bello, in the amount of \$2,361,839.10 or the existing balance, in favor of the Plaintiffs.
- The Plaintiffs' Motion for TRIA Turnover Judgment on Garnishee Branch Banking & Trust Co. (**ECF No. 155**) is **GRANTED**. A final judgment of garnishment is entered on the account identified in the Garnishee's Answer (ECF No. 71), XXX9258, in the name of Samark Jose Lopez Bello, and XXX1848 in the name of Profit Corp. CA, and XXX9323 in the name of SMT Technologia CA, in the total amount of \$1,332,859.11 or the existing balances, in favor of the Plaintiffs.
- The Plaintiffs' Motion for TRIA Turnover Judgment on Garnishee Morgan Stanley Smith Barney LLC (**ECF No. 168**) is **GRANTED**. A final judgment of garnishment is entered on the account identified in the Garnishee's Answer (ECF No. 76), XXX300, in the name of Yakima Trading Corp., and XXX945 in the name of Samark Jose Lopez Bello, in the total amount of \$11,498,994.68 or the existing balances, in favor of the Plaintiffs.
- The Plaintiffs' Motion for TRIA Turnover Judgment on Garnishee Safra National Bank of New York (**ECF No. 170**) is **GRANTED**. A final judgment of garnishment is entered on the account identified in the Garnishee's Answer (ECF No. 78), XXX4131, in the name of Samark Jose Lopez Bello, and XXX5158 in the name of PYP International LLC, in the amount of \$9,044,160.79 or the existing balances, in favor of the Plaintiffs.

Done and ordered in chambers, at Miami, Florida, on April 29, 2020.



Robert N. Scola, Jr.
United States District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 19-20896-CV-SCOLA/TORRES

KEITH STANSELL, *et al.*,

Plaintiffs,

v.

REVOLUTIONARY ARMED FORCES OF
COLOMBIA, *et al.*,

Defendants.

**REPORT AND RECOMMENDATION ON MOVANTS' MOTION
TO DISMISS, OR IN THE ALTERNATIVE, CHANGE VENUE**

The matter before this Court is a Motion to Dismiss, or in the alternative, Change Venue filed by SAMAR JOSE LOPEZ BELLO and YAKIMA TRADING CORPORATION ("Movants") on April 22, 2019. [D.E. 174]. The Motion is now fully briefed and ripe for disposition. For the reasons stated below, we hereby **RECOMMEND** that the Motion be **GRANTED in part and DENIED as moot in part**. We also hereby **RECOMMEND** that (1) Plaintiff's Motion to Dismiss Citibank, N.A.'s ("Citi") Interpleader Claims [D.E. 152], and (2) Plaintiff's Motion for Entry of a Terrorist Risk Insurance Act of 2002 ("TRIA") Turnover Judgement on Citi [D.E. 177] be **DENIED as moot**.

I. BACKGROUND

On February 15, 2019, the Honorable Judge Robert N. Scola declared Movants to be agencies or instrumentalities of the Revolutionary Armed Forces of Columbia, thereby exposing various assets owned by Movants to attachment and execution. [D.E. 22]. Included in the group of assets attached by Judge Scola is an account maintained with Citi. The account, account no. 231743 (the “Blocked Account”), is held in the name of SIX SIS Ltd., successor-in-interest to Intersettle Swiss Corporation for International Securities Settlements (“SIX”).¹ Plaintiff’s filed a writ of execution and garnishment (the “Writ”) with the Court on February 20, 2019. [D.E. 33].

On February 25, 2019, Plaintiffs served the Writ on Citi. [D.E. 53]. Prior to serving Citi with the Writ in this District, Plaintiffs served Citi with a writ of execution in the Southern District of New York (“SDNY”) to attach and execute the Blocked Account (the “SDNY Writ”). *See Stansell v. FARC*, No. 16-mc-405 (S.D.N.Y.). Movants filed a motion to dismiss the SDNY Writ in the SDNY that remains pending. *Id.* Citi has held and continues to hold the Blocked Account on the books of its New York branch.²

¹ As of January 29, 2019, the Blocked Account held security entitlements, as well as certain related cash proceeds, with an aggregate value of \$269,386,498.86.

² The Court notes that its Report and Recommendation [D.E. 255] found that Movants failed to provide any evidence that the Blocked Account was located outside Florida but now acknowledges that Movants, in connection with this Motion, have provided sufficient evidence that the Blocked Account is located in New York.

The Blocked Account is comprised of security entitlements and related cash proceeds that were previously held in SIX's securities accounts that were maintained on the books of Citi's New York branch. These securities accounts originate from a Direct Custodial Services Agreement entered into by SIX and Citi in New York back on September 22, 1994. Citi acts as SIX's securities custodian under the agreement, holding securities at The Depository Trust Company and the Federal Reserve Bank of New York for SIX's benefit. In turn, Citi recorded the entitlements and related cash proceeds to those securities in accounts maintained on its own books in the name SIX. Citi moved this property to the Blocked Account after SIX reported to Citi that Movants may have been the ultimate beneficiaries of the underlying securities. Citi does not know if there are other beneficial owners of the Blocked Account, including SIX, and cannot confirm if Movants are the beneficial owners.

On March 18, 2019, Citi filed an Answer that raised objections to the Court's jurisdiction over the Blocked Account and requested to transfer the Writ to the SDNY. [DE 78]. On March 22, 2019, Plaintiffs filed a reply to Citi's Answer. [D.E. 99]. On April 8, 2019, Citi amended its Answer and asserted the Interpleader Claims. [D.E. 126]. Citi asserted the Interpleader Claims because it alleged that there are other potential claimants to the Blocked Account, such as SIX, that are located outside of the United States. On April 11, 2019, Movants moved to dissolve the Writ against Citi for lack of jurisdiction and improper venue. [D.E. 134]. Plaintiffs then filed a response to the Movants' motion to dissolve on April 22, 2019 [D.E. 171], and the Movants filed a reply on April 29, 2019. [D.E. 182].

On April 22, 2019, Movants filed this Motion, which seeks to dissolve the Writ and dismiss the Interpleader Claims, or in the alternative, transfer the Writ to the SDNY. [D.E. 174]. On May 6, 2019, Citi opposed the Movants' motion insofar as it sought dismissal or transfer of the Interpleader Claims independent from the Writ but joined the motion insofar as it sought to transfer both the Writ and the Interpleader Claims to the SDNY. [D.E. 187]. Plaintiffs, ignoring the motions regarding transfer, filed a motion for entry of a TRIA turnover judgment on April 24, 2019 [DE 177], and Movants and Citi each responded separately on May 8, 2019. [D.E. 197, 198]. Plaintiffs' replied to these responses on May 2, 2019. [D.E. 202, 203].

II. APPLICABLE LAW

A. The First-Filed Rule

“The first-filed rule provides that when parties have instituted competing or parallel litigation in separate courts, the court initially seized of the controversy should hear the case.” *Collegiate Licensing Co. v. Am. Cas. Co. of Reading, Pa.*, 713 F.3d 71, 78 (11th Cir. 2013); *see also Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 (11th Cir. 2005) (“Where two actions involving overlapping issues and parties are pending in two federal courts, there is a strong presumption across the federal circuits that favors the forum of the first-filed suit.”). This rule “not only determines which court may decide the merits of substantially similar cases, but also generally establishes which court may decide whether the second filed suit must be dismissed, stayed, or transferred and consolidated.” *Id.* The first-to-file rule was developed because “[c]ompeting lawsuits involving the same parties and the same issues in

separate jurisdictions waste judicial resources and can lead to conflicting results.” *In re Checking Account Overdraft Litig.*, 859 F. Supp. 2d 1313, 1324 (S.D. Fla. 2012).

“Applying the first-to-file rule requires evaluation of three factors: (1) the chronology of the two actions; (2) the similarity of the parties; and (3) the similarity of the issues.” *Chapman v. Progressive Am. Ins. Co.*, 2017 WL 3124186, at *1 (N.D. Fla. July 24, 2017) (internal quotation marks and citations omitted). If the court finds that the first-to-file rule applies, the court must then determine whether the party objecting to jurisdiction in the first-filed forum has met its burden of demonstrating that “compelling circumstances” support an exception to the rule. *See Chapman*, 2017 WL 3124186, at *1 (quoting *Manuel*, 430 F.3d at 1135); *see also Belacon Pallet Servs., LLC v. Amerifreight, Inc.*, 2016 WL 8999936, at *3-4 (N.D. Fla. Mar. 26, 2016). “Compelling circumstances include bad faith negotiations, an anticipatory suit, and forum shopping.” *See Belacon Pallet Servs.*, 2016 WL 8999936, at *4 (citation omitted). If the presumption holds, the district court can either stay, dismiss, or transfer the second-filed case to the forum in which the first-filed action is pending. *See Futurewei Tech., Inc. v. Acacia Research Corp.*, 737 F.3d 704, 709 (Fed. Cir. 2013).

This rule is not meant to be rigid or inflexible but should be applied in a manner that best serves the interests of justice. *See Philibert v. Ethicon, Inc.*, 2005 WL 525330, at *1 (S.D. Fla. Jan. 14, 2005); *Carl v. Republic Sec. Bank*, 2002 WL 32167730, at *3 (S.D. Fla. Jan. 22, 2002). “Thus, while the forum where an action is first filed typically is given priority over subsequently-filed actions, it is appropriate

to depart from the general rule when there is a showing that the balance of convenience tips in favor of the second forum or that there are special circumstances which justify giving priority to the second action.” *Philibert*, 2005 WL 525330, at *1 (citing *Carl*, 2002 WL 32167730, at *3).

B. 28 U.S.C. § 1404(a)

Section 1404(a) is a statute that authorizes a civil action to be transferred to another district “[f]or the convenience of the parties and witnesses, in the interest of justice.” 28 U.S.C. § 1404(a). “Section 1404(a) is intended to place discretion in the district court to adjudicate motions for transfer according to an ‘individualized, case-by-case consideration of convenience and fairness.’” *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 29 (1988) (quoting *Van Dusen v. Barrack*, 376 U.S. 612, 622 (1964)). “Whether a transfer is appropriate depends on two inquiries: (1) whether the action ‘might have been brought’ in the proposed transferee court and (2) whether various factors are satisfied so as to determine if a transfer to a more convenient forum is justified.” *Del Monte Fresh Produce Co. v. Dole Food Co.*, 136 F. Supp. 2d 1271, 1281 (S.D. Fla. 2001) (citing *Miot v. Kechijian*, 830 F. Supp. 1460, 1465-66 (S.D. Fla. 1993) (denying motion for transfer where above test was not met)).

The following factors are relevant in determining whether to transfer a case under Section 1404(a):

(1) the convenience of the witnesses; (2) the location of relevant documents and the relative ease of access to sources of proof; (3) the convenience of the parties; (4) the locus of operative facts; (5) the availability of process to compel the attendance of unwilling witnesses; (6) the relative means of the parties; (7) a forum’s familiarity with the governing law; (8) the weight accorded a plaintiff’s choice of forum; and

(9) trial efficiency and the interests of justice, based on the totality of the circumstances.

Manuel, 430 F.3d at 1135 (citing *Gibbs & Hill, Inc. v. Harbert Int'l, Inc.*, 745 F. Supp. 993, 996 (S.D.N.Y. 1990)). “The purpose of Section 1404(a) is not to shift inconvenience from a defendant to a plaintiff, nor is it to allow adjudication in a forum that is likely to prove equally convenient or inconvenient.” *Rishell v. Comput. Scis. Corp.*, 2013 WL 11834245, at *1 (M.D. Fla. July 24, 2013), Report and Recommendation adopted, 2013 WL 11836753 (M.D. Fla. July 30, 2013). As such, the burden is on Movants to establish that the SDNY is a more convenient forum than this District. See *In re Ricoh Corp.*, 870 F.2d 570, 573 (11th Cir. 1989).

III. ANALYSIS

Movants and Citi argue that the Writ and Interpleader Claims should be transferred to the SDNY because (1) Plaintiffs filed the SDNY Writ before they filed the Writ with this District and (2) the SDNY is the proper venue as that is where the Blocked Account was created and is currently located. And that is where other parties with no connection to this District may have a beneficial interest in the Blocked Account. Plaintiff's response is that the first-filed rule does not apply because it only filed the SDNY Writ to perfect its judgment lien priority vis-à-vis other competing creditors under New York Civil Practice Law & Rules (C.P.L.R.) § 5232 and has not filed a TRIA turnover “motion” in the SDNY. Plus, if the rule did apply, Plaintiffs argue the following compelling circumstances support an exception to the rule: (1) this Court has already completed TRIA executions on other assets owned by Movants, (2) other banks have answered writs of garnishment without any

objection, (3) there is already a TRIA turnover motion on the Blocked Account pending in this District, and (4) Movants only want to transfer the Writ to the SDNY to cause a delay. Plaintiffs argue that this District is the proper venue for the same listed compelling circumstances and that a substantial portion of the assets owned by Movants to be garnished are located in this District.

The Court agrees that the Writ and the Interpleader Claims should be transferred to the SDNY because the first-filed rule favors transfer and the SDNY is a better venue, in the interest of justice and judicial economy, for the resolution of this particular dispute.

A. The First-Filed Rule Favors Transfer to the SDNY

Before we can apply the three factors of the first-filed rule, we must first determine if the rule applies. Typically, the first-filed rule is used when there have been two complaints filed in different districts. Plaintiffs argue that the rule does not apply because it has not filed a turnover “motion” against the Blocked Account in the SDNY. But the rule does not require that there have been two “motions” filed in separate districts. The first-filed rule only requires us to determine if there are two “actions” that are competing against each other in separate districts. The status of individual motion practice within those dueling districts is a very secondary consideration. *See, e.g., Collegiate Licensing Co. v. Am. Cas. Co. of Reading, Pa.*, 713 F.3d 71, (11th Cir. 2013) (first-filed rule governs where “two actions involving overlapping issues and parties are pending in two federal courts”) (affirming first-filed rule is triggered when complaint is filed in first district and where dispute is

“initially seized” as opposed to when motions for intervention were first filed) (citing *Manuel*, 430 F.3d at 1135).

Plaintiffs commenced the action against Citi in this District when they filed the Writ on February 20, 2019. The action in the SDNY was “initially seized” when Plaintiffs filed the SDNY Writ on January 14, 2019. These two actions are currently competing against each other; they both are first steps in moving to garnish funds from the same account maintained by Citi. The Court cannot rely on the Plaintiffs’ alleged motive of perfecting a lien as Plaintiffs might have the dual motive to eventually file a TRIA turnover motion in the SDNY. Simply put, if the Court denied the pending TRIA turnover motion in this District, Plaintiffs could easily file a duplicate motion in the SDNY as that action has already begun. Thus, there are two competing actions pending in both the SDNY and this District. The first-filed rule clearly applies notwithstanding Plaintiffs’ theory that they could control this rule by choosing which district to file a turnover motion and when. As the Eleventh Circuit has found, what is most telling is the essential character of the proceedings and the parties to those actions. By that measure, the SDNY is the first-filed district given the identical character of the proceedings Plaintiffs initiated in the first place.

Having established that the first-filed rule applies to the Writ, we next apply the rule’s three factors. The first factor cuts in Movants favor because the SDNY Writ was filed 37 days prior to the filing of the Writ in this District. The second factor favors transfer because the parties are identical, and the final factor cuts in favor of transfer because the issues are identical. With the first-to-file presumption

established, the burden shifts to Plaintiffs to offer rebuttal evidence of compelling circumstances that warrant this case to remain before this Court.

