

THE WHITE HOUSE

Office of the Press Secretary
(South Brunswick, New Jersey)

For Immediate Release

August 23, 2000

MEMORANDUM OF JUSTIFICATION
IN CONNECTION WITH THE WAIVERS
UNDER SECTION 3201(a)(4) OF
THE EMERGENCY SUPPLEMENTAL ACT,
AS ENACTED IN
THE MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2001

The challenges faced by Colombia are a matter of national security interest to the United States. Our assistance package is crucial to maintaining our counterdrug efforts and helping the Colombian Government and people to preserve Colombia's democracy. Moreover, the United States has important interests in promoting economic reform, protection of U.S. citizens, and hemispheric stability, all of which are addressed by our support for Colombia. Pursuant to Section 3201(a)(4) of the Emergency Supplemental Act, and for the following reasons, the President has determined that a waiver of the certification requirements in Section 3201(a)(1)(A)(ii) and (iii) and 3201(a)(1)(B)-(E) is in the national security interest.

Colombia confronts a drug emergency that directly affects the United States. In spite of aggressive counterdrug efforts, coca cultivation in Colombia has increased 140 percent over the last five years. This massive rate of increase threatens to reverse the counterdrug successes in Peru and Bolivia. Ninety percent of the world's cocaine is grown, processed, or transported through Colombia. The U.S. Drug Enforcement Administration estimates that up to 75 percent of the heroin consumed on the East Coast of the United States comes from Colombia. Illegal drugs cost our society 52,000 lives and nearly \$110 billion each year in health costs, accidents, and lost productivity. The drug trade is also fueling the illegal armed groups involved in Colombia's internal conflict, further exacerbating human rights problems.

The Administration supports the Congress' effort to ensure that human rights are respected and protected in Colombia. As we begin the certification process, the Administration is committed to working with the Colombian Government to protect human rights by making progress in all areas stipulated by the law. While the Government of Colombia is actively taking steps to meet the seven conditions on assistance, we are currently able to certify only one (Section 3201(a)(1)(A)(i)). The Government of Colombia will need some time before we will be able to certify several of the criteria. We continue to press the Government of Colombia to achieve tangible results in these areas. By the terms of the law, another certification or waiver will be required prior to the obligation of further funds in FY 2001. The Administration will continue to engage in an extensive consultative process with the Colombian Government over the coming months as we strive to be able to certify additional provisions.

Consistent with Section 3201(a)(2), the State Department has consulted with internationally recognized human rights organizations. Senior State Department principals met with representatives of these

organizations on August 2 to initiate an ongoing consultative dialogue on the implementation of the U.S. assistance package. Meetings were also held on August 10, 17, and 18. Our Embassy officials in Bogota also met with 15 Colombian NGOs on August 2, and agreed to establish a similar consultative process. Additionally, the Colombian Government has instituted its own formal consultative mechanism with Colombian NGOs.

For each of the six certification requirements that the President has waived, this memorandum describes the steps the Colombian government has already taken toward meeting the requirements, the reason they cannot be certified at this time, and the further steps we expect them to take to allow them to meet the conditions for certification in the future.

(1) Secretary of State must certify "that the Commander General of the Colombian Armed Forces is promptly suspending from duty any Colombian Armed Forces personnel who are credibly alleged to have committed gross violations of human rights or to have aided or abetted paramilitary groups. . . ." (Section 3201(a)(1)(A)(ii)).

At the present time, the Military Commander of the Colombian Armed Forces has only limited authority to promptly suspend from duty all Armed Forces personnel credibly alleged to have committed gross violations of human rights or to have aided or abetted paramilitary groups. Currently, the Military Forces have the authority to remove officers with a minimum of 15 years of service. The proposed reform of the military career personnel statutes, which is expected to become law by September 14, 2000, will also give the Military Commander, General Fernando Tapias, the authority to dismiss officers with fewer than 15 years of active duty service. Non-commissioned officers (NCOs) will continue to be subject to removal from the Armed Forces by a senior military commander. The Administration will strongly urge that the Commanding General use the requisite authorities to suspend promptly from service Armed Forces personnel facing credible allegations of involvement in human rights violations or of aiding or abetting paramilitary groups.

In several important cases, usually by order of civilian authorities, senior-level officers have been suspended after charges have been brought against them. Examples include General Jorge Plazas Acevedo, arrested and suspended in April 1999 in connection with the murder of Benjamin Khoudari; Brigadier General Jaime Humberto Uscategui, suspended in April 1999 in connection with the 1997 paramilitary massacre at Mapiripan (Meta); and Lieutenant Colonel Jesus Maria Clavijo, suspended in March 2000 after being arrested on charges of collaboration with paramilitaries and involvement in "social cleansing" killings while a member of the Army's 4th Brigade.

However, there are still a number of documented cases of senior security force personnel remaining on "active duty" even while charges against them were being pursued.

On August 15, six children were killed and five were injured after being shot by Colombian army troops. According to a senior Colombian army officer, the National Liberation Army (ELN), Colombia's second largest guerrilla force, were using the children as "human shields" following a shoot-out between the Colombian army and the ELN. However, witnesses of the incident report that the ELN was not involved. President Pastrana has said he will personally oversee the investigation.

According to the Human Rights Report of the Colombian Ministry of Defense, 32 members of the Armed Forces were separated from service between 1998 and 1999 for presumed human rights violations. During that same period, the military justice system also discharged 65 police officers. We will continue to work with the Government of Colombia in order to monitor further progress in holding military and police personnel accountable for violations of human rights.

Additionally, the Ministry of Defense reported that approximately 63,000 security force members received human rights training in 1999, provided by the International Committee of the Red Cross, the Colombian Red Cross, the Roman Catholic Church, elements of the government and security forces, and foreign governments.

Nevertheless, there remain disturbing, credible allegations that individual Colombian military officers continue to collaborate with paramilitaries. The Government of Colombia needs to take further, and more effective, measures that aggressively prevent collusion between security force personnel and paramilitary groups, and to take decisive disciplinary measures against its personnel where appropriate before we can certify compliance. The Administration has raised these issues with the Government of Colombia repeatedly at all levels of our bilateral dialogue and will continue to work with the Colombian Government to satisfactorily address these concerns.

(2) Secretary of State must certify that "the Colombian Armed Forces and its Commander General are fully complying with Section 3201 (a)(1)(A)(i) and (ii) of the Act. . . ." (Section 3201(a)(1)(A)(iii)).

With respect to Section 3201(a)(1)(A)(i), President Pastrana's directive to the Colombian Armed Forces was issued only recently, so we will need to monitor the extent of their compliance over the next several months. With respect to Section 3201(a)(2)(A)(ii), some Armed Forces personnel have been promptly suspended when credibly alleged to have committed gross violations of human rights; however, there are still many cases where this does not occur.

It is our expectation that the Presidential directive, which was issued on August 17, will provide the requisite authorities with the power to suspend from duty Armed Forces personnel credibly alleged to have committed gross violations of human rights or to have aided or abetted paramilitary groups. We expect the Armed Forces and the Commanding General to take prompt and immediate steps to use the new authority in the Presidential directive. Accordingly, the Armed Forces and its Commander General cannot be said to be "fully" complying at this time.

(3) Secretary of State must certify that "the Colombian Armed Forces are cooperating fully with civilian authorities in investigating, prosecuting, and punishing in the civilian courts Colombian Armed Forces personnel who are credibly alleged to have committed gross violations of human rights. . . ." (Section 3201(a)(1)(B)).

During the Pastrana Administration, there has been a gradual, but steady, improvement in the cooperation between civilian authorities and the Colombian Armed Forces in the investigation, prosecution, and punishment in the civilian courts of military personnel who are credibly alleged to have committed gross violations of human rights, but steps remain to be taken before this condition can be certified. President Pastrana has demonstrated his Government's commitment to human rights by

the dismissal of four generals and numerous mid-level officers and NCOs for collaboration with right wing paramilitaries or for failure to confront them aggressively. The military high command, under the leadership of Defense Minister Ramirez and General Tapias, has also stated repeatedly that it will not tolerate collaboration between military personnel and paramilitary groups. However, security force actions in the field are not always consistent with this policy.

The human rights unit of the Prosecutor General's Office (Fiscalia) investigated, indicted, or prosecuted 303 security force members during 1999, including at least 12 officers, on a variety of charges including homicide, torture, and sponsorship of paramilitary groups. The Attorney General's Office (Procuraduria) and the security forces demonstrated a greater willingness to follow up with instructions that those ordered arrested be removed from their duties, denied the right to wear a uniform, or turned over to civilian judicial authorities.

Most recently, five Colombian generals and other ranking officers are being investigated by the Procuraduria for failing to protect residents from paramilitary massacres. In July 2000, the Procuraduria reopened the case against four army Generals and one Lieutenant Colonel for failing to take appropriate measures to protect the residents of Puerto Alvira from a May 1998 paramilitary attack. One of these officers is Brigadier General Jaime Humberto Uscategui, who was rearrested on July 31, 2000 in connection with the 1997 Mapiripan massacre. Additionally, an investigation was opened concerning the former commander of the 5th Brigade, General Alberto Bravo Silva, and four other officers for failure to act to prevent the August 21-22, 1999 paramilitary massacre in the areas of Tibu and La Gabarra.

The military judiciary demonstrated an increased willingness to turn cases involving security force officers accused of serious human rights violations over to the civilian judiciary. The military cites over 500 such cases since the 1997 Constitutional Court decision; however, some of these cases involve the police, and many of them involve criminal activity not directly related to human rights.

Civilian authorities, including the Prosecutor General, have expressed concern over the number of security force personnel who have escaped from military confinement while awaiting trial in civilian courts. As stated in the Department of State's 1999 Country Report on Human Rights for Colombia, there are a number of cases of Armed Forces personnel accused of human rights violations that have been adjudicated in the civilian courts but progress is still insufficient to permit certification of this provision at this time.

The Government of Colombia is making concrete progress in ensuring that military personnel credibly alleged to have committed gross violations of human rights are brought to justice, but continued work is needed. This should include active cooperation with civilian authorities in executing outstanding arrest warrants related to human rights abuses or paramilitary activity; complete sharing of information with civilian authorities; effective detention of alleged perpetrators of human rights violations against whom there are arrest warrants; and, establishment and implementation of effective measures to protect civilian investigators and prosecutors from threats that impede their work.

(4) Secretary of State must certify that "the Government of Colombia is vigorously prosecuting in the civilian courts the leaders and members of paramilitary groups and Colombian Armed Forces personnel who are aiding

or abetting these groups. . . ." (Section 3201(a)(1)(C)).

The Colombian military's record in dealing with paramilitary groups remains inadequate. In some locations, elements of the army have attacked and captured members of such groups; in others, individual members tolerated or even collaborated with paramilitary groups. At the end of 1999, Colombian military and security forces began to target more aggressively paramilitary forces.

In taking forceful action against paramilitary forces, many of these armed encounters resulted in paramilitary members' deaths and the capture over 300 paramilitaries according to 1999-2000 data from the Statistics Center of the Colombian Ministry of Defense.

The Department of State's 1999 Country Report on Human Rights on Colombia reports that "the military judiciary demonstrated an increased willingness to turn cases involving security force officers accused of serious human rights violations over to the civilian judiciary, as required by a 1997 Constitutional Court ruling; however, concerns about impunity within the military judiciary remain." The Fiscalía is also vigorously going after a number of military personnel for aiding or abetting paramilitaries. Although the Fiscalía is committed to prosecuting military personnel colluding with paramilitaries, it remains burdened by competing demands and scarce resources. Our supplemental aid package will help the Fiscalía deal with these challenges by augmenting and expanding the recently created Human Rights Special Unit, and by providing training for judges and public defenders. The Fiscalía's Human Rights Special Unit is a task force comprised of more than 100 prosecutors, investigators, and technicians responsible for the investigation and prosecution of human rights crimes. Formed in October 1999, this unit has received initial specialized training in the United States on conducting criminal investigations of cases involving multiple homicides, bombings, and kidnappings.

