IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Venancio Aguasanta Arias, *et al*., Plaintiffs, v. DynCorp, *et al*. Defendants.	Case Number: 1:01cv01908 (RWR)
Nestor Ermogenes Arroyo Quinteros, *et al*., Plaintiffs, v. DynCorp, *et al*. Defendants.	Case Number: 1:07cv01042 (RWR) (Cases Consolidated for Case Management and Discovery)

DEFENDANTS' MOTION TO DISMISS THE THREE PROVINCIAL PLAINTIFFS ON THE PLEADINGS, OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

Defendants DynCorp, *et al.* ("DynCorp") hereby move pursuant to Fed. R. Civ. P. 12(c) to dismiss on the pleadings the claims of the three provincial government plaintiffs ("Provinces") in *Quinteros*, or, in the alternative, defendants move pursuant to Fed. R. Civ. P. 56 for summary judgment, because the Provinces have neither standing nor legal capacity to pursue their claims in this Court. The Provinces lack standing because (1) foreign governments do not have standing to bring *parens patriae* claims in U.S. courts and (2) the Provinces' derivative claims based on alleged personal injuries and property damages to provincial residents are too remote from the alleged conduct of which they complain. *See Service Employees International Union Health & Welfare Fund v. Philip Morris Inc.*, 249 F.3d 1068 (D.C. Cir. 2001). The Provinces also do not have the legal capacity to bring suit because Ecuadorian law does not authorize provincial

governments to bring suit in U.S. court but instead vests such power solely with the central government through the office of the Attorney General. *See* Declaration of Andres Donoso-Calvo, attached hereto as Exhibit A. The Provinces' lack of standing and legal capacity in this Court is further demonstrated by the fact that the Republic of Ecuador has elected to pursue identical claims against the Republic of Colombia in a proceeding pending before the International Court of Justice in the Hague.

BACKGROUND

This case arises in connection with a consolidated action brought on behalf of some 2,500 individuals and three Ecuadorian provinces within which the individual plaintiffs all reside. All of the plaintiffs allege damages as a result of the aerial coca eradication operations being conducted pursuant to the joint United States-Colombia counter-narcotics and counter-terrorist program known as "Plan Colombia." The Ecuadorian provinces of Carchi, Esmeraldas, and Sucumbios bring their claims in *parens patriae*, alleging injury to the "natural resources" within the provinces and seeking funds "to remediate the situation and to address their citizens' health, security, and property." (First Am. Consol. Compl. in *Quinteros* ¶1; *see also id.* ¶ 7 (alleging that Provinces are bringing suit "in their own right and in their parens patri[a]e capacity")). The Provinces thus seek recoveries, *inter alia*, for the same damages alleged by the individual plaintiffs. The Provinces allege that they "have suffered increased housing costs, education costs, costs associated with the housing and feeding of refugees" and that "as the political subdivisions responsible for protecting the environment, face remediation costs." *Id.* ¶ 32.

The Provinces do not allege a basis for their claimed legal authority to bring suit on their own behalf in a foreign court, stating only that they are "political subdivisions of the Republic of Ecuador." *Id.* ¶ 7. In particular, the provincial governments do not allege, and have presented no

evidence showing, that their actions were filed in this U.S. federal court with the participation and involvement of the Attorney General of Ecuador or that the Attorney General is overseeing the litigation with the authority to dismiss or settle the lawsuit, both of which are expressly required under Ecuadorian law. *See* Declaration of Andres Donoso-Calvo ¶ 3.

