

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
(Ft. Lauderdale Division)

Case Nos. 07-22459 & 08-21063 (COHN/SELTZER)

ELOY ROJAS MAMANI, et al.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
GONZALO DANIEL SÁNCHEZ DE	)
LOZADA SÁNCHEZ BUSTAMANTE,	)
	)
Defendant,	)
	)
JOSÉ CARLOS SÁNCHEZ BERZAÍN,	)
	)
Defendant.	)
_____	)

**DEFENDANTS’ STATEMENT OF MATERIAL FACTS IN SUPPORT  
OF THEIR MOTION FOR SUMMARY JUDGMENT**

WILLIAMS & CONNOLLY LLP

Stephen D. Raber (*pro hac vice*)  
Ana C. Reyes (*pro hac vice*)  
James E. Gillenwater (*pro hac vice*)  
Suzanne M. Salgado (*pro hac vice*)  
Giselle Barcia (*pro hac vice*)  
725 Twelfth Street, N.W.  
Washington, DC 20005  
(202) 434-5000

BECKER & POLIAKOFF, P.A.

Evan B. Berger  
1 East Broward Blvd., Suite 1800  
Ft. Lauderdale, FL 33301  
(954) 364-6055

Dated: November 20, 2017

*Attorneys for Defendants*

## TABLE OF CONTENTS

<b>I.</b>	<b>Background .....</b>	<b>1</b>
A.	The Defendants .....	1
B.	The Plaintiffs and Decedents .....	1
C.	Political Background.....	2
<b>II.</b>	<b>Events of September and October 2003 and Known Circumstances of Each Decedent’s Death.....</b>	<b>7</b>
A.	Failure of Evidence Concerning the Shooters .....	7
B.	The Events of September 2003 in Warisata.....	8
1.	Marlene Nancy Rojas Ramos.....	12
C.	The Events of October 2003 in El Alto .....	13
1.	Lucio Santos Gandarillas Ayala.....	19
2.	Roxana Apaza Cutipa .....	19
3.	Teodosia Morales Mamani .....	21
4.	Marcelino Carvajal Lucero .....	22
D.	The Events of October 2003 in the Southern Zone of La Paz .....	23
1.	Arturo Mamani Mamani .....	25
2.	Jacinto Bernabé Roque .....	26
3.	Raúl Ramón Huanca Márquez .....	27
<b>III.</b>	<b>Military Structure and Authority.....</b>	<b>29</b>
A.	Orders and Directives .....	31
B.	Limited Authority over the Military .....	34
<b>IV.</b>	<b>Relevant Additional Bolivian Law .....</b>	<b>35</b>

Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1(a), and in connection with their Notice of Motion for Summary Judgment, Defendants Gonzalo Sánchez de Lozada and Carlos Sánchez Berzaín hereby submit the following statement of material facts as to which Defendants contend there is no genuine issue to be tried:

**I. Background**

**A. The Defendants**

1. Gonzalo Sánchez de Lozada served as the democratically-elected President of the Republic of Bolivia from August 1993 to August 1997 and again from August 2002 to October 2003. Second Am. Compl. ¶ 13, Dkt. No. 156 (“Compl.”).<sup>1</sup>

2. Carlos Sánchez Berzaín served as Minister of Defense during Gonzalo Sánchez de Lozada’s second term as president, between early August 2003 and October 2003. Declaration of Ana C. Reyes, Ex. 69 (Def. Sánchez Berzaín’s Resp. Pls.’ Second RFA at 4 (Resp. Request 182)).<sup>2</sup>

**B. The Plaintiffs and Decedents**

3. Plaintiff Eloy Rojas Mamani is the father of decedent Marlene Nancy Rojas Ramos and sues on her behalf. Compl. ¶ 18.

4. Plaintiff Etelvina Ramos Mamani is Marlene’s mother and sues on her behalf. Compl. ¶ 18.

5. Plaintiff Sonia Espejo Villalobos is the common-law spouse of decedent Lucio Santos Gandarrillas Ayala and sues on his behalf. Ex. 49 (Villalobos Dep. Tr. 12:4-8, 13:14-17). She sought on her own behalf, but was not able to obtain, compensation under the 2008

---

<sup>1</sup> All docket numbers references contained herein refer to *Mamani v. Sánchez de Lozada*, Case No. 08-21063.

<sup>2</sup> All Exhibits cited herein are attached to the Declaration of Ana C. Reyes in Support of Defendants’ Motion for Summary Judgment.

Humanitarian Assistance law, which provided benefits to “heirs with up to a first degree of kinship, that is to say the children, spouses and parents of those killed.” Ex. 24 (MAMANI0002435T, at 2436T, 2440T) (Ministerial Resolution No. 67/2009).

6. Plaintiff Hernán Apaza Cutipa is the brother of decedent Roxana Apaza Cutipa and sues on his behalf. Compl. ¶ 20.

7. Plaintiff Teófilo Baltazar Cerro is the husband of decedent Teodosia Morales Mamani and sues on her behalf. Compl. ¶ 21.

8. Plaintiff Juana Valencia de Carvajal is the wife of decedent Marcelino Carvajal Lucero and sues on his behalf. Compl. ¶ 22.

9. Plaintiff Hermógenes Bernabé Callizaya is the son of decedent Jacinto Bernabé Roque and sues on his behalf. Compl. ¶ 23. He did not obtain compensation under the 2008 Humanitarian Assistance law. *See* Ex. 24 (MAMANI0002435T) (Ministerial Resolution No. 67/2009).

10. Plaintiff Gonzalo Mamani Aguilar is the son of decedent Arturo Mamani Mamani and sues on his behalf. Compl. ¶ 24. He did not obtain compensation under the 2008 Humanitarian Assistance law. *See* Ex. 24 (MAMANI0002435T, at 2438T) (Ministerial Resolution No. 67/2009); Ex. 47 (Mamani Aguilar Dep. Tr. 136:7-14).

11. Plaintiff Felicidad Rosa Huanca Quispe is the daughter of decedent Raúl Ramón Huanca Márquez and sues on his behalf. Compl. ¶ 25.

### **C. Political Background**

12. Beginning with President Sánchez de Lozada’s first term in office, “his main policies were [to] generate . . . economic growth, and solve . . . social problems” such as the “political exclusion [of] the indigenous and Aymara and Quechua people.” Ex. 56 (Aparicio Dep.

Tr. 97:11-98:17). The measures he took to implement these policies include naming an Aymara vice-president, Victor Hugo Cardenas, during his first term; capitalization, by which the government would capitalize half of state-owned companies through foreign investment and “the other half would remain . . . the people’s property . . . through pension funds”; the Popular Participation law, aimed at redistributing funds to and enfranchising rural communities; cash benefits for the elderly; providing residential gas for all Bolivian homes; and free universal health insurance for women and children. *Id.*; *see also* Ex. 48 (Berindoague Dep. Tr. 32:4-9); Ex. 43 (Comboni Dep. Tr. 136:10-18); Ex. 55 (Meruvia Dep. Tr. 32:3-12; 102:22-103:17); Ex. 59 (Sánchez Berzain Dep. Tr. 45:3-10; 61:2-18; 75:3-23); Ex. 53 (Siles Dep. Tr. 66:19-67:13, 90:8-16).

13. In December 2002, President Gonzalo Sánchez de Lozada announced that his Administration would continue a U.S.-funded coca eradication program. Ex. 9 (DEF-0000193, at 194) (*New Bolivian Opposition Group To Step Up Protests, Challenge New Administration*, Assoc. Press (Jan. 23, 2003)). In response, the leader of the “cocaleros” (coca growers), and current president of Bolivia, Evo Morales issued a public threat: “[I]f the government maintains its intransigent position” on the cocaine eradication program, “we’ll paralyze this nation until the government is forced from office.” *Id.* at 193. Mr. Morales followed through with that threat, turning Bolivian highways into “virtual war zone[s]” through unprecedented “blockades and force”: protestors “used massive rock walls . . . built with machines[,] . . . drill[ed] on the highway to put ironclads on the road . . . to prevent cars from moving . . . [and] ston[ed] the cars that were going through that in means that were not heard of before in Bolivia.” Ex. 43 (Comboni Dep. Tr. 145:13-146:20).

14. In February 2003, amid protests, armed rebel police units fired hand guns and assault rifles at military personnel stationed in front of the Presidential Palace. *See* Ex. 7 (DEF-0000078, at 84) (May 2003 OAS Rep.). Shots were fired at the Presidential Palace while President Sánchez de Lozada was inside at places he was known to work. *Id.* at 86-87. Palace guards were killed. *Id.* at 85. Members of President Sánchez de Lozada’s cabinet and staff observed “a carpet of blood” on the Palace’s terrace where these soldiers were shot, and bullet holes in the chairs where they, and the President, had been sitting shortly before the Palace was attacked. Ex. 43 (Comboni Dep. Tr. 158:5-160:9); Ex. 52 [REDACTED] *see also* Ex. 57 (Eastman Dep. Tr. 102:15-18).

15. The Organization of American States (OAS) conducted an investigation and found that “[t]he life of the President of Bolivia was indeed in danger, as was the stability of Bolivian institutions and democracy in this country.” Ex. 7 (DEF-0000078, at 87) (May 2003 OAS Rep.). The OAS also found that the Bolivian “armed forces acted to defend democracy and the rule of law against an attack by police, and their response was controlled and proportional, the large number of victims notwithstanding.” *Id.*; *see also* Ex. 57 (Eastman Dep. Tr. 112:17-22; 113:15-114:2).

16. The opposition grew in part because of a plan, initiated by the prior administration, to export and sell gas to raise domestic revenue and finance public spending. Ex. 57 (Eastman Dep. Tr. 120:13-18); Ex. 56 (Aparicio Dep. Tr. 143-45); Ex. 48 (Berindoague Dep. Tr. 76:14-77:5). As Bolivia is a landlocked country, the gas would need to be exported through a pipeline that ran through either Chile or through Peru. Ex. 56 (Aparicio Dep. Tr. 143-45). No final decision was ever made as to a final port and which country the pipeline would run through. Ex. 48 (Berindoague Dep. Tr. 203:16-25). Nevertheless, some members of the public believed that

Bolivia was going to sell gas through Chile, and, indeed, to Chile itself. Ex. 55 (Meruvia Dep. Tr. 57:20-58:3).

17. President Sánchez de Lozada and his government attempted to negotiate with the leaders of the blockades, including Felipe Quispe and Evo Morales, but the blockades were not lifted. Ex. 52 [REDACTED] Ex. 59 (Sánchez Berzaín Dep. Tr. 60:18-25, 88:10-90:5); Ex. 58 (Harb Dep. Tr. 30:11-33:11; 38:17-20, 39:8-41:11 96:9-97:4). In the case of the negotiations regarding the blockades in Sorata, the government representatives had to quickly evacuate when the situation became dangerous. Ex. 58 (Harb Dep. Tr. 41:25-42:10; 94:23-96:2); Ex. 53 (Siles Dep. Tr. 83:15-84:7).

18. Sánchez de Lozada had regular meetings with members of his government looking for dialogue with protesters, with increased frequency in October 2003, and often used the church as a mediator in negotiations. Ex. 55 (Meruvia Dep. Tr. 64:15-68:20; 76:2-78:14); Ex. 52 [REDACTED] [REDACTED] Ex. 58 (Harb Dep. Tr. 74:3-10).

19. On October 12, 2003, at Sánchez de Lozada's request, then Vice Minister of Labor Guido Meruvia hand-delivered, to three prominent labor groups in El Alto, letters signed by Sánchez de Lozada seeking dialogue and explaining how no decision had been made regarding the export of gas, and none would be made until consultation with the Bolivian people. Ex. 12 (DEF-0000529) (Letter); Ex. 13 (DEF-0000531) (Letter); Ex. 14 (DEF-0000533) (Letter); Ex. 55 (Meruvia Dep. Tr. 68:12-73:2; 106:8-112:14); Ex. 52 [REDACTED] Ex. 53 (Siles Dep. Tr. 84:8-17, 173:21-175:14). Meruvia's car was attacked with stones upon the delivery of the letters, and the person who accompanied him on the mission suffered a serious cut to his face. Ex. 55 (Meruvia Dep. Tr. 68:12-73:2; 106:8-112:14).

20. Sánchez de Lozada also requested a representative of the OAS to come to Bolivia to mediate the dialogue in October 2003. Ex. 57 (Eastman Dep. Tr. 128:23-129:3). The OAS mediator testified that while Sánchez de Lozada's government and the church were ready to dialogue, opposition leaders—including Evo Morales and Felipe Quispe—were not. Ex. 57 (Eastman Dep. Tr. 131:12-134:8); *see also* Ex. 56 (Aparicio Dep. Tr. 198:17-199:8).

21. On October 17, 2003, President Sánchez de Lozada resigned under protest, and his cabinet, including Minister Berzaín, was dissolved. *See* Sánchez de Lozada's Answer to Second Am. Compl. ¶ 164, Dkt. No. 219; Ex. 59 (Sánchez Berzaín Dep. Tr. 260:2-262:12). As the OAS mediator testified, both his and Sánchez de Lozada's lives were "in danger" on that day due to the violent protests that continued to rage in the streets of El Alto: "Protestors were . . . attacking the cars, any car that was passing by." Ex. 57 (Eastman Dep. Tr. 41:3-14, 134:19-24). Following acceptance by the Congress of the resignation of the Sánchez de Lozada government, Sánchez de Lozada and Minister Berzaín left Bolivia for the United States. Ex. 59 (Sánchez Berzaín Dep. Tr. 260:2-262:12).

22. The two presidents who followed President Sánchez de Lozada were also forced to resign.

23. Evo Morales was elected president on December 18, 2005, and remains in office today, notwithstanding a provision in Bolivian constitution that limited a President's term to five years.

24. Since Morales's election, his government has attempted to bring formal criminal charges against the five former presidents. Ex. 17 (DEF-0003472, at 3476) (U.S. State Dept. Country Rep. on Human Rights Practices - 2006). The reasons for those criminal charges appear to be politically motivated. *Id.*



25. On Aug 14, 2017, the State Department denied Defendants' *Touhy* request for deposition and testimony of the former U.S. Ambassador to Bolivia. Ex. 19 (Ltr. from J. Kovar to A. Reyes (Aug. 14, 2017)). The letter stated: "[t]he current President of Bolivia was a principal opposition figure during the events at issue in the lawsuit, and testimony by the former U.S. Ambassador could be used by opponents and supporters of the President to entangle the United States in the controversial matters addressed in the case, with substantial detrimental impact on U.S. foreign policy interests." *Id.*

26. It is well-known that the newspaper *La Razón* was purchased by a Venezuelan businessman with strong ties to the Chavez government and does not practice independently; it is now effectively controlled by the Venezuelan government and serves the Bolivian government. Ex. 40 (Sánchez de Lozada Dep. Tr. 9:2-21) (Oct. 4, 2017); Ex. 64 (Bjork-James Dep. Tr. 51:5-20).

## **II. Events of September and October 2003 and Known Circumstances of Each Decedent's Death**

27. "By order of the Chief Prosecutor" of Bolivia, three prosecutors were commissioned to "investigat[e] the facts of the case known as 'The Gas War or Black October.'" Ex. 11 (DEF-00000453, at 453) (Decision to reject criminal complaint no. 016/04 (July 28, 2004)) ("Three Prosecutors' Rep."). They published the findings of their investigation in a report from the Bolivian Prosecutor's Office on July 28, 2004. *Id.*

### **A. Failure of Evidence Concerning the Shooters**

28. Plaintiffs have not identified, by name or description, the shooter of any of the decedents.

29. Plaintiffs have not identified any eyewitness who saw the person who shot any of the decedents.

30. Mr. Hayden admitted he could not put himself in the minds of the shooters. *See* Ex. 65 (Hayden Dep. Tr. 328:2-9).

31. There is no physical evidence in the case available for inspection as to any decedent.

32. There is no evidence in the record as to what type of bullet any decedent was shot with, and therefore no possible determination based on ballistics as to what type of firearm was used for each shot. Although a Bolivian prosecutor tested a bullet provided by Ms. Mamani in 2006, Mr. Hayden acknowledged that no determination was ever made that the bullet tested was the bullet that struck Marlene Nancy Rojas Ramos in 2003. Ex. 65 (Hayden Dep. Tr. 180:24-181:3; 181:11-15).

33. There is no evidence that there was any military sniper in the areas and at the times each of the decedents was shot. Ex. 65 (Hayden Dep. Tr. 190:18-22, 262:19-25, 405:19-406:4).

34. There is no evidence of any order by either Defendant to shoot any of the decedents, or any other innocent civilian. Ex. 63 (Borrelli Dep. Tr. 161:4-22, 162:10-18, 164:11-19, 165:22-166:4); Ex. 56 (Aparicio Dep. Tr. 61:4-62:3, 87:4-8, 188:2-6); Ex. 46 (Bedoya Dep. Tr. 188:16-19); Ex. 48 (Berindoague Dep. Tr. 208:14-17); Ex. 43 (Comboni Dep. Tr. 134:15-19); Ex. 54 [REDACTED] Ex. 55 (Meruvia Dep. Tr. 21:9-11, 104:20-23); Ex. 52 [REDACTED] Ex. 59 (Sánchez Berzaín Dep. Tr. 113:11-114:5); Ex. 39 (Sánchez de Lozada Dep. Tr. 256:16-25) (May 15, 2015); Ex. 53 (Siles Dep. Tr. 184:11-18).

**B. The Events of September 2003 in Warisata**

35. Felipe Quispe was the head of the Single Trade Union Confederation of Peasant Workers of Bolivia (CSUTCB) during the events of September and October 2003. Ex. 11 (DEF-0000453, at 454) (Three Prosecutors' Rep.).

36. In September 2003, the CSUTCB, headed by Felipe Quispe, called for the mobilization of altiplano communities, setting in motion blockades in the altiplano area north of the city of La Paz. Ex. 11 (DEF-0000453, at 454, 476) (Three Prosecutors' Rep.).

37. The roadblocks "left approximately 1,000 tourists, both Bolivian and foreign, held against their will in the town of Sorata." *Id.* at 454. The tourists were in Sorata to celebrate a popular annual religious festival. Ex. 61 (Ramirez Dep. Tr. 34:7-35:8). The blockades led to a lack of food, medical supplies, and economic resources for those in Sorata. *See* Ex. 61 (Ramirez Dep. Tr. 44:2-18, 74:11-19); Ex. 54 [REDACTED]

38. With the blockade lasting more than one week, the individuals in Sorata were running low on food and money. Some who tried to escape were threatened with physical violence. Ex. 1 (FOIA-025 at 26-27) (U.S. State Dept. Cable); Ex. 11 (DEF-0000453, at 454) (Three Prosecutors' Rep.); *see* Ex. 54 [REDACTED]

39. The government attempted to negotiate an end to the blockade with Mr. Quispe over several days, but many of Mr. Quispe's demands—which by September 20 numbered more than 100—could not be redressed by the government. Ex. 58 (Harb Dep. Tr. 97:6-19).

40. Diplomatic representatives, concerned for the safety and security of their citizens, expressly demanded that the National Government do something about the situation. Ex. 11 (DEF-0000453, at 454) (Three Prosecutors' Rep.); Ex. 58 (Harb Dep. Tr. 89:23-94:15).

41. The Bolivian government sent in a convoy to rescue the individuals on September 20, 2003. Ex. 11 (DEF-0000453, at 455) (Three Prosecutors' Rep.); Ex. 1 (FOIA-025, at 27) (U.S. State Dept. Cable).

42. The government used a police convoy accompanied by members of the military police to escort and protect a fleet of buses that traveled out of Sorata. Ex. 11 (DEF-0000453, at

455) (Three Prosecutors' Rep.); Ex. 1 (FOIA-025, at 27) (U.S. State Dept. Cable); Ex. 61 (Ramirez Dep. Tr. 62:17-24).

43. Soon after the convoy left Sorata, it came under attack by armed protestors. Ex. 11 (DEF-0000453, at 455, 471) (Three Prosecutors' Rep.).

44. Security forces in Warisata, which were attempting to assist the convoy, were fired upon from surrounding hills and from some local homes. Ex. 11 (DEF-0000453, at 455) (Three Prosecutors' Rep.); Ex. 2 (FOIA-031, at 32-34) (U.S. State Dept. Cable). The small arms fire came from an estimated 150 people, some armed with 7.62 mm FN FALs, .30 caliber Mauser rifles and .22 caliber rifles. Ex. 1 (FOIA-025, at 27) (U.S. State Dept. Cable).

45. More specifically, at approximately 3:39 p.m., "crossfire was received from both hills, from the building of the Rural School of Warisata and from people positioned in the trees existing in the proximity of the school." Ex. 32 (MAMANI0005318T, at 5318T.0006) (Social Conflict Field Diary). At approximately 4 p.m., units were withdrawn to the outskirts of Warisata to counter the attack of those firing at the convoy. *Id.*

46. Soldiers and policemen were killed and wounded as a result of this civilian fire. Ex. 1 (FOIA-025, at 26, 28-29) (U.S. State Dept. Cable); Ex. 11 (DEF-0000453, at 455) (Three Prosecutors' Rep.); Ex. 34 (MAMANI0009662, at 9663) (Ballistics Report); Ex. 32 (MAMANI0005318T, at 5318T.0007) (Social Conflict Field Diary); Ex. 65 (Hayden Dep. Tr. 195:4-8). Three civilians also died. Ex. 11 (DEF-0000453, at 455) (Three Prosecutors' Rep.).

47. Felipe Quispe took credit for the violence, stating that that he gave the order to ambush soldiers using rifles on the convoy rescuing foreign and Bolivian tourists. Ex. 2 (FOIA-031, at 33); *see also* Felipe Quispe, *Goni's Downfall: Journal of the "Hunger Strike"* 12 (2013)

(recounting how he ordered campesinos to ambush the military with firearms from the nearby hills).

48. José Elias Harb, a government vice-Minister who was negotiating with Mr. Quispe that day, testified that he feared for his life after Mr. Quispe learned that the Sorata tourists were being rescued. Ex. 58 (Harb Dep. Tr. 94:23-97:19). He and other government officials were forced to escape by jumping through a bathroom window. *Id.* at 42:4-10.

49. In late September, after the events of September 20, 2003, Colonel Nelson Flores became Commander of the military unit that had accompanied the Sorata convoy. Ex. 54 [REDACTED]

[REDACTED] received reports that members of the military unit “were shot [at] . . . from the hills where there were armed civilians.” [REDACTED] Those “community members who were armed” with “Mauser rifles” fired at Flores’s unit in Warisata. [REDACTED]

50. On September 20 and 21, 2003, in Warisata, a number of civilians were armed with Mauser rifles. Ex. 1 (FOIA-025, at 27) (U.S. State Dept. Cable); Ex. 11 (DEF-0000453, at 479) (Three Prosecutors’ Rep.); Ex. 54 [REDACTED] These included “former members of the . . . Tupak Katari Guerrilla Army.” Ex. 64 (Bjork-James Dep. Tr. 188:24-189:4). Bolivian news outlets subsequently published images of “campesinos” from Warisata bearing Mauser rifles. *See, e.g.*, Ex. 8 DEF-0000170 (DEF-0000170, at 170 (photograph), 172 (translation)) (*Sorata Is Scared, Cut Off, and Unprotected, La Razón* (Sept. 22, 2003)).

51. The Bolivian National Police issued a ballistics report dated September 29, 2003, based on analysis conducted on September 22, 2003 regarding the bullets recovered from Captain Gustavo Villafuerte Aguilar, and Sargent Marco Antonio Venegas, who were shot in Warisata on

September 20, 2003. Ex. 34 (MAMANI0009662, at 9663) (Ballistics Rep.). The report concluded that the bullets were 7.62 caliber from an F.A.L. rifle. *Id.* at 9664.

52. Four of Plaintiffs' proffered experts concede the presence of armed campesinos in Warisata. Ex. 65 (Hayden Dep. Tr. 200:12-24, 209:7-13); Ex. 63 (Borrelli Dep. Tr. 262:10-263:21, 266:16-267:3, 283:15-284:6); Ex. 64 (Bjork-James Dep. Tr. 146:15-17, 170:13-18, 188:24-189:4); Ex. 62 (Goldstein Dep. Tr. 178:2-179:3, 337:14-24).

**1. Marlene Nancy Rojas Ramos**

53. Marlene Nancy Rojas Ramos died on September 20, 2003, due to a gunshot wound.

54. According to Marlene's mother, Ms. Ramos Mamani, who was in bed in the second-floor room when Marlene was shot, Marlene was shot while near a window at around 4 p.m. Ex. 42 (Ramos Mamani Dep. Tr. 18:22-19:12); Ex. 28 (MAMANI0002577T, at 2590T) (Visual Inspection Rep.); Ex. 29 (MAMANI0002599T, at 2605T) (Ballistics Rep.); Ex. 65 (Hayden Dep. Tr. 197:6-21). Her father, Mr. Rojas Mamani, had left the house that afternoon for the hills. Ex. 41 (Rojas Mamani Dep. Tr. 18:24-19:6, 74:17-75:11).

55. The Mamani's house was not located directly in Warisata, but was located approximately 900 to 1000 meters away from it, in front of surrounding hills. Ex. 66 (Katz Rep. ¶ 49); Ex. 65 (Hayden Dep. Tr. 195:19-21); Ex. 41 (Rojas Mamani Dep. Tr. 86:24-87:5).

56. A 7.62 bullet can travel over 1000 meters. Ex. 65 (Hayden Dep. Tr. 195:22-25).

57. Mr. and Ms. Mamani cannot identify the shooter or any person who witnessed the shooter. Ex. 41 (Rojas Mamani Dep. Tr. 112:6-113:5); Ex. 42 (Ramos Mamani Dep. Tr. 18:18-19:6). Mr. Mamani testified that he only saw military shooting in the area, but conceded he would not have been able to see if there were individuals firing from the hills. Ex. 41 (Rojas Mamani Dep. Tr. 89:24-90:5).

58. There is no evidence regarding who shot Marlene Nancy Rojas Ramos, why that person was shooting or what that person was doing or thinking at the time of the shooting.

59. Marlene Nancy Rojas Ramos's death could have been accidental. Mr. Mamani testified that the situation outside the house was "chaos," with people running around and shots being fired. Ex. 41 (Rojas Mamani Dep. Tr. 86:17-23). He agrees that it was "possible that [his daughter] was shot by mistake." *Id.* at 133:2-7. "By mistake, it could have been." *Id.* A U.S. State Department Cable from the Embassy in La Paz dated September 22, 2003, reported that casualties included "Marlene Nancy Rojas Ramos, 8 (civilian – shot in chest by stray bullet as she looked out a window.)" Ex. 1 (FOIA-025, at 28) (U.S. State Dept. Cable). Plaintiffs' proffered expert, Mr. Bjork-James, concluded that Marlene "was killed by a stray bullet," relying on evidence that so stated. Ex. 64 (Bjork-James Dep. Tr. 271:20-24, 274:8-275:9). Plaintiffs' proffered expert Philip Hayden agreed that the shooting could have been accidental. Ex. 65 (Hayden Dep. Tr. 135:20-23, 210:16-211:4).

60. Plaintiffs claim that Marlene was hit with a 7.62 caliber bullet, but no determination was ever made that the bullet tested was the bullet that struck Marlene Nancy Rojas Ramos in 2003, and that bullet is not available for inspection. Ex. 65 (Hayden Dep. Tr. 181:4-182:24); Ex. 71 (Pls. Rojas Mamani & Ramos Mamani's Resp. Tangible Things RFP at 3) (Resps. Requests 1-5).

