

No. 20-1599

IN THE
Supreme Court of the United States

JOHN DOE 7, JANE DOE 7, JUANA DOE 11, MINOR DOE 11A, SEVEN SURVIVING
CHILDREN OF JOSE LOPEZ 339, and JUANA PEREZ 43A,
Petitioners,

v.
CHIQUITA BRANDS INTERNATIONAL, INC.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT

**BRIEF FOR *AMICI CURIAE* HUMAN RIGHTS ORGANIZATIONS IN SUPPORT
OF PETITIONERS' PETITION FOR A WRIT OF CERTIORARI**

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INTEREST OF *AMICI CURIAE*¹

Amici are eleven non-profit, non-governmental organizations and one private law firm that collectively have decades of experience working on business and human rights issues in conflict and post-conflict settings, including in Colombia. Amici have a significant interest in this case because their work is directly tied to the promotion of human rights and the protection of human rights defenders in Colombia, a group that includes Petitioners. This brief contains unique information regarding Petitioners' status as human rights defenders and the risks of physical harm they will face if Respondent reveals their identifying information. The brief shows that Petitioners are at risk of targeting by state and non-state actors, including paramilitary groups, and that the principal Colombian institutions charged with promoting human rights and protecting human rights defenders are unlikely to protect Petitioners from physical harm.

SUMMARY OF ARGUMENT

Human rights defenders in Colombia are targeted by state and non-state actors for their promotion of

¹ All counsel of record received timely notice of the intent to file this amicus brief under Supreme Court Rule 37.2(a). This brief is filed with the consent of all parties. Petitioners filed with the Court letters providing blanket consent. Respondent provided written consent. Amici and their counsel have authored the entirety of this brief. No counsel for any party authored this brief in whole or in part, nor did any party or other person make a monetary contribution to the brief.

human rights and their real or imputed political opinions. As litigants in human rights-related cases against Chiquita Brands International, Inc. (Chiquita), Petitioners are human rights defenders and at risk of physical harm in Colombia. In the past, at-risk human rights defenders may have turned to Colombian institutions like the National Protection Unit, Ombudsman's Office, and Attorney General's Office for protection. However, these institutions currently lack the capacity and/or political will to adequately protect human rights defenders in Colombia, leaving Petitioners with nowhere to turn should they face threats of violence if their identities are revealed to the public.

Respondent initially agreed to a protective order over Petitioners' identifying information. The order the court granted is the only legal barrier preventing Respondent from disclosing Petitioners' names, phone numbers, and employers to the public, which would make Petitioners easily identifiable by actors who may seek to target them. The public revelation of Petitioners' identifying information, including to illegal armed groups and state actors known to target human rights defenders, exposes Petitioners to greater risk of physical harm. The Court should therefore grant certiorari and reverse the Eleventh Circuit's decision.

ARGUMENT

I. AS HUMAN RIGHTS DEFENDERS, PETITIONERS ARE AT RISK OF TARGETING BY STATE AND NON-STATE

**ACTORS IN COLOMBIA, AND
RESPONDENT'S REVELATION OF
THEIR IDENTIFYING INFORMATION
PUTS THEM AT RISK OF PHYSICAL
HARM.**

**A. Petitioners are at Risk of Physical
Harm because they are Human
Rights Defenders in Colombia.**

Petitioners are human rights defenders under the United Nations (“UN”) Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (“Declaration on Human Rights Defenders”), which considers persons who act individually or with others to peacefully promote or protect human rights to be human rights defenders. *See Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, Office of the High Commissioner on Human Rights (OHCHR), General Assembly resolution 53/144 (1998), available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RightAndResponsibility.aspx>. The U.S. State Department and Colombian Ombudsman’s Office subscribe to the UN definition. *See U.S. Support for Human Rights Defenders*, U.S. Dept. of State (Jan. 20, 2021), available at <https://www.state.gov/u-s-support-for-human-rights-defenders/>; *see also* Defensoría del pueblo Resolución Defensorial No. 074-2020

[Ombudsman's Office Resolution No. 074-2020] (Aug. 14, 2020).

The key indicator for determining whether a person is a human rights defender is one's engagement in an activity that promotes or protects human rights. *See Report on the Situation of Human Rights Defenders in the Americas*, Inter-American Commission on Human Rights (IACHR), OEA/Ser.L/V/II.124, Doc. 5 rev.1 ¶¶ 19 (Mar. 7, 2006), available at http://www.cidh.org/countryrep/Defenders/defenders_chap1-4.htm#Human [hereinafter *Situation of Human Rights Defenders* (Mar. 7, 2006)]. *See also Report on the Situation of Human Rights Defenders and Social Leaders in Colombia*, IACHR, OEA/Ser.L/V/II. Doc 262/19 ¶ 25 (Dec. 6, 2019), available at <https://www.oas.org/en/iachr/reports/pdfs/ColombiaDefenders.pdf> [hereinafter *Situation of Human Rights Defenders* (Dec. 6, 2019)].

Litigants in human rights cases are human rights defenders because seeking judicial remedy for human rights abuses promotes human rights by addressing impunity and deterring future abuse.² By

² Actors involved in human rights-related litigation are often considered human rights defenders. For example, in Colombia lawyers who bring human rights-related cases are considered human rights defenders and a subgroup of defenders at high risk of harm. *Visit to Colombia: Report of the Special Rapporteur on the situation of human rights defenders*, Human Rights Council, U.N. Doc A/HRC/43/51/Add.1 13 (Mar. 20, 2020) [hereinafter *Visit to Colombia* (Mar. 20, 2020)]. The OHCHR recognizes that

seeking judicial remedy for human rights violations that Chiquita allegedly financed, including torture and murder, Petitioners are engaging in “action to secure accountability and to end impunity” and are making a “special effort” to promote human rights, recognized as principal activities of human rights defenders. *About Human Rights Defenders*.

Petitioners are at risk of physical harm because human rights defenders are targeted in Colombia. *Visit to Colombia* (Mar. 20, 2020) ¶ 19–55. More human rights defenders were killed in Colombia than anywhere else in Latin America between 2016 and 2019. *Id.* at ¶ 20. Many human rights defenders face threats, attacks, intimidation, and assassination as a result of their actions to promote and protect human rights. *Business & human rights defenders in Colombia*, Business and Human Rights Resource Centre (BHRRC) 2 (Mar. 2020), available at https://media.business-humanrights.org/media/documents/files/Business__

“witnesses” and “those who contribute to assuring justice—judges, the police, lawyers and other key actors,” where they act to ensure access to justice and guarantee victims’ human rights, “can be said to be acting as human rights defenders.” *About Human Rights Defenders*, OHCHR, available at <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx> [hereinafter *About Human Rights Defenders*]. The OHCHR also notes that defenders’ activities include “bear[ing] witness, either in a public forum (for example, a newspaper) or before a court or tribunal, to human rights violations that have already occurred.” *Human Rights Defenders: Protecting the Right to Defend Human Rights*, United Nations Fact Sheet No.29, at 4, <https://www.ohchr.org/Documents/Publications/FactSheet29en.pdf>.

Human_Rights_Defenders_in_Colombia.pdf [hereinafter BHRRC Colombia (Mar. 2020)]. The UN, IACHR, the U.S. State Department, and the U.S. Congressional Committee on Appropriations have identified heightened risks for human rights defenders in Colombia. *See, e.g., Visit to Colombia* (Mar. 20, 2020) ¶ 20; *Situation of Human Rights Defenders* (Dec. 6, 2019); 2020 Country Reports on Human Rights Practices: Colombia, U.S. Dep’t of State (Mar. 30, 2020), available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/colombia/> [hereinafter Colombia Country Report (Mar. 30, 2020)].

The IACHR has reported that attacks, threats, and harassment “hinder the work of human rights defenders” in the Americas, noting that a Colombian lawyer representing a Colombian petitioner was assassinated, along with two of the petitioner’s brothers, while preparing for a hearing before the IACHR. *Situation of Human Rights Defenders* (Mar. 7, 2006) ¶ 151, 154.

Violence against human rights defenders in Colombia has significantly increased since the government signed the Peace Agreement with the Fuerzas Armadas Revolucionarias de Colombia-Ejército del Pueblo (“FARC-EP”) in 2016. *Situation of Human Rights Defenders* (Dec. 6, 2019) ¶ 41; *Amicus brief on killings of human rights defenders in Colombia*, Human Rights Watch (Apr. 2021), <https://www.hrw.org/news/2021/04/20/amicus-brief-killings-human-rights-defenders-colombia> [hereinafter *Amicus brief on killings of human rights*

defenders (Apr. 2021)]. Amicus Business and Human Rights Resource Centre (“BHRRC”) has tracked attacks on human rights defenders who raise concerns about business-related harms since 2015, finding the largest number of incidents in 2017 and 2018. BHRRC Colombia (Mar. 2020) (noting that “[t]his coincides with the general increase in attacks against all HRDs – whether related to business or not – throughout the country, as reported by several organisations. While there are numerous reasons for this, it is noteworthy that there has been a significant increase since the signing of the Peace Agreement in November 2016.”)

UN offices report more than 400 killings of human rights defenders in Colombia between January 2016 and December 2020, approximately 120 killings in 2020, and at least 71 killings so far in 2021, including 49 between March 27 and June 25, 2021 alone. *IACHR Reiterates Its Concern*, Organization of American States (Jan. 22, 2021), available at https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/media_center/PReleases/2021/013.asp [hereinafter *IACHR Reiterates Its Concern* (Jan. 22, 2021)]; *United Nations Verification Mission in Colombia*, Security Council, U.N. Doc. S/2021/603, ¶ 32 (Jun. 25, 2021), available at https://colombia.unmissions.org/sites/default/files/n2116026_en.pdf.