The Republic of Ecuador is separately seeking recovery for alleged injuries to the citizens and land within that country from the same "Plan Colombia" spraying at issue in this case, through a proceeding against the Republic of Colombia in the International Court of Justice ("ICJ").[1] In that action, Colombia is named as the party responsible for the harms that allegedly occurred due to Plan Colombia spraying. The allegations by the Republic of Ecuador, however, otherwise track the allegations made by the Provinces in the *Quinteros* case. *Compare* Application Instituting Proceedings (Ecuador v. Colombia) ¶¶ 2-6 ("Nature of the Dispute") (relevant excerpt attached hereto as Ex. C) *with* First Am. Consol. Compl. in *Quinteros* ¶1 ("Introduction – Nature of the Action"). In its ICJ proceeding, Ecuador seeks indemnification from Colombia for:

(1) death or injury to the health of any person or persons arising from the use of such [Plan Colombia] herbicides; and

(2) any loss of or damage to the property or livelihood or human rights of such persons; and

(3) environmental damage or the depletion of natural resources; and

[1] *See* Press Release, Int'l Ct. of Justice (Ecuador v. Colom.), Ecuador institutes proceedings against Colombia with regard to a dispute concerning the alleged aerial spraying by Colombia of toxic herbicides over Ecuadorian territory (Apr. 1, 2008) ("ICJ Press Release"), attached hereto as Exhibit B.

(4) the costs of monitoring to identify and assess future risks to public health, human rights and the environment resulting from Colombia's use of herbicides; and

(5) any other loss or damage.

See Ecuador ICJ Application, Ex. C ¶ 38.B. Accordingly, all of the relief requested by the Provinces (and indeed by all of the individual plaintiffs in *Quinteros* and *Arias*) is subsumed within the Republic of Ecuador's ICJ proceeding against Colombia.

ARGUMENT

I. The Provinces' Claims Should Be Dismissed Because The Provinces Lack Standing Under U.S. Law.

In *Service Employees International*, the U.S. Circuit Court of Appeals for the District of Columbia held that foreign governments lack standing to bring suit in U.S. courts for alleged injuries to their citizens or to their quasi-sovereign interests for two independent reasons. First, U.S. courts do not extend *parens patriae* standing to foreign governments. Second, these type of alleged government injuries are too remote from the alleged misconduct to provide standing. The Provinces' claims fail for both of these reasons, and their claims accordingly should be dismissed for lack of standing.

A. The Provinces Do Not Have Standing to Bring *Parens Patriae* Claims.

The Provinces – each a governmental subdivision of the Republic of Ecuador – allege standing to bring claims in this United States District Court in *parens patriae* to protect their natural resources, their public treasuries, and the health and welfare of their people. (First Am. Consol. Compl. in *Quinteros* ¶¶ 1, 7, 32; *see also Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 604, 607 (1982) (*parens patriae* interest encompasses claims brought by a State to protect its quasi-sovereign interest in "all the earth and air within its domain" and

"the health and well-being – both physical and economic – of its residents")). The law in this Circuit is clear however that foreign governments cannot bring *parens patriae* claims in U.S. courts. In *Service Employees International*, the Republics of Guatemala, Nicaragua, and Ukraine brought suit in *parens patriae* seeking damages from tobacco companies for alleged injuries to the health of their citizens and corresponding "economic harms to their treasuries" in providing health care to those citizens. The D.C. Circuit affirmed the dismissal of these claims, explaining that the doctrine of *parens patriae* does not extend to foreign governments:

> The nations' assertion that they may proceed in *parens patriae* is dubious at best, for as the First Circuit pointed out in *Estados Unidos Mexicanos v. DeCoster,* 229 F.3d 332, 336 (1st Cir. 2000), *parens patriae* standing should not be recognized in a foreign nation (by contrast with a State in this country) unless there is a clear indication by the Supreme Court or one of the two coordinate branches of government to grant such standing. The nations offer no evidence of such intent.

Service Employees International, 249 F.3d at 1073.

In *DeCoster*, the First Circuit provided a detailed analysis explaining why foreign governments should not be extended *parens patriae* standing in U.S. courts. The court noted that the justifications for recognizing *parens patriae* standing in the States simply do not apply to foreign nations. First, "the States have surrendered certain aspects of their sovereignty to the federal government and, in return, are given recourse to solve their problems with other States." 229 F.3d at 337. Quoting from the seminal *parens patriae* case, *Missouri v. Illinois*, 180 U.S. 208, 241 (1901), the First Circuit noted that if a State within the United States "were an independent and sovereign State[,] all must admit that she could seek a remedy by negotiation, and, that failing, by force. Diplomatic powers and the right to make war having been surrendered by the general [State] government, it was to be expected that upon the latter would be devolved the duty of providing a remedy." *DeCoster,* 229 F.3d at 337. Foreign governments,

of course, have not surrendered any of their sovereignty to the United States, and the central government of Ecuador is in fact pursuing recourse for the same alleged wrongs claimed by the Provinces here through diplomatic means and in an appropriate international tribunal with its pending action before the ICJ.

