# IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

#### Alexandria Division

UNITED STATES OF AMERICA	)	
v.	)	Criminal No. 1:12CR3
KIM DOTCOM, et al.,	)	
Defendants.	)	

# OPPOSITION OF THE UNITED STATES TO DEFENDANT MEGAUPLOAD LIMITED'S SUPPLEMENTAL MEMORANDUM OF LAW

Defendant Megaupload Limited has sought leave to file a supplemental memorandum of law in support of its motion to dismiss, (Dkt. 120) (July 31, 2012). The supplemental memorandum, now the company's fourth pleading on this issue, still fails to cite any authority for its unprecedented request to immunize foreign corporate defendants from criminal prosecution. This Court should follow established precedent and deny the defendant's motion for the following reasons.

First, as the United States emphasized during the July 27, 2012 hearing, Rule 4 does not impose a time limit for initiating service of a criminal summons (or, for that matter, for executing an arrest warrant), and the United States should be given an opportunity to effect service according to the methods previously proposed or new methods that may arise as the investigation continues. In addition, there is no merit to defense counsel's claim during oral argument that, if successful here, Defendant Megaupload's assets should be released. The dismissal of a single defendant from this multi-defendant prosecution would have no effect on these assets because two grand juries and the Court have found probable cause that the assets are forfeitable for several reasons, most notably as proceeds of the remaining defendants' criminal activities. At

this stage in the case, no person, whether named in the Superseding Indictment or not, is entitled to the release of any assets named in the forfeiture provisions and covered by the Court's seizure and restraining orders.

Second, the mutual legal assistance treaty between the United States and Hong Kong ("U.S.-HK MLAT") provides a possible and proper means of effecting service of a summons either apart from, or in satisfaction of, Rule 4. Federal courts considering this issue have reached that conclusion, and no court has ruled otherwise. The case now cited by Defendant, DeJames v. Magnificence Carriers, Inc., is readily distinguishable because the treaty in that case, by its very terms, did "not provide independent authorization for service of process in a foreign country." 654 F.2d 280, 288 (3d Cir. 1981). And the court's ultimate conclusion was based not

<sup>&</sup>lt;sup>1</sup> A copy of the U.S.-HK MLAT, entitled Agreement Between the Government of the United States of America and the Government of Hong Kong on Mutual Legal Assistance in Criminal Matters, U.S.-H.K., Apr. 16, 1997, S. TREATY DOC. NO. 105-6, was attached as Exhibit B to the Opp'n of the U.S. to Mot. of Specially Appearing Def. Megaupload Ltd. to Dismiss Indictment for Lack of Personal Jurisdiction, (Dkt. 117-2) (July 13, 2012).

<sup>&</sup>lt;sup>2</sup> See, e.g., United States v. Alfred L. Wolff GmbH, Case No. 1:08-cr-417, 2011 WL 4471383, \*4 n.3 (N.D. III. Sept. 26, 2011) ("Given these MLAT provisions, it appears the government can effectuate service in compliance with Rule 4."); United States v. Chitron Elecs. Co. Ltd., 668 F. Supp. 2d 298, 306 (D. Mass. 2009) (recognizing that an "MLAT only becomes operative if a request is made by the United States to China for assistance with the service of a summons"); United States v. Johnson Matthey PLC, Case No. 2:06-cr-169, 2007 WL 2254676, \*2 (D. Utah Aug. 2, 2007) ("[A]n alternative means of service may be the Mutual Legal Assistance Treaty (MLAT) between the United Kingdom and the United States."). Similarly, the district court in United States v. Fuerzas Armadas Revolucionarias de Colombia granted the government's motion to serve a foreign organization, defined in Rule 1(b)(7) and 18 U.S.C. § 18 as any person other than individual, by delivering a copy of the summons to an officer of the organization, publishing a notice of the summons in a foreign newspaper, and sending a copy of the summons to the organization's electronic mail account. See Order at 1-2, Case No. 1:04-cr-232 (D.D.C. July 19, 2005). The court's order and the underlying motion of the government are attached to this pleading as Exhibit A.

<sup>&</sup>lt;sup>3</sup> The sole purpose of the treaty, as described in its preamble, is "to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time," and "to improve the organisation of mutual judicial assistance for that purpose

on the treaty itself but on the foreign defendant's lack of contacts with the district. *Id.* at 291 ("Because we have held that Hitachi's contact with the State of New Jersey was insufficient to support the assertion of personal jurisdiction under the state long-arm rule, we affirm the district court's conclusion that it had no personal jurisdiction over Hitachi.")