Plaintiffs do not provide any compelling circumstances. Plaintiffs contend that the Court has already completed TRIA executions on other assets owned by Movants. The Writ, however, is unique to the Blocked Account, so it is irrelevant if the Court has already completed TRIA executions on other assets (i.e. condos and yachts located in Florida) owned by Movants because the material facts of those executions are not relevant in this action. Plaintiffs also argue that other banks have answered writs of garnishment without any objection. There is nothing compelling about the behavior of other parties – there is also no evidence that those writs involved bank accounts located outside of Florida nor that they may have beneficial owners besides Movants. And just because one bank jumped off a bridge, doesn't mean Citi should.

The Court also does not find it compelling that there is already a pending TRIA turnover motion on the Blocked Account in this District. A similar motion can be easily replicated and filed in the SDNY. Furthermore, there is a pending motion to dismiss the SDNY Writ filed by Movants, *see Stansell v. FARC et al.*, Civ. Action No. 1:16-mc-00405-ALC (S.D.N.Y.; D.E. 56), and Plaintiffs registered its default judgment against Movants in the SDNY in 2016, so the SDNY is already aware of the underlying issues of the case and the Blocked Account. But most compellingly, the SDNY is where Citi's Blocked Account is located and where Citi has sought to protect the interests of its account holders. That fact is far more persuasive than where Plaintiffs have first filed their turnover motion.

Finally, Plaintiffs argue that Movants only want to transfer the Writ to the SDNY to cause a delay. First, Plaintiffs do not proffer how a delay is a compelling circumstance (i.e. the funds in the blocked account may be gone by the time the action is transferred). To the contrary, any potential discovery disputes regarding the Blocked Account and its creation and ownership could be resolved in the SDNY in a timelier manner than this District because that is where it was created and currently managed. Additionally, this District has no personal jurisdiction against SIX, the party that created the securities accounts that now fund the Blocked Account. These are more compelling reasons to transfer the Writ to the SDNY than any potential delay.

Accordingly, with the first-filed presumption established and no compelling circumstances provided as an exception to the first-filed rule, the Writ and the Interpleader Claims should be transferred to the SDNY. Regardless, Section 1404(a) also favors transferring the action to the SDNY.³

B. The SDNY is a More Convenient Forum than this District

The first consideration when determining the merits of a transfer pursuant to Section 1404(a) is whether the action may have been brought in the desired district of transfer, which in this proceeding is the SDNY. *See Del Monte Fresh Produce Co.*, 136 F. Supp. 2d at 1281. Therefore, we must determine if Citi, the garnishee, and the Blocked Account are subject to jurisdiction in the SDNY.

³ The Court notes that because the first-filed rule favors transfer, an analysis of a change of venue pursuant to Section 1404(a) is not required.

“[G]arnishment or foreign attachment is a proceeding *quasi in rem*.” *Shaffer v. Heitner*, 433 U.S. 186, 211 n.38 (1977) (quoting *Pennington v. Fourth Nat. Bank*, 243 U.S. 269, 271 (1917)); *SunTrust Bank v. Arrow Energy, Inc.*, 199 So. 3d 1026, 1028 (Fla. 4th DCA 2016) (“Garnishment is a *quasi in rem* proceeding”). As with *in rem* proceedings, jurisdiction in *quasi in rem* proceedings “is based on the court’s power over property within its territory[.]” *Shaffer*, 433 U.S. at 199; *SunTrust Bank*, 199 So. 3d at 1028 (“[In garnishment suits], a court must have both the jurisdictional authority to adjudicate the class of cases to which the case belongs and *jurisdictional authority over the property which is the subject matter of the controversy*.”) (emphasis in original) (quoting *Ruth v. Dep’t of Legal Affairs*, 684 So. 2d 181, 185 (Fla. 1996)). “Garnishment proceedings have a dual nature: while a garnishment action moves against the garnishee in personam, the object of such proceedings is to obtain a judgment against the debtor’s property, and the court issuing the process must have jurisdiction over *both* the garnishee and any property which is held by the garnishee.” *APR Energy, LLC v. Pakistan Power Res., LLC*, 2009 WL 425975, at *2 (M.D. Fla. Feb. 20, 2009) (emphasis in original) (quoting 6 Am. Jur. 2d Attachment and Garnishment § 19 (2008)).

Therefore, the property held by a garnishee must be located in the jurisdiction of the presiding court for venue to be proper. *See Stansell v. Revolutionary Armed Forces of Colombia (FARC)*, 149 F. Supp. 3d 1337, 1339-40 (M.D. Fla. 2015) (holding that when a “plaintiff serves a writ of garnishment seeking to attach bank accounts located outside the state of Florida, the court lacks jurisdiction over the property”);

APR Energy, 2009 WL 425975, at *2 (holding that Florida did not have jurisdiction to issue a writ or garnishment against a bank account in Oklahoma because the Court must “have jurisdiction over the property to be garnished”).

In the present case, subject matter jurisdiction of this District is based on Section 201(a) of TRIA, which provides this Court with subject matter jurisdiction over post-judgment execution and attachment proceedings against a blocked account. The same would be true if this case were brought in the SDNY. Because Citi maintains the Blocked Account in New York, New York, there is no question that personal jurisdiction, venue, and service of process would have been proper there.

The Blocked Account was created and is currently located in New York, so the SDNY has jurisdiction over it. Moreover, the SDNY would have jurisdiction over SIX, whom is allegedly a beneficial owner of the Blocked Account and a Swiss corporation, as it entered into the agreement that created the securities accounts underlying the funds in the blocked account in New York. Accordingly, this action could have been brought in the SDNY.

Having determined that the action could have been brought in the SDNY, the Court’s next consideration is whether the transfer would be for the convenience of parties and witnesses and in the interest of justice. This depends on certain factors, including the convenience of the parties, the convenience of the witnesses, the relative ease of access to sources of proof, the availability of process to compel the presence of unwilling witnesses, the cost of obtaining the presence of witnesses, and the SDNY’s

familiarity with the governing law. *See Del Monte Fresh Produce Co.*, 136 F. Supp. 2d at 1282 (listing factors).

The Blocked Account was created in New York, and potential witnesses regarding its creation and ownership reside in that state. Citi has alleged that SIX may have a beneficial ownership in the Blocked Account under Article 8 of the Uniform Commercial Code.⁴ The property in the Blocked Account has a complex structure that has not been fully outlined by any party in this District. Any potential discovery disputes regarding the Blocked Account and ownership structure could be resolved in the SDNY in a timelier manner because that is where it was created and currently managed.

Plaintiffs have also contended that the C.P.L.R. governs the “enforcement and collection of money judgments” in New York. The SDNY is more familiar with C.P.L.R., which apparently applies to an account located in New York, than this District. Because the potential evidence that is necessary to determine the beneficial ownership of the Blocked Account is located in New York and New York law is to be applied, transferring the Writ and the Interpleader Claims to the SDNY would be in the interest of justice. Thus, the Writ and the Interpleader Claims should be transferred to the SDNY pursuant to Section 1404(a).

⁴ Under Article 8, “all interests in [a] financial asset held by the securities intermediary [such as Citi] are held by the securities intermediary for the entitlement holders,” and an entitlement holder such as SIX has a “property interest with respect to a particular financial asset” equal to “a pro rata property interest in all interests in that financial asset held by the securities intermediary.” U.C.C. § 8- 503; § 8-102(a)(7), (a)(14) (defining “securities intermediary” and “entitlement holder”).

III. CONCLUSION

For both these separate reasons, this proceeding should be finally adjudicated in the SDNY. We thus **RECOMMEND** that [D.E. 174] the Motion to transfer the Writ and the Interpleader Claims to the SDNY be **GRANTED**. We therefore also **RECOMMEND** the following:

1. Movants' [D.E. 174] Motion to Dismiss be **DENIED as moot**;
2. Plaintiffs' [D.E. 152] Motion to Dismiss Citi's Interpleader Claims be **DENIED as moot**; and
3. Plaintiffs' [D.E. 177] Motion for Entry of a TRIA Turnover Judgement on Citi be **DENIED as moot**.

Pursuant to Local Magistrate Rule 4(b) and Fed. R. Civ. P. 73, the parties have twenty-one (21) days from service of this Report and Recommendation within which to file written objections, if any, with the Honorable Judge Robert N. Scola. The Court finds good cause to extend the objection period based on the pending national health emergency. Failure to timely file objections shall bar the parties from *de novo* determination by the District Judge of any factual or legal issue covered in the Report *and* shall bar the parties from challenging on appeal the District Judge's Order based on any unobjected-to factual or legal conclusions included in the Report. 28 U.S.C. § 636(b)(1); 11th Cir. Rule 3-1; *see, e.g., Patton v. Rowell*, 2017 WL 443634 (11th Cir. Feb. 2, 2017); *Cooley v. Comm'r of Social Security*, 2016 WL 7321208 (11th Cir. Dec. 16, 2016).

DONE AND SUBMITTED in Chambers at Miami, Florida this 23rd day of
March, 2020.

/s/ Edwin G. Torres
EDWIN G. TORRES
United States Magistrate Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

KEITH STANSELL, et al.,

Plaintiffs,

Civil Action: 1:19-cv-20896-RNS

v.

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

Defendants.

PROPOSED ORDER

AND NOW, this _____ day of May, 2020, it is hereby **ORDERED AND DECREED** that Samark Jose López Bello, Yakima Trading Corporation, EPBC Holdings, Ltd., 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 64E LLC, and 200G PSA Holdings LLC, Profit Corp. CA, SMT Technologia CA, and PYP International LLC's Motion to Waive the Bond Requirement and Stay the Enforcement of the Judgment Pending Appeal is **GRANTED**;

And it is **ORDERED AND DECREED NO BOND OR SECURITY IS REQUIRED TO BE POSTED**; and it is

FURTHER ORDERED AND DECREED this matter is STAYED pending Appeal and until further Order of this Court; and it is

FURTHER ORDERED AND DECREED that garnishees shall freeze the subject bank accounts until further Order of this Court.

Hon. Robert N. Scola, U.S.D.J.

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App000411

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

KEITH STANSELL, et al.,

Plaintiffs,

v.

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

Defendants.

Civil Action: 1:19-cv-20896-RNS

**EXPEDITED MOTION TO WAIVE THE BOND REQUIREMENT AND STAY THE
ENFORCEMENT OF THE JUDGMENT PENDING APPEAL**

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Samark Jose López Bello, Yakima Trading Corporation, EPBC Holdings, Ltd., 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 64E LLC, and 200G PSA Holdings LLC, Profit Corp. CA, SMT Technologia CA, and PYP International LLC (“Moving Parties”), hereby submit this Motion to Waive the Bond Requirement and Stay The Enforcement of the Judgment Pending Appeal.

Certification and Reasons for Expedited Request Pursuant to Local Rule 7.1(d)

1. On April 30, 2020, the Court granted Plaintiffs’ Motion for Turnover Judgment in the amount of \$53,208,315. (ECF Doc. No. 322).
2. The Moving Parties filed a Notice of Appeal on May 6, 2020. (ECF No. 341).
3. The Moving Parties request action on or before May 11, 2020.
4. “Except as provided in Rule 62(c) and (d), [which is not applicable here], execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise. Fed. R. Civ. P. 62(a).
5. In 2018, Rule 62(a) of the Federal Rules of Civil Procedure was amended. The amendment extended the automatic stay for execution on a judgment from fourteen to thirty days after the judgment is entered. Fed. R. Civ. P. 62(a). According to the committee's notes, “Amended Rule 62(a) expressly recognizes the court's authority to dissolve the automatic stay or supersede it by a court-ordered stay.” Fed. R. Civ. P. 62(a) Committee Notes (2018). “One reason for dissolving the automatic stay may be a risk that the judgment debtor's assets will be dissipated. Similarly, it may be important to allow immediate enforcement of a judgment that does not involve a payment of money.” Id. Among other things, “the court may choose to supersede [the Rule 62(a) automatic stay] by ordering a stay that lasts longer or requires security.” Id.; see also 11 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2902 (3d ed. 2020).
6. The Moving Parties are entitled to a stay on enforcement of the April 30, 2020 judgment as a matter of right by posting a bond or other security pursuant to Fed. R. Civ. P. 62(b). District courts, however, are permitted to waive the bond provision, when the judgment-debtor cannot post a bond and when there is ample security, the subject matter of the instant Motion.
7. The Moving Parties must seek permission from the District Court before requesting a stay in the Eleventh Circuit.

8. In the event that the District Court denies the instant Motion, the Moving Parties need to provide the Eleventh Circuit with sufficient time to rule upon the Motion to Stay before the expiration of the 30 day automatic stay period.
9. And in the event the Eleventh Circuit denies the Motion to Stay, the Moving Parties need sufficient time to file an emergency petition in the United States Supreme Court before the expiration of the 30 day automatic stay period.

Procedural History

10. On February 13, 2017, the U.S. Department of the Treasury's Office of Foreign Asset Control ("OFAC") designated Mr. López and thirteen related companies under the Foreign Narcotics Kingpin Designation Act ("Kingpin Act"). OFAC blocked Mr. López's United States bank accounts which, excluding the Citibank account, are the subject of the April 30, 2020 turnover Order. (ECF Doc. No. 339).¹
11. On February 15, 2019, the District Court attached the garnished bank accounts that are subject to the instant judgment. These attachments have remained in place since that time and take precedence over all other unsecured creditors. As of this filing, there are no other secured or unsecured creditors that Plaintiffs have identified that have a valid lien on these accounts. Thus, the status quo, has remained the same since February 15, 2019.
12. On April 30, 2020, the Court granted Plaintiffs' Motion for Turnover Judgment in the amount of \$53,208,315. (ECF Doc. No. 322).
13. The Moving Parties filed a Notice of Appeal on May 6, 2020. (ECF No. 341).

Argument

14. Pursuant to Local Rule 62.1, "[a] supersedeas bond or other security staying execution of a money judgment shall be in the amount of 110% of the judgment, to provide security for interest, costs, and any award of damages for delay.
15. Pursuant to Florida law, garnishment proceedings and subsequent turnover orders are considered monetary judgments. Because the turnover order is considered a monetary judgment, the Moving Parties are entitled to a stay on enforcement of that judgment as a

¹UBS Financial Services, Inc. (\$28,970,462); RJA Financial Services, Inc. (\$2,361,839.10); Branch Banking & Trust Co. (\$1,332,859.11); Morgan Stanley Smith Barney LLC (\$11,498,994.68); Safra National Bank of New York (\$9,044,160.79); and Citibank, N.A. (\$269,386,498.86). (See Docket Nos. 322, 323, and 322).]

matter of right by posting a bond or other security pursuant to Fed. R. Civ. P. 62(b).

District courts, however, are permitted to waive the bond provision, when the judgment-debtor cannot post a bond and when there is ample security. These conditions exist in this case and warrant a waiver of the bond requirement.