Second, the *DeCoster* court noted that: "States require a sufficiently independent forum to resolve their disputes with one another." *Id.* Again, this justification does not apply to foreign governments which have – as Ecuador has here – other forums in which to resolve their disputes and which in any event certainly do not depend on U.S. courts to provide such a forum. The First Circuit also explained that its analysis was not altered by the fact that the foreign government plaintiff in *DeCoster* (Mexico) was bringing its claim against private defendants, stating that "federalism justifications for permitting States to bring suit parens patriae against private entities are simply absent here." *Id.* at 338.[2] *See also State of São Paulo of the Federative Republic of Brazil v. American Tobacco Co.,* 919 A.2d 1116, 1121-22 (Super. Ct. Del. 2007) (following *Service Employees* and *DeCoster* to dismiss an asserted claim in a case involving a political subdivision of a foreign government and noting the lack of any authority to the contrary).

The present case amply demonstrates why courts have been properly resistant to extending *parens patriae* standing to foreign governments in United States courts. Pursuant to

[2] The *DeCoster* court also explained that "several doctrines of judicial restraint counsel against recognition" of *parens patriae* standing in foreign governments. *Id.* at 336. The court noted that such standing is not "supported by adherence to any principle of customary international law." *Id.* at 339. The court explained, moreover, that "[t]he conduct of foreign affairs in this country is committed to the Executive and to the Congress" and that "[t]his division of power should give courts pause before entering this arena." *Id.* at 340. And the court cautioned that "the potential exists for conflicts between the individual litigants and the parens patriae nation over issues of settlement, appropriate relief, and the like" and that "relief obtained by the parens patriae plaintiff might bar private litigants from later bringing suit." *Id.* at 340-41.

its authority as a sovereign nation, the Republic of Ecuador has brought a proceeding in the ICJ by which that international tribunal is being asked to resolve many of the same factual and legal issues that the Provinces raise here: Has herbicide used in the Plan Colombia aerial coca eradication operations been sprayed into, or drifted into, Ecuador? If so, has that herbicide caused personal injuries, property damage or environmental damage in Ecuador? If so, does the spraying constitute a wrong cognizable under international law? If so, what damages are due to the State in *parens patriae* on behalf of the people of Ecuador living in the affected regions? Unlike here, however, there is no question that Ecuador has both standing and capacity to bring a legal claim before the ICJ, nor is there any question whether it has brought its claim in a proper forum. *See* U.N. Charter, Art. 94, Para. 1 ("Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case in which it is a party."). There is no need for a U.S. court to provide a judicial forum for this dispute and, indeed, if standing were provided to the Provinces here, it would create the risk of duplicative, inconsistent, or completely conflicting rulings on questions of fact and international law relating to activities near the border between two sovereign nations, which are presently addressing those questions to a competent international tribunal.[3]

[3] Indeed, the pendency of the ICJ proceeding would support abstention by this Court under the doctrine of international comity even if the Provinces did have standing or legal capacity to pursue their claims here. *See Casey v. Dep't of State*, 980 F.2d 1472, 1478 (D.C. Cir. 1992) (affirming dismissal of lawsuit in the United States in deference to pending parallel litigation in Costa Rica: "The potential confusion of parallel proceedings and the possibility that the Costa Rican court will resolve the dispute in such a way as to obviate any need for further American litigation on the issue also weigh against adjudication in the American courts at this time."); *see also Scandinavian Satellite System v. Prime TV Ltd.*, 291 F.3d 839, 847 (D.C. Cir. 2002) (instructing district court on remand that "[y]et another potentially dispositive issue is whether the action should be dismissed in consideration of international comity, because of the pending litigation in Pakistan"); *Ungaro-Benages v. Dresdner Bank AG*, No. 01-2547, 2003 WL 25729923, *7 (S.D. Fla. Feb. 20, 2003) ("United States courts defer to a foreign system of specialized dispute resolution, enacted pursuant to foreign law and embodying important foreign