Petitioners’ risk of physical harm is elevated because they raise concerns about business activities, namely Chiquita’s alleged financing of paramilitaries who killed their family members, and because they

reside in rural areas. *See, e.g.*, BHRRC Colombia (Mar. 2020) 2 (noting that Colombia is the second most dangerous country for human rights defenders who raise concerns related to business conduct.); *Situation of Human Rights Defenders* (Dec. 6, 2019) ¶ 3; *Visit to Colombia* (Mar. 20, 2020) ¶ 20; *Left Undefended: Killings of Rights Defenders in Colombia's Remote Communities*, Human Rights Watch (Feb. 2021), available at <https://www.hrw.org/report/2021/02/10/left-undefended/killings-rights-defenders-colombias-remote-communities> [hereinafter Human Rights Watch (Feb. 2021)]. Petitioners are from Urabá, a banana growing region in the Antioquia department. Other plaintiffs in the multidistrict litigation against Chiquita are from Antioquia and Magdalena and either still live in these departments, or have been displaced to other parts of Colombia. *See, e.g.*, Plaintiffs' Opposition to Defendants' Expedited Pls.' Opp. to Defs.' "Expedited" Mot. to Preclude Continued Use of Pseudonym at 10–11, *In re: Chiquita Brands Int'l, Inc. Alien Tort Statute and Shareholder Derivative Litig.*, No. 08-01916-MD-MARRA (S.D. Fla. Feb. 13, 2019) (explaining that many of the bellwether Plaintiffs live in Urabá and Magdalena, and displaced Plaintiffs live in Medellin); Order Den. Defs.' Joint Mot. to Dismiss Based on *Forum Non Conveniens* at 6–7, *In re: Chiquita Brands Int'l, Inc. Alien Tort Statute and Shareholder Derivative Litig.*, No. 08-01916-MD-MARRA (S.D. Fla. Nov. 29, 2016) (stating that Plaintiffs still live in the banana growing regions of Colombia, and most of the Plaintiffs reside in Antioquia); Plaintiffs' Memorandum of Law in Opp. to Def. Chiquita's Mot. to Dismiss Under Fed. R. Civ.

P. 12(B)(6) and for *Forum Non Conveniens* 6 at 18–19, 31, *In re: Chiquita Brands Int’l, Inc. Alien Tort Statute and Shareholder Derivative Litig.*, No. 08-01916-MD-MARRA (S.D. Fla. June 23, 2015) (noting that many Plaintiffs reside in Antioquia and in the banana growing regions, and some Plaintiffs have moved to other regions). Both Antioquia and Magdalena are largely rural. From 2016–2020, 70% of human rights defenders killed in Colombia resided in rural communities, the vast majority in areas controlled by armed groups where the government’s presence is weak. *See ibid.* In 2020, killings of human rights defenders were concentrated in rural departments including in Antioquia and Magdalena. *IACHR Reiterates Its Concern* (Jan. 22, 2021).

Amicus BHRRC reported 181 attacks and 72 assassinations against Colombian human rights defenders who raised concerns related to business from 2015–2019. BHRRC Colombia (Mar. 2020) 2–3. The majority were committed against defenders promoting human rights in the agricultural or extractive industries and nearly half of the defenders had raised concerns about transnational companies’ activities. *Id.* at 2 (noting that “companies do not operate in a vacuum. They are aware – or should be aware – that critics of their business or industry are at risk and they should work to prevent and mitigate these attacks.”).

By virtue of litigating human rights-related harm, Petitioners are human rights defenders and are at risk of physical harm in Colombia. The risks Petitioners face are exacerbated by their opposition to

business activity, namely Chiquita’s alleged financing of paramilitaries who killed their family members, and their rural status. In this context, removing the protective order that prohibits Chiquita from revealing Petitioners’ identifying information to the public puts their lives in jeopardy.

B. Petitioners are at Risk of Physical Harm by Paramilitaries in Colombia.

The Colombian civil conflict, which began in the 1960s and spanned more than five decades, involved the Colombian government, left-wing guerillas, and the far-right paramilitary group Autodefensas Unidas de Colombia (“AUC”).

In 2005, the Colombian government introduced a framework to demobilize the AUC that was ultimately ineffective. Camilo González Posso, *Ley 975 de 2005: Ocho Años Después*, INDEPAZ (Feb. 2014), available at <http://www.INDEPAZ.org.co/wp-content/uploads/2014/02/LEY-975veredicto.pdf>; *Paramilitaries’ Heirs: The New Face of Violence in Colombia*, Human Rights Watch (Feb. 2010), available at https://www.hrw.org/report/2010/02/03/paramilitaries-heirs/new-face-violence-colombia#_ftnref386 [hereinafter *Paramilitaries’ Heirs* (Feb. 2010).] Thousands of AUC members did not demobilize but instead splintered into “paramilitary heir” groups. *Id.* These groups include the *Autodefensas Unidas Gaitanistas de Colombia* (“AGC”), also known as “*Clan del Golfo*” or “*Los Urabeños*,” which maintains a territorial stronghold in Urabá. See Thomas Harvey

Power, *Paramilitares y empresas bananeras en el Urabá 2016–2020*, Universidad Nacional de Colom. (2020) at 24; *see also* Jerrod Demir, *The rise of the AGC, Colombia’s criminal powerhouse*, Colombia Reports (Mar. 19, 2018), available at <https://colombiareports.com/the-rise-of-the-agc-colombias-criminal-powerhouse/>. These and other paramilitary successor groups now operate independently with different strongholds and perpetuate cycles of violence, which include targeting human rights defenders. *See Colombia: Background and U.S. Relations*, Congressional Research Service R43813 at 4 (Oct. 26, 2020), available at <https://crsreports.congress.gov/product/pdf/R/R4381>; *see also* Colombia Country Report (Mar. 30, 2020); *Paramilitaries’ Heirs* (Feb. 2010).

Eleven years after the failed AUC demobilization efforts, the 2016 Peace Agreement that the Juan Manuel Santos administration signed with the FARC-EP provided for a ceasefire and established the Special Jurisdiction for Peace, the Truth Commission, and other transitional justice institutions and processes. *Final Agreement to End the Armed Conflict and Build a Stable and Lasting Peace*, Special Jurisdiction for Peace at 1, 8–10 (English translation) (Nov. 24, 2016), available at <https://www.peaceagreements.org/viewmasterdocument/1845> [hereinafter Final Peace Agreement]. The Peace Agreement also called for the establishment of a plan to counter stigmatization of human rights defenders, a comprehensive protection protocol for defenders, and strengthening the Attorney General’s power to monitor complaints and investigations

related to attacks against human rights defenders. *Americas: State Protection Mechanisms For Human Rights Defenders*, Amnesty International at 2 (May 2017), available at <https://www.amnesty.org/download/Documents/AMR0162112017ENGLISH.pdf> [hereinafter Amnesty International (May 2017)].

However, five years after the Peace Agreement was signed, it is undeniable that the country's civil conflict did not end. Instead, "conflict-related violence has since taken new forms, and serious abuses continue." *World Report 2021*, Human Rights Watch at 175 (2021), available at https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf [hereinafter *World Report 2021*]. The Ivan Duque administration, elected in 2018 on a platform opposing many of the Peace Agreement's reforms, has failed to actively implement the Peace Agreement's transitional justice processes, its provisions to protect communities and human rights defenders, or its measures to dismantle paramilitary structures. The government's reluctance to adhere to the Peace Agreement has undermined national security and the rule of law and created a governance vacuum. See, e.g., Ted Piccone, *Peace With Justice: The Colombian Experience With Transitional Justice*, Foreign Policy at Brookings (Jul. 2019), available at https://www.brookings.edu/wp-content/uploads/2019/06/FP_20190708_colombia.pdf; *Colombia: Veto Could Undermine Accountability. Move Could Delay Badly Needed Progress*, Human Rights Watch (Mar. 2019), available at [https://www.hrw.org/news/2019/03/12/colombia-veto-](https://www.hrw.org/news/2019/03/12/colombia-veto)

could-undermine-accountability#; *In a Blow to Truth and Justice, Colombia's President Puts a Fragile Peace Deal on Life Support*, WOLA (Mar. 2019), available at <https://www.wola.org/2019/03/colombia-peace-deal-duque-transitional-justice-system/>.

These conditions allowed illegal armed groups, including paramilitaries, to regain control in some areas where they were present before the Peace Agreement and enter into new areas previously controlled by other groups. *See Visit to Colombia* (Mar. 20, 2020) ¶ 71. These conditions have also contributed to paramilitaries targeting human rights defenders. *Id.* at ¶ 72 (“The delays, lack of political determination and failure to allocate sufficient funds for the implementation of the Peace Agreement . . . is undoubtedly one of the key structural causes that keeps human rights defenders at risk.”); *Amicus brief on killings of human rights defenders* (Apr. 2021) (“Authorities’ failure to exercise effective control over many areas previously controlled by the [FARC-EP] has in large part enabled the violence against human rights defenders.”).

Paramilitary groups continue to target perceived opponents, including human rights defenders. *World Report 2021*. In 2020, there was a 43% increase in murders committed by paramilitaries. The majority occurred in Antioquia, where AGC operates. *Situation of Human Rights Defenders* (Dec. 6, 2019) ¶ 95. Amici Temblores and INDEPAZ documented 91 massacres in Colombia in 2020, including 21 in Antioquia. They reported 43

massacres so far in 2021, including eight in Antioquia. *Con Líderes Hay Paz, Agresiones contra la paz en Colombia Noviembre 2016 - Abril 19 de 2021*, INDEPAZ at 16 (2021). Since the 2016 Peace Agreement, homicides against human rights defenders have increased. *Visit to Colombia* (Mar. 20, 2020) ¶ 21. While most of those responsible for these killings have not been identified, the Attorney General’s Office has linked many cases to illegal armed groups. *Amicus brief on killings of human rights defenders* (Apr. 2021).

Paramilitary groups often target human rights defenders based on defenders’ real or imputed political opinions. The former UN Special Rapporteur on the situation of human rights defenders notes that human rights defenders’ activities may “trigger the imputation of opinions, allegiances or intentions and easily place defenders at risk,” especially in places like rural Colombia, where illegal armed groups are reasserting power and where peace processes have broken down. *Visit to Colombia* (Mar. 20, 2020) ¶ 27. Furthermore, paramilitary groups often stigmatize human rights defenders as “guerrilleros,” “terrorists,” “anti-development,” and/or “informants,” and impute opposition to paramilitary control to human rights defenders. *Id. at* ¶¶ 27, 69; Amnesty International (May 2017) 1–2. Historically, the far-right AUC targeted individuals and communities they identified as ideological opponents, including social leaders and trade unionists like John Doe 9. *See Doe v. Chiquita Brands International*, EarthRights International, available at <https://earthrights.org/case/doe-v->

chiquita-brands-international/#documentsff69-1a905f26-f4b6.

Human rights defenders' risk of physical harm at the hands of paramilitaries has increased during COVID-19. In March 2020, the UN Verification Mission in Colombia noted that in the context of pandemic-related social isolation in Colombia, "social leaders continue suffering from threats, harassment, and armed actions." *Statement By Special Representative Of The Secretary-General And Head Of The UN Verification Mission In Colombia Mr. Carlos Ruiz Massieu*, UN Verification Mission in Colombia (Mar. 28, 2020), available at <https://colombia.unmissions.org/en/statement-special-representative-secretary-general-and-head-un-verification-mission-colombia-mr>. In a judgment ordering the Colombian government to guarantee the right to defend human rights and protect human rights defenders, a Colombian court emphasized that the state's obligations continue during emergencies like the pandemic. The judge noted that while COVID-19 lockdown requirements were in effect, attacks and killings of human rights defenders have continued due to the government's failure to identify risks, implement protection measures, and provide access to justice. Civil Court of Bogotá, Óscar Gerardo Salazar and others, Case No. 110013103045202000025-00 at 45, ruling of March 25, 2020.

Factors related to the COVID-19 pandemic, including restrictions on movement and increased surveillance, have also exposed human rights

defenders to elevated risk of paramilitary violence. See, e.g., *Colombia: Events of 2020*, Human Rights Watch, available at <https://www.hrw.org/world-report/2021/country-chapters/colombia>. Journalists have documented that globally, pandemic-related government restrictions have made human rights defenders even more vulnerable, as lockdowns restrict their movements and make them easier targets. See, e.g., Julia Zulver & Megan Janetsky, “Colombia: How armed gangs are using lockdown to target activists,” BBC News (May 21, 2020), available at <https://www.bbc.com/news/world-latin-america-52661457>. In Colombia, assassinations of human rights defenders increased more than 60% in 2020, during which COVID-19 restrictions were imposed for ten months of the year. *Ni la pandemia mermó la violencia contra los líderes sociales*, Verdad Abierta (May 2021), available at <https://verdadabierta.com/ni-la-pandemia-mermo-la-violencia-contra-los-lideres-sociales/> [hereinafter *Ni la pandemia mermó la violencia* (May 2021)].

Illegal armed groups have used the pandemic as a means to tighten control over communities where they operate in Colombia. See *Rolling Back Social and Environmental Safeguards in the time of COVID-19*, Forest Peoples Programme 47 (Feb. 2021) available at <https://www.forestpeoples.org/sites/default/files/documents/Rolling%20Back%20Social%20and%20Environmental%20Safeguards%20-%20Global%20Report%20ENGLISH%20FINAL.pdf> [hereinafter Forest Peoples Programme (Feb. 2021)]; Danelly Estupiñán, *Colombia’s social leaders are still*

being killed during the quarantine, Amnesty International (Jun. 2020), available at <https://www.amnesty.org/en/latest/news/2020/06/lideres-sociales-nos-siguen-matando-durante-cuarentena/> [hereinafter Estupiñán (Jun. 2020)]. This includes targeted enforcement of armed groups’ own pandemic rules. Human Rights Watch (Feb. 2021) (finding that “[a]rmed groups often oppress human rights defenders, trying to use them to impose ‘rules’ within communities. That increases the possibility that groups will target them for real or perceived non-compliance or for allegedly supporting an opposing party”); *Colombia: Armed Groups’ Brutal COVID-19 measures*, Human Rights Watch (Jul. 2020), available at <https://www.hrw.org/news/2020/07/15/colombia-armed-groups-brutal-covid-19-measures>; *IACHR Expresses Concern over Increase in Violence in Colombia in Territories Where Illegal Armed Groups Are Operating*, IACHR (Oct. 13, 2020), available at https://www.oas.org/en/iachr/media_center/PReleases/2020/251.asp. At least ten people have been killed for transgressing paramilitary-imposed COVID-19 measures. Alerta Temprana No. 018-2020, De Inmencia, Defensoría del Pueblo 1 (Apr. 30, 2020), available at https://colombiapeace.org/files/200430_def.pdf.