As stated in the Department of State's 1999 Country Report on Human Rights for Colombia, the Government of Colombia "demonstrated an increased willingness to remove from duty security force officers who failed to respect human rights, or ignored or were complicit in the abuses committed by paramilitary groups." Since the August 1997 Constitutional Court ruling, which more narrowly defined the constitutional provision that crimes by state agents unrelated to "acts of service" must be tried in civilian courts, the military judiciary has turned 526 cases of possible human rights violations over to the civilian judiciary for investigation and possible prosecution. Among the cases transferred during 1999 were those of three full colonels -- the first time that the military judiciary turned over cases concerning several high-ranking officers. However, some of the cases included in this figure do not involve gross violations of human rights.

The Government of Colombia is making progress in bringing to justice paramilitary personnel and armed forces personnel credibly alleged to have aided paramilitary personnel, but must continue to implement effective measures to achieve this objective. The Superior Military Tribunal provided a list of cases transferred from September 1997 to the present consistent with the Constitutional Court decision of 1997. That list indicates that, in 1999, 27 cases (involving murder, deprivation of liberty, personal injury, etc.) were transferred to civilian courts. In January - May 2000, 4 such cases were transferred. In February, the Government created (via executive decree) a Coordinating Center for the Struggle against "Self Defense" and other Illegal Armed Groups. To date, however, this Center has not achieved

tangible results, such as the establishment of a "Search Block" to pursue paramilitaries, or the creation of an early warning system to provide better protection to the civilian population, or the development of an effective rapid response team to follow up on investigations of human rights violations by paramilitaries.

The Administration is strongly urging the Government of Colombia to undertake all necessary measures to eliminate impunity within the military justice system and to dedicate to the Fiscalía all necessary resources to permit it to investigate and, as appropriate, prosecute members of the paramilitary groups or members of the government security forces who assist them.

(5) Secretary of State must certify that "the Government of Colombia has agreed to and is implementing a strategy to eliminate Colombia's total coca and opium poppy production by 2005 through a mix of alternative development programs; manual eradication; aerial spraying of chemical herbicides; tested, environmentally safe mycoherbicides; and the destruction of illicit narcotics laboratories on Colombian territory. . . ." (Section 3201(a)(1)(D)).

The Administration does not believe that this criterion can be met. The Colombian Government in Plan Colombia has set a goal of eliminating 50 percent of drug crop cultivation within five years (October 2005). This target is in keeping with the much-heralded reductions achieved in Peru and Bolivia. A 50 percent reduction is significant, realistic, and obtainable.

Any plan for total coca and poppy elimination in this time period would require more resources than are contemplated in Plan Colombia. As the implementation of Plan Colombia proceeds, it may be possible for the Government of Colombia to revise its timetable for drug elimination; this is particularly true for opium poppy elimination. The Administration has asked the Government of Colombia to determine a timetable, and an estimate of resources, that would allow it to work towards a strategy of eliminating coca and poppy production.

With respect to mycoherbicides, we have made clear that the United States will not support the use of mycoherbicides against the Colombian coca crop unless three conditions have been met: first, a rigorous, carefully supervised research and test program in Colombia determines that mycoherbicides are safe, effective, and superior to existing chemical eradication methods; second, a broader national security assessment, including consideration of the potential impact on biological weapons proliferation and terrorism, provides a solid foundation for concluding that the use of this particular drug control tool is in our national interest; and, third, the Colombian Government agrees with proceeding with the mycoherbicide program.

(6) Secretary of State must certify that "the Colombian Armed Forces are developing and deploying in their field units a Judge Advocate General Corps to investigate Colombian Armed Forces personnel for misconduct. . . ." (Section 3201(a)(1)(E)).

The military penal reform bill (which became effective August 12, 2000) requires, for the first time, that the military legal system operate outside and independent of the chain of command. Under this new penal code, the commanding officer in the field would no longer conduct criminal trials. Instead, the code provides for the installation of professional military judges. Criminal investigations will continue to be conducted by "judges of instruction," who in essence are civilians

with legal training. According to the Colombian Ministry of Defense, the Colombian military is in the process of establishing a JAG Corps. Given the differences between the U.S. and Colombian legal systems, the Colombian JAG Corps may differ in important respects from the U.S. version. The Administration believes with international support, the JAG Corps will be fully developed and deployed in the near future.

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