

THE LEGAL ADVISER  
DEPARTMENT OF STATE  
WASHINGTON

March 31, 2011

The Honorable Tony West, Esq.  
Assistant Attorney General  
Civil Division  
United States Department of Justice  
950 Pennsylvania Ave. N.W.  
Washington D.C. 20530

Re: *Claudia Balceró Giraldo, et al. v. Drummond Company, Inc., et al.*,  
Civil Action No. 1:10mc00764 (JDB) (D.D.C.)

Dear Assistant Attorney General West:

I write to request that the Department of Justice convey to the United States District Court for the District of Columbia in the above-referenced case the determination of the Department of State that Alvaro Uribe, the former President of Colombia, enjoys the testimonial immunity from the Court's subpoena power described below.

President Uribe is the former head of the Government of Colombia. The current Government of Colombia has formally asked the Department of State to take the steps necessary to have this subpoena quashed on the basis of former President Uribe's immunity from U.S. jurisdiction as a former foreign head of state. A copy of the letter dated November 12, 2010 from the Ambassador from Colombia requesting that action is enclosed.

Taking into account the relevant principles of customary international law, and considering the overall impact of this matter on the foreign policy of the United States, the Department of State has determined that President Uribe enjoys residual immunity from this Court's jurisdiction insofar as Plaintiffs seek information (i) relating to acts taken in his official capacity as a government official; or (ii) obtained in his official capacity as a government official.

Moreover, the Department of State believes that, in light of President Uribe's immunity and for reasons of comity, the Court should initially stay President Uribe's deposition in this case and direct plaintiffs first to explore other reasonably available means of gathering the evidence they seek. The foreign policy interest of the United States favors avoiding unnecessary irritants in our relations with Colombia. Plaintiffs' counsel has confirmed that plaintiffs have not yet attempted to seek evidence from the Colombian government through the traditional means of letters rogatory, or through other avenues that may be available under Colombian law. In our view, such avenues may well provide a better way for plaintiffs to obtain the evidence they seek,

especially in light of President Uribe's testimonial immunity as indicated above.

Finally, it should be noted that many former heads of state, including former U.S. Presidents, travel widely and often serve as unofficial spokesmen for their states. Reciprocal courtesies would prevent U.S. Presidents from being subjected to subpoenas by private defendants abroad when the information sought could be reasonably obtained by other means.

Accordingly, the Department of State requests that the Department of Justice submit to the Court an appropriate filing setting forth this immunity determination.

Sincerely,

A handwritten signature in black ink, appearing to read 'Harold Koh', written in a cursive style.

Harold Hongju Koh  
The Legal Adviser



*Embajada de Colombia*  
*Washington, D. C.*

2010 NOV 15 P 1:00

E. 1779

November 12, 2010

**BY HAND**

The Honorable Hillary Clinton  
United States Secretary of States  
United States State Department  
2201 C Street, NW  
Washington DC 20520

Dear Secretary Clinton:

The Embassy of the Republic of Colombia presents its compliments to the Department of State. On behalf of the government of the Republic of Colombia, I have the honor of notifying you of a recent effort to force former President Álvaro Uribe Vélez to testify in a civil litigation currently taking place in the United States.

On November 3, 2010 President Uribe received a subpoena as part of the ongoing litigation in the United States District Court for the Northern District of Alabama under the caption *Giraldo, et al. v. Drummond Company, Inv., et al.*, Civil Action No. 7:09-cv-1401 (sic). The subpoena, which was issued by the United States District Court for the District of Columbia, compels President Uribe to be deposed as part of this litigation on November 22, 2010 at 9:00am at the offices of Conrad & Scherer, LLP. According to a press release issued by plaintiffs' counsel the day after President Uribe was served with this subpoena, plaintiffs intend to use this deposition to inquire about President Uribe's knowledge of "the extend of government military support to protect the Drummond mining facilities in Colombia, the relationship and level of cooperation between the military forces and the AUC, particularly in relation to the areas in Cesar Province where Drummond operated, the military's role in covering up was crimes committed by the AUC, and the efforts by the Colombian government during Mr. Uribe's tenure to suppress evidence of Drummond's relationship to the AUC."Copies of both the subpoena and press release are enclosed.

In response to this subpoena, my government has instructed me to convey to you its unequivocal to retain and asset any and all immunities applicable to President Uribe and to specifically request head-of-state immunity on his behalf.



*Embajada de Colombia*  
*Washington, D. C.*

The Embassy understands that this designation of immunity should come from the Department of State in the form of a Suggestion of Immunity letter. Thus, this Embassy kindly request the assistance of the Department of State in preparing a Suggestion of Immunity letter to be submitted to the District Court by the Attorney General, or his designee, pursuant to 28 U.S.C. § 517, and that the Department of State take all steps necessary to quash this subpoena.