As the D.C. Circuit properly cautioned, "the doctrine of parens patriae is merely a species of prudential standing … and does not create a boundless opportunity for governments to seek recovery for alleged wrongs against them or their residents." *Service Employees International*, 249 F.3d at 1073 (citing *Pfizer, Inc. v. Lord*, 522 F.2d 612, 616 (8th Cir. 1975) (rejecting foreign government's assertion of *parens patriae* standing). The Provinces do not have standing to bring their *parens patriae* claims in this Court, and defendants' motion to dismiss those claims should be granted.

B. The Provinces Do Not Have Standing Because Their Claimed Injuries Are Too Remote From the Defendants' Alleged Wrongdoing.

In affirming the dismissal of the foreign government plaintiffs in *Service Employees International*, the D.C. Circuit relied, in the alternative, on a second fatal flaw in those foreign government plaintiffs' claims that likewise requires dismissal of the Provinces' claims here – "that the harms alleged by … the nations are too remote from the defendants' alleged wrongdoing to provide … standing." *Service Employees International*, 249 F.3d at 1074. As the Supreme Court has explained, "[t]he general tendency of the law, in regard to damages at least, is not to go beyond the first step." *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 271 (1992) "Thus, a plaintiff who complain[s] of harm flowing merely from the misfortunes visited upon a third person by the defendant's acts [i]s generally said to stand at too remote a distance to recover." *Id.* at 268-69; *see also In re Tobacco/Governmental Health Care Costs Litig.*, 83 F. Supp. 2d 125, 128 (D.D.C. 1999) (same), *aff'd*, *Serv. Employees Int'l*, 249 F.3d 1068 (D.C. Cir. 2001).

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interests, where such deference is not inconsistent with United States foreign policy"), *aff'd,* 379 F.3d 1227 (11th Cir. 2004).

In *Service Employees International*, the D.C. Circuit analyzed three factors identified by the Supreme Court in *Holmes* in determining that the foreign governments' claims that the tobacco defendants' conduct had caused the governments to expend additional health care costs were too remote to afford standing. *Id*. at 1074-75.[4] First, the court held that the foreign governments' alleged damages were "highly speculative and difficult to calculate given the many other potential causes for the alleged financial injuries." *Id*. at 1073; *see also id.* at 1074. Second, the court held that allowing the government plaintiffs to proceed would "require complex rules for apportioning damages between potential plaintiffs removed from the alleged wrongdoing by different levels of injury, as well as create a very real possibility of duplicative recoveries against the defendants." *Id*. at 1075. Third, the court held that the "individual smokers constitute[d] a group of potential plaintiffs possessed of more direct claims who can be counted on to deter the alleged wrongdoing by asserting state law theories of recovery." *Id*. at 1076.

Each of these three factors likewise supports dismissal of the Provinces' claims in *Quinteros*. First, just as with the governments' derivative claims based upon alleged health impacts of smoking in *Service Employees International*, the Provinces' claims are derivative of alleged personal injuries and property damage of individual residents of the Provinces living close to the border, and the Provinces' alleged damages from, *e.g.*, "increased housing costs, education costs, costs associated with the housing and feeding of refugees," First Amended Consolidated Complaint in *Quinteros* ¶ 32, are "highly speculative and difficult to calculate given the many other potential causes for the alleged financial injuries." *Service Employees*

[4] While these factors were set forth in *Holmes* in the context of RICO and antitrust claims, they reflect "long-standing common law principles which the Supreme Court has incorporated into

International, 249 F. 3d at 1073. The Provinces cannot offer any credible basis by which they could even hope to separate the alleged impacts of the Plan Colombia spraying from the endemic economic, public health, and environmental problems that contribute to each of the alleged categories of damages. *See*, *e.g.*, United Nations, Interagency Assessment of Ecuador's Northern Border Region (2004) (noting, *inter alia*, that poverty rates in the region are upwards of 95%, that chronic malnutrition rates exceed 30%, and that between 80% and 100% of households in the region lack basic needs).[5] Indeed, rather than even attempting to link any specific government expenditures or injury to Plan Colombia spraying, the Provinces' expert report on damages submitted with their Initial Disclosures alleges that defendants should be held liable for *the entire amount* of their provincial budget deficits from 2001 to 2007 and for the cost of *relocating every man woman and child* who lives within 10 kilometers of the border. *See* Expert Report of Henry H. Fishkind, at 5, 13-14 (dated Jan. 28, 2008) (relevant excerpts attached hereto as Exhibit D). Moreover, the Provinces seek recovery for alleged environmental damages based on the claimed value of allegedly damaged crops, livestock, timber, and other natural resources, despite the fact that the only scientific data from soil or water testing cited in the sole report upon which their damages expert relies for his calculation of such damages found "no trace of glyphosate" in soil and water samples tested from areas allegedly impacted by the Plan Colombia spraying.[6] *See also* Defendants' Statement of Undisputed Facts ¶¶ 1-4.

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the proximate cause requirement for purposes of determining standing" and are thus fully applicable here. *Service Employees International*, 249 F.3d at 1072.

[5] Available at http://web3.coehs.siu.edu/SSW/ecuador/UN_North_Border_Ecuador.ppt (last visited June 23, 2009).

[6] *See* Fishkind Report at 11-12; Stalin Suarez Castellanos et al., *Economic Valuation and Impact Assessment of the Environmental Assets and Services Affected by the Fumigations in the Northern Ecuadorian Border along the Province of Sucumbios* (2006), revised and updated

Second, allowing the Provinces to assert their claims would both require complicated rules for allocation of damages as between the Provinces and the individual plaintiffs currently asserting claims in the *Arias* and *Quinteros* litigation and create the real possibility of double recovery. *See Hawaii v. Standard Oil Co.*, 405 U.S. 251, 264 (1972) ("Even the most lengthy and expensive trial could not in the final analysis, cope with the problems of double recovery inherent in allowing damages for harms both to the economic interests of individuals and for the quasi-sovereign interests of the State."). The Provinces' damages claims are based upon the alleged impacts of the spraying on the health and property of their citizens, *see* First Am. Consol. Compl. ¶ 1 ("to remediate the situation and to address their citizens' health, security, and property"), but some 2,500 of those citizens are currently seeking recoveries for those same alleged damages in this litigation as individual plaintiffs. The problems of allocation and duplicative recoveries here are compounded even further by the fact that there is a third party – the central government of Ecuador – seeking recovery for these same alleged injuries before the ICJ.

Third, there is no need to allow the provincial plaintiff governments to proceed to vindicate the alleged interests of their citizens. Just like the individual smokers in *Service Employees International*, those citizens "may be counted on to vindicate the public interests at stake," 249 F.3d at 1074, through their own independent claims based upon their alleged direct injuries. Moreover, any alleged quasi-sovereign interests can and are being fully addressed by the central government of Ecuador in its ICJ proceeding.

For these reasons, the Provinces' claims are too remote to provide them standing, and their claims should be dismissed on this ground as well.

(2008), at 13-14 & Annex 2 (relevant excerpt attached hereto as Exhibit E) (the reference to

II. The Provinces' Claims Should Be Dismissed Because the Provinces Lack Capacity to Bring This Action Under Ecuadorian Law.