Here, in contrast, Article 1 of the U.S.-HK MLAT provides that the countries shall provide mutual assistance "in connection with the investigation, prosecution, and prevention of criminal offenses, and in proceedings related to criminal matters[,]" to include "serving documents." Article 15, entitled "Service of Documents," requires each country to "use its best efforts to serve any document transmitted to it pursuant to this Agreement for the purpose of service." The language of the MLAT plainly authorizes service of a summons on a foreign corporation, either apart from, or in satisfaction of, Rule 4.

Third, Defendant is wrong to claim that the U.S.-HK MLAT predates the provisions of Rule 4 at issue here. These provisions have existed in substance as part of Rule 9(c)(1) since the Federal Rules of Criminal Procedure first went into effect in 1946. The 2002 Amendment to which Defendant Megaupload refers merely transferred the provisions to their present location in Rule 4. As explained in Rule 4's advisory committee's notes:

Rule 4(c)(3)(C) is taken from former Rule 9(c)(1). That provision specifies the manner of serving a summons on an organization. The Committee believed that Rule 4 was the more appropriate location for general provisions addressing the mechanics of arrest warrants and summonses.

Rule 9's advisory committee's notes likewise provide: "The language in current Rule 9(c)(1), concerning service of a summons on an organization, has been moved to Rule 4." Not only do these provisions predate the U.S.-HK MLAT, but they do so by decades.

by simplifying and expediting the procedure[.]" Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361.

For these reasons and those advanced in previous pleadings and arguments, the United States respectfully requests that the Court deny Defendant Megaupload's motion to dismiss.

Respectfully submitted,

Neil H. MacBride United States Attorney

By: /s/ Ryan K. Dickey

Jay V. Prabhu Ryan K. Dickey Alexander T.H. Nguyen Andrew Peterson Assistant United States Attorneys

Lanny A. Breuer Assistant Attorney General U.S. Department of Justice Criminal Division Glenn C. Alexander Nathaniel Gleicher Trial Attorneys

U.S. Department of Justice

Computer Crime & Intellectual Property Section

Dated: August 3, 2012

#### **CERTIFICATE OF SERVICE**

I hereby certify that on the August 3, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF, which will then send a notification of such filing (NEF) to:

William A. Burck, Esq.
Paul F. Brinkman, Esq.
Heather H. Martin, Esq.
Ouinn Emanuel Urguhart & St

Quinn Emanuel Urquhart & Sullivan LLP 1299 Pennsylvania Avenue, NW, Suite 825

Washington, DC 20004 Tele: (202) 538-8000

williamburck@quinnemanuel.com paulbrinkman@quinnemanuel.com heathermartin@quinnemanuel.com Ira P. Rothken, Esq. The Rothken Law Firm 3 Hamilton Landing, Suite 280

Novato, CA 94949 Tele: (415) 924-4250 ira@techfirm.net

Craig C. Reilly, Esq. 111 Oronoco Street Alexandria, VA 22314 Tele: (703) 549-5354

craig.reilly@ccreillylaw.com

By: /s/ Ryan K. Dickey

Ryan K. Dickey Assistant United States Attorney United States Attorney's Office 2100 Jamieson Avenue Alexandria, Virginia 22314

Phone: (703) 299-3700 Fax: (703) 299-3981

E-mail: Ryan.Dickey@usdoj.gov

# Exhibit A

# UNITED STATES DISTRICT COURT' FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	
FUERZAS ARMADAS,	)	Criminal No.04-232-02 (TFH)
REVOLUCIONARIAS DE COLOMBIA,	)	
also known as FARC,	)	
also known as Revolutionary Armed Forces	)	
Of Colombia,	)	

#### **ORDER**

Upon motion of the United States, and the factual allegations contained in the criminal indictment filed in the above-captioned case, this Court FINDS

That the defendant Fuerzas Armadas Revolucionarias de Colombia, also known as the FARC, has been designated a Foreign Terrorist Organization (FTO) by the United States

Department of State, which operates outside the United States and which has no fixed address to which a criminal summons can be directed; and

That Juvenal Ovidio Ricardo Palmera Pineda, also known as Simon Trinidad, is one of approximately 27 people who serve on the "Central General Staff' of the FARC organization, and in that position is an appropriate personunder the Federal Rules to receive service of a criminal summons on behalf of the defendant organization; and

That publication of a notice of the summons in the six newspapers and magazines cited by the government and through the electronic mailbox utilized by the FARC organization on its official website, <a href="www.farc-ep.org">www.farc-ep.org</a>, are methods of service that are reasonable calculated to notify

the defendant organization of the existence of this prosecution and their obligation under United States law to appear before this court, through counsel or otherwise.