The Embassy wishes to stress the importance of this request and its deep appreciation of the prompt attention of the Department of State

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Gabriel Silva', with a long, sweeping flourish extending to the left and a small '2' at the end.

**Gabriel Silva**  
Ambassador

CC. Gregory Craig. Counsel for President Álvaro Uribe Vélez

Attached. Copy of the subpoena delivered to President Álvaro Uribe Vélez  
Copy of press release by Conrad & Scherer



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November 3, 2010

**HAND-DELIVERED**

**ATTENTION: Alvaro Uribe Velez**

Dear Mr. Uribe:

As per the attached subpoena in the *Drummond* litigation, we have scheduled your deposition for Monday, November 22 at 9:00 am in my office. If that date is not convenient for you, please contact my office and we can reschedule for a mutually-convenient time. Otherwise, I look forward to seeing you on November 22.

Sincerely,



Terence P. Collingsworth

AO 88A (Rev. 06/09) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the District of Columbia

CLAUDIA BALCERO GIRALDO, et al.,

Plaintiff

v.

DRUMMOND COMPANY, Inc., et al.

Defendant

Civil Action No. 7:09-cv-1041-RDP

(If the action is pending in another district, state where: Northern District of Alabama)

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Alvaro Uribe Vélez, Inter-Cultural Center, Georgetown University, ICC 223B, 3800 Reservoir Road NW, Washington, D.C. 20007

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization that is not a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: Conrad & Scherer, LLP
1156 15th Street NW, Suite 502
Washington, D.C. 20005

Date and Time: 11/22/2010 9:00 am

The deposition will be recorded by this method: audiovisual and stenographic means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: 10/26/2010

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR

Attorney's signature

The name, address, e-mail, and telephone number of the attorney representing (name of party)

CLAUDIA BALCERO GIRALDO, et al.

, who issues or requests this subpoena, are:

Terrence P. Collingsworth, Conrad & Scherer LLP
1156 15th St. NW, Suite 502, Washington, D.C. 20005
P: 202-543-4001, F:1-866-8031125

**Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)****(c) Protecting a Person Subject to a Subpoena.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

**(i)** At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

**(ii)** These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

**(i)** fails to allow a reasonable time to comply;

**(ii)** requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

**(iii)** requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

**(iv)** subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

**(i)** disclosing a trade secret or other confidential research, development, or commercial information;

**(ii)** disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

**(iii)** a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

**(i)** shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

**(ii)** ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

**(i)** expressly make the claim; and

**(ii)** describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).



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**Colombian Victims of Drummond's War Crimes Subpoena Former President Uribe**

**Contact:** Terry Collingsworth, Counsel for Plaintiffs  
Conrad & Scherer 202-543-5811 (office); 202-255-2198 (mobile)

In 2009, nearly 500 family members of Colombian citizens who were murdered by paramilitary forces during the Colombian civil conflict brought a federal lawsuit in Birmingham, Alabama against Drummond Company, Inc. for its role in supporting war crimes. The Plaintiffs discovered significant evidence that Drummond made an explicit agreement in 1999 with the main paramilitary group, the United Self Defense Forces of Colombia ("AUC"), that Drummond would provide significant funding and other support to the AUC to allow the AUC to escalate its civil war with the primary guerilla group in Colombia, the Revolutionary Armed Forces of Colombia ("FARC"). This support continued until 2007, well after the AUC was designated a terrorist organization in 2001 by the U.S. State Department.

Drummond's direct support to a terrorist organization made it an aider and abetter and co-conspirator with the AUC in its brutal attacks on innocent civilians, including the murdered relatives of the Plaintiffs. The federal court in this case ruled on April 30, 2010 that Plaintiffs had stated a viable claim against Drummond, and the case is now in the discovery phase.

The Drummond Plaintiffs have subpoenaed former Colombian President Uribe during his stay in the United States to compel his attendance at a formal deposition in the court case. Mr. Uribe has direct knowledge of several key issues in the case, including the extent of government military support to protect the Drummond mining facilities in Colombia, the relationship and level of cooperation between the military forces and the AUC, particularly in relation to the areas in Cesar Province where Drummond operated, the military's role in covering up war crimes committed by the AUC, and the efforts by the Colombian government during Mr. Uribe's tenure to suppress evidence of Drummond's relationship to the AUC.

The deposition of Mr. Uribe is scheduled for Monday, November 22 at the Washington, D.C. offices of Conrad & Scherer.

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Established 1974  
Rex Conrad 1935-1999 • William Scherer  
Conrad & Scherer, LLP • 1156 15th St. NW, Suite 502, Washington, DC 20005  
Phone 202.543.4001 • Fax 1.866.803.1125  
[www.conradscherer.com](http://www.conradscherer.com)