The Provinces' claims also should be dismissed on the independent ground that they lack capacity under Ecuadorian law to pursue this litigation. "Capacity has been defined as a party's personal right to come into court, and should not be confused with the question of whether a party has an enforceable right or interest or is the real party in interest." *The Plan Committee v. PricewaterhouseCoopers, LLP*, 335 B.R. 234, 243 (D.D.C. 2005). Pursuant to Rule 17(b) of the Federal Rules of Civil Procedure, the capacity of a governmental corporation to sue or be sued is governed by the law of the state in which the entity was organized. *See* Fed. R. Civ. P. 17(b); *Hanes v. Metro. Gov't of Davidson County, Tennessee*, 32 F. Supp. 2d 991, 994 (M.D. Tenn. 1998). "Political subdivisions of a state or local government have capacity only if the law creating them recognizes them as separate legal entities having capacity to sue or be sued." *Id.*; 4 James Wm. Moore, *Moore's Federal Practice* § 17.26[3] (2007).

Thus, the determination whether the Provinces have capacity to bring the present actions is governed by Ecuadorian law. Under Ecuadorian law, the Provinces may not bring a lawsuit in the United States, except insofar as the lawsuit is conducted with the direct participation and involvement of the Attorney General of Ecuador and subject to the Attorney General's ultimate control. *See* Declaration of Andres Donoso-Calvo ¶¶ 3, 11-12. According to both the Constitution of the Republic of Ecuador ("Ecuador Constitution") and the Organic Law of the Office of the [Ecuadorian] Attorney General ("Organic Law"), the Attorney General is the "judicial representative of the State." [7] Donoso-Calvo Decl. ¶ 4 (quoting Organic Law, art. 2

Annex 1 in the body of the Suarez report is in error).

[7] As set forth in Article 225 of the Ecuador Constitution, ratified October 2008, the State encompasses all government institutions in Ecuador, including municipalities and provincial councils. *See* Donoso-Calvo Decl. ¶ 7.

(Ecuador) and Ecuador Constitution, art. 237).[8] The Attorney General's duties include "[o]versee[ing] the course of judicial cases and arbitration and administrative procedures for disputes or claims, *in which State institutions that have legal personhood participate*, and *intervene in respect to them, in the defense of State interests, before any entity, Court, Tribunal or Judge within the country or abroad*[.]" Donoso-Calvo Decl. ¶ 9 (quoting Organic Law, art. 5(c) (emphasis added)). In particular, Ecuadorian law authorizes the Attorney General, *not* individual provinces, to "represent judicially the State and *public sector entities* … [in] *any case or procedure corresponding to the jurisdiction of the entities, judges or authorities in another State, with the power to withdraw the actions it has filed and with the power to settle*[.]" *Id*. ¶ 6 (quoting Organic Law, art. 5(d)) (emphasis added).[9]

Accordingly, the Provinces do not have the capacity to bring their separate actions here. That authority is vested solely in the Ecuadorian Attorney General, and the Attorney General must maintain control over any such litigation in the United States (*i.e.*, the power to withdraw the actions filed and the power to settle).[10] *See* Donoso-Calvo Decl. ¶¶ 3-14; *see also Darby v. Pasadena Police Dep't*, 939 F.2d 311, 313 (5th Cir. 1991) ("our cases uniformly show that unless the true political entity has taken explicit steps to grant the servient agency with jural

[8] English-translated versions of the key statutory and Constitutional provisions cited herein, followed by the Spanish-language text of the same provisions, are attached as exhibits to the Donoso-Calvo Declaration.

[9] *See also id.* ¶ 8 (the Attorney General – not the provincial government – has the exclusive duty of "[r]epresenting the Ecuadorian State and the *entities of the public sector in any proceeding or claim that must be filed or that has been brought against them in another State*, in accordance with the Political Constitution of the Republic of Ecuador, international treaties and conventions in full force and effect and the laws of the Ecuadorian State" (quoting Organic Law, art. 3(d) (emphasis added)).