IT IS THEREFORE ORDERED that a criminal summons be issued for defendant FARC;

ORDERED that a copy of the summons be forthwith served upon Simon Trinidad, an

officer of the organization, defendant FARC;

ORDERED that the United States be permitted to provide notice by publication in the following newspapers and magazines in the Republic of Colombia: El Tiempo, El Colombiano, Cambio, Semana, El Diario de Huila, and El Espectador, for a period of six consecutive weeks, in Spanish;

It is FURTHER ORDERED that the United States be permitted to provide notice by electronic mail, to be sent through the defendant FARC's internet website, <a href="https://www.farcep.org">www.farcep.org</a>.

SO ORDERED, this <a href="https://doi.org/10.1007/jof-10.1007/

CHIEF JUDGE

UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF COLUMBIA

lem L.

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
<b>v.</b>	)	
	)	
FUERZAS ARMADAS,	)	<b>Criminal No.04-232-01 (TFH)</b>
REVOLUCIONARIAS DE COLOMBIA,	)	
also known as FARC,	)	
also known as Revolutionary Armed Forces	)	
Of Colombia,	)	

## APPLICATION FOR SERVICE OF SUMMONS ON DEFENDANT FARC

The United States of America, by and through the United States Attorney for the District of Columbia, respectfully moves this Honorable Court, pursuant to Rule 9(a) of the Federal Rules of Criminal Procedure, for issuance of a summons and service of the same on the defendant Fuerzas Armadas Revolucionarias de Colombia, also known as the Revolutionary Armed Forces of Colombia, hereinafter referred to as "FARC."

#### BACKGROUND

In an Indictment filed in open court on May 13, 2004, defendant FARC was charged jointly with codefendant JUVENAL OVIDIO RICARDO PALMERA PINEDA, also known as Simon Trinidad, in an act of terrorism involving the February 13, 2003 hostage taking of three Americans in the Republic of Colombia.

The charges against both defendants involve the same series of acts or transactions, and the evidence at trial evidence against both will be substantially the same. Therefore, it is in the interest of justice and judicial efficiency that both defendants be tried together in a single trial.

Buchanan v. Kentucky, 483 U.S. 402 (1987).

#### MOTION

TO ENSURE THAT DEFENDANT FARC RECEIVES ADEQUATE NOTICE OF THIS CRIMINAL PROCEEDING, THE UNITED STATES REQUESTS THAT A CRIMINAL SUMMONS BE ISSUED BY THIS COURT AND PERSONALLY SERVED ON AN OFFICER OF THE ORGANIZATION, AND THAT DUPLICATE NOTICE BE PROVIDED BY PUBLICATION AND BY EMAIL

Rule 9(a) of the Federal Rules of Criminal Procedure directs that the Court "must issue a warrant – or at the government's request, a summons – for each defendant named in an indictment." Rule 9(a), Fed.R.Crim.Proc. The rule also allows the Court to issue "more than one warrant or summons for the same defendant." <u>Ibid.</u>

Where a defendant happens to be a corporation or other organization, Rule 4(c)(3)(C) provides that a summons should be served as follows:

A summons is served on an organization by delivering a copy to an officer, to a managing or general agent, or to another agent appointed or legally authorized to receive service of process. A copy must also be mailed to the organization's last known address within the district or to it's principal place of business elsewhere in the United States.

Rule 4(c)(3)(C), Federal Rules of Criminal Procedure.

In interpreting who within an organization or corporation qualifies as an appropriate "officer" to receive service, federal courts have held that the person must have "sufficient authority or responsibility within the organization so as to make it reasonable to assume that 'he will realize his responsibility and know what he should do with any legal papers served upon him." Wright & Miller, 4 Federal Practice 7 Procedure, ¶ 1101 at 385. See In re Legend Industries, Inc. v. C.P.P. Corp., 49 B.R. 935, 937 (Bank.E.D.N.Y. 1985).