### **C. The Events of October 2003 in El Alto**

61. Opposition forces implemented blockades in and around the city of La Paz in October 2003. La Paz sits in a crater that is below a high plateau that surrounds it called El Alto, which literally means "the high place." Ex. 46 (Bedoya Dep. Tr. 198:18-200:9). The airport is in El Alto. *Id.*

62. As Mr. Bjork-James testified, “El Alto is strategically positioned to cut off La Paz.” Ex. 64 (Bjork-James Dep. Tr. 313:8-15). There are two main roads that go in and out of La Paz: one main road that connects El Alto to the city of La Paz, and another that goes in and out of the Southern part of La Paz. Ex. 46 (Bedoya Dep. Tr. 199:10-20); Ex. 48 (Berindoague Dep. Tr. 178:5-179:3); Ex. 53 (Siles Dep. Tr. 153:7-10). Both those roads were cut off in October 2003. Ex. 64 (Bjork-James Dep. Tr. 313:21-314:2).

63. In early October 2003, protestors blocked the principal vehicle access to El Alto from La Paz, “destroying a pedestrian bridge over the highway and rolling a railway freight car on to the road.” Ex. 4 (FOIA-047, at 49) (U.S. State Dept. Cable).

64. The road that goes in and out of the Southern part of La Paz was also blockaded by protestors in October 2003. Ex. 64 (Bjork-James Dep. Tr. 313:21-314:2); Ex. 5 (FOIA-053, at 54); Ex. 46 (Bedoya Dep. Tr. 199:15-200:20); Ex. 53 (Siles Dep. Tr. 153:7-10).

65. Opposition to the government laid siege to La Paz. Ex. 2 (FOIA-031, at 32) (U.S. State Dept. Cable). The opposition implemented “Plan Tourniquet,” which was designed to starve the capital city into submission. *Id.* at 33. “Three newborns died when their hospital ran out of oxygen and average citizens were left scrambling for scarce basic necessities.” *Id.* at 32; *see also* Ex. 64 (Bjork-James Dep. Tr. 314:4-7).

66. As of the weekend of October 11-12, La Paz remained virtually cut off from the rest of the country by application of El Alto’s “tourniquet.” Ex. 3 (FOIA-041, at 42) (U.S. State Dept. Cable).

67. By October 13 the road blockades were extending into the city of La Paz itself, amidst a transportation strike that kept buses and most cars off the roads. La Paz was experiencing



shortages of fuel and some food items due to the blockades. Ex. 3 (FOIA-041, at 42) (U.S. State Dept. Cable).

68. By October 15, the opposition was continuing its siege against the capital. In La Paz and El Alto, food was scarce and stores, schools, businesses and banks remained closed. Ex. 55 (Meruvia Dep. Tr. 18:13-19:10); Ex. 53 (Siles Dep. Tr. 151:14-152:6). Public transportation was at a standstill, though some gasoline and bottled gas supplies were delivered to the fuel starved capital the previous night. Ex. 4 (FOIA-047, at 48) (U.S. State Dept. Cable). The airport remained closed, as were most roads outside of the city. *Id.* at 49. “La Paz was essentially paralyzed.” Ex. 48 (Berindoague Dep. Tr. 62:11-12).

69. Javier Comboni, the then Minister of Finance, testified that when he returned to La Paz on October 13, “the city was totally and completely blockaded.” Ex. 43 (Comboni Dep. Tr. 102:18-103:3). The blockade was so effective that people were going hungry. *Id.* at 116:11-19.

70. Plaintiff Juana Valencia de Carvajal testified that there were blockades outside of her house near Río Seco on October 11, 2003, and that during the blockades she was scared to leave her home and walk through El Alto. Ex. 44 (De Carvajal Dep. Tr. 52:21-53:2, 57:16-21). She closed and locked up her shop and did not go out during the protests. *Id.* at 53:13-17.

71. Plaintiff Sonia Espejo Villalobos testified that when she went to a nearby market in El Alto on October 12, 2003, there was nothing left to purchase because of the blockades. Ex. 49 (Villalobos Dep. Tr. 35:7-17). Her family did not have gas to cook with and there was none to buy in stores. *Id.* at 31:7-13.

72. Plaintiff Hernán Apaza Cutipa testified that streets were closed on October 12, 2003, because of the blockades. Ex. 51 (Cutipa Dep. Tr. 69:6-20). He could not remember exactly

how long the blockades lasted, but testified they lasted more than ten days. *Id.* at 69:21-70:8. During the blockades, people were burning tires. *Id.* at 77:18-78:9, 79:22-80:12.

73. Plaintiff Teófilo Baltazar Cerro testified that transportation could not move because of the blockades in El Alto. Ex. 45 (Baltazar Dep. Tr. 33:18-24.) During that time his wife had difficulty obtaining the goods that she sold at the fairs in El Alto. *Id.* at 34:21-24. She was not working on October 12, 2003 because she could not get goods to sell due to the blockades. *Id.* at 35:6-9. The majority of El Alto was closed because of the blockades. *Id.* at 37:9-12. Ambulances were prevented from circulating due to deep ditches in the road. *Id.* at 79:8-25.

74. Senkata was a storage facility for gasoline and other fuels in El Alto. Due to the road blockages, no fuel could be taken out of those plants and transported to La Paz for more than a week. Ex. 48 (Berindoague Dep. Tr. 61:4-20); Ex. 58 (Harb Dep. Tr. 137:14-19). Normal transportation of fuel had stopped, as the truckers were afraid for their lives and that their trucks would be damaged. Ex. 48 (Berindoague Dep. Tr. 62:2-8); Ex. 58 (Harb Dep. Tr. 139:5-21). There was a severe problem of lack of fuel in La Paz which affected the hospitals, clinics, and ambulances. Ex. 48 (Berindoague Dep. Tr. 62:8-10); Ex. 58 (Harb Dep. Tr. 138:25-139:4); Ex. 4 (FOIA-047, at 48) (U.S. State Dept. Cable).

75. On October 11, 2003, Sánchez de Lozada, with the signed approval of his Cabinet, issued Supreme Decree 27209, an order to the Commander in Chief of the Armed Forces. Ex. 6 (DEF-0000069) (Supreme Decree No. 27209).

76. Supreme Decree 27209 aided the transportation of fuel tanks from the Senkata plant to the city of La Paz. Ex. 6 (DEF-0000069) (Supreme Decree No. 27209); Ex. 11 (DEF-0000453, at 457) (Three Prosecutors' Rep.); Ex. 48 (Berindoague Dep. Tr. 170:19-25).

77. The order contained a provision that the government would cover expenses of any individuals or property harmed as a result of compliance with the order, because gas drivers would not drive the trucks otherwise. Ex. 6 (DEF-0000069, at 71) (Supreme Decree No. 27209); Ex. 58 (Harb Dep. Tr. 52:23-53:3, 133:13-134:11, 139:5-21); Ex. 59 (Sánchez Berzaín Dep. Tr. 183:19-184:13).

78. Violent confrontations took place when security forces tried to bring fuel from El Alto to La Paz. Ex. 2 (FOIA-031, at 35) (U.S. State Dept. Cable). “While security forces first exhausted non-lethal means against the El Alto crowds that prevented desperately needed food and fuel from being delivered to the hostage capital, protestors used dynamite against people and property.” *Id.* at 33.

79. At 6 p.m. on October 11th, along Avenida 6 de Marzo, in El Alto, a crowd attacked security forces by throwing dynamite, homemade Molotov bombs, homemade explosives made with dynamite, nails, and metallic materials contaminated with human excrement, put into plastic containers that then became hand grenades, having the same effect as war grenades, rifles of different calibers, and Mauser rifles. Ex. 32 (MAMANI0005318T, at 5318T.00014-15) (Social Conflict Field Diary); *see also* Ex. 64 (Bjork-James Dep. Tr. 195:2-8) (“Molotov cocktails were used by protestors.”).

80. During the operation in the Senkata area of El Alto on October 12, 2003, there were “attacks on the tanker trucks—the mobilized civilian population was armed with Mauser rifles and dynamite.” Ex. 11 (DEF-0000453, at 479) (Three Prosecutors’ Rep.); *see also* Ex. 48 (Berindoague Dep. Tr. 180:21-181:24).

81. While the attacks on the tanker trucks were directed at the members of the joint forces, in Senkata, the attacks on the tanker trucks endangered the lives of civilians who did not take part in the clashes. Ex. 11 (DEF-0000453, at 479) (Three Prosecutors' Rep.).

82. There were violent clashes throughout El Alto during the day, with at least one soldier killed. Ex. 3 (FOIA-041, at 43) (U.S. State Dept. Cable).

83. On October 12, 2003, in the vicinity of the zone of Río Seco, individuals armed with Mauser rifles and carbines started to attack the troops advancing in the direction from El Alto and La Paz from the tops of buildings and church bell towers in this area. Ex. 33 (MAMANI0005355, at 5357) (Military Intelligence Rep.). An angry mob in the same area was using dynamite, Molotov bombs, rocks and gunfire coming from the contiguous buildings off the main avenue. Ex. 32 (MAMANI0005318T, at 5318T.0019) (Social Conflict Field Diary); *see also* Ex. 15 (DEF-0000723, at 806-807) (Police Intelligence Report). Also in the Río Seco area, a mob blew up a gasoline station, injuring 20 persons and killing 5; clashes occurred between the mob and the local inhabitants who were defending their property. Ex. 32 (MAMANI0005318T, at 5318T.0022) (Social Conflict Field Diary).

84. The attacks in Río Seco resulted in the death of Private Memecio Garcia, who was shot in the head with a high-caliber bullet. Ex. 33 (MAMANI0005355, at 5357) (Military Intelligence Rep.); Ex. 32 (MAMANI0005318T, at 5318T.0021) (Social Conflict Field Diary); Ex. 15 (DEF-0000723, at 797 (Police Intelligence Report), 821 (Police Intelligence Report)).

85. On October 13, 2003, in the Río Seco area of El Alto “groups of vandals dug into the ground in several places to find the gas lines so they could blow them up with dynamite.” Ex. 11 (DEF-0000453, at 457) (Three Prosecutors' Rep.). At mid-day the footbridge located near Río Seco was blown up with dynamite. *Id.*

**1. Lucio Santos Gandarillas Ayala**

86. Lucio Santos Gandarillas Ayala died on October 12, 2003, due to a gunshot wound.

87. Plaintiff Sonia Espejo Villalobos testified that Mr. Gandarillas Ayala left their home the morning of October 12 to get to his brother's house, traveling through the area of Senkata in El Alto. Ex. 49 (Villalobos Dep. Tr. 33:19-34:24). He left to get fuel, which was unavailable in the stores due to the blockades. *Id.* at 31:3-13, 42:12-23. She was told that Mr. Gandarillas Ayala was shot in the Senkata area of El Alto, about a block and a half from the main road. *Id.* at 37:5-14, 51:6-24.

88. Plaintiff was not with Mr. Gandarillas Ayala when he was shot and cannot identify the shooter. *See* Ex. 49 (Villalobos Dep. Tr. 37:10-11).

89. There is no evidence in the case regarding who shot Mr. Gandarillas Ayala, why that person was shooting or what that person was doing or thinking at the time of the shooting.

90. It is not possible to establish the point of origin, trajectory, or angle of incidence of the bullet that struck Mr. Gandarillas Ayala. Ex. 38 (MAMANI0017756T, at 17756T.0003) (Ballistics Rep.); Ex. 65 (Hayden Dep. Tr. 505:14-506:2).

91. Mr. Gandarillas Ayala's shooting could have been accidental. Ex. 65 (Hayden Dep. Tr. 526:8-17).

**2. Roxana Apaza Cutipa**

92. Roxana Apaza Cutipa died on October 12, 2003, due to a gunshot wound.

93. At approximately 7 p.m. on October 12, 2003, Roxana Apaza Cutipa was hit by a bullet behind her left ear while on the fourth-floor rooftop of her home in the city of El Alto. Ex. 26 (MAMANI0002452T) (Police Rep.); Ex. 25 (MAMANI0002448T) (Police Rep.); Ex. 51 (Cutipa Dep. Tr. 8:9-14, 12:8-13:6). Her home was approximately six blocks away from the Río

Seco area in El Alto. *Id.* at 81:6-23; Ex. 65 (Hayden Dep. Tr. 249:5-9). It was 400 meters and seven city blocks up from Juan Pablo Avenue, the main thoroughfare running through El Alto. Ex. 65 (Hayden Dep. Tr. 246:22-23); Ex. 51 (Cutipa Dep. Tr. 35:19-36:3).

94. She was shot after sunset while looking over the wall to an unfinished room on the roof, while wearing a grey hat. Ex. 65 (Hayden Dep. Tr. 240:22-241:5, 243:22-244:3). According to Plaintiff's proffered expert Philip Hayden, for an intentional shot to hit her at dusk from Juan Pablo Avenue, it would take "a very well-trained sniper making an incredibly difficult shot." Ex. 65 (Hayden Dep. Tr. 263:22-264:4). There is no evidence that the Bolivian military had such a qualified individual, or that such an individual was in El Alto that day. Exhibit 80 is an aerial photograph that depicts the path of a shot fired from Juan Pablo Avenue, at Mr. Hayden's assumed position for the military, to the residence where Ms. Apaza Cutipa was struck.

95. Plaintiffs' proffered expert Mr. Hayden conceded that there was evidence of armed protestors on the roofs in the area around Juan Pablo Avenue "shooting down at" the military. Ex. 65 (Hayden Dep. Tr. 236:3-6, 237:20-238:7; 263:3-9).

96. No bullet or bullet fragments were recovered, and no determination was made as to the type of firearm used. Ex. 31 (MAMANI0002620T, at 2620T.0003) (Ballistics Rep.). It is not possible to establish the point of origin, trajectory, or angle of incidence of the bullet that struck Ms. Apaza Cutipa. *Id.*

97. Plaintiff Hernán Apaza Cutipa did not see who shot his sister and cannot identify the shooter. Ex. 51 (Cutipa Dep. Tr. 17:19-18:6).

98. There were no soldiers on the street outside the building where Ms. Apaza Cutipa was shot. Ex. 27 (MAMANI0002479T) (Police Rep.); Ex. 51 (Cutipa Dep. Tr. 23:23-24:20).

99. There is no evidence regarding who shot Roxana Apaza Cutipa, why that person was shooting or what that person was doing or thinking at the time of the shooting.

100. Roxana Apaza Cutipa's death could have been accidental. Plaintiff Hernán Apaza Cutipa testified that "there were lots of people on the street that could have been hit instead" at the time his sister was shot. Ex. 51 (Cutipa Dep. Tr. 117:15-18). Mr. Apaza Cutipa acknowledged the possibility of this explanation when asked "[i]s it possible that the bullet that hit your sister was a stray bullet and not intended to hit her?": "[I]t could be and only God knows." *Id.* at 117:2-8. "It could have been a stray bullet that killed [Roxana Apaza Cutipa]." *Id.* at 118:3-16; Ex. 65 (Hayden Dep. Tr. 250:4-7, 314:7-11).

### **3. Teodosia Morales Mamani**

101. Teodosia Morales Mamani died on October 14, 2003, due to a gunshot wound sustained on October 12, 2003, while at her sister's house on Juan Pablo II Avenue No. 35 in the Río Seco zone of El Alto. Ex. 45 (Baltazar Dep. Tr. 15:15-16:21, 50:17-22). The house is only a couple of blocks from the Río Seco bridge. *Id.* at 22:17-19.

102. The bullet came through a brick wall on the side of her house that did not have any windows. Ex. 45 (Baltazar Dep. Tr. 89:20-21); Ex. 65 (Hayden Dep. Tr. 326:10-17). Exhibit 81 shows a photograph of the house with a red circle approximating where the bullet went through the wall. *See also* Ex. 65 (Hayden Dep. Tr. 326:10-17).

103. Ms. Morales Mamani's family had earlier in the day stood by a window in the apartment to look at what was happening outside. They were told by military to get away from the windows. No soldier took any shot at them, even though the soldiers would have had a clear line of site to do so. Ex. 65 (Hayden Dep. Tr. 323:16-324:3).

104. Plaintiff Teófilo Baltazar Cerro was not with Ms. Morales Mamani when she was shot and cannot identify the shooter. Ex. 45 (Baltazar Dep. Tr. 90:4-91:10, 97:24-98:9).

105. There is no evidence in the case regarding who shot Teodosia Morales Mamani, why that person was shooting or what that person was doing or thinking at the time of the shooting.

106. Ms. Morales Mamani's death could have been accidental. Ex. 65 (Hayden Dep. Tr. 330:20-331:20).

#### **4. Marcelino Carvajal Lucero**

107. Marcelino Carvajal Lucero died on October 12, 2003, due to a gunshot wound.

108. Mr. Carvajal was shot through the window of his second-story home located at 93 avenue Juan Pablo II in El Alto. Ex. 44 (De Carvajal Dep. Tr. 25:6-8, 76:11-17, 83:15-84:15).

109. Minutes before her husband was killed, Plaintiff Juana Valencia de Carvajal “did not hear at that point noise from the military, but [she] did hear the noise from the protesters.” Ex. 44 (De Carvajal Dep. Tr. 72:18-25). It sounded like “chaos outside [her] home in the minutes before” her husband was killed—people were “running around . . . shouting” and there were “loud noises” that made her afraid. *Id.* at 73:2-12. Mr. Carvajal Lucero was by himself in the room when he was shot. *Id.* at 83:6-15.

110. There is no evidence regarding who shot Marcelino Carvajal Lucero, why that person was shooting or what that person was doing or thinking at the time of the shooting.

111. Marcelino Carvajal Lucero's death could have been accidental. As his wife testified, the bullet that came in through the window could have been a stray bullet. Ex. 44 (De Carvajal Dep. Tr. 85:14-18); *see also* Ex. 65 (Hayden Dep. Tr. 486:25-487:12).



**D. The Events of October 2003 in the Southern Zone of La Paz**

112. General Marcelo Eulogio Antezana Ruiz was the Commander of the Military Academy in the Southern Zone of La Paz in 2003. Ex. 60 (Antezana Dep. Tr. 132:13-16). His roles and duties included maintaining the security of the school itself, as well as the surrounding areas. *Id.* at 132:23-133:13.

113. General Antezana testified that, from October 6 to October 13, 2003, there was a military operation taking place in Uni, in the Southern Zone of La Paz. Ex. 60 (Antezana Dep. Tr. 50:6-21:26, 55:16-56:15). The troops would go out and come back each day to keep the road unobstructed. *Id.* at 139:5-9.

114. The road from Palca to La Paz is one by which agricultural goods are transported from Palca and the countryside to La Paz. Ex. 60 (Antezana Dep. Tr. 139:10-14). It runs through the Ánimas Valley. *Id.* at 78:21-79:3.

115. There is only one road from Palca to La Paz. Ex. 47 (Mamani Aguilar Dep. Tr. 32:5-6). From Palca heading northwest to La Paz it passes through Uni, Apaña, Ovejuyo, and Chasquipampa, in that order. Ex. 79 (Mamani Aguilar Dep. Ex. 1) (Map).

116. Plaintiff Felicidad Rosa Huanca Quispe testified that there was a blockade that existed on the Ánimas Valley road in October 2003. Ex. 50 (Huanca Quispe Dep. Tr. 32:6-33:9). She testified that neighbors took food and supplies to the blockaders. *Id.* at 32:5-33:25.

117. Plaintiff Gonzalo Mamani Aguilar testified he saw people blocking the road by the Ánimas Lake on October 12, 2003. Ex. 47 (Mamani Aguilar Dep. Tr. 46:20-22).

118. General Antezana testified that in the morning of October 13, around 9:00am, the troops were instructed to leave Uni because their services were not necessary, as there were no more protests there, and to provide support in Chasquipampa. Ex. 60 (Antezana Dep. Tr. 139:15-

16). A “great protest [was] growing” there. Ex. 32 (MAMANI0005318T, at 5318T.0026) (Social Conflict Field Diary). Protestors threatened to come down into the southern suburbs of La Paz to ransack the city. Ex. 3 (FOIA-041, 43) (U.S. State Dept. Cable).

119. General Antezana testified that, on the way from Uni to Chasquipampa on the morning of October 13, 2013, a military unit was ambushed on the Palca road to La Paz. Ex. 60 (Antezana Dep. Tr. 73:2-74:18). At “a place that was planned by the people from the zone,” a troop transport truck had to stop due to a ditch that had been dug in the road. *Id.* The troops set up a secure perimeter around the truck so that “officials could analyze the situation and could find a way to go through this obstacle.” *Id.* At that point, they were attacked from above with firearms. *Id.*

120. The ambush occurred between 10:00 and 11:00 a.m., and the unit was attacked by a mob of people with dynamite, stones, and firearms, who shot and threw dynamite at the military contingent. Ex. 35 (MAMANI0009729, at 9747) (Police Rep.); Ex. 32 (MAMANI0005318T, at 5318T.0026) (Social Conflict Field Diary).

121. During the ambush, a young soldier was hit through the eye with a “precise shot” and killed. Ex. 60 (Antezana Dep. Tr. 141:2-142:8); *see* Ex. 35 (MAMANI0009729, at 9756) (Police Rep.); Ex. 32 (MAMANI0005318T, at 5318T.0026) (Social Conflict Field Diary).

122. The unit commander called General Antezana to report the ambush, at which point General Antezana ordered the troops to withdraw from the “death zone,” defending themselves as they withdrew. Ex. 60 (Antezana Dep. Tr. 142:9-13).

123. General Antezana ordered helicopter FAB-730 to be “sent to rescue the fallen soldier and provide supplies.” Ex. 60 (Antezana Dep. Tr. 143:14-17); Ex. 35 (MAMANI0009729, at 9747) (Police Rep.) (“[A] draftee was hit by a bullet in the left eye by the blockaders. . . . [A]

helicopter arrived at that location, in which he was moved to the Military College.”). General Antezana testified that that same morning on October 13, 2003, just to the west of Ovejuyo in Chasquipampa, “about 4,000 to 5,000” protestors surrounded a military truck and soldiers, “asking them to surrender, to leave their weapons on the floor.” Ex. 60 (Antezana Dep. Tr. 135:11-139:25).

124. The soldiers retreated to avoid casualties, leaving the truck behind, at which point the protestors flipped it over and burned it. Ex. 60 (Antezana Dep. Tr. 108:14-109:12); *see also* Ex. 32 (MAMANI0005318T, at 5318T.0027) (Social Conflict Field Diary); Ex. 18 (DEF-0004241) (still frames of video showing truck being flipped over and burned).

#### **1. Arturo Mamani Mamani**

125. Arturo Mamani Mamani died on October 13, 2003, as a result of a gunshot wound. He was struck atop the steep cliff face of Huaichichuro around the same time that the soldiers were ambushed on the road below. Ex. 65 (Hayden Dep. Tr. 441:4-21). Decedent Jacinto Bernabé Roque was cross-positioned on a different steep hilltop, Huaichichuni, approximately 250 meters to the west, also overlooking the Palca road where the military was ambushed. *Id.* A photograph taken by Mr. Hayden of the two hilltops is attached at Exhibit 83. Defendants have added a green arrow to depict the assumed position of decedent Jacinto Bernabé Roque, and a red arrow to depict decedent Arturo Mamani Mamani’s assumed position.

126. Mr. Mamani Mamani’s son, Plaintiff Gonzalo Mamani Aguilar, testified that on the morning of October 13, 2013, he and his father left their home around 7:30 a.m. to walk to their family plot of land where they cultivate crops on Huaichichuro to “turn the soil” to “prepare for the planting,” each travelling separately, with his father leaving the house after him. Ex. 47 (Mamani Aguilar Dep. Tr. 61:9-62:9, 70:14-15). Mr. Mamani Aguilar testified he did not reach Huaichichuro, but instead went to Huaichichuni and stopped to hide near decedent Jacinto

Bernabé, while his father went to Huaichichuro by a different route. *Id.* at 10:14-16, 63:11-18, 71:3-6, 74:11-23, 82:23-83:13.

127. A still frame from a drone video taken by Mr. Hayden depicting where Mr. Mamani Mamani was positioned, as seen from the direction of the Palca road, is attached as Exhibit 82 (Hayden Rep., Ex. 5, at 0:00:20). Defendants have added a red arrow depicting the position of individuals standing in the assumed location of decedent Arturo Mamani Mamani atop Huaichichuro.

128. Mr. Mamani Aguilar did not “actually see” his father get shot, or who specifically shot him but “heard him when he cried out.” Ex. 47 (Mamani Aguilar Dep. Tr. 115:21-24).

129. There is no evidence regarding who shot Arturo Mamani Mamani, why that person was shooting or what that person was doing or thinking at the time of the shooting.

130. No determination was made as to the type of bullets that hit Mr. Mamani Mamani or the firearm the bullets came from. Ex. 21 (MAMANI0002149T) (Autopsy Rep.); Ex. 22 (MAMANI0002190T) (Autopsy Rep.).

131. It is not possible to establish the point of origin, trajectory, or angle of incidence of the bullet that struck Mr. Mamani Mamani. Ex. 37 (MAMANI0015177T, at 15177T.0002-3) (Ballistics Rep.); Ex. 65 (Hayden Dep. Tr. 363:5-14).

132. Arturo Mamani Mamani’s death could have been accidental. Ex. 65 (Hayden Dep. Tr. 444:25-447:20).

## **2. Jacinto Bernabé Roque**

133. Jacinto Bernabé Roque died on October 13, 2003, at around 10:30 am, as a result of a gunshot wound.

134. Mr. Roque was struck while positioned on Huaichichuni, a steep hilltop overlooking the Palca road west of Uni, Ex. 79 (Mamani Aguilar Dep. Ex. 1) (Map), around the same time that the soldiers travelling west on the road from Uni were ambushed, Ex. 65 (Hayden Dep. Tr. 441:4-21). Decedent Arturo Mamani Mamani was cross-positioned on a different steep hilltop, Huaichichuro, approximately 250 meters to the east, also overlooking the road where the military was ambushed. *Id.*

135. Mr. Mamani Aguilar testified that when he arrived at Huaichichuni around 8:00 a.m. on the morning of October 13, 2003, Mr. Bernabé Roque was already there, “laying down behind [a] bale of hay.” Ex. 47 (Mamani Aguilar Dep. Tr. 83:3-85:9). He then “crawled to the area where Jacinto [Bernabé] was hiding” and hid “right behind him.” *Id.* There was no one else near them when they were lying behind the straw. *Id.* at 90:15-17.

136. Mr. Mamani Aguilar did not see Mr. Bernabé Roque get shot (at around 10:30 a.m.), and Mr. Mamani Aguilar did not see who shot him. Ex. 47 (Mamani Aguilar Dep. Tr. 90:25-91:25).

137. It is not possible to establish the point of origin, trajectory, or angle of incidence of the bullet that struck Mr. Bernabé Roque. Ex. 37 (MAMANI0015177T, at 15177T.0002-3) (Ballistics Rep.); Ex. 65 (Hayden Dep. Tr. 443:4-10).

138. There is no evidence regarding who shot Jacinto Bernabé Roque, why that person was shooting or what that person was doing or thinking at the time of the shooting.

139. Jacinto Bernabé Roque’s death could have been accidental. Ex. 65 (Hayden Dep. Tr. 444:25-447:20).

### **3. Raúl Ramón Huanca Márquez**

140. Raúl Ramón Huanca Márquez died on October 13, 2003, due to a gunshot wound.

141. On the morning of October 13, 2003, there was a blockade on the Ánimas Valley Road. Ex. 50 (Huanca Quispe Dep. Tr. 32:9-14; 32:22-33:4).

142. There were sounds that morning that sounded to Plaintiff Felicidad Rosa Huanca Quispe like gunfire or dynamite exploding. Ex. 50 (Huanca Quispe Dep. Tr. 43:13-23).

143. There are two stores on the main road. Ex. 50 (Huanca Quispe Dep. Tr. 35:13-24, 36:7-13). Both stores were closed due to looting by the campesinos. *Id.* at 32:6-14; 42:25-43:12.

144. Plaintiff Felicidad Rosa Huanca Quispe attempted to buy food that morning, but there was “nothing for [her] to buy,” and she returned home. Ex. 50 (Huanca Quispe Dep. Tr. 36:7-18).

145. After returning home, she cooked lunch for her family, including her father, Raúl Ramón Huanca Márquez. Ex. 50 (Huanca Quispe Dep. Tr. 36:14-23). They had heard what she thought sounded like gunfire while they had lunch. *Id.* at 37:3-18.

146. Raúl Ramón Huanca Márquez left the house by himself at 1 p.m. Ex. 50 (Huanca Quispe Dep. Tr. 38:21-16, 44:5-7). According to Plaintiff Huanca Quispe, he said that he was leaving to buy a Coca-Cola, despite hearing gunfire and despite the stores being closed. *Id.* at 38:21-40:22.

147. Several hours went by and Raúl Ramón Huanca Márquez did not return. Ex. 50 (Huanca Quispe Dep. Tr. 44:9-11). During this time she generally heard “shots coming from lots of different directions.” *Id.* at 47:4-8. Later, a neighbor told Plaintiff that her father had been shot and died. *Id.* at 45: 13-25.

148. Ms. Huanca Quispe was not with her father and did not see who shot him. Ex. 50 (Huanca Quispe Dep. Tr. 46:10-11, 50:5-8).

149. Decedent Mr. Huanca Márquez was hit by a bullet in Ovejuyo, just west of where the military was ambushed on the Palca road.

150. In a police interview, Ms. Huanca Quispe was told: “[A]ccording to other versions, your father was carrying a weapon with a group of people provoking the soldiers.” Ex. 23 (MAMANI0002420T) (Statement of Felicidad Rosa Huanca Quispe (Oct. 13, 2003)); *see also* Ex. 50 (Huanca Quispe Dep. Tr. 53:10-25).

151. There is no evidence regarding who shot Mr. Huanca Márquez, why that person was shooting or what that person was doing or thinking at the time of the shooting.<sup>3</sup>

152. It is not possible to establish the point of origin, trajectory, or angle of incidence of the bullet that struck Mr. Huanca Márquez. Ex. 30 (MAMANI0002612T, at 2612T.0003); Ex. 65 (Hayden Dep. Tr. 588:20-589:2).

153. Raúl Ramón Huanca Márquez’s death could have been accidental. Ex. 65 (Hayden Dep. Tr. 547:19-21, 551:10-13, 583:17-584:2, 588:20-589:2).

### **III. Military Structure and Authority**

154. Sánchez de Lozada, as the President of the Republic, was the Captain General of the Armed Forces. Ex. 70 (Def. Sánchez de Lozada Resps. Second RFA at 4 (Resp. Request 180)).

---

<sup>3</sup> In her response to Defendants’ interrogatories, Ms. Huanca Quispe, in response to being asked to identify the shooter, asserted that “[t]he soldier who shot Raúl was from the Colegio Militar. A neighbor, Germán, worked in the Colegio Militar and stated that it was a captain from the Colegio Militar who killed Raúl.” Ex. 68 (Huanca Quispe Resps. Def. Interrog. at 8 (Resp. Rog. 2)). But that is still not an identification of any individual shooter, and there is no evidence in the case to support that assertion. In any event, Plaintiffs never included any such person in their Initial Disclosures. Ex. 67 (Pls.’ Sixth Initial Disclosures).

155. Between early August 2003 and October 17, 2003, Sánchez Berzaín was the Minister of National Defense. Ex. 69 (Def. Sánchez Berzaín Resps. Second RFA at 4 (Resp. Request 182)).

156. The Bolivian Constitution in effect in Bolivia in 2003 (“Constitution”) provided: “The fundamental mission of the Armed Forces is to defend and preserve [] the national independence, security and stability of the Republic, and the honor and sovereignty of the country; to ensure the supremacy of the Political Constitution; to guarantee the stability of the legitimately constituted Government; and to participate in the development of the country.” Ex. 10 (DEF-0000198, at 237) (Bol. Const. art. 208).

157. The Constitution provides: “The Armed Forces are subordinate to the President of the Republic and receive their orders administratively through the Minister of Defense, and in technical matters, from the Commander in Chief.” Ex. 10 (DEF-0000198, at 237) (Bol. Const. art. 210).

158. The Organic Law of the Armed Forces in effect in Bolivia in 2003 (“Organic Law”) provides: “The President of the Republic and Captain General of the Armed Forces . . . shall order the use of the military forces: . . . Domestically, for maintaining public order when the institutions legitimately constituted for this purpose prove insufficient.” Ex. 36 (MAMANI0009992, at 993) (Art. 8, Organic Law of the Armed Forces of Bolivia).

159. The Organic Law provides: “The Commander in Chief of the National Armed Force[s] is *the highest Command and Decision-making body of a technical/operating nature*, for the permanent coordination and direction of the Armed Forces.” Ex. 36 (MAMANI0009992, at 998) (Art. 36, Organic Law of the Armed Forces of Bolivia) (emphasis added).



**A. Orders and Directives**

160. In response to the ambush of police forces in Warisata, on September 20, 2003, Sánchez de Lozada issued an order to the acting Commander in Chief of the Armed Forces. Ex. 20 (DEF-0000066) (Pres. Decree (Sept. 20, 2003)). The Decree ordered the acting Commander in Chief of the Armed Forces, General Gonzalo Rocabado Mercado, to “mobilize and use the necessary force to restore public order and respect for the rule of law in the region.” *Id.* President Sánchez de Lozada had the order reviewed by legal counsel before issuing it. Ex. 39 (Sánchez de Lozada Dep. Tr. 230:5-11) (May 15, 2015).

161. On October 11, 2003, Sánchez de Lozada issued Supreme Decree 27209, an order to the Commander in Chief of the Armed Forces. Ex. 6 (DEF-0000069) (Supreme Decree No. 27209). The Decree noted that “[a]t present, the distribution and supply of liquid fuels are being obstructed by demonstrations, strikes, and roadblocks in certain areas of national territory, impinging on the rights of end users of such products and affecting the free movement of persons and public transportation.” *Id.* at 70. The Decree ordered (1) “[t]hat a national emergency be declared throughout the Republic in order to ensure a regular supply of liquid fuel to the people by protecting storage facilities and ensuring fuel shipments,” (2) that the Armed Forces “assume control of shipments in tanker trucks and other [vehicles] and to secure storage facilities, pipelines, service stations, and all types of infrastructure needed to ensure regular distribution and supply of liquid fuels to the people of the Department of La Paz” and that, “[t]o this end, the Ministry of Defense shall establish the mechanisms necessary for its execution,” and (3) that “[t]he Bolivian State guarantees compensation for any damage to property and persons that might occur as a result of compliance with the terms hereof.” *Id.* at 71.

162. The Orders dated September 20, 2003 and October 11, 2003 did not authorize unlawful conduct. Ex. 20 (DEF-0000066) (Pres. Decree (Sept. 20, 2003)); Ex. 6 (DEF-0000069)

(Supreme Decree No. 27209); Ex. 63 (Borrelli Dep. Tr. 161:4-22, 162:10-18, 164:11-19, 271:25-272:10).

163. The Orders dated September 20, 2003 and October 11, 2003 were authorized under Bolivian law. Ex. 20 (DEF-0000066) (Pres. Decree (Sept. 20, 2003)); Ex. 6 (DEF-0000069) (Supreme Decree No. 27209); *see* Ex. 36 (MAMANI0009992, at 993) (Art. 8, Organic Law of the Armed Forces of Bolivia) (“The President of the Republic and Captain General of the Armed Forces . . . *shall* order the use of the military forces: . . . Domestically, for maintaining public order when the institutions legitimately constituted for this purpose prove insufficient.” (emphasis added)); Ex. 63 (Borrelli Dep. Tr. 164:11-19, 271:25-272:10)).

164. There is no evidence of any other written orders from Sánchez de Lozada to the Armed Forces in September or October 2003.

165. There is no evidence of any oral orders from Sánchez de Lozada to the Armed Forces.

166. There is no evidence of any orders from Sánchez Berzaín to the Armed Forces.

167. On September 20, 2003, General Gonzalo Rocabado Mercado issued Directive No. 27/03. Ex. 70 (Def. Sánchez de Lozada Resps. Second RFA at 14 (Resp. Request 224) (Aug. 25, 2017)).

168. Directive 27/03, whose purpose was to “[m]aintain public order and enforcement of the National Constitution in the north *altiplano* region of LA PAZ,” cited the Presidential Decree of September 20, 2003 and the existence of “[a]rmed groups of campesinos and civilians from ACHACACHI, HUARINA, SORATA, WARISATA, and other towns in the *altiplano* region of La Paz,” who “perpetrated a series of attacks over the last several days,” including “an attack on a military column conducting a humanitarian rescue operation of a group of foreign and national

tourists from the city of SORATA.” Ex. 72 (MAMANI0000080) (Directive 27/03). The Directive created a Joint Task Force consisting of members from the three branches of the Armed Forces, whose mission was “[t]o carry out DIT operations” in particular provinces “and restore public order and the Rule of Law, in order to guarantee that the population may carry out its normal activities.” *Id.* at 81.

169. Between September 20, 2003 and September 26, 2003, General Gonzalo Rocabado Mercado was the acting Commander in Chief. Ex. 70 (Def. Sánchez de Lozada Resps. Second RFA at 6 (Resp. Request 192) (Aug. 25, 2017)).

170. On October 12, 2003, General Roberto Claros Flores, Commander in Chief of the Armed Forces, issued Directives Nos. 33/03 and 34/03. Ex. 70 (Def. Sánchez de Lozada Resps. Second RFA at 10 (Resp. Request 211) (Aug. 25, 2017)).

171. Directive Nos. 33/03 and 34/03, whose purpose was to “[m]aintain public order and enforcement of the Constitution of the State in the national territory,” both cited the Supreme Decree dated October 11, 2003 and the existence of “[a]rmed groups of farmers and civilians” in towns in the “La Paz plateau [who] have been engaging in a series of attacks in recent days against people and property in the region,” including that “the actions of these groups have worsened in the city of [EL] ALTO, leading to acts of violence.” Ex. 73 (MAMANI0000262) (Directive 33/03); Ex. 74 (MAMANI0000267) (Directive 34/03).

172. Directive 33/03 created a Joint Task Force consisting of members from the three branches of the Armed Services, whose mission was to “perform [DIT] operations as of [the date of the order], throughout the entire national territory to restore public order and the rule of law with the purpose of ensuring that the population is able to carry out its normal activities.” Ex. 73 (MAMANI0000262, at 263) (Directive 33/03). Directive 33/03 ordered that the Joint Task Force

be established in multiple areas of the country, including “LA PAZ, EL ALTO – ALTIPLANO NORTE.” *Id.*

173. Directive No. 34/03 ordered that the Joint Task Force be established in “LA PAZ – EL ALTO – HIGHLANDS,” and that its mission was to “[p]erform D[I]T [o]perations as of the date of the new order, in the city of [EL] ALTO, to restore public order and the rule of law to make sure the population is able to carry out its activities as normal, by carrying out the following tasks: Protect essential basic services[;] Protect military and police facilities and installations[;] Ensure operations at the Airport and hydrocarbon plant[;] Maintain a supply axle between El Alto – La Paz and . . . El Alto and the airport.” Ex. 74 (MAMANI0000267, at 267-69) (Directive 34/03).

174. Both Directives ordered that “[m]ilitary prosecutors will be appointed to cover the respective legal matters.” Ex. 73 (MAMANI0000262, at 263) (Directive 33/03); Ex. 74 (MAMANI0000267, at 269) (Directive 34/03).

175. There is no evidence that Directives Nos. 27/03, 33/03, or 34/03, were unlawful.

176. Plaintiffs’ “command and control” expert concedes that he cannot identify a single order or instruction by Sánchez de Lozada or Sánchez Berzaín that was unauthorized under Bolivian law. Ex. 63 (Borrelli Dep. 164:11-19; 165:22-166:4).

#### **B. Limited Authority over the Military**

177. As to orders to the Armed Forces, Sánchez de Lozada only had the authority to give general orders to the Commander in Chief.

178. Sánchez de Lozada could not bypass the Commander in Chief and give direct orders to subordinate commanders or soldiers, nor is there any evidence he did so.

179. Sánchez Berzaín did not have the authority to give operational orders to the Armed Forces, nor is there any evidence he did so.

180. There is no evidence of any order given by either Defendant to kill innocent civilians.

181. There is no evidence that either Defendant saw the Manual for the Use of Force cited in Plaintiffs' Complaint prior to this litigation. Ex. 39 (Sánchez de Lozada Dep. Tr. 51:7-11) (May 14, 2015).

182. There is no evidence that either Defendant saw the Republic Plan cited in Plaintiffs' Complaint prior to this litigation. Ex. 39 (Sánchez de Lozada Dep. Tr. 66:4-11) (May 14, 2015).

183. Neither Sánchez de Lozada nor Sánchez Berzaín had the ability to prevent soldiers from killing the decedents.

184. Neither Sánchez de Lozada nor Sánchez Berzaín had the ability to punish soldiers if they had killed the decedents. Ex. 7 (DEF-0000078, at 90) (May 2003 OAS Rep.) (explaining how prosecutor would bring charges); Ex. 16 (DEF-0003425, at 3432, 3425) (U.S. State Dept. Country Rep. on Human Rights Practices - 2003) (noting independence of Attorney General from executive branch).

185. Plaintiffs' "command and control" expert does not offer opinions regarding the legal standard of effective control or command responsibility, or the application thereof to the Defendants. Ex. 63 (Borrelli Dep. Tr. 101:16-19, 133:5-10, 151:4-8, 153:2-16). He is not an expert in the Bolivian military structure and did not have prior knowledge of the Bolivian military; at the beginning of this case he did not know that the President is the Captain General in the Bolivian military. *Id.* 38:17-24, 39:15-20, 40:10-17.

#### **IV. Relevant Additional Bolivian Law**

186. Article 20 of the Bolivian Penal Code (Perpetrators) states: "Those who carry out the crime by themselves, jointly, by means of another, or those who willfully provide cooperation

of such nature that, without which, the willful unlawful action could not have been committed, are the perpetrators.” Ex. 75 (Excerpts from Bol. Penal Code).

187. Article 20 of the Bolivian Penal Code (Perpetrators) also states: “A person who willfully makes use of another as the instrument to carry out the crime is the mediate perpetrator.” Ex. 75 (Excerpts from Bol. Penal Code).

188. Article 22 of the Bolivian Penal Code states: “A person who willfully induces another person to commit a willful unlawful action is an instigator.” Ex. 75 (Excerpts from Bol. Penal Code).

189. Article 23 of the Bolivian Penal Code states: “A person who willfully facilitates or cooperates in the execution of the willful unlawful action in such form that even without this assistance, it would have been committed; and a person who, by reason of previous promises, renders assistance or aid subsequent to the event is an accomplice.” Ex. 75 (Excerpts from Bol. Penal Code).

190. Article 87 of the Bolivian Penal Code (Civil Liability) states: “Any person criminally liable is also civilly liable and is obligated to pay reparations for the material and non-material damages caused by the crime.” Ex. 75 (Excerpts from Bol. Penal Code).

191. Article 273 of the Bolivian Penal Code states: “A person who, with the intent of causing bodily damage or damage to health, causes the death of a person unintended by the perpetrator but which could have been foreseen, shall be punished by imprisonment of from THREE to EIGHT years.” Ex. 75 (Excerpts from Bol. Penal Code).

192. Article 37 of the Bolivian Code of Criminal Procedure states: “A civil action can be pursued in the criminal proceedings under special rules provided in this Code or may be filed

with the civil courts, but cannot be pursued simultaneously in both jurisdictions.” Ex. 76 (Excerpts from Bol. Code Crim. P.).

193. Article 38 of the Bolivian Code of Criminal Procedure states: “When the action for reparations is initiated in the civil courts, a sentence cannot be handed down in this jurisdiction while the pending criminal proceedings have not been resolved by a final sentence or ruling . . . .” Ex. 76 (Excerpts from Bol. Code Crim. P.).

194. Article 69 of the Bolivian Code Civil Procedure states: “Default shall not prevent the suit from proceeding on its legal path and shall constitute a presumption of truth with respect to the unlawful acts affirmed by the party who obtained the declaration.” Ex. 77 (Excerpts from Bol. Code Civ. P.).

195. The Bolivian Constitution in effect in Bolivia in 2003 (“Constitution”) states: “Common-law or de facto conjugal unions that satisfy the conditions of stability and singularity and are maintained between persons of legal capacity to enter into bonds produce effects *similar to those of marriage* in terms of the personal and patrimonial relations of the partners and with respect to the children born thereto.” Ex. 10 (DEF-0000198, at 235) (Bol. Const. art. 194) (emphasis added).

196. The website for the U.S. Embassy in Bolivia explains the Bolivian Marriage Laws. *See* Ex. 78 (“Getting Married in Bolivia,” U.S. Embassy in Bolivia, <https://bo.usembassy.gov/u-s-citizen-services/child-family-matters/getting-married-bolivia/>). It specifies: “Only civil marriages are recognized as legal in Bolivia. Civil marriages are performed by a civil registry official, either before or after a religious ceremony.” *Id.*

Dated: November 20, 2017

Respectfully submitted,

WILLIAMS & CONNOLLY LLP

/s/ Ana C. Reyes

Stephen D. Raber (*pro hac vice*)  
Ana C. Reyes (*pro hac vice*)  
James E. Gillenwater (*pro hac vice*)  
Suzanne M. Salgado (*pro hac vice*)  
Giselle Barcia (*pro hac vice*)  
725 Twelfth Street, N.W.  
Washington, DC 20005  
(202) 434-5000

BECKER & POLIAKOFF, P.A.

Evan B. Berger  
1 East Broward Blvd., Suite 1800  
Ft. Lauderdale, FL 33301  
(954) 364-6055

*Attorneys for Defendants*



**CERTIFICATE OF SERVICE**

I hereby certify that, on November 20, 2017, I electronically filed the foregoing documents with the Clerk of the Court using CM/ECF. I also certify that the foregoing documents are being served this day on all counsel of record or parties of record on the Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Evan Berger  
Evan Berger