[10] *See* Ecuador Constitution, ratified October 2008, art. 226 ("State institutions, its organs and offices, public servants and the individuals acting by virtue of state authority shall not exercise powers other than those established in the Constitution and the law.")

authority, the agency cannot engage in any litigation except in concert with the government itself"). The Provinces allege no such involvement in or control by the Ecuadorian Attorney General in the First Amended Consolidated Complaint. *See also* Defendants' Statement of Undisputed Facts ¶¶ 5-8. Moreover, in initial discovery requests, defendants specifically inquired both by way of interrogatories and document requests into whether the Provinces had obtained authorization or approval from the central government of Ecuador to file their claims in a U.S. District Court. The Provinces' responses confirmed that they had not.[11]

Ecuadorian law reserves authority for public entities to bring suit overseas to the central government as represented by the Attorney General, authority which has in fact been exercised here through the central government's filing of its action in the International Court of Justice. The Provinces thus do not have the capacity under Ecuador law to sue defendants in this U.S. court, *see* Donoso-Calvo Decl. ¶¶ 3, 14, and their claims must be dismissed for this reason as well.

CONCLUSION

For the above-stated reasons, Defendants respectfully request that the Court dismiss the three Provinces' claims. A proposed Order of dismissal has been submitted simultaneously with this motion.

[11] *See* Provinces' Response to Interrogatory No. 1 (attached hereto as Ex. F). Indeed, only the Province of Sucumbios provided any evidence of central government involvement at all, but that involvement was limited to a resolution from the Ecuadorian Congress purporting to endorse the litigation. This resolution does not and cannot bestow upon Sucumbios the capacity to bring a lawsuit in the United States. *See* Donoso-Calvo Decl. ¶ 13.

June 24, 2009

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Venancio Aguasanta Arias, *et al*., Plaintiffs, v. DynCorp, *et al*. Defendants.	Case Number: 1:01cv01908 (RWR)
Nestor Ermogenes Arroyo Quinteros, *et al*., Plaintiffs, v. DynCorp, *et al*. Defendants.	Case Number: 1:07cv01042 (RWR) (Cases Consolidated for Case Management and Discovery)

DEFENDANTS' STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE IN SUPPORT OF
MOTION, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT
ON CLAIMS BROUGHT BY THE THREE PROVINCIAL PLAINTIFFS

Pursuant to Fed. R. Civ. P. 56 and LCvRs 7(h) and 56.1, defendants DynCorp, *et al.* ("DynCorp") hereby submit the following statement of material facts as to which there is no genuine issue in support of its motion, in the alternative, for summary judgment. As set forth in DynCorp's accompanying motion, the three provincial government plaintiffs ("Provinces") should be dismissed on the pleadings pursuant to Fed. R. Civ. P. 12(c) because they lack both standing and capacity to pursue their *parens patriae* claims in this Court. The facts set forth herein are material only insofar as the Court elects to address issues beyond the pleadings in response to DynCorp's alternative request for summary judgment.

1. As set forth in the expert report submitted by Henry H. Fishkind as part of plaintiffs' initial disclosures, the Provinces seek three categories of damages in this litigation: (a) negative impacts on the Provinces' public treasuries of alleged environmental and/or health consequences of "Plan Colombia" spraying, (b) environmental damage within the Provinces allegedly linked to the spraying, and (c) costs of relocating provincial residents living on land allegedly impacted by the spraying.

2. With respect to the first category of damages identified in paragraph 1 above, the Provinces allege that DynCorp should be held liable for the entire amount of their provincial budget deficits from 2001 to 2007.

3. With respect to the second category of damages identified in paragraph 1 above, the Provinces allege that DynCorp should be held liable for environmental damages based on the claimed value of purportedly damaged crops, livestock, timber, and other natural resources within the Provinces.

4. With respect to the third category of damages identified in paragraph 1 above, the Provinces allege that DynCorp should be held liable for the cost of relocating every man, woman, and child living within 10 kilometers of the border.

5. The Provinces did not obtain authorization from the Ecuador Attorney General prior to filing their lawsuits.

6. The Ecuador Attorney General is not directly participating in or involved with the Provinces' prosecution of their lawsuits.

7. The Ecuador Attorney General does not have authority to withdraw the Provinces' lawsuits.

8. The Ecuador Attorney General does not have authority to settle the Provinces' lawsuits.

Respectfully submitted,

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