In this case, codefendant Simon Trinidad is an appropriate officer to accept service of the summons on behalf of the FARC organization. The Indictment itself alleges that Trinidad is one of approximately 27 people who serve on a governing council known as the "Estado Mayor Central," or the "Central General Staff," which manages and provides day-to-day operational control of the 15,000 to 18,000 member FARC organization. The Indictment also alleges that in 2003 the FARC named codefendant Trinidad as its organizational representative in negotiations with the Colombian government – and other foreign governments for that matter – concerning the American hostages and other "exchangable" hostages held by the FARC. Indeed, codefendant Trinidad was arrested in Ecuador in December 2003 while serving as FARC's representative in attempted meetings with an official of a foreign government.

Codefendant Trinidad is the highest ranking member of the FARC organization ever taken into custody by the Colombian government, and certainly the highest ranking FARC official ever brought within the jurisdiction of a United States court. Trinidad is qualified to accept service on behalf of the FARC, and can be readily served. A proposed summons for the FARC, address to codefendant Trinidad, is affixed hereto as ATTACHMENT A. This method of notice would be in the best interest of judicial efficiency and economy.

Where, as in this case, the organization is located abroad and has no place of business in the United States to which a copy of the summons can be mailed, the Federal Criminal Rules fail to provide additional guidance as to how the specific requirements of Rule 4(c)(3)(C) can be satisfied. However, the Federal Rules of Civil Procedure provide an alternative means of service for foreign corporations or other unincorporated associations where a method of service is not otherwise provided by federal law. See Fed. R. Crim. P. 49(b) ("Service must be made in the

manner provided for a civil action."). According to Rule 4(h)(2) of the Federal Rules of Civil Procedure, service on unincorporated associations outside the United States shall be done "in any manner prescribed for individuals" by Rule 4(f). Rule 4(f) of the Federal Rules of Civil Procedure prescribes that service shall be done in compliance with international agreements providing a means of effective service.

In this case, Rule 4(f)(1) of the Civil Rules is not applicable because the Republic of Colombia is not a signatory of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and although Colombia is a signatory of the Inter-American Convention of Letters Rogatory, neither treaty is appropriate for service of compulsory process. Moreover, defendant FARC maintains no fixed address in Colombia at which a summons could be served in any event. Where there is no international agreement in effect providing a means of effective service, this Court has discretion to prescribe any method of service of its own pursuant to Civil Rule 4(f)(3), provided that the means of service is "not prohibited by international agreement." Ibid.

In this case, notice by publication within the Republic of Colombia would satisfy Rule 4(f)(3) of the Civil Rules, and would constitute "notice reasonably calculated under all the circumstances, to apprize interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Service by publication on international terrorist organizations has been permitted in the civil context. See, *Mwami, et al. v. The United States of America*, 99 civ. 0125 (D.D.C. 2004) and *Smith v. The Islamic Emirate of Afghanistan, et al.* 2001 U.S. Dist LEXIS 21712 (S.D.N.Y. 2001).

In ATTACHMENT B to this application, the United States has provided the text of a proposed notice which, if the Court grants this request, would be published in the Spanish language in six newspapers and magazines in Colombia for a period of six consecutive weeks. The six publications, listed on ATTACHMENT C, were selected because they each have a national circulation within the Republic of Colombia and/or have published interviews of FARC guerrilla leaders and devoted extensive coverage to FARC activities.

The United States also proposes that notice be provided to the FARC by electronic email. The FARC maintains a website, located at <a href="http://www.farcep.org">http://www.farcep.org</a>. On this website, the FARC posts many of its official communiques, including several expressing the organization's strong objection to the extradition and prosecution of its senior commander, codefendant Simon Trinidad, in this very case. The website also provides an electronic mailbox by which individuals may send messages and "suggestions" to the FARC organization. By sending notice of the summons through this website mailbox, it is reasonable to conclude that appropriate FARC officials will be notified of this legal action and will have sufficient notice to appear in court, through counsel or otherwise, at an appointed date if it chooses to do so.

As early as 1980, federal courts in civil cases have permitted service by electronic means. In *New England Merchants National Bank v. Iran Power Generation and Transmission Company et al.*, 295 F.Supp. 73, 81 (S.D.N.Y. 1980), the court permitted service on Iranian defendants by telex, given assertions by the plaintiffs that other mechanisms of service had been reasonably thwarted. And more recently, courts have held that service by electronic mail is an appropriate means of service, especially when the defendant does not have a fixed or public address and electronic mail is their preferred if not only means of communication. In *In re* 

International Telemedia Associates, Inc. v. Diaz et al., 245 B.R. 713, 718 (Bank.N.D.Ga., 2000), part of the reason given by the court for granting permission to serve notice of the defendant via electronic mail was the fact that he was, "a 'moving target,' making it virtually impossible for the Trustee to find him and effect service by any of the traditional means specified in the Federal Rules of Civil Procedure." The court in Rio Properties v. Rio International Interlink, 284 F.3d 1007, 1015 (9th Cir., 2002), in granting permission for service via electronic mail also noted that, "Rule (4)(f)(3) is not subsumed within or in any way dominated by Rule 4(f)'s other subsections; it stands independently, on equal footing," implying that the provisions of Rule 4(f)(3) are not necessarily to be seen as a last resort or in any way inferior to the other provisions specified in Rule 4(f).