16. “The purpose of a supersedeas bond is to protect the appellees from a loss resulting from the stay of execution.” Whitesell Corp. v. Electrolux Home Prod., Inc., No. CV 103-050, 2019 WL 2448665, at *1 (S.D. Ga. June 10, 2019)(citing Poplar Grove Planting & Ref. Co. v. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1190-91 (5th Cir. 1979); Prudential Ins. Co. v. Boyd, 781 F.2d 1494, 1498 (11th Cir. 1986) (stating that the purpose of the supersedeas bond is to preserve the status quo and protect the rights of the non-appealing party during appeal)).
17. Rule 62(d) does not preclude the court from issuing a stay without a bond or upon the posting of a partial bond. See Wunschel & Small, Inc., v. United States, 554 F. Supp. 444-45 (U.S. Cl. Ct. 1983); C. Albert Sauter Co. v. Richard S. Sauter Co., 368 F. Supp. 501, 520–21 (E.D. Pa. 1973).
18. The attachments over the garnished accounts provide sufficient security that will maintain the status quo during the pendency of the appeal. (ECF No. 323 at 2, n. 1)(As of January 29, 2019, the Blocked Account held security entitlements, as well as certain related cash proceeds, with an aggregate value of \$269,386,498.86.”).
19. Moving Parties cannot post a bond because all assets in the United States are frozen pursuant to the United States Department of Treasury (OFAC) blocking order of February 13, 2017. Nor are there any liquid foreign funds available to use for a bond. (Declaration of Samark Jose López Bello, ¶¶ 7-15, attached as Exhibit A).
20. Even if there was money was available outside of the United States, any attempt to fund a bond is contingent upon OFAC’s approval of a license in time to prevent the judgment from being executed upon. Under federal law, the Moving Parties are prohibited from seeking or posting a bond unless OFAC issues a license for the transfer of unblocked assets to the United States. See 31 C.F.R. §598.202. The OFAC blocking order further prevents the accounts from being liquidated pending appeal. 31 C.F.R. §598.202(b). (See Declaration of Jeffrey M. Scott, Esquire, ¶¶ 9-13, attached hereto as Ex. B).

21. Further, OFAC in the past, has refused to grant an application for a similar bond to prevent the sale of property owned by the Moving Parties. Id.
22. The Moving Parties risk losing over \$53 million if they cannot post a bond pending appeal.
23. If a stay pending appeal is not granted because the Moving Parties are not granted timely permission to purchase a bond by OFAC, the funds will be gone forever. And, the Moving Parties will not be able to recoup any of those lost funds, should they be successful on appeal.
24. To ameliorate any concern about the need to further protect the assets from being encumbered or liquidated in the interim, this Court can enter an order directing each garnishee to freeze the subject accounts, pending appeal, until further Order of this Court.

Relief Sought

For these reasons, and those that follow in the attached memorandum of law, the Moving Parties respectfully request this Court stay the final judgment pending appeal and waive the bond and security requirement.

Certification of Counsel Pursuant to Local Rule 7.1

The undersigned counsel for the Moving Parties has conferred with counsel for Plaintiffs regarding the relief sought in the motion in a good faith effort to resolve the issues and Plaintiffs have indicated their objection to the motion.

Dated: May 6, 2020

Respectfully submitted,

/s/

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218487023v1

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

KEITH STANSELL, et al.,

Plaintiffs,

v.

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

Defendants.

Civil Action: 1:19-cv-20896-RNS

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WAIVE
THE BOND REQUIREMENT AND STAY THE ENFORCEMENT OF
THE JUDGMENT PENDING APPEAL**

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Samark Jose López Bello, Yakima Trading Corporation, EPBC Holdings, Ltd., 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 64E LLC, and 200G PSA Holdings LLC, Profit Corp. CA, SMT Technologia CA, and PYP International LLC (“Moving Parties”), hereby submit this Memorandum of Law in Support of their Motion to Waive the Bond Requirement and Stay The Enforcement of the Judgment Pending Appeal.

I. INTRODUCTION

This matter has been proceeding under Federal Rule of Civil Procedure 69(a)(1), which commands that state civil procedure governs execution proceedings. Accordingly, Florida law controls. See Stansell v. Revolutionary Armed Forces of Colombia (FARC), 711 F.3d 713, 733 (11th Cir. 2014). Pursuant to Florida law, garnishment proceedings and subsequent turnover orders are considered monetary judgments. Because the turnover order is considered a monetary judgment, the Moving Parties are entitled to a stay on enforcement of that judgment as a matter of right by posting a bond or other security pursuant to Fed. R. Civ. P. 62(b). District courts, however, are permitted to waive the bond provision, when the judgment-debtor cannot post a bond and when there is ample security. These conditions exist in this case and warrant a waiver of the bond requirement.

A bond is unnecessary because this Court has already imposed a post-judgment attachment on the subject financial accounts. Even absent any other circumstances, the Moving Parties are unable to liquidate any of the assets identified in the April 30, 2020 Order, as all funds remained subject to the Court’s attachment.

Additionally, the Moving Parties cannot post a bond because all assets in the United States are frozen pursuant to the United States Department of Treasury (OFAC) blocking order of February 13, 2017. Nor are there any liquid foreign funds available to use for a bond. Even if there was money was available outside of the United States, any attempt to fund a bond is contingent upon OFAC’s approval of a license in time to prevent the judgment from being executed upon. The OFAC blocking order further prevents the accounts from being liquidated pending appeal. Moreover, the Citibank account, on which Plaintiffs have already secured an attachment, but is not the subject of the April 30, 2020 turnover Order, has been reported to be in excess of \$260,000,000; it provides ample security to protect the current judgment pending appeal.

For these reasons, and those that follow, the Moving Parties request this Court to stay the judgment pending appeal and waive the bond and security requirement.

II. FACTS AND PROCEDURAL HISTORY

On February 13, 2003, Plaintiffs were flying over Colombia while performing counter-narcotics reconnaissance. Members of the Revolutionary Armed Forces of Colombia (“FARC”) shot their plane down and, after the plane’s crash landing, captured the group. FARC immediately executed one member of the group and took the survivors hostage, holding them for over five years. After they were rescued and returned to the United States, Plaintiffs filed a complaint against FARC in the United States District Court for the Middle District of Florida under the Antiterrorism Act, 18 U.S.C. § 2333 (“ATA”). After FARC failed to appear, the court granted Plaintiffs’ motion for default judgment and ordered FARC to pay \$318,030,000 in damages. On July 28, 2010, Plaintiffs registered their judgment against FARC in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. §1963.

On February 13, 2017, the U.S. Department of the Treasury’s Office of Foreign Asset Control (“OFAC”) designated Mr. López and thirteen related companies under the Foreign Narcotics Kingpin Designation Act (“Kingpin Act”). OFAC blocked Mr. López’s United States bank accounts which, excluding the Citibank account, are the subject of the April 30, 2020 turnover Order. (ECF Doc. No. 339).¹

On February 15, 2019, the District Court attached the garnished bank accounts that are subject to the instant judgment. These attachments have remained in place since that time and take precedence over all other unsecured creditors. As of this filing, there are no other secured or unsecured creditors that Plaintiffs have identified that have a valid lien on these accounts. Thus, the status quo, has remained the same since February 15, 2019.

The federal government has the sole authority over foreign policy and national security. American Ins. Ass'n v. Garamendi, 539 U.S. 396, 413 (2003). The federal government, through OFAC, “administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals....” <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>. State law collection procedures cannot interfere or override the federal government’s regulatory scheme in the area of national security. See Islamic Am. Relief Agency v. Gonzales, 477 F.3d

¹UBS Financial Services, Inc. (\$28,970,462); RJA Financial Services, Inc. (\$2,361,839.10); Branch Banking & Trust Co. (\$1,332,859.11); Morgan Stanley Smith Barney LLC (\$11,498,994.68); Safra National Bank of New York (\$9,044,160.79); and Citibank, N.A. (\$269,386,498.86). [See Docket Nos. 322, 323, and 339.]

728, 734 (D.C. Cir. 2007) (OFAC operates “in an area at the intersection of national security, foreign policy, and administrative law.”). As a result of this designation, Lopez was subject to the specific regulations that apply to the Kingpin Act. See 31 C.F.R. § 598, et seq. Posting a bond, without specific OFAC permission, would be in violation of OFAC regulations and could give rise to criminal penalties.

Under §598.301, “the terms blocked account and blocked property mean any account or property subject to §598.202 held in the name of a specially designated narcotics trafficker, or in which a specially designated narcotics trafficker has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.”

Accordingly, all of López’s blocked assets are frozen, 31 C.F.R. §598.202(a), unless a specific license is authorized by OFAC. The governing OFAC regulation states:

Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any specially designated narcotics trafficker is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security.

31 C.F.R. §598.202(b). Under federal law, the Moving Parties are prohibited from seeking or posting a bond unless OFAC issues a license for the transfer of unblocked assets to the United States. See 31 C.F.R. §598.202. Even assuming that within thirty days the Moving Parties could muster sufficient funds for a bond from some source, and file an application for a license and that OFAC would grant such an application, a separate license then would be required in favor of any surety company in order for the bond transaction to even take place. See 31 C.F.R. §598.503 (“The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license.”). There is no mechanism for ensuring OFAC will issue a license and no requirement for OFAC to move with any due haste on the application. OFAC would deem the purchase of a bond, absent a specific license, as a prohibited transaction. Further, even if the Moving Parties were de-

listed sometime in the future, a delisting or a change in OFAC's position during TRIA execution proceedings cannot be applied retroactively. Stansell v. Revolutionary Armed Forces of Colombia, 771 F. 3d 713, 733 (11th Cir. 2014).

In sum, the existing attachments on all bank sufficient protection and adequate security pending appeal. To ameliorate any concern about the need to further protect the assets from being encumbered or liquidated in the interim, this Court can enter an order directing each garnishee to freeze the subject accounts, pending appeal, until further Order of this Court.

III. ARGUMENT

A. The Moving Parties Are Entitled To A Stay As A Matter Of Right

"Except as provided in Rule 62(c) and (d), [which is not applicable here], execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise. Fed. R. Civ. P. 62(a). A party may obtain a stay on enforcement of a judgment as a matter of right by posting a bond or other security. Fed. R. Civ. P. 62(b). Fed. R. Civ. P. 62 (2018 Advisory Committee Notes)("The new rule's text makes explicit the opportunity to post security in a form other than a bond."). Pursuant to Local Rule 62.1, "[a] supersedeas bond or other security staying execution of a money judgment shall be in the amount of 110% of the judgment, to provide security for interest, costs, and any award of damages for delay. Upon its own motion or upon application of a party the Court may direct otherwise." S.D. Fla. L.R. 62.1. The total amount of the judgment at issue here is \$53,208,315. (ECF Doc. No. 322).

"The purpose of a supersedeas bond is to protect the appellees from a loss resulting from the stay of execution." Whitesell Corp. v. Electrolux Home Prod., Inc., No. CV 103-050, 2019 WL 2448665, at *1 (S.D. Ga. June 10, 2019)(citing Poplar Grove Planting & Ref. Co. v. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1190-91 (5th Cir. 1979); Prudential Ins. Co. v. Boyd, 781 F.2d 1494, 1498 (11th Cir. 1986) (stating that the purpose of the supersedeas bond is to preserve the status quo and protect the rights of the non-appealing party during appeal)).² Rule 62(d) does not

² The Court need only determine whether a bond should be waived, there is no need to analyze any other factors related to the validity of a stay pending appeal. Turnover orders that are derived from garnishment proceedings are considered monetary judgments. See Fla. R. Civ. P. 1.570(a) (stating that Florida provides for two processes to enforce a judgment solely for the payment of money: execution and writ of garnishment); see also Arnold, Matheny and Eagan, P.A. v. First American Holdings, Inc., 982 So.2d 628, 632 (Fla. 2008) (noting that garnishment "is authorized as a method of collecting a monetary judgment against a defendant."); Caruana and Lorenzen, P.A. v. Garone, 748 So.2d 321, 322 (Fla. 3d DCA 1999) (noting that in an effort to collect on two money

preclude the court from issuing a stay without a bond or upon the posting of a partial bond. See Wunschel & Small, Inc., v. United States, 554 F. Supp. 444-45 (U.S. Cl. Ct. 1983); C. Albert Sauter Co. v. Richard S. Sauter Co., 368 F. Supp. 501, 520–21 (E.D. Pa. 1973).

There is, already, sufficient security already present in this case. The attachments over the garnished accounts provide sufficient security that will maintain the status quo during the pendency of the appeal. The Moving Parties' assets in the United States are frozen pursuant to OFAC regulations and the Moving Parties do not possess sufficient readily available liquid assets to obtain a bond or other security. (Declaration of Samark Jose López Bello, ¶¶ 7-15, attached as Exhibit A). Further, no future de-listing by OFAC, can abrogate the priority rights attendant to the attachments. Moreover, there is an attachment over the Citibank accounts which are reported to have a value of over \$269,000,000. (ECF No. 323 at 2, n. 1)(As of January 29, 2019, the Blocked Account held security entitlements, as well as certain related cash proceeds, with an aggregate value of \$269,386,498.86.”).

For these reasons, and those that follow, the Moving Parties respectfully request this Court stay the final judgment pending appeal and waive the bond and security requirement.

B. The Bond Requirement Should Be Waived

The posting of a bond or security is not mandatory and can be waived in the Court's discretion. The burden is on the moving party to show a need to depart from the general bond-posting requirement. Hurtado v. Balerno International Ltd., Civil Action No. 17-62200, 2018 WL 10517082, at *1 (S.D. Fla. July 11, 2018) (citing Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1191 (5th Cir. 1979); United States v. Kurtz, 528 F. Supp. 1113, 1115 (D. Pa.1981) (it is appellant's burden to demonstrate objectively that posting a full bond is impossible or impractical and “to propose a plan that will provide adequate (or as adequate

judgments that appellant had obtained against a former client, appellant served a writ of garnishment against the client's insurer); Williams Mgmt. Enters., Inc. v. Buonauro, 489 So.2d 160, 167-68 (Fla. 5th DCA 1986) (noting that “[t]o enforce money judgments, ancillary legal remedies, such as garnishment and attachment, are available to reach debts owed to, and funds held for, the judgment debtor. . .”) (emphasis added). Here, the District Court adopted the Report and Recommendation for the entry of a final judgment of garnishment be entered with respect to the subject financial accounts. Thus, the garnishment Orders are considered a monetary judgment pursuant to Florida law. As a result, the Moving Parties are entitled to a stay as a matter of right if a bond or security is posted, unless waived by the Court.

as possible) security for the appellee”). The former Fifth Circuit Court of Appeals gave relevant guidance on this point and held:

If a judgment debtor objectively demonstrates a present financial ability to facilely respond to a money judgment and presents to the court a financially secure plan for maintaining that same degree of solvency during the period of an appeal, the court may then exercise a discretion to substitute some form of guaranty of judgment responsibility for the usual supersedeas bond. Contrariwise, if the judgment debtor's present financial condition is such that the posting of a full bond would impose an undue financial burden, the court similarly is free to exercise a discretion to fashion some other arrangement for substitute security through an appropriate restraint on the judgment debtor's financial dealings, which would furnish equal protection to the judgment creditor.

Poplar Grove Planting & Ref. Co., 600 F.2d at 1191; Texaco Inc. v. Pennzoil Co., 784 F.2d 1133, 1154 (2d Cir. 1986), rev'd, 481 U.S. 1 (1987)(reversed on other grounds)([W]hen setting supersedeas bonds courts seek to protect judgment creditors as fully as possible without irreparably injuring judgment debtors.”). The posting of a bond should be weighed against the irreparable harm that could befall judgment debtor. In its discretion, the Court can protect all parties by fashioning a “substitute security through an appropriate restraint on the judgment debtor's financial dealings.” Poplar Grove, 600 F.2d at 1191.

This Court already fashioned a restraint to provide the Plaintiffs with adequate security pending appeal.³ The TRIA attachments, according to Plaintiffs, have priority over all other unsecured lienholders. Keeping the attachments in place protects the assets from being moved by any party. As further restraint, and in the interest of protecting the Plaintiffs, the Court can order the garnishees to “freeze” the funds pending further order of the District Court. This additional restraint, along with the current OFAC blocking rules, will prevent the Moving Parties, and any other third party, from using the assets for any purpose, maintaining the status quo. See Chmielewski v. City of St. Pete Beach, Civil Action No. 8:13–3170–T–27MAP, 2016 WL 7438432, at *1 (M.D. Fla. Sep. 16, 2016) (granting motion to waive bond requirement and finding that “[b]ecause the full amount of the judgment, plus two years of post-judgment interest, will be placed in a separate account from which the City cannot withdraw absent a Court order, I find that

³ As Plaintiffs have repeatedly argued, the February 15, 2019 Order of attachment was a post-judgment remedy.

the City has objectively demonstrated a present financial ability to pay the judgment and has presented a financially secure plan for maintaining that ability during the period of an appeal.”).

Pursuant to OFAC Regulations, the Moving Parties cannot post a bond without authorization from OFAC. In this very case, OFAC failed to act, or refused to act, when the Moving Parties requested approval to purchase a surety bond to prevent the sale of the Brickell properties, which occurred on April 16, 2019, OFAC refused to act and the properties were sold. (See Declaration of Jeffrey M. Scott, Esquire, ¶¶ 9-13, attached hereto as Ex. B). “Any attempt to purchase a surety bond, absent OFAC approval, will be considered a violation of the Kingpin Act, which can result in both civil and criminal penalties. (Narcotics Sanction Program at 5-6, attached hereto to Ex. C.). The United States Government can impose civil penalties in an amount up to \$1.075 million per violation. Likewise, [c]riminal penalties for corporate officers may include up to 30 years in prison and fines up to \$5 million. Criminal fines for corporations may reach \$10 million. And, [o]ther individuals could face up to 10 years in prison and fines pursuant to Title 18 of the United States Code for criminal violations of the Kingpin Act or the regulations.” (*Id.* at 6).

Further, Plaintiffs also have an attachment over the Citibank accounts in New York. This account was reported to have a value of over \$269,000,000. (ECF No. 323 at 2, n. 1)(As of January 29, 2019, the Blocked Account held security entitlements, as well as certain related cash proceeds, with an aggregate value of \$269,386,498.86.”). This attachment provides substantial protection and security for the current judgment of \$53 million. Because there are sufficient funds available to satisfy the judgment, the posting of a bond is unnecessary. Center for Individual Rights v. Chevaldina, 2019 WL 7370412, at *1 (S.D. Fla. Oct. 29, 2019) (citing Avirgan v. Hull, 125 F.R.D. 185, 186 (S.D. Fla. 1989)).

Where there is a substantial difference between the bond amount and the moving party’s assets, courts tend to find that the moving party’s ability to pay the bond is plain. See Hurtado, 2018 WL 10517082, at *2 (finding that posting of \$232,000 bond would be unnecessary where the movant “submitted documentation to the Court showing that [it was] insured in the amount of \$500,000,000.00 for liability[,] ha[d] a fixed value of 5,275,555.80 euros [and had] also represented to the Court that its insurer [would] step in to defend against Plaintiff’s claims once the Court dispose[d] of the Motion to Stay and the Motion to Set Aside Default Judgment.”); see also Arban v. W. Publ’g Corp., 345 F.3d 390, 409 (6th Cir. 2003) (affirming district court’s waiver of bond requirement where there was a “vast disparity” between the bond amount of

\$225,000 and the movant's annual revenues of \$2.5 billion); Guzman v. Boeing Company, 2019 WL 468195, at *7-8 (D. Mass. Feb. 6, 2019) (finding that the submission of a quarterly SEC report showing that Boeing's 2018 first quarter earnings exceeded \$2 billion indicated that Boeing "would readily be able to pay the judgment" of approximately \$2.3 million if the judgement was affirmed on appeal and therefore "the posting of a bond would be a waste of money."); In re Nassau County Strip Search Cases, 783 F.3d 414, 418 (2d Cir. 2015) (Finding that "Nassau County [] demonstrated the existence of appropriated funds, available for the purpose of paying judgments without substantial delay or other difficulty[,] making the posting of a bond a waste of money); HCB Contractors v. Rouse & Assocs., 168 F.R.D. 508, 512-13 (E.D. Pa. 1995)(Granting Stay Pending Appeal without posting bond). The Moving Parties have demonstrated their inability to pay and the Court's ability to maintain the status quo without causing irreparable harm to the Moving Parties.

The Moving Parties risk losing over \$53 million if they cannot post a bond pending appeal. If a stay pending appeal is not granted because the Moving Parties are not granted timely permission to purchase a bond, the funds will be gone forever. The Moving Parties will not be able to recoup any of those lost funds, should they be successful on appeal. Given these unique circumstances, which provide Plaintiffs with the utmost security, an alternative measure should be instituted to maintain the status quo without irreparably harming the Moving Parties. Rule 62(b) permits the Court to make "to fashion some other arrangement for substitute security through an appropriate restraint on the judgment debtor's financial dealings, which would furnish equal protection to the judgment creditor." Poplar Grove, 600 F.2d at 1191.

IV. CONCLUSION

The Moving Parties request this Court to waive the bond requirement, and stay the enforcement of the judgment pending appeal.

Date: May 6, 2020

Respectfully submitted,

/s/

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CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on May 6, 2020, I electronically filed the foregoing Motion to Waive the Bond Requirement and Stay the Enforcement of the Judgment Pending Appeal with the Clerk of the Court by using the CM/ECF system. I further certify that I served the foregoing document on all counsel of record via CM/ECF as follows:

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EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

KEITH STANSELL, et al.,

Plaintiffs,

Civil Action: 1:19-cv-20896-RNS

v.

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

Defendants.

**DECLARATION OF SAMARK JOSE LÓPEZ BELLO
PURSUANT TO 28 U.S.C. § 1746**

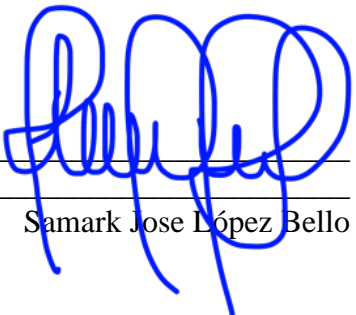
I, SAMARK JOSE LÓPEZ BELLO, hereby declare and say:

1. I, Samark Jose López Bello, hereby declare and say:
2. I have personal knowledge of the facts set forth in this declaration.
3. I am a citizen of Venezuela and I am making this declaration from without the United States.
4. I understand that the District Court entered a turnover judgment on April 30, 2020 against my bank accounts and my related companies' bank accounts.
5. I understand that the amount of the judgment totals \$53,208,315.
6. My Counsel will be filing an appeal of the April 30, 2020 Order to the Eleventh Circuit Court of Appeals.
7. I understand that in order to stay the enforcement of the judgment, while my appeal is pending, I must post a bond or security in the total amount of 110% of the judgment amount.
8. I have no available funds in the United States, or any property in the United States, that can be used to post any amount of security.
9. I do not own or possess any other funds, located outside of the United States, which can be used to post any amount of security.

10. Even if I had available funds to funds to post a bond, I am prohibited from doing so.
11. On February 13, 2017, the United States Department of Treasury (OFAC) blocked all of my assets and blocked my ability, as well as the designated companies, to sell, transfer, or engage in any business, with anyone in the United States. I have been fighting that designation since February, 2017.
12. The OFAC designation precludes any third-party to engage in any transaction with me or a designated company, without OFAC permission.
13. The OFAC designation prevents me and a designated company from purchasing a bond or any other form of security in the United States, absent a specific license granted by OFAC. Neither I, nor my Counsel, have a license that permits me to purchase a bond or any other form of security.
14. The OFAC designation also prevents me from purchasing a bond or any other form of security in the United States, with funds or assets located outside the United States, absent a specific license granted by OFAC. Neither I, nor my Counsel, have a license that permits me to purchase bond or any other form of security with assets located outside the United States.
15. If I attempt to purchase a bond or any other form of security, I can be criminally charged and be subject to civil penalties.
16. I respectfully request the Court to waive the bond or security requirement due to my inability to purchase a surety bond and my inability to conduct any business in the United States due to the OFAC designation of February 13, 2017.
17. All of these statements are based upon personal knowledge.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 6, 2020.



Samark Jose López Bello

218457200v1

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

KEITH STANSELL, et al.,

Plaintiffs,

Civil Action: 1:19-cv-20896-RNS

v.

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

Defendants.

DECLARATION OF JEFFREY M. SCOTT
PURSUANT TO 28 U.S.C. § 1746

1. I am a Partner at the law firm of Archer & Greiner, P.C., and legal counsel for Samark Jose López Bello, Yakima Trading Corporation, EPBC Holdings, Ltd., 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 64E LLC, and 200G PSA Holdings LLC, Profit Corp. CA, SMT Technologia CA, and PYP International LLC (collectively, the “Designated Parties”).

2. On February 13, 2017, the U.S. Department of the Treasury’s Office of Foreign Asset Control (“OFAC”) designated Mr. López and thirteen related companies under the Foreign Narcotics Kingpin Designation Act (“Kingpin Act”). The Designated Parties were subject to the specific regulations that apply to the Kingpin Act. See 31 C.F.R. § 598, et seq.

3. Under §598.301, “the terms blocked account and blocked property mean any account or property subject to §598.202 held in the name of a specially designated narcotics trafficker, or in which a specially designated narcotics trafficker has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.”

4. The governing OFAC regulation states:

Unless otherwise authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of or known to be held for the benefit of any specially designated narcotics trafficker is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of any such security or the endorsement or guaranty of signatures on any such security.

31 C.F.R. §598.202(b).

5. Under federal law, the Designated Parties are prohibited from seeking or posting a bond unless OFAC issues a license for the transfer of unblocked assets to the United States. See 31 C.F.R. §598.202.

6. “Any attempt to purchase a surety bond, absent OFAC approval, will be considered a violation of the Kingpin Act, which can result in both civil and criminal penalties. (Narcotics Sanction Program at 5-6, attached hereto as Ex. 1). The United States Government can impose civil penalties in an amount up to \$1.075 million per violation. Likewise, [c]riminal penalties for corporate officers may include up to 30 years in prison and fines up to \$5 million. Criminal fines for corporations may reach \$10 million. And, [o]ther individuals could face up to 10 years in prison and fines pursuant to Title 18 of the United States Code for criminal violations of the Kingpin Act or the regulations.” (Id. at 6).

7. On February 15, 2019 the District Court attached and levied the properties formerly owned by 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 64E LLC. The District Court also ordered the sale of the three properties.

8. The sale was scheduled for April 16, 2019.

9. On March 22, 2019, Archer & Greiner, P.C. filed an Application with OFAC requesting a license to secure a surety bond in order to obtain a hearing and prevent the sale of the three properties as required by Florida law. (See OFAC Application, attached hereto as Ex. 2.)

10. On March 29, 2019, the Moving Parties filed a Motion for Summary Judgment Seeking to Dissolve the Writs of Execution and Levies on the Brickell Properties (Doc. No. 109.)

11. On April 1, 2019, the Designated Parties filed a Motion to Stay the Sale of 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave 64E LLC, 1425 Brickell Ave Unit 46B LLC scheduled for April 16, 2019. (Doc. No. 110).

12. OFAC did not issue a license and never acted on the March 22, 2019 license application.

13. The three properties were sold on April 16, 2019.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on May 5, 2020.

A handwritten signature in black ink, appearing to read "Jeffrey M. Scott", is written above a horizontal line.

Jeffrey M. Scott

218484215v1

EXHIBIT 1

DEPARTMENT OF THE TREASURY

OFAC

Office of Foreign Assets Control

NARCOTICS SANCTIONS PROGRAM

This document is explanatory only and does not have the force of law. Executive Order 12978, applicable laws and the implementing Narcotics Trafficking Sanctions Regulations (31 C.F.R. Part 536), against narcotics traffickers centered in Colombia, as well as the Foreign Narcotics Kingpin Designation Act and the implementing regulations (31 C.F.R. Part 598), contain the legally binding provisions governing the sanctions against significant foreign narcotics traffickers and their organizations. This document does not supplement or modify the Executive Order, applicable laws or regulations.



Updated July, 18 2014

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SANCTIONS AGAINST NARCOTICS TRAFFICKERS

I. INTRODUCTION

On October 21, 1995, the President issued Executive Order (E.O.) 12978, “*Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers*,” to deal with the unusual and extraordinary posed by narcotics traffickers centered in Colombia. On March 5, 1997, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) issued the Narcotics Trafficking Sanctions Regulations, 31 C.F.R. Part 536, which implemented E.O. 12978.

On December 3, 1999, the President signed the Foreign Narcotics Kingpin Designation Act (the “Kingpin Act”) to apply economic and other financial sanctions to significant foreign narcotics traffickers and their organizations worldwide. On July 5, 2000, OFAC issued the Foreign Narcotics Kingpin Sanctions Regulations, 31 C.F.R. Part 598, which implemented the Kingpin Act.

II. OVERVIEW OF AUTHORITIES

E.O. 12978

On October 21, 1995, the President issued [E.O. 12978](#), declaring a national emergency to address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the actions of significant narcotics traffickers centered in Colombia, and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad. E.O. 12978 was issued under the authority of inter alia, the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 *et seq.*) (IEEPA) and the National Emergencies Act (50 U.S.C. §§ 1601 *et seq.*) (NEA).

On March 5, 1997, OFAC issued the Narcotics Trafficking Sanctions Regulations, [31 C.F.R. Part 536](#), implementing E.O. 12978 and blocking the property and interests in property in the United States, or in the possession or control of U.S. persons, of the persons listed in the Annex to E.O. 12978 (the “Annex”), as well as of any foreign person determined by the Secretary of the Treasury, after consultation with the Attorney General and the Secretary of State, to be a specially designated narcotics trafficker. A specially designated narcotics trafficker, as defined in 31 C.F.R. Part 536, meets the following criteria:

- Plays a significant role in international narcotics trafficking centered in Colombia;
- Materially assists in, or provides financial or technological support for or goods or services in support of, the narcotics trafficking activities of specially designated narcotics traffickers; or
- Is owned or controlled by, or acts for or on behalf of, any other specially designated narcotics trafficker.

THE KINGPIN ACT

On December 3, 1999, the President signed into law the [Kingpin Act](#) (21 U.S.C. §§ 1901-1908 and 8 U.S.C § 1182), providing authority for the application of sanctions to significant foreign narcotics traffickers and their organizations operating worldwide. Section 805(b) of the Kingpin Act blocks all property and interests in property within the United States, or within the possession or control of any U.S. person, which are owned or controlled by significant foreign narcotics traffickers, as identified by the President, or foreign persons designated by the Secretary of the Treasury, after consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug

Enforcement Administration, the Secretary of Defense, the Secretary of Homeland Security,¹ and the Secretary of State, as meeting the criteria as identified in the Kingpin Act.

On July 5, 2000, OFAC issued the Foreign Narcotics Kingpin Sanctions Regulations, [31 C.F.R. Part 598](#), which implement the Kingpin Act and block all property and interests in property within the United States, or within the possession or control of any U.S. person, which are owned or controlled by specially designated narcotics traffickers, as identified by the President, or foreign persons designated by the Secretary of the Treasury, after consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of Homeland Security and the Secretary of State, as meeting the following criteria:

- Materially assists in, or provides financial or technological support for or to, or provides goods or services in support of, the international narcotics trafficking activities of a specially designated narcotics trafficker;
- Owned, controlled, or directed by, or acts for or on behalf of, a specially designated narcotics trafficker; or
- Plays a significant role in international narcotics trafficking.

III. PROHIBITED TRANSACTIONS

E.O. 12978

E.O. 12978 blocks the property and interests in property in the United States, or in the possession or control of U.S. persons, of the persons listed in the Annex to E.O. 12978, as well as of any foreign person determined by the Secretary of the Treasury, after consultation with the Attorney General and the Secretary of State, to be a specially designated narcotics trafficker.

The names of persons and entities listed in the Annex to E.O. 12978 or designated pursuant to E.O. 12978, whose property and interests in property are therefore blocked, are published in the *Federal Register* and incorporated into OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List) with the OFAC program tag "[SDNT]." The SDN List is available through OFAC's web site:

<http://www.treasury.gov/sdn>

THE KINGPIN ACT

The Kingpin Act blocks all property and interests in property within the United States, or within the possession or control of any U.S. person, of the persons, identified by the President, or foreign persons designated by the Secretary of the Treasury, after consultation with the previously identified federal agencies.

The names of persons and entities designated pursuant to the Kingpin Act, whose property and interests in property are therefore blocked, are published in the *Federal Register* and incorporated into the SDN List with the OFAC program tag "[SDNTK]." The SDN List is available through OFAC's web site:

<http://www.treasury.gov/sdn>

¹ Since the establishment of the Department of Homeland Security (DHS) pursuant to the Homeland Security Act 2002 (Public Law 107-293) on November 25, 2002, DHS has participated as a consulting authority.

TRANSACTIONS

Unless otherwise authorized or exempt, transactions by U.S. persons, or in or involving the United States, are prohibited if they involve transferring, paying, exporting, withdrawing, or otherwise dealing in the property or interests in property of an entity or individual listed on the SDN List. The property and interests in property of an entity that is 50% or more owned, directly or indirectly, by a person on the SDN List are also blocked, regardless of whether the entity itself is listed. For additional guidance on the 50% rule please see:

http://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf

PROCEDURES TO REQUEST RECONSIDERATION FROM THE SDN LIST

A designated person may seek administrative reconsideration of the designation, or assert that the circumstances resulting in the designation no longer apply, and thus seek to have the designation rescinded pursuant to 31 C.F.R. § 501.807.

For example, a person designated as a Specially Designated Narcotics Trafficker may submit arguments or evidence that the person believes establishes that an insufficient basis exists for the designation pursuant to E.O. 12978 or the Kingpin Act. The Specially Designated Narcotics Trafficker also may propose remedial steps, such as corporate reorganization, resignation of persons from positions in a blocked entity, turning over seized assets or similar steps, which may negate the basis for designation. The request for reconsideration must be made in writing and addressed to the Office of Foreign Assets Control, ATTN: Office of Global Targeting, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. After OFAC has conducted a review of the request for reconsideration, it will provide a written decision to the Specially Designated Narcotics Trafficker. For additional information please see: [31C.F.R. § 501.807](#)

IV. AUTHORIZED OR EXEMPT TRANSACTIONS

EXEMPT TRANSACTIONS

Certain types of activities and transactions may be exempt from the prohibitions of the Narcotics Trafficking Sanctions Regulations. For example, the prohibitions in Part 536 do not prohibit the importation from any country and the exportation to any country of certain information or informational materials as defined in 31 C.F.R. § 536.306. This exemption, however, does not apply to Part 598.

GENERAL LICENSES

OFAC may authorize certain types of activities and transactions, which would otherwise be prohibited by E.O. 12978, by issuing a general license. General licenses may be published in the regulations, on OFAC's Web site, or both. For example, the provision of certain legal services to or on behalf of persons whose property and interests in property are blocked pursuant to E.O. 12978 and the Kingpin Act is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed. See 31 C.F.R. §§ 536.506 and 598.507. For an updated list of all general licenses relating to the narcotics sanctions programs, please see 31 C.F.R. §§ 536 subpart E and 598 subpart E and visit:

<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/narco.aspx>

SPECIFIC LICENSES

On a case-by-case basis, OFAC considers applications for specific licenses to authorize transactions that are neither exempt nor covered by a general license. Requests for a specific license must be submitted to OFAC's Licensing Division. License requests may be submitted using any of the following methods:

- Online: <http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx>

- Fax: (202) 622-1657
- U.S. mail: Assistant Director for Licensing, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220

LICENSING POLICY REGARDING SPECIFIC COLOMBIAN ENTITIES

OFAC currently authorizes the following U.S. suppliers to engage in certain transactions with Specially Designated Narcotics Traffickers that are currently Colombian Government-controlled entities, including the following entities:

- AGRONILO, Casa Grajales S.A., FREXCO, Grajales S.A., HOTEL LOS VINEDOS, Transportes del Espiritu Santo S.A., [Policy, 7/21/05 Press](#)
- G.L.G. S.A., Ramal S.A., [Policy, 2/16/07 Press](#)

V. PENALTIES

E.O. 12978

Civil monetary penalties of up to the greater of \$250,000 or twice the amount of the underlying transaction may be imposed administratively against any person who violates, attempts to violate, conspires to violate, or causes a violation of E.O. 12978 or the implementing regulations. Upon conviction, criminal fines of up to \$1,000,000, imprisonment for up to 20 years, or both, may be imposed on any person who willfully commits or attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of E.O. 12978 or the regulations.

THE KINGPIN ACT

Penalties for violations of the Kingpin Act range from civil penalties of up to \$1.075 million per violation to more severe criminal penalties. Criminal penalties for corporate officers may include up to 30 years in prison and fines up to \$5 million. Criminal fines for corporations may reach \$10 million. Other individuals could face up to 10 years in prison and fines pursuant to Title 18 of the United States Code for criminal violations of the Kingpin Act or the regulations.

ADDITIONAL RESOURCES

Lists of principal traffickers named under E.O. 12978 [SDNT] and all persons named in the Kingpin Act [SDNTK] along with resource documents are also available on OFAC web site:

www.treasury.gov/resource-center/sanctions/programs/pages/narco.aspx

This document is explanatory only and does not have the force of law. Please see particularly Executive Order 12978, the implementing Narcotics Trafficking Sanctions Regulations (31 C.F.R. Part 536), against narcotics traffickers centered in Colombia, the Foreign Narcotics Kingpin Designation Act, the implementing Kingpin Act regulations (31 C.F.R. Part 598), and other applicable laws and regulations for legally binding provisions governing the sanctions. This document does not supplement or modify the Executive Order, laws, or regulations.

The Treasury Department's Office of Foreign Assets Control also administers sanctions programs involving the Balkans, Belarus, Burma (Myanmar), the Central African Republic, Cote d'Ivoire, Cuba, the Democratic Republic of the Congo, Rough Diamond Trading (Kimberley Process), Iran, Iraq, Lebanon, Liberia, Libya, the Magnitsky Act, North Korea, Somalia, South Sudan, Sudan, Syria, Ukraine, Yemen, Zimbabwe, as well as highly enriched uranium, persons who commit, threaten to commit, or support terrorism, Foreign Terrorist Organizations, Terrorism List Governments, transnational criminal organizations, and proliferators of weapons of mass destruction and their supporters. For additional information about these programs or about sanctions involving international narcotics traffickers please contact:

OFFICE OF FOREIGN ASSETS CONTROL
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
www.treasury.gov/ofac
202/622-2490

EXHIBIT 2



O F A C

Office of Foreign Assets Control

License Application

Reference Number: Request for Surety Bond Pursuant to Court Order

Generated on 3/22/2019

Application Information

Application Type:	Transactional	Category:	Transactional
Application Reason:	Amendment	Subcategory:	Financial Transactions
Program(s):	Specially Designated Narcotics Traffickers	Previous Case ID:	N/A
Description of Subject Matter:			
Request for Surety Bond Pursuant to Court Order			

Contact Information

Applicant

Contact Category:	Institution		
Organization Name:	Archer & Greiner, P.C.		
Point of Contact Name:			
Address:	Line1: Three Logan Square		
	Line2: 1717 Arch Street		
	Line3: Suite 3500		
	City: PHILADELPHIA	State:	PENNSYLVANIA
	Zip: 19103	Country:	United States
Email Address:	jkolansky@archerlaw.com		
Phone:	Office: (215) 279-9693x5190		
	Mobile:		
	Fax: (215) 963-9999		
Principal Place of Business:	Philadelphia		
Place where Business is Incorporated:	PENNSYLVANIA		

Correspondent

Contact Category:	Institution		
Organization Name:	Archer & Greiner, P.C.		
Point of Contact Name:			
Address:	Line1: Three Logan Square		
	Line2: 1717 Arch Street		
	Line3: Suite 3500		
	City: PHILADELPHIA	State:	PENNSYLVANIA
	Zip: 19103	Country:	United States
Email Address:	jkolansky@archerlaw.com		
Phone:	Office: (215) 279-9693x5190		
	Mobile:		
	Fax: (215) 963-9999		
Principal Place of Business:	Philadelphia		
Place where Business is Incorporated:	PENNSYLVANIA		

Attachments

<u>Name</u>	<u>Document Type</u>
Request for Surety Bond Pursuant to Court Order	Supplemental Information
Application Summary	License Amendment Request

Certification

Signature:	Jeffrey M. Kolansky	Date:	3/22/2019
Email Address:	aborgatti@archerlaw.com		

EXHIBIT C

DEPARTMENT OF THE TREASURY

OFAC

Office of Foreign Assets Control

NARCOTICS SANCTIONS PROGRAM

This document is explanatory only and does not have the force of law. Executive Order 12978, applicable laws and the implementing Narcotics Trafficking Sanctions Regulations (31 C.F.R. Part 536), against narcotics traffickers centered in Colombia, as well as the Foreign Narcotics Kingpin Designation Act and the implementing regulations (31 C.F.R. Part 598), contain the legally binding provisions governing the sanctions against significant foreign narcotics traffickers and their organizations. This document does not supplement or modify the Executive Order, applicable laws or regulations.



Updated July, 18 2014

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SANCTIONS AGAINST NARCOTICS TRAFFICKERS

I. INTRODUCTION

On October 21, 1995, the President issued Executive Order (E.O.) 12978, “*Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers*,” to deal with the unusual and extraordinary posed by narcotics traffickers centered in Colombia. On March 5, 1997, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) issued the Narcotics Trafficking Sanctions Regulations, 31 C.F.R. Part 536, which implemented E.O. 12978.

On December 3, 1999, the President signed the Foreign Narcotics Kingpin Designation Act (the “Kingpin Act”) to apply economic and other financial sanctions to significant foreign narcotics traffickers and their organizations worldwide. On July 5, 2000, OFAC issued the Foreign Narcotics Kingpin Sanctions Regulations, 31 C.F.R. Part 598, which implemented the Kingpin Act.

II. OVERVIEW OF AUTHORITIES

E.O. 12978

On October 21, 1995, the President issued [E.O. 12978](#), declaring a national emergency to address the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the actions of significant narcotics traffickers centered in Colombia, and the extreme level of violence, corruption, and harm such actions cause in the United States and abroad. E.O. 12978 was issued under the authority of inter alia, the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 *et seq.*) (IEEPA) and the National Emergencies Act (50 U.S.C. §§ 1601 *et seq.*) (NEA).

On March 5, 1997, OFAC issued the Narcotics Trafficking Sanctions Regulations, [31 C.F.R. Part 536](#), implementing E.O. 12978 and blocking the property and interests in property in the United States, or in the possession or control of U.S. persons, of the persons listed in the Annex to E.O. 12978 (the “Annex”), as well as of any foreign person determined by the Secretary of the Treasury, after consultation with the Attorney General and the Secretary of State, to be a specially designated narcotics trafficker. A specially designated narcotics trafficker, as defined in 31 C.F.R. Part 536, meets the following criteria:

- Plays a significant role in international narcotics trafficking centered in Colombia;
- Materially assists in, or provides financial or technological support for or goods or services in support of, the narcotics trafficking activities of specially designated narcotics traffickers; or
- Is owned or controlled by, or acts for or on behalf of, any other specially designated narcotics trafficker.

THE KINGPIN ACT

On December 3, 1999, the President signed into law the [Kingpin Act](#) (21 U.S.C. §§ 1901-1908 and 8 U.S.C § 1182), providing authority for the application of sanctions to significant foreign narcotics traffickers and their organizations operating worldwide. Section 805(b) of the Kingpin Act blocks all property and interests in property within the United States, or within the possession or control of any U.S. person, which are owned or controlled by significant foreign narcotics traffickers, as identified by the President, or foreign persons designated by the Secretary of the Treasury, after consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug

Enforcement Administration, the Secretary of Defense, the Secretary of Homeland Security,¹ and the Secretary of State, as meeting the criteria as identified in the Kingpin Act.

On July 5, 2000, OFAC issued the Foreign Narcotics Kingpin Sanctions Regulations, [31 C.F.R. Part 598](#), which implement the Kingpin Act and block all property and interests in property within the United States, or within the possession or control of any U.S. person, which are owned or controlled by specially designated narcotics traffickers, as identified by the President, or foreign persons designated by the Secretary of the Treasury, after consultation with the Attorney General, the Director of Central Intelligence, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Secretary of Defense, the Secretary of Homeland Security and the Secretary of State, as meeting the following criteria:

- Materially assists in, or provides financial or technological support for or to, or provides goods or services in support of, the international narcotics trafficking activities of a specially designated narcotics trafficker;
- Owned, controlled, or directed by, or acts for or on behalf of, a specially designated narcotics trafficker; or
- Plays a significant role in international narcotics trafficking.

III. PROHIBITED TRANSACTIONS

E.O. 12978

E.O. 12978 blocks the property and interests in property in the United States, or in the possession or control of U.S. persons, of the persons listed in the Annex to E.O. 12978, as well as of any foreign person determined by the Secretary of the Treasury, after consultation with the Attorney General and the Secretary of State, to be a specially designated narcotics trafficker.

The names of persons and entities listed in the Annex to E.O. 12978 or designated pursuant to E.O. 12978, whose property and interests in property are therefore blocked, are published in the *Federal Register* and incorporated into OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List) with the OFAC program tag "[SDNT]." The SDN List is available through OFAC's web site:

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THE KINGPIN ACT

The Kingpin Act blocks all property and interests in property within the United States, or within the possession or control of any U.S. person, of the persons, identified by the President, or foreign persons designated by the Secretary of the Treasury, after consultation with the previously identified federal agencies.

The names of persons and entities designated pursuant to the Kingpin Act, whose property and interests in property are therefore blocked, are published in the *Federal Register* and incorporated into the SDN List with the OFAC program tag "[SDNTK]." The SDN List is available through OFAC's web site:

<http://www.treasury.gov/sdn>

¹ Since the establishment of the Department of Homeland Security (DHS) pursuant to the Homeland Security Act 2002 (Public Law 107-293) on November 25, 2002, DHS has participated as a consulting authority.

TRANSACTIONS

Unless otherwise authorized or exempt, transactions by U.S. persons, or in or involving the United States, are prohibited if they involve transferring, paying, exporting, withdrawing, or otherwise dealing in the property or interests in property of an entity or individual listed on the SDN List. The property and interests in property of an entity that is 50% or more owned, directly or indirectly, by a person on the SDN List are also blocked, regardless of whether the entity itself is listed. For additional guidance on the 50% rule please see:

http://www.treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf

PROCEDURES TO REQUEST RECONSIDERATION FROM THE SDN LIST

A designated person may seek administrative reconsideration of the designation, or assert that the circumstances resulting in the designation no longer apply, and thus seek to have the designation rescinded pursuant to 31 C.F.R. § 501.807.