As paramilitary groups continue to target human rights defenders, allowing Respondent to reveal Petitioners’ identifying information to the public is even more dangerous, especially given Respondent’s own history of financing paramilitary groups. See *United States v. Chiquita Brands Int’l*, 1:07-cr-00055 (D.D.C.).

C. Petitioners are at Risk of Physical Harm by State Actors in Colombia.

The Colombian government's targeting of human rights defenders with physical attacks, surveillance, and criminalization is well documented. *See, e.g., Human rights defenders operating in conflict and post-conflict situations: Report of the Special Rapporteur on the situation of human rights defenders*, Human Rights Council, U.N. Doc. A/HRC/43/51, ¶ 29 (Mar. 20, 2020), available at <https://undocs.org/en/A/HRC/43/51>. State actors often label and target human rights defenders as “internal enemies,” “terrorists,” or “spoilers of peace, development, or social harmony.” *Ibid.*

Recently, state actors have arrested, and in some cases, physically attacked human rights defenders in Colombia under the guise of enforcing pandemic-related restrictions on movement and in response to the ongoing national strike, which began in April 2021 in opposition to a regressive tax bill and has continued in opposition to the Duque administration's policies. Estupiñán (Jun. 2020); Steve Hege, *Colombia's National Strike: Inequality and Legitimacy Crises Drive Unrest*, United States Institute of Peace (May 27, 2021), available at <https://www.usip.org/publications/2021/05/colombias-national-strike-inequality-and-legitimacy-crises-drive-unrest>. Over the course of the strike, Amici Temblores and INDEPAZ recorded almost 3,800 cases of police violence, including physical violence, homicides, and arbitrary detentions against

demonstrators, including human rights defenders. *Informe de Temblores ONG, INDEPAZ y Paiss a la CIDH sobre la violación sistemática de la Convención Americana y los alcances jurisprudenciales de la Corte IDH con respecto al uso de la fuerza pública contra la sociedad civil en Colombia, en el marco de las protestas acontecidas entre el 28 de abril y el 31 de mayo de 2021*, Temblores, INDEPAZ & Paiss (2021), available at https://4ed5c6d6-a3c0-4a68-8191-92ab5d1ca365.filesusr.com/ugd/7bbd97_691330ba1e714daea53990b35ab351df.pdf.

State surveillance of human rights defenders is also documented. In May 2020, journalists reported that the Colombian intelligence community had inappropriately developed dossiers on more than 100 public figures, including human rights defenders. See Colombia Country Report (Mar. 30, 2020) 12.

Criminalization also puts human rights defenders at risk. In his report on a 2018 visit to Colombia, the former Special Rapporteur on the situation of human rights defenders noted that 70 human rights defenders from three organizations had been “accused, prosecuted and detained on charges, among others, of belonging to illegal armed groups” in connection with their work. He also reported that at least 202 land and environmental rights defenders had been prosecuted between 2012 and the time of his visit. *Visit to Colombia* (Mar. 20, 2020) ¶¶ 28–29.

Because Colombian police and military forces often target human rights defenders, Petitioners will be at risk of physical harm by state actors if

Respondent is allowed to publicly reveal their identifying information.

II. COLOMBIAN GOVERNMENT INSTITUTIONS TASKED WITH PROTECTING HUMAN RIGHTS DEFENDERS ARE UNABLE OR UNWILLING TO PROTECT THEM, ELEVATING PETITIONERS' RISK OF PHYSICAL HARM IF RESPONDENT IS ALLOWED TO PUBLICLY REVEAL THEIR IDENTIFYING INFORMATION.

The Colombian National Protection Unit (*Unidad Nacional de Protección*, “UNP”), Attorney General’s Office (*Fiscalía General de la Nación*), and the Ombudsman’s Office (*Defensoría del Pueblo*) are the principal institutions responsible for promoting human rights and protecting at-risk Colombians, including human rights defenders, from physical harm. *See The Risk of Returning Home: Violence and Threats against Displaced People Reclaiming Land in Colombia*, Human Rights Watch (Sept. 17, 2013), available at <https://www.hrw.org/report/2013/09/17/risk-returning-home/violence-and-threats-against-displaced-people-reclaiming-land>.

As a result of the current presidential administration’s influence and instability from the ongoing national strike, these institutions lack the capacity and/or political will to protect human rights defenders. *See Colombia: Egregious Police Abuses Against Protesters*, Human Rights Watch (Jun. 2021),

available at <https://www.hrw.org/news/2021/06/09/colombia-egregious-police-abuses-against-protesters> [hereinafter Human Rights Watch (Jun. 2021)]. The IACHR has repeatedly urged the Colombian government to use these institutions to prevent violence against human rights defenders, establish more robust protection measures for defenders, and implement a comprehensive protection policy through these institutions. *IACHR Reiterates Its Concern* (Jan. 22, 2021). However, these institutions are failing to uphold their mandates and create an environment in which defenders can freely exercise their rights. If Petitioners' identities are revealed to the public, increasing their vulnerability to physical harm, it is unlikely that these institutions will effectively protect them.