WHEREFORE, the United States requests that the Court direct that a criminal summons for defendant FARC be personally served on the FARC through Simon Trinidad, in his capacity as an officer of the FARC organization. The United States further requests that the Court enter an order authorizing the United States to accomplish alternative service on the FARC organization via publication in Colombian newspapers and magazines for an amount of time wherein it can be reasonably expected that the FARC will receive notice of these proceedings<sup>1</sup>;

<sup>&</sup>lt;sup>1</sup> Once the court signs the order permitting publication, the United States will then transmit that order in the proper form through the channels of a mutual legal assistance treaty request to the Government of Colombia for their assistance in executing the order.

and to also send notice of these proceedings to the FARC through the electronic mail box on its website.

Respectfully submitted,

KENNETH L. WAINSTIEN United States Attorney D.C. Bar No. 451-058

JOHN ARMON BEASLEY, JR. Assistant U.S. Attorney D.C. Bar No. 354478 Transnational/Major Crimes Section 555 Fourth Street, N.W., 5th Floor Washington, D.C. 20001 (202) 514-6954 John.A.Beasley@usdoj.gov

KENNETH C. KOHL Assistant U.S. Attorney D.C. Bar No. 476236 Transnational/Major Crimes Section 555 Fourth Street, N.W., 5th Floor Washington, D.C. 20001 (202) 616-2139 Ken.Kohl@usdoj.gov

T. J. REARDON, III
Trial Attorney
D. C. Bar No.
Criminal Division, Counterterrorism Section
U. S. Department of Justice
10<sup>th</sup> & Constitution Avenue, N.W.
Washington, D. C., 20530
(202)514-1083
T.J.ReardonIII@usdoj.gov

SAO83 (Rev. 10/03) Summons in a Criminal Case	
UNITED STATES DIS	STRICT COURT
DISTRICT C	)F
UNITED STATES OF AMERICA  V.  FUERZAS ARMADAS, REVOLUCION ARIAS  DE COLOMBIA, also known as FARC,  also known as Revolutionary Armed  Forces of Colombia  (Name and Address of Defendant)	SUMMONS IN A CRIMINAL CASE  Case Number: 04–232 (01)
YOU ARE HEREBY SUMMONED to appear before the United forth below.	I States District Court at the place, date and time set
Place United States Courthouse Third & Constitution Avenue, NW Washington, DC 2001 USA Before: Chief Judge Thomas F. Hogan	Room Courtroom 4114  Date and Time
To answer a(n)  ✓ Indictment ☐ Information ☐ Complaint ☐ Probation Viola Petition	Violation Petition
	United States Code, Section(s) 1203(a), 2, 981(a)(1)(GStates Code, Section 2461(c)
Conspiracy to Commit Hostage Taking, an A as defined by 18 United States Code, Sect and its Citizens.	
Signature of Logging Officer	Date
Signature of Issuing Officer  Name and Title of Issuing Officer	Date

## **ATTACHMENT A**

	RETURN OF SERVICE		
Date Service was made by me on:1			
Check one box below to indicate appropriate method of service			
Served personally upon the defendant at on the person of its managing officer,			
codefendant Juvenal Ovidio Ricardo Palmera Pineda, also known as SIMON TRINIDAD			
Left summons at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein and mailed a copy of the summons to the defendant's last known address. Name of person with whom the summons was left:			
☐ Returne	ed unexecuted:		
	under penalty of perjury under the laws of the U the Return of Service is true and correct.  Date	Inited States of America that the foregoing information  Name of United States Marshal	
contained in	the Return of Service is true and correct.	Name of United States Marshal	
contained in Returned on	the Return of Service is true and correct.		
contained in	the Return of Service is true and correct.	Name of United States Marshal	
contained in Returned on	the Return of Service is true and correct.	Name of United States Marshal	
contained in Returned on	the Return of Service is true and correct.	Name of United States Marshal	
contained in Returned on	the Return of Service is true and correct.	Name of United States Marshal	
contained in Returned on	the Return of Service is true and correct.	Name of United States Marshal	
contained in Returned on	the Return of Service is true and correct.	Name of United States Marshal	
contained in Returned on	the Return of Service is true and correct.	Name of United States Marshal	
contained in Returned on	the Return of Service is true and correct.	Name of United States Marshal	

<sup>&</sup>lt;sup>1</sup> As to who may serve a summons, see Rule 4 of the Federal Rules of Criminal Procedure.