For example, a person designated as a Specially Designated Narcotics Trafficker may submit arguments or evidence that the person believes establishes that an insufficient basis exists for the designation pursuant to E.O. 12978 or the Kingpin Act. The Specially Designated Narcotics Trafficker also may propose remedial steps, such as corporate reorganization, resignation of persons from positions in a blocked entity, turning over seized assets or similar steps, which may negate the basis for designation. The request for reconsideration must be made in writing and addressed to the Office of Foreign Assets Control, ATTN: Office of Global Targeting, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. After OFAC has conducted a review of the request for reconsideration, it will provide a written decision to the Specially Designated Narcotics Trafficker. For additional information please see: [31C.F.R. § 501.807](#)

IV. AUTHORIZED OR EXEMPT TRANSACTIONS

EXEMPT TRANSACTIONS

Certain types of activities and transactions may be exempt from the prohibitions of the Narcotics Trafficking Sanctions Regulations. For example, the prohibitions in Part 536 do not prohibit the importation from any country and the exportation to any country of certain information or informational materials as defined in 31 C.F.R. § 536.306. This exemption, however, does not apply to Part 598.

GENERAL LICENSES

OFAC may authorize certain types of activities and transactions, which would otherwise be prohibited by E.O. 12978, by issuing a general license. General licenses may be published in the regulations, on OFAC's Web site, or both. For example, the provision of certain legal services to or on behalf of persons whose property and interests in property are blocked pursuant to E.O. 12978 and the Kingpin Act is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed. See 31 C.F.R. §§ 536.506 and 598.507. For an updated list of all general licenses relating to the narcotics sanctions programs, please see 31 C.F.R. §§ 536 subpart E and 598 subpart E and visit:

<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/narco.aspx>

SPECIFIC LICENSES

On a case-by-case basis, OFAC considers applications for specific licenses to authorize transactions that are neither exempt nor covered by a general license. Requests for a specific license must be submitted to OFAC's Licensing Division. License requests may be submitted using any of the following methods:

- Online: <http://www.treasury.gov/resource-center/sanctions/Pages/licensing.aspx>

- Fax: (202) 622-1657
- U.S. mail: Assistant Director for Licensing, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220

LICENSING POLICY REGARDING SPECIFIC COLOMBIAN ENTITIES

OFAC currently authorizes the following U.S. suppliers to engage in certain transactions with Specially Designated Narcotics Traffickers that are currently Colombian Government-controlled entities, including the following entities:

- AGRONILO, Casa Grajales S.A., FREXCO, Grajales S.A., HOTEL LOS VINEDOS, Transportes del Espiritu Santo S.A., [Policy, 7/21/05 Press](#)
- G.L.G. S.A., Ramal S.A., [Policy, 2/16/07 Press](#)

V. PENALTIES

E.O. 12978

Civil monetary penalties of up to the greater of \$250,000 or twice the amount of the underlying transaction may be imposed administratively against any person who violates, attempts to violate, conspires to violate, or causes a violation of E.O. 12978 or the implementing regulations. Upon conviction, criminal fines of up to \$1,000,000, imprisonment for up to 20 years, or both, may be imposed on any person who willfully commits or attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of E.O. 12978 or the regulations.

THE KINGPIN ACT

Penalties for violations of the Kingpin Act range from civil penalties of up to \$1.075 million per violation to more severe criminal penalties. Criminal penalties for corporate officers may include up to 30 years in prison and fines up to \$5 million. Criminal fines for corporations may reach \$10 million. Other individuals could face up to 10 years in prison and fines pursuant to Title 18 of the United States Code for criminal violations of the Kingpin Act or the regulations.

ADDITIONAL RESOURCES

Lists of principal traffickers named under E.O. 12978 [SDNT] and all persons named in the Kingpin Act [SDNTK] along with resource documents are also available on OFAC web site:

www.treasury.gov/resource-center/sanctions/programs/pages/narco.aspx

This document is explanatory only and does not have the force of law. Please see particularly Executive Order 12978, the implementing Narcotics Trafficking Sanctions Regulations (31 C.F.R. Part 536), against narcotics traffickers centered in Colombia, the Foreign Narcotics Kingpin Designation Act, the implementing Kingpin Act regulations (31 C.F.R. Part 598), and other applicable laws and regulations for legally binding provisions governing the sanctions. This document does not supplement or modify the Executive Order, laws, or regulations.

The Treasury Department's Office of Foreign Assets Control also administers sanctions programs involving the Balkans, Belarus, Burma (Myanmar), the Central African Republic, Cote d'Ivoire, Cuba, the Democratic Republic of the Congo, Rough Diamond Trading (Kimberley Process), Iran, Iraq, Lebanon, Liberia, Libya, the Magnitsky Act, North Korea, Somalia, South Sudan, Sudan, Syria, Ukraine, Yemen, Zimbabwe, as well as highly enriched uranium, persons who commit, threaten to commit, or support terrorism, Foreign Terrorist Organizations, Terrorism List Governments, transnational criminal organizations, and proliferators of weapons of mass destruction and their supporters. For additional information about these programs or about sanctions involving international narcotics traffickers please contact:

OFFICE OF FOREIGN ASSETS CONTROL
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220
www.treasury.gov/ofac
202/622-2490

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

Case No.: 20-11736

**KEITH STANSELL, ET AL.,
PLAINTIFFS/APPELLEES**

v.

**REVOLUTIONARY ARMED FORCES OF COLOMBIA (FARC), ET AL.,
("DEFENDANTS") & SAMARK JOSE LÓPEZ BELLO, YAKIMA
TRADING CORPORATION, EPBC HOLDINGS, LTD., 1425 BRICKELL
AVE 63-F LLC, 1425 BRICKELL AVE UNIT 46B LLC, 1425 BRICKELL
AVE 64E LLC, 200GPSA HOLDINGS LLC, PROFIT CORP. CA, SMT
TECNOLOGIA CA, AND PYP INTERNATIONAL LLC
("INTERVENORS")**

**APPELLANTS' EMERGENCY MOTION TO STAY THE ENFORCEMENT OF
THE MONEY JUDGMENT PENDING APPEAL AND MOTION TO WAIVE
THE BOND REQUIREMENT**

Jeffery M. Scott, Esq.
Kerri E. Chewning, Esq.
ARCHER & GREINER, P.C.
171717 Arch Street
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312 SE 17th Street
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Fort Lauderdale, FL 33316
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Fax: (954) 767-8111
Email: glindsay@saavlaw.com

BASIS FOR EMERGENT RELIEF

Pursuant to Federal Rule of Appellate Procedure 8(a), the undersigned counsel for Samark Jose López Bello, Yakima Trading Corporation, EPBC Holdings, Ltd., 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 64E LLC, 200GPSA Holdings, Profit Corp. CA, Technologia CA, and International, (“López”) hereby move this Court for an Emergency Order seeking stay of the enforcement of the April 30, 2020 money judgment pending appeal and a waiver of the security requirement.

López seeks emergency relief before this Court pursuant 11th Cir. App. R. 8(a) and 11th Cir. App. R. 27-1(b)(1)(1) and (2). This motion is appropriate for emergency treatment because the automatic thirty day stay provided by Fed. R. Civ. P. 62 has expired and thus, absent emergent relief from this Court, the \$53,000,000 in López’s financial accounts will be irretrievably lost.

López is seeking emergent relief from this Court within seven days of the District Court’s Order denying a stay and waiver of the bond. See 11th Cir. App. R. 27-1(b)(1)(1) and (2). On April 30, 2020, the District Court for the Southern District of Florida entered a money judgment against López in the amount of \$53,208,315. (ECF Doc. No. 322). The April 30, 2020 Order authorizes various bank garnishees to turn over **\$53,208,315** to Plaintiffs/Appellees (“Stansell”). The Eleventh Circuit has jurisdiction to adjudicate this emergent petition as there is currently an appeal pending, with Opening Briefs due on or before July 17, 2020. López further satisfies the

remaining requirements for emergency relief because the District Court committed reversible error by applying the incorrect legal test to López's Motion to Stay and Request to Waive the Security Requirement, thereby subjecting López to the risk of irreparable harm. Therefore, López is likely to succeed on the merits of the instant motion. Further, granting the requested relief will not create harm to any other parties and will also serve the public interest. For these reasons and those that follow, López is entitled to emergent relief from this Court.

López filed a timely notice of appeal on May 6, 2020. (ECF No. 341). On the same day, López, filed with the District Court an Expedited Motion for Stay and Motion to Waive the Security Requirement Pending Appeal. (ECF No. 344). López requested an expedited ruling by May 11, 2020, to avoid the necessity of having to burden the Eleventh Circuit with an Emergency Motion. The briefing of the Motion to Stay was fully completed on May 9, 2020. The District Court waited until June 3, 2020, at 7:40 a.m. to file its two page Order which denied López's Motion to Stay. (ECF No. 358).

López requests this Court to reverse the District Court's denial of stay pending appeal because the Court erroneously applied to the four part test that is applicable only to non-monetary judgments. The District Court further erred when it denied López's request to waive the security requirement. The record before the District Court demonstrates that the judgment was secured by the District Court a year before it was even obtained when the February 15, 2019 Order, issuing writs of attachment ("freeze

orders”) as to the very accounts that are the subject of the Turnover Judgment Order of April 30, 2020.

The February 15, 2019 ex parte Order granted the application for attachment of the subject bank accounts. (Doc. No. 22 at 1). At no time were the attachments ever removed. Accordingly, there is more than Three Hundred Million Dollars (\$300,000,000) of non-real estate assets which are frozen by Court Order in the Southern District of Florida and in the Southern District of New York. These assets are further blocked and secured by way of sanctions imposed by the U.S. Department of the Treasury’s Office of Foreign Asset Control (“OFAC”). These judicial attachments and OFAC blocked property are more than sufficient to secure the April 30, 2020 money judgment and maintain the status quo pending appeal. Thus, the requirements for a stay and waiver of the security requirement have been fully satisfied and the District Court erred in refusing to grant López the requested relief.

BACKGROUND

On February 13, 2003, Plaintiffs were flying over Colombia while performing counter-narcotics reconnaissance. Members of the Revolutionary Armed Forces of Colombia (“FARC”) shot their plane down and, after the plane’s crash landing, captured the group. FARC immediately executed one member of the group and took the survivors hostage, holding them for over five years. After they were rescued and returned to the United States, Stansell filed a complaint against FARC in the United States District Court for the Middle District of Florida under the Antiterrorism Act, 18

U.S.C. § 2333 (“ATA”). After FARC failed to appear, the court granted Stansell’s motion for default judgment and ordered FARC to pay \$318,030,000 in damages. On July 28, 2010, Stansell registered their judgment against FARC in the United States District Court for the Southern District of Florida pursuant to 28 U.S.C. §1963.

On February 13, 2017, OFAC designated Mr. López and thirteen related companies under the Foreign Narcotics Kingpin Designation Act (“Kingpin Act”). OFAC blocked Mr. López’s United States bank accounts which, excluding the Citibank account, are the subject of the April 30, 2020 turnover Order. (ECF Doc. No. 339).¹

On February 15, 2019, pursuant to the Stansell’s ex parte application for attachment of López’s OFAC blocked assets, the District Court issued a pre-judgment attachment (as to López) on garnished bank accounts that are the subject of the April 30, 2020 final Order and the pending appeal of May 6, 2020. (ECF No. 22). These attachments have remained in place since that time and take precedence over all other unsecured creditors. As of this filing, there are no other secured or unsecured creditors that Stansell have identified that have a valid lien on these accounts. The status quo, which is and has been attachment, has remained the same since February 15, 2019.

The attached accounts and reported balances are located at the following financial institutions: (1) UBS Financial Services, Inc. (\$28,970,462); (2) RJA Financial Services,

¹ In a separate order on April 30, 2020, the Southern District Court of Florida, transferred all matters related to the Citibank Account to the Southern District of New York. The attachment on the Citibank account remains in effect and has not been dissolved by any Court of proper jurisdiction.

Inc. (\$2,361,839.10); (3) Branch Banking & Trust Co. (\$1,332,859.11); (4) Morgan Stanley Smith Barney LLC (\$11,498,994.68); (5) Safra National Bank of New York (\$9,044,160.79); and (6) Citibank, N.A. (\$269,386,498.86). [See Docket Nos. 322, 323, and 339.] Not only were the funds secured by a judicial order granting Stansell priority rights over the subject funds and freezing all of these assets, the OFAC designation², which continues to remain in effect, prohibits any transfer of these funds. Thus, the OFAC designation further secures the judgment.

As a result of the February 13, 2017 designation, López, and the above financial institutions would be subject to civil and criminal penalties if any of the blocked assets were moved without specific OFAC permission. See 31 C.F.R. § 598, *et seq.*³ Accordingly, all of López's blocked assets remained completely frozen, 31 C.F.R. §598.202(a), unless a specific license is authorized by OFAC.

Further, under federal law, López is prohibited from bringing “fresh funds” into the United States, without a specific OFAC license See 31 C.F.R. §598.202. Even assuming that the Mr. López could muster sufficient funds for the posting of additional security from some non-U.S. source, a separate license then would be required in favor of any surety company in order for the bond transaction to even take place. See 31

² Indeed, as López is not a judgment debtor on the Stansell's Judgment, it is the OFAC designation that even makes these funds available to Stansell.

³ Under §598.301, “the terms blocked account and blocked property mean any account or property subject to §598.202 held in the name of a specially designated narcotics trafficker, or in which a specially designated narcotics trafficker has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from the Office of Foreign Assets Control authorizing such action.”

C.F.R. §598.503 (“The Director of the Office of Foreign Assets Control reserves the right to exclude any person, property, or transaction from the operation of any license or from the privileges conferred by any license.”). There is no mechanism for ensuring OFAC will issue a license and no requirement for OFAC to move with any due haste on the application. OFAC would deem the purchase of a bond, absent a specific license, as a prohibited transaction.

Further, even if López was de-listed by OFAC sometime in the future, this Court has already determined that a delisting or a change in OFAC’s position during TRIA execution proceedings cannot be applied retroactively. Stansell v. Revolutionary Armed Forces of Colombia, 771 F. 3d 713, 733 (11th Cir. 2014).

In sum, the existing judicial and administrative “freeze orders” on each of the financial institutions provide sufficient protection and adequate security pending appeal. To ameliorate any concern about the need to further protect the assets from being encumbered or liquidated in the interim, this Court can enter an order directing each garnishee to freeze the subject accounts, pending appeal, until further Order of this Court.

ARGUMENT

A. The District Court Erred As a Matter of Law In Applying the Incorrect Test to López’s Request for a Stay.

The April 30, 2020 Judgment Order is a final money judgment, which invokes the protections of Rule 62(a) and the automatic thirty day stay. State Contracting &

Engineering Corp. v. Condotte America, Inc., No. 97–7014–CIV, 2002 WL 34365828, at *4 (S.D. Fla. Aug. 28, 2002) (“It would seem common sense that an automatic stay of execution of a money judgment would also extend to a stay of garnishment to satisfy that exact same money judgment.”).⁴ Under Fed. R. Civ. P. 62(b), a party may obtain a stay on enforcement of a judgment as a matter of right by posting a bond or other security. Fed. R. Civ. P. 62(b); Fed. R. Civ. P. 62 (2018 Advisory Committee Notes)(“The new rule's text makes explicit the opportunity to post security in a form other than a bond.”). The District Court erred as a matter of law when it applied the four part test set forth in Hilton v. Braunskill, 107 S. Ct. 2113, 2119 (1987), when it denied López’s request for a stay.⁵ (ECF No. 358 at 1)(District Court denying request for stay because López failed to satisfy the four part test.).

Stansell conceded in the lower court that the April 30, 2020 Order is a judgment for money. Pls.’ Opp’n. (ECF No. 353) at 2 (“turnover judgments concern only money”). Because the April 30, 2020 turnover Order was a money judgment, López was entitled to an automatic stay and was not required to meet the four-part test reserved

⁴ Under the 2018 amendment to Rule 62(a), the automatic stay now lasts 30 days (rather than the prior 14 days). In 2018, “Civil Rule 62 was reorganized and its provisions for staying a judgment were changed. Prior Rule 62(c) (injunctions pending appeal) was relocated to Rule 62(d). Motion for a Stay or Injunction, 16A Fed. Prac. & Proc. Juris. § 3954 (5th ed.).

⁵ The factors regulating the issuance of a stay of a non-monetary judgment under Federal Rule of Civil Procedure 62 are as follows: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.”

for stay requests involving non-monetary relief. Hebert v. Exxon Corp., 953 F.2d 936 (5th Cir. 1992); Venus Lines Agency v. CVG Industria Venezolana De Alumino, C.A., 210 F.3d 1309, 1313 (11th Cir. 2000)); State Contracting & Engineering Corp., 2002 WL 34365828, at *4. Thus, we request this Court to reverse the District's Court ruling that López was not entitled to an automatic thirty day stay as permitted under Fed. R. Civ. P. 62(a).

B. The District Court Abused Its Discretion in Refusing to Waive the Security Requirement Because the Judgment Is Already Secured.

The District Court abused its discretion in denying López's motion to waive the bond requirement. López is in the unique situation of being under a money judgment that is already fully satisfied because Stansell obtained the security for the judgment through the February 15, 2019 ex parte Order, and of also being unable to post a bond, in part because of the existence of that February 15, 2019 Order.

“The purpose of a supersedeas bond is to protect the appellees from a loss resulting from the stay of execution.” Whitesell Corp. v. Electrolux Home Prod., Inc., No. CV 103-050, 2019 WL 2448665, at *1 (S.D. Ga. June 10, 2019)(citing Poplar Grove Planting & Ref. Co. v. Bache Halsey Stuart, Inc., 600 F.2d 1189, 1190-91 (5th Cir. 1979); Prudential Ins. Co. v. Boyd, 781 F.2d 1494, 1498 (11th Cir. 1986) (stating that the purpose of the supersedeas bond is to preserve the status quo and protect the rights of the non-appealing party during appeal)). See also Wunschel & Small, Inc., v.

United States, 554 F. Supp. 444-45 (U.S. Cl. Ct. 1983); C. Albert Sauter Co. v. Richard S. Sauter Co., 368 F. Supp. 501, 520–21 (E.D. Pa. 1973).

The posting of a bond or security is not mandatory and can be waived in the Court’s discretion. Hurtado v. Balerno International Ltd., Civil Action No. 17-62200, 2018 WL 10517082, at *1 (S.D. Fla. July 11, 2018) (citing Poplar Grove, 600 F.2d at 1191; United States v. Kurtz, 528 F. Supp. 1113, 1115 (D. Pa. 1981) (noting it is appellant's burden to demonstrate objectively that posting a full bond is impossible or impractical and “to propose a plan that will provide adequate (or as adequate as possible) security for the appellee”). The former Fifth Circuit Court of Appeals gave relevant guidance on this point and held:

If a judgment debtor objectively demonstrates a present financial ability to facily respond to a money judgment and presents to the court a financially secure plan for maintaining that same degree of solvency during the period of an appeal, the court may then exercise a discretion to substitute some form of guaranty of judgment responsibility for the usual supersedeas bond. Contrariwise, if the judgment debtor's present financial condition is such that the posting of a full bond would impose an undue financial burden, the court similarly is free to exercise a discretion to fashion some other arrangement for substitute security through an appropriate restraint on the judgment debtor's financial dealings, which would furnish equal protection to the judgment creditor.

Poplar Grove Planting & Ref. Co., 600 F.2d at 1191; Texaco Inc. v. Pennzoil Co., 784 F.2d 1133, 1154 (2d Cir. 1986), rev'd on other grounds, 481 U.S. 1 (1987)(“[W]hen setting supersedeas bonds courts seek to protect judgment creditors as fully as possible without irreparably injuring judgment debtors.”).

López's assets in the United States are frozen pursuant to OFAC regulations and he does not possess sufficient readily available liquid assets to obtain a bond or other security. (Declaration of Samark Jose López Bello ¶¶ 7-15, attached as Ex. A). Further, no future de-listing by OFAC, can abrogate the priority rights attendant to the attachments. Moreover, there is an attachment over the Citibank accounts which are reported to have a value of over \$269,000,000. (ECF No. 323 at 2, n. 1)(As of January 29, 2019, the Blocked Account held security entitlements, as well as certain related cash proceeds, with an aggregate value of \$269,386,498.86.”).

Under these circumstances, and having demonstrated that both scenarios for waiver of a supersedeas bond exist, the District Court abused its discretion in not waiving the bond and issuing a stay for the appeal. Campbell v. Rainbow City, Alabama, 209 F. App'x 873, 876 (11th Cir. 2006)(finding District Court did not abuse its discretion in declining to tax bond premiums on unsuccessful appellee). See also United States v. Certain Real & Pers. Prop. Belonging to Hayes, 943 F.2d 1292, 1296 (11th Cir. 1991) (noting that bond requirement may be waived in discretion of district court); Dillon v. City of Chicago, 866 F.2d 902, 904 (7th Cir. 1988) (finding abuse of discretion where district court refused to waive bond requirement for municipal defendant).

The posting of a bond or additional monetary security should be weighed against the irreparable harm that could befall López. This Court can protect all parties by fashioning a “substitute security through an appropriate restraint on the judgment

debtor's financial dealings.” Poplar Grove, 600 F.2d at 1191. Here, the Court already fashioned a sufficient restraint on López by issuing the writs of attachments over the financial accounts by way of the February 15, 2019 Order.

Pursuant to OFAC Regulations, the López cannot post a bond without authorization from OFAC. In this very case, OFAC failed to act, or refused to act, when López requested approval to purchase a surety bond to prevent the sale of the Brickell properties, which occurred on April 16, 2019 and the properties were sold. (See Declaration of Jeffrey M. Scott, Esquire, ¶¶ 9-13, attached hereto as Ex. B). “Any attempt to purchase a surety bond, absent OFAC approval, may be considered a violation of the Kingpin Act, which can result in both civil and criminal penalties. (Narcotics Sanction Program at 5-6, attached as Exhibit 1 to the Declaration of Jeffrey M. Scott, Esquire, attached hereto as Ex. B). The United States Government can impose civil penalties in an amount up to \$1.075 million per violation. Likewise, [c]riminal penalties for corporate officers may include up to 30 years in prison and fines up to \$5 million. Criminal fines for corporations may reach \$10 million. And, [o]ther individuals could face up to 10 years in prison and fines pursuant to Title 18 of the United States Code for criminal violations of the Kingpin Act or the regulations.” (Id. at 6). The District Court refused to take these facts, which were argued below, into consideration.

Further, Stansell also has an attachment over the Citibank accounts in New York, which is also subject to an attachment order in the State of Florida. This account was reported to have a value of over \$269,000,000. (ECF No. 323 at 2, n. 1)(As of January

29, 2019, the Blocked Account held security entitlements, as well as certain related cash proceeds, with an aggregate value of \$269,386,498.86.”). This attachment provides substantial protection and security for the current judgment of \$53 million.

Because the very funds that make up the judgment have already been secured by the District Court and because additional secured funds exist which satisfy the judgment, the posting of a bond is duplicative and unnecessary. Center for Individual Rights v. Chevaldina, 2019 WL 7370412, at *1 (S.D. Fla. Oct. 29, 2019) (citing Avirgan v. Hull, 125 F.R.D. 185, 186 (S.D. Fla. 1989)).

Where there is a substantial difference between the bond amount and the moving party’s assets, courts tend to find that the moving party’s ability to pay the bond is plain. See Hurtado, 2018 WL 10517082, at *2 (finding that posting of \$232,000 bond would be unnecessary where the movant “submitted documentation to the Court showing that [it was] insured in the amount of \$500,000,000.00 for liability[,] ha[d] a fixed value of 5,275,555.80 euros [and had] also represented to the Court that its insurer [would] step in to defend against Plaintiff’s claims once the Court dispose[d] of the Motion to Stay and the Motion to Set Aside Default Judgment.”); see also Arban v. W. Publ’g Corp., 345 F.3d 390, 409 (6th Cir. 2003) (affirming district court’s waiver of bond requirement where there was a “vast disparity” between the bond amount of \$225,000 and the movant’s annual revenues of \$2.5 billion); Guzman v. Boeing Company, 2019 WL 468195, at *7-8 (D. Mass. Feb. 6, 2019) (finding that the submission of a quarterly SEC report showing that Boeing’s 2018 first quarter earnings exceeded \$2 billion indicated

that Boeing “would readily be able to pay the judgment” of approximately \$2.3 million if the judgement was affirmed on appeal and therefore “the posting of a bond would be a waste of money.”); In re Nassau County Strip Search Cases, 783 F.3d 414, 418 (2d Cir. 2015) (finding that “Nassau County [] demonstrated the existence of appropriated funds, available for the purpose of paying judgments without substantial delay or other difficulty[,]” making the posting of a bond a waste of money); HCB Contractors v. Rouse & Assocs., 168 F.R.D. 508, 512–13 (E.D. Pa. 1995)(granting stay pending appeal without posting bond). Here, there is \$300,000,000 in frozen assets, secured by judicial attachments. This is more than enough security for the \$53,000,000 judgment.

López provided ample support that both considerations set forth in Rule 62 apply to him. The judgment is already secured both by the prior order of the District Court as well as the restraint imposed by the OFAC blocking. López further demonstrated that he is unable to fund a bond because he has no available funds or security in the United States that is not already encumbered by the United States. See López Decl. ¶¶ 7-15. For these reasons, the District Court abused its discretion when it refused to waive the bond requirement.

There is no question that the District Court’s prior Order of February 15, 2019 will achieve the purposes of Rule 62 by maintaining the status quo without causing irreparable harm to Stansell. In contrast, López risks losing over \$53 million because he is restrained from posting any additional security pending appeal. This is so because his

available United States assets are blocked by OFAC, which enabled Stansell to attach the \$53,000,000 before final judgment was issued on April 30, 2020.

If a stay pending appeal is not granted, Lopez will not be able to recoup any of those lost funds, should he be successful on appeal. Given these unique circumstances, wherein the District Court has already provided Stansell with the utmost security, to the extent any additional assurance is needed, an alternative measure should be instituted to maintain the status quo without irreparably harming López.

Rule 62(b) permits the Court “to fashion some other arrangement for substitute security through an appropriate restraint on the judgment debtor's financial dealings, which would furnish equal protection to the judgment creditor.” Poplar Grove, 600 F.2d at 1191. The District Court already fashioned a restraint to provide Stansell with adequate security pending appeal.⁶ The TRIA attachments, according to Stansell, have priority over all other unsecured lienholders. Keeping the attachments in place protects the assets from being moved by any party.

As further restraint, and in the interest of protecting Stansell, this Court can direct the District Court to order the garnishees to “freeze” the funds pending the issuance of the mandate. This additional restraint, along with the April 30, 2020 turnover Order, and the current OFAC blocking rules, will prevent López, and any other third party, from using the assets for any purpose, thereby maintaining the status quo. See

⁶ As Stansell has repeatedly argued, the February 15, 2019 Order of attachment was a post-judgment remedy.

Chmielewski v. City of St. Pete Beach, Civil Action No. 8:13–3170–T–27MAP, 2016 WL 7438432, at *1 (M.D. Fla. Sep. 16, 2016) (granting motion to waive bond requirement and finding that “[b]ecause the full amount of the judgment, plus two years of post-judgment interest, will be placed in a separate account from which the City cannot withdraw absent a Court order, I find that the City has objectively demonstrated a present financial ability to pay the judgment and has presented a financially secure plan for maintaining that ability during the period of an appeal.”).

CONCLUSION

For these reasons, López hereby requests this Court to reverse the District Court and order it to Stay all Proceedings, including the enforcement of the money judgment, pending the outcome of the instant appeal.

Dated: June 3, 2020

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**CERTIFICATE OF INTERESTED PERSONS AND
CORPORATE DISCLOSURE STATEMENT**

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Marc Gonsalves

Thomas Howes

Judith Janis

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Greer Janis

Michael Janis

Jonathan Janis

Porter & Korvick

Office of Foreign Asset Control, Chief Counsel

Office of the Attorney General of the State of Florida

SIX SIS Ltd.

UBS Financial Services Inc.

Branch Banking & Trust Company

Safra National Bank of New York

Safra Securities LLC

Morgan Stanley Smith Barney LLC

Citibank N.A.

Samark Jose López Bello

Yakima Trading Corporation

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1425 Brickell Ave Unit 46B LLC

1425 Brickell Ave 64E LLC

200G PSA Holdings LLC

MFAA Holdings Limited

Profit Corp. CA,

SMT Technologia CA

PYP International, LLC

CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Fed. R. App. P. 27(d)(2) because this document contains 4,031 words (excluding exempted parts) using the word count feature of Microsoft Word Version, 2013.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 font point in Times New Roman.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 3, 2020, a true and correct copy of the foregoing has been furnished by electronic mail via CM/ECF portal of the 11th Circuit Court of Appeals upon the following parties:

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United States District Court
for the
Southern District of Florida

Keith Stansell, and others,)
Plaintiffs,)
)
v.) Case No. 19-20896-Civ-Scola
)
Revolutionary Armed Forces of)
Columbia, Defendant.)

Order Denying Motion for Stay Pending Appeal

Now before the Court is the Defendants’ Expedited Motion to Waive the Bond Requirement and Stay the Enforcement of the Judgment Pending Appeal. For the reasons set forth below, the Court **denies** the motion to stay enforcement of the judgment pending appeal (**ECF No. 351**) and to waive the bond requirement (**ECF No. 349**).

1. Enforcement of the Judgment Should Not Be Stayed

The factors regulating the issuance of a stay under Federal Rule of Civil Procedure 62 are as follows: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 107 S.Ct. 2113, 2119 (1987). Here, the Court need not address each factor because the Defendants have not made a strong showing that they are likely to succeed on the merits on appeal.

This Court has already held that the Defendants are agents or instrumentalities of the FARC due to their indirect ties to it, and the Eleventh Circuit has concluded that “indirect” ties are sufficient to establish the required relationship. *Stansell v. Revolutionary Armed Forces of Colom.*, 771 F.3d 713, 742 (11th Cir. 2014) (“*Stansell I*”) (“The evidence Plaintiffs presented to the district court was sufficient to establish the required relationship between FARC and the Partnerships, even if that relationship was indirect.”). The Eleventh Circuit also rejected the Defendants’ arguments that the manner in which this Court made the “agency or instrumentality” finding violated his due process rights. *Stansell v. Lopez Bello*, -- Fed. App’x --, 2020 WL 290423 (11th Cir. Jan. 21, 2020) (“*Stansell II*”) (Lopez Bello had received actual notice of the execution proceedings and had a full and fair opportunity to make his case). Moreover, the Defendants failed to substantially show that they were likely to succeed on the merits on

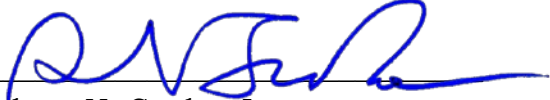
appeal in their motion (ECF No. 351) and in their reply (ECF No. 354). In fact, they did not even attempt to make this required showing.

2. The Bond Requirement Should Not Be Waived

The posting of a bond or security is not mandatory and can be waived in the Court's discretion if waiver is justified by "extraordinary circumstances." *Suntrust Bank v. Ruiz*, 2015 WL 11216713 at *2 (S.D. Fla. Nov. 6, 2015) (Lenard, J.). In order to meet this standard, the Defendants must adequately show either: (1) that "their ability to pay the judgment is plain" and the cost of the bond would be a waste of time or (2) "the bond requirement would put Defendants' other creditors in undue jeopardy." *Id.*; see also *Avirgan v. Hull*, 125 F.R.D. 185, 186 (S.D. Fla. 1989) (King, J.).

The Defendants have not shown that their ability to pay the judgment is plain. To the contrary, they have submitted Samark Jose Lopez Bello's declaration, which states that he has "no available funds" inside or outside of the United States "that can be used to post any amount of security." (ECF No. 349-2 ¶¶ 8, 9.) And, the Defendants have not shown—or even suggested—that the bond requirement would put the Defendants' other creditors in undue jeopardy. Therefore, the Court declines to waive the bond requirement in this case.

Done and ordered in chambers, at Miami, Florida, on June 2, 2020.



Robert N. Scola, Jr.
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

KEITH STANSELL, et al.,

Plaintiffs,

v.

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

Defendants.

Civil Action: 1:19-cv-20896-RNS

**MEMORANDUM OF LAW IN SUPPORT OF SAMARK JOSE LÓPEZ BELLO,
YAKIMA TRADING CORPORATION, EPBC HOLDINGS, LTD.,
1425 BRICKELL AVE 63-F LLC, 1425 BRICKELL AVE UNIT 46B LLC,
1425 BRICKELL AVE 64E LLC, AND 200G PSA HOLDINGS LLC'S
MOTION FOR RECONSIDERATION**

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and 200G PSA Holdings LLC*

Samark Jose López Bello, Yakima Trading Corporation, EPBC Holdings, Ltd., 1425 Brickell Ave 63-F LLC, 1425 Brickell Ave Unit 46B LLC, 1425 Brickell Ave 64E LLC, and 200G PSA Holdings LLC (collectively, “López”), hereby submit this Memorandum in Support of their Motion for Reconsideration of the June 3, 2020 Order.

I. Introduction

Reconsideration is appropriate because the June 3, 2020 Order denying López’s Motions to Stay [ECF No. 351] and to Waive the Security Requirement [ECF No. 349] contained Manifest Errors of Law and Fact that should be corrected. First, the Court overlooked the facts submitted and incorrectly determined that López failed to show that the \$53 million judgment was secured by the Court ex parte Order dated February 15, 2019. Second, the June 3, 2020 Order incorrectly applied the four-part test used for requests to stay non-monetary judgments. The Court should have used the standard governed by Rule 62(b) because the April 30, 2020 Turnover Order is a money judgment. For these reasons, reconsideration of the June 3, 2020 Order is appropriate and López’s motion should be granted.

II. Argument

“The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence.” MG Prods. of S. Fla., Inc. v. Hartman & Tyner, Inc., No. 18-60380-CIV, 2018 WL 4208226, at *1 (S.D. Fla. July 13, 2018) (citing Baquero v. Lancet Indemnity Risk Retention Group, Inc., No. 12-CIV-24105-FAM, 2013 WL 5705574, at *1 (S.D. Fla. Oct. 18, 2013)). López seeks reconsideration of the June 3, 2020 Order which denied López’s Motions to Stay Pending Appeal [ECF No. 351] and to Waive the Security for the appeal [ECF No. 349].

Reconsideration is appropriate because the very financial accounts that are the subject of the money judgment at issue have been secured by operation of this Court’s February 15, 2019 Order since that time. In addition to already having funded the judgment and guaranteeing its availability, López also demonstrated that he is unable to post additional funds because of the sanctions imposed by OFAC. Second, the Court misconstrued the legal standard applicable to the motion and further used incorrect facts in assessing that standard. López is appealing a money judgment, as such the four factor test applied by the Court was incorrect. For these reasons, and those that follow, this Court should reconsider the June 3, 2020 Order.

A. Errors of Fact – López has Already Secured the Judgment.

The June 3, 2020 Order contains errors and omissions of fact, which provide a basis for reconsideration. On April 30, 2020, this Court entered a money judgment in Plaintiffs' favor authorizing various bank garnishees to turn over \$53,208,315. López sought a stay pursuant to Rule 62(a) and (b). López demonstrated that there is and always has been sufficient security to maintain the status quo, and satisfy the purpose of the security requirement.

The April 30, 2020 money judgment has been secured since February 15, 2019. The February 15, 2019 Order [ECF No. 22] provided Plaintiffs with the authorization to issue writs of garnishment as to each of the subject financial accounts. These writs of garnishment were issued to maintain the status quo and to prevent potential liquidation of those funds during the pending litigation. The February 15, 2019 Order has remained intact from its entry until today, and will remain intact until further order of this Court, or the Court of Appeals. Because the judgment is already secured, López's "ability to pay the judgment is plain." [ECF No. 358 at 2] (citing Suntrust Bank v. Ruiz, 2015 WL 1126713, at *2 (S.D. Fla. Nov. 6, 2015)).

The June 3, 2020 Order omits this critical and dispositive fact. The June 3, 2020 Order mistakenly overlooked these undisputed facts. And the Order mistakenly overlooked the impact of the February 15, 2010 Order. The February 15, 2010 Order specifically preserves and secures the assets in the financial accounts that are the very subject of the \$53,000,000.00 judgment. The June 3, 2020 Order also ignored the securities and funds located in the financial account held by Citibank, N.A., which exceeds \$269,000,000.00. Plaintiffs continue to maintain a writ of garnishment ("freeze order") over that account as well.

Because the very funds that make up the judgment have already been secured by the this Court and because additional secured funds exist which can satisfy the judgment, the posting of a bond is duplicative and unnecessary. Center for Individual Rights v. Chevaldina, 2019 WL 7370412, at *1 (S.D. Fla. Oct. 29, 2019) (citing Avirgan v. Hull, 125 F.R.D. 185, 186 (S.D. Fla. 1989)). Respectfully, this oversight is a plain error of fact, which should be corrected to avoid a manifest injustice, an unnecessary and irretrievable loss of \$53,000,000.00, should López be successful on appeal.

B. Errors of Law – The Four-Part Test for a Stay Applicable to Injunctive Relief Judgments Was Improperly Applied.

Reconsideration is necessary because the District Court incorrectly applied the four part test set forth in Hilton v. Braunskill, 107 S. Ct. 2113, 2119 (1987), when it denied López’s request for a stay. [ECF No. 358 at 1](denying request for stay because López failed to satisfy the four part test.). “Rule 62(d), [now 62(b)] entitles an appealing party as a matter of right to have a money judgment against it stayed while the order it challenges is on appeal, provided that the party seeking the stay pays a bond guaranteeing payment if it loses the appeal.” Dixon v. United States, 900 F.3d 1257, 1268 (2018); Venus Lines Agency v. CVG Industria Venezolana De Alumino, C.A., 210 F.3d 1309, 1313 (11th Cir. 2000)). The four-part test is not applicable to the facts of this case. The April 30, 2020 Judgment Order is a final money judgment, therefore, the protections of Rule 62(a) and the automatic thirty-day stay applied.¹ State Contracting & Engineering Corp. v. Condotte America, Inc., No. 97–7014–CIV, 2002 WL 34365828, at *4 (S.D. Fla. Aug. 28, 2002) (“It would seem common sense that an automatic stay of execution of a money judgment would also extend to a stay of garnishment to satisfy that exact same money judgment.”).

The June 3, 2020 Order also incorrectly denied López’s request to extend the stay. López sought to extend the automatic stay of the money judgment beyond the thirty days by seeking a waiver of the bond requirement. Under Fed. R. Civ. P. 62(b), a party may obtain a stay on enforcement of a judgment as a matter of right by posting a bond or other security. Fed. R. Civ. P. 62(b); Fed. R. Civ. P. 62 (2018 Advisory Committee Notes)(“The new rule's text makes explicit the opportunity to post security in a form other than a bond.”).

There is no provision in Rule 62 that requires the Court to re-evaluate the appropriateness extending the stay of execution on a money judgment pending appeal if the defending party posts a bond or the Court determines a bond is unnecessary because other security exists. See Fed. R. Civ. P. 62(b). The purpose of the bond is to protect the appellees from a loss resulting from the stay of execution.” St. Louis Condo. Ass'n, Inc. v. Rockhill Ins. Co., No. 18-21365-CIV, 2019 WL 7905010, at *1 (S.D. Fla. Oct. 30, 2019), report and recommendation adopted, No. 18-21365-CIV, 2019 WL 7905011 (S.D. Fla. Nov. 12, 2019) (citing Poplar Grove Planting & Ref. Co. v.

¹ Plaintiffs’ Opposition to López’s motion agrees that the April 30, 2020 Order is a judgment for money. Pls.’ Opp’n. [ECF No. 353] at 2 (“turnover judgments concern only money”).

Bache Halsey Stuart, Inc., 600 F.2d 1189, 1190-91 (5th Cir. 1979)). The posting of a bond or security is not mandatory and can be waived in the Court's discretion. Hurtado v. Balerno International Ltd., Civil Action No. 17-62200, 2018 WL 10517082, at *1 (S.D. Fla. July 11, 2018) (citing Poplar Grove, 600 F.2d at 1191; United States v. Kurtz, 528 F. Supp. 1113, 1115 (D. Pa. 1981) (noting it is appellant's burden to demonstrate objectively that posting a full bond is impossible or impractical and "to propose a plan that will provide adequate (or as adequate as possible) security for the appellee").

Thus, López is in the unique situation of being under a money judgment that is already fully satisfied because Stansell obtained the security for the judgment through the February 15, 2019 ex parte Order. The Fifth Circuit Court of Appeals gave relevant guidance on this point and held:

If a judgment debtor objectively demonstrates a present financial ability to facilely respond to a money judgment and presents to the court a financially secure plan for maintaining that same degree of solvency during the period of an appeal, the court may then exercise a discretion to substitute some form of guaranty of judgment responsibility for the usual supersedeas bond. Contrariwise, if the judgment debtor's present financial condition is such that the posting of a full bond would impose an undue financial burden, the court similarly is free to exercise a discretion to fashion some other arrangement for substitute security through an appropriate restraint on the judgment debtor's financial dealings, which would furnish equal protection to the judgment creditor.

Poplar Grove Planting & Ref. Co., 600 F.2d at 1191; Texaco Inc. v. Pennzoil Co., 784 F.2d 1133, 1154 (2d Cir. 1986), rev'd on other grounds, 481 U.S. 1 (1987)("[W]hen setting supersedeas bonds courts seek to protect judgment creditors as fully as possible without irreparably injuring judgment debtors.").

The June 3, 2020 Order, respectfully, did not properly assess the request to waive a security bond. López may not post a bond without a specific license from OFAC. All of López's blocked assets are frozen, 31 C.F.R. §598.202(a), unless a specific license is authorized by OFAC. See 31 C.F.R. §598.202(b). There is no mechanism for ensuring OFAC will issue a license and no requirement for OFAC to move with any due haste on the application. Thus, the waiver of the bond requirement is particularly appropriate in the context of the OFAC regulations.

Under these circumstances, and having demonstrated that both scenarios for waiver of a supersedeas bond exist, the June 3, 2020 Order should be reconsidered and allow for a waiver of the bond requirement related to López's request for a stay. United States v. Certain Real & Pers.

Prop. Belonging to Hayes, 943 F.2d 1292, 1296 (11th Cir. 1991) (noting that bond requirement may be waived in discretion of district court); Dillon v. City of Chicago, 866 F.2d 902, 904 (7th Cir. 1988) (finding abuse of discretion where district court refused to waive bond requirement for municipal defendant).

III. CONCLUSION

Therefore, López requests this Court grant this Motion for Reconsideration of the June 3, 2020 Order and issue an Order that institutes a stay pending appeal and in acknowledgment of February 15, 2020 Order securing the judgment, that no bond is necessary pending the outcome of López's appeal to the Eleventh Circuit.

Respectfully submitted,

/s/

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64E LLC, and 200G PSA Holdings LLC.*

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that counsel for Plaintiffs are opposed to the motion.

Respectfully submitted,

/s/

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Dated: June 12, 2020

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that on June 12, 2020, I electronically filed the foregoing Motion to Intervene with the Clerk of the Court by using the CM/ECF system. I further certify that I served the foregoing document on all counsel of record via CM/ECF as follows:

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United States District Court
for the
Southern District of Florida

Keith Stansell, and others,)
Plaintiffs,)
v.) Case No. 19-20896-Civ-Scola
Revolutionary Armed Forces of)
Columbia, Defendant.)

Order Denying the Defendants' Motion For Reconsideration

The Defendant has asked the Court to reconsider its previous ruling in denying their motion for a stay pending appeal (ECF No. 351) and their motion to a waive the security requirement (ECF No. 349). The Defendants point to the same facts—that Lopez secured the judgement and therefore bond is unnecessary—and the same law in its motion. Federal Rule of Civil Procedure 60(b) provides:

[A] court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Additionally, Federal Rule of Civil Procedure 59(e) permits a motion to alter or amend a judgment. “The only grounds for granting a Rule 59 motion are newly-discovered evidence or manifest errors of law or fact. A Rule 59(e) motion cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.” *Arthur v. King*, 500 F.3d 1335, 1343 (11th Cir. 2007) (internal quotations omitted).

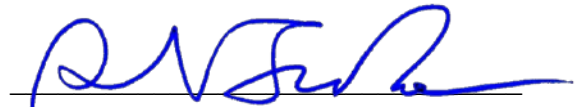
It is an improper use of the motion to reconsider to ask the Court to rethink what the Court already thought through—rightly or wrongly. The motion to reconsider would be appropriate where, for example, the Court has patently misunderstood a party, or has made a decision outside the adversarial issues presented to the Court by the parties,

or has made an error not of reasoning but of apprehension. A further basis for a motion to reconsider would be a controlling or significant change in the law or facts since the submission of the issue to the Court. Such problems rarely arise and the motion to reconsider should be equally rare.

Z.K. Marine Inc. v. M/V Archigetis, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992) (Hoeveler, J.) (citation omitted). The Defendant does not indicate whether it is moving for reconsideration under Rule 59 or 60. Regardless, because the Motion does not present new facts or new law but merely urges the Court to rethink its previous decision, the Court must **deny** the motion (**ECF No. 361**).

The Court notes that the Defendants may obtain a stay by posting a bond pursuant to Rule 62(b) in the total amount reflected in the final judgment. However, the Defendants have not done so, and therefore, they are not entitled to a stay pursuant to that subsection.

Done and ordered in chambers, at Miami, Florida, on June 15, 2020.

A handwritten signature in blue ink, appearing to read 'R. N. Scola, Jr.', written over a horizontal line.

Robert N. Scola, Jr.
United States District Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11736-GG

KEITH STANSELL, et al.,

Appellees,

versus

SAMARK JOSE LOPEZ BELLO, et al.,

Appellants.

On Appeal from the United States
District Court for the Southern District of Florida

BEFORE: MARTIN, BRANCH, and GRANT, Circuit Judges.

BY THE COURT:

“Appellants’ Motion to File Reply to Appellees’ Response to Emergency Motion to Stay on or Before June 12, 2020” is DENIED AS MOOT. Appellants already filed a timely reply.

“Appellants’ Emergency Motion to Stay the Enforcement of the Money Judgment Pending Appeal and Motion to Waive the Bond Requirement” is DENIED.

The Clerk of Court is directed to treat any motion for reconsideration of this order as a non-emergency matter.