A. The National Protection Unit is Failing to Protect Human Rights Defenders from Physical Harm.

The UNP is charged with designing, implementing, and evaluating protection measures for Colombians at risk of physical harm based on protected grounds, including political beliefs. Ch. IV: Colombia, Annual Report of the IACHR ¶ 126 (2011). The UNP's mandate includes protecting human rights defenders. *See* Decree 4065 of 2011, Arts. 1, 3 (Colombia). The UNP provides physical protection services like bodyguards, bulletproof vests, and/or safety plans in response to particular risks. *See Amicus brief on killings of human rights defenders* (Apr. 2021). However, it is failing to adequately

protect human rights defenders. The UNP’s “serious weaknesses” include failing to provide protection to eligible defenders, long wait times when it does provide protection, and implementing inadequate or ineffective measures. Amnesty International (May 2017) 2.

Despite increased risks to human rights defenders during the COVID-19 pandemic, the UNP decreased the number of security measures it implemented in 2020. *Ibid.* During this same period, killings of human rights defenders increased approximately 60% compared to 2019. *See Ni la pandemia mermó la violencia* (May 2021). The UNP granted about 14.5% of the protection requests it received from human rights defenders for security in 2020, 300 fewer requests than in 2019. *See Human Rights Watch* (Feb. 2021).

Human rights defenders also often face significant and dangerous wait times before the UNP responds to requests, even when the UNP ultimately grants protection. While the UNP is legally required to assess risks within 30 days, as of May 2020 the average processing time was 190 days. Human Rights Watch (Feb. 2021). In some cases, human rights defenders are killed while waiting for the UNP to grant or implement protection schemes. *See, e.g., Situation of Human Rights Defenders* (Dec. 6, 2019) ¶ 28.

When the UNP implements protection measures for human rights defenders, it often provides ineffective or inappropriate measures, “such

as providing a vehicle for secure transport but without gasoline, or a cell phone without credit.” Amnesty International (May 2017) 2. For example, around 2016, the UNP began providing panic buttons with location-sharing technology for at-risk persons in case of emergency. Defenders who activated their buttons reported not receiving responses and privacy concerns since they were not informed about when and how the voice-responsive buttons could be activated. Amnesty International (May 2017) 2. Human rights defenders who receive UNP security measures remain concerned about their right to privacy. Amici Latin American Working Group Education Fund, Washington Office on Latin America, Comisión Intereclesial de Justicia y Paz, and other human rights groups report that defenders receiving UNP protection “continue to have serious concerns regarding the use of the information gathered by bodyguards, which was made worse with recent revelations that some bodyguards leaked and sold information to criminal groups.” *Protect Colombia’s Peace*, Latin American Working Group at 11 (Jul. 2020), available at <https://www.lawg.org/wp-content/uploads/Protect-Colombias-Peace-F.pdf>.

The UNP’s failure to protect human rights also includes retracting measures provided without cause. For example, in November, 2020, the UNP unilaterally removed a bulletproof vest it had provided to human rights defender Jani Silva, despite ongoing security risks she faced as a rural defender raising business-related concerns. After the UNP retracted this measure, paramilitary groups sent her death threats. *Pese a amenazas contra la lideresa*

Jani Silva, UNP retira una de sus medidas de protección, Contagioradio (Dec. 2020), available at <https://www.contagioradio.com/pese-amenazas-contrajani-silva-unp-retira-proteccion/>.

Silva's situation is not unique. See Global Analysis 2020, Front Line Defenders at 13 (2020), https://www.frontlinedefenders.org/sites/default/files/fld_global_analysis_2020.pdf. The UNP's repeated failure to provide effective protection to human rights defenders makes the possibility of Respondent revealing Petitioners' identifying information even riskier.

B. The Attorney General's Office is Failing to Investigate or Prosecute Killings of Human Rights Defenders.

The Attorney General's Office is mandated to investigate and prosecute crimes that come to its knowledge through complaints, special requests, or *ex officio*. Colombian Constitution of 1991, Art. 250. Its mission includes guaranteeing victims' access to truth and justice. See *Misión*, Fiscalía General de la Nación, available at <https://www.fiscalia.gov.co/colombia/la-entidad/mision/>. But instead of providing human rights defenders with access to justice, the Office is criminalizing human rights defenders and failing to fully investigate or prosecute perpetrators of violence against defenders. See Colombia Country Report (Mar. 30, 2021).

The Attorney General's Office has largely failed to investigate and prosecute mounting threats

and attacks against human rights defenders recently. *Ibid.* The Office has convicted only 60 perpetrators responsible for more than 400 human rights defender killings it recognizes occurred between January 2016 and August 2020. *Ibid.* For crimes against human rights defenders other than killings, like rape or death threats, the likelihood that the Attorney General's Office will prosecute perpetrators is even lower. Human Rights Watch (Feb. 2021). The Office's low prosecution rates for crimes against human rights defenders contributes to an environment ripe for further killings and other physical harm. *See* Amnesty International (May 2017) 2.

The Attorney General's Office also contributes to the criminalization of human rights defenders. In recent years, the Office has ramped up false or vague charges against human rights defenders, including "rebellion." Forest Peoples Programme (Feb. 2021) 47. Some defenders have been criminalized after participating in peaceful protests or leading community discussions around business activities. *Id.*

The Attorney General's Office has reportedly targeted individuals who raise concerns about business activities, including human rights defenders, in connection with the Office's relationships to the private sector. *See Visit to Colombia* (Mar. 20, 2020) ¶ 30. The former Special Rapporteur on the situation of human rights defenders noted an "apparent connection" between an energy company, the Colombian Army, the Attorney General's Support Office, and the arrest of activists opposed to the energy company's activities in 2018.

Ibid. The Special Rapporteur raised concern about a related company's multiple agreements for more than \$24 million to "strengthen the investigative and prosecutorial capacity of the Attorney General's Support Office to deal – inter alia – with crimes of obstruction of public roads during social protests that affect the functioning of [the company] and/or its associated companies." *Ibid.*

The Attorney General's Office's contributions to the cycle of violence and impunity against human rights defenders show that it is failing to create a safe environment for defenders, making the possibility of revealing Petitioner's identifying information even more dangerous.

C. The Ombudsman's Office is Failing to Comply with Its Mandate to Protect, Defend, and Promote Human Rights.

The Colombian Ombudsman's Office was established to protect, defend, and promote the liberties and human rights of all people. *Historia*, La Defensoría del Pueblo, available at <https://www.defensoria.gov.co/es/public/institucional/5848/Historia.htm>. The Peace Agreement made this Office an autonomous and independent institution and clarified its role as a check on executive overreach. Final Peace Agreement 3.4.9. Yet recently, the Ombudsman's Office has failed both to effectively use the Early Alert System, a key mechanism to protect at-risk defenders, and to condemn state violence against protesters participating in strike demonstrations.

The Peace Agreement established the Ombudsman's Office's Early Alert System (*Sistema de Alerta Temprana*), a mechanism for analyzing and responding to situations of potential human rights abuse, including risks to the physical safety of human rights defenders. Sistema de Alertas Tempranas - SAT, La Defensoría del Pueblo, available at <https://www.defensoria.gov.co/es/public/atencionciudadanoa/1469/Sistema-de-alertas-tempranas---%20SAT.htm>. To identify and evaluate the level of risk in a particular situation, the Ombudsman's Office is supposed to consider factors such as threats and potential risks to at-risk civilians, including human rights defenders. Final Peace Agreement 2.1.2.2. In its first two years, the Office effectively used the Early Alert System to notify local authorities of potential threats and coordinate responses to protect human rights defenders and others at risk of physical harm. *Situation of Human Rights Defenders* (Dec. 6, 2019) ¶ 257. However, under the Duque administration, the Ombudsman's Office has drastically reduced the number of Early Alerts issued and no longer effectively coordinates Alert responses with authorities that could provide protection locally. Human Rights Watch (Feb. 2021).

The Ombudsman's Office has also “failed to periodically report on and unequivocally condemn police abuses” against peaceful demonstrators, including human rights defenders, during the national strike. Human Rights Watch (Jun. 2021). This is particularly concerning given the Peace Agreement's clarification that the Office should check

the government's infringement on rights. *See Colombia: escalating human rights to deescalating violence*, International Commission of Jurists (May 2021), available at <https://www.icj.org/escalating-human-rights-to-deescalating-violence/> (“The Office of the Ombudsperson must remember that they are independent from the Government. They must take their independent role seriously. They must fulfil their constitutional function of defending human rights and denouncing abuses committed by authorities.”). The Ombudsman’s Office’s response to abuse committed by state actors contributes to cycles of impunity and violence against defenders. *See Amnesty International* (May 2017) 2 (“Impunity remains a major challenge. It perpetuates and bolsters the risk for human rights defenders since it sends the message that defenders can be attacked without fear of any punishment.”).

The Ombudsman’s Office’s failure to use the Early Alert System to protect human rights defenders or condemn state abuse against demonstrators indicates that it would be unable or unwilling to protect Petitioners if their identities are revealed and state and/or non-state actors target them.

CONCLUSION

For these reasons, we respectfully request the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX

List of *Amici Curiae*:

Business and Human Rights Resource Centre
London, United Kingdom

Colectivo de Abogados José Alvear Restrepo
Bogotá, Colombia

Comisión Colombiana de Juristas
Bogotá, Colombia

Comisión Intereclesial de Justicia y Paz
Bogotá, Colombia

Due Process of Law Foundation
Washington, D.C.

Front Line Defenders
Dublin, Ireland

**Instituto de Estudios para el Desarrollo y la Paz
(INDEPAZ)**
Bogotá, Colombia

**Latin American Working Group Education
Fund**
Washington, D.C.

Robert F. Kennedy Human Rights
Washington, D.C.

Simetría Legal
Bogotá, Colombia

Temblores
Bogotá, Colombia

Washington Office on Latin America
Washington, D.C.