#### **ATTACHMENT B**

#### NOTICE

FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA also known as FARC also known as REVOLUTIONARY ARMED FORCES OF COLOMBIA Republic of Colombia

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA, CRIMINAL DIVISION, UNITED STATES OF AMERICA v. FUERZAS ARMADAS REVOLUCIONARIAS DE COLOMBIA ALSO KNOWN AS FARC ALSO KNOWN AS REVOLUTIONARY ARMED FORCES OF COLOMBIA, Criminal No. 04-232-01 (TFH) NOTICE OF FILING OF A CRIMINAL SUMMONS. An order for service by publication was issued by Chief Judge Thomas F. Hogan on July 19, 2005. It was ordered that notice of the above-captioned action should be published once a week for six consecutive weeks in El Tiempo, El Colombiano, El Espectador, El Diario de Huila, Cambio and Semana (in Spanish). Notice is hereby served on Defendant organization FARC that it was charged in a criminal indictment with violations of Title 18 United States Criminal Code Sections 1203 and 2339A on May 13, 2004 by a grand jury of the United States District Court for the District of Columbia. The Defendant organization FARC is hereby summoned to appear with counsel before Chief Judge Thomas Hogan on September , 2005 at 9:00am in Courtroom No. United States District Court for the District of Columbia located at 300 Constitution Avenue, N.W., Washington, D.C. for an initial appearance on these charges. Failure to appear would permit the court to appoint counsel to appear on the defendant organization's behalf and to proceed with the trial of this matter, possibly resulting in the defendant organization's conviction and sentencing. The Indictment charges defendant organization FARC with conspiracy to commit hostage-taking and providing material support to terrorists in violation of United States law.

## ATTACHMENT C

### <u>Publications</u>:

- 1. El Tiempo
- 2. El Colombiano
- 3. Cambio
- 4. Semana
- 5. El Diario de Huila
- 6. El Espectador

## UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
<b>v.</b>	)	
	)	
FUERZAS ARMADAS,	)	Criminal No.04-232-02 (TFH)
REVOLUCIONARIAS DE COLOMBIA,	)	
also known as FARC,	)	
also known as Revolutionary Armed Forces	)	
Of Colombia,	)	

#### ORDER

Upon motion of the United States, and the factual allegations contained in the criminal indictment filed in the above-captioned case, this Court FINDS

That the defendant Fuerzas Armadas Revolucionarias de Colombia, also known as the FARC, has been designated a Foreign Terrorist Organization (FTO) by the United States

Department of State, which operates outside the United States and which has no fixed address to which a criminal summons can be directed; and

That Juvenal Ovidio Ricardo Palmera Pineda, also known as Simon Trinidad, is one of approximately 27 people who serve on the "Central General Staff" of the FARC organization, and in that position is an appropriate person under the Federal Rules to receive service of a criminal summons on behalf of the defendant organization; and

That publication of a notice of the summons in the six newspapers and magazines cited by the government and through the electronic mailbox utilized by the FARC organization on its official website, <a href="www.farc-ep.org">www.farc-ep.org</a>, are methods of service that are reasonable calculated to notify

the defendant organization of the existence of this prosecution and their obligation under United

States law to appear before this court, through counsel or otherwise.

IT IS THEREFORE ORDERED that a criminal summons be issued for defendant FARC;

ORDERED that a copy of the summons be forthwith served upon Simon Trinidad, an

officer of the organization, defendant FARC;

ORDERED that the United States be permitted to provide notice by publication in the

following newspapers and magazines in the Republic of Colombia: El Tiempo, El Colombiano,

Cambio, Semana, El Diario de Huila, and El Espectador, for a period of six consecutive weeks,

in Spanish;

It is FURTHER ORDERED that the United States be permitted to provide notice by

electronic mail to be sent through the defendant FARC's internet website, www.farcep.org.

SO ORDERED, this \_\_\_\_\_ day of July, 2005.

CHIEF HIDGE

CHIEF JUDGE
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA