

## **ANNEX C: RESPONSE TO CLAIMANTS' BRIBERY ALLEGATIONS**

1. Claimants rely upon an alleged bribery scheme of a former judge in the Lago Agrio case, Judge Nuñez, in support of its allegation that the Republic breached its Treaty obligations and committed a denial of justice. As shown below, Claimants participated in the underlying conduct, orchestrated (at least some of) the videotaping, transformed the grainy film into a slick, made-for-Hollywood video (complete with subtitles), and unveiled the alleged bribery scheme on August 31, 2009 — just three weeks before it launched this proceeding — in a massive public relations gambit that included banner internet advertisements and multiple press releases and interviews.<sup>1</sup>

2. No objective observer with access to the actual videos could possibly conclude that Judge Nuñez was involved in a bribery scheme. As noted by a U.S. district court judge: “I read the transcript, at least of the two transcripts you provided me . . . there was no hint in there about him taking a bribe or payoff, and I didn’t see anything in the two transcripts provided to me on that.”<sup>2</sup> It is telling that nowhere in Claimants’ 410 pages of merits memorials do Claimants reproduce a transcript of what Judge Nuñez actually said in response to aggressive questioning by Chevron’s proxies. The transcript speaks for itself.

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<sup>1</sup> R-314, Chevron Press Release, *Videos Reveal Serious Judicial Misconduct and Political Influence in Ecuador Lawsuit* (Aug. 31, 2009); R-574, *Chevron Offers Evidence Of Bribery Scheme In Ecuador Lawsuit*, NEW YORK TIMES (Sept. 1, 2009); R-575, *Chevron Claims Judicial Corruption In Ecuadorian Environmental Case*, THE ASSOCIATED PRESS (Sept. 1, 2009); R-576, *Chevron Steps Up Ecuador Legal Fight*, FINANCIAL TIMES (Sept. 1, 2009).

<sup>2</sup> R-197, Transcript of Proceedings (Nov. 10, 2010), *In re Application of the Republic of Ecuador re Diego Borja*, No. C 10-00112 (N.D. Cal.) at 38:19-39:5.

**A. Chevron’s Long-Time Contractor, Diego Borja, Together With A Convicted Felon, Wayne Hansen, Engaged In Criminal Conduct In Their Effort To Help Chevron**

3. Diego Borja, an Ecuadorian citizen and a long-time contractor on Chevron’s Lago Agrio Litigation team,<sup>3</sup> together with Wayne Hansen, a U.S. citizen and convicted felon,<sup>4</sup> surreptitiously recorded four conversations in Ecuador between May 11, 2009 and June 22, 2009. Two of those conversations included Judge Nuñez, who at the time was the judge presiding over the Lago Agrio Litigation. The other two conversations included Ecuadorian citizens with no connection to the Republic or the Lago Agrio Litigation. An analysis of the unlawfully-obtained recordings affirmatively demonstrates Judge Nuñez’s unwillingness to engage in any unlawful scheme, notwithstanding Chevron’s transparent effort to entrap him in wrongdoing.

**1. Borja Has Been Financially Dependent On Chevron Since 2004; Chevron Continues To Support Him And His Family**

4. At the time Chevron launched its media blitz with the recordings, Chevron plainly misled Ecuadorian authorities and media outlets by claiming that the recordings were a “gift”<sup>5</sup> — an “act of whistle-blowing by men offended by unethical behavior.”<sup>6</sup> Chevron insisted that Borja was acting not on behalf of Chevron but instead merely as a “good Samaritan” who had innocently been “pursuing business opportunities” in Ecuador.<sup>7</sup> Chevron further failed to

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<sup>3</sup> R-319, Chevron “Ecuador Litigation Team” Organization Chart at 6, 11.

<sup>4</sup> R-577, *Revelation Undermines Chevron Case in Ecuador*, NEW YORK TIMES, (Oct. 30, 2009) at 1 (revealing that Hansen is “a convicted drug trafficker” who was “was convicted of conspiring to traffic 275,000 pounds of marijuana from Colombia to the United States in 1986.”).

<sup>5</sup> R-316, *Chevron’s Legal Fireworks*, LOS ANGELES TIMES (Sept. 5, 2009) at 2 (emphasis added).

<sup>6</sup> R-577, *Revelation Undermines Chevron Case in Ecuador*, NEW YORK TIMES (Oct. 30, 2009) at 1.

<sup>7</sup> R-314, Chevron Press Release, *Videos Reveal Serious Judicial Misconduct and Political Influence in Ecuador Lawsuit* (Aug. 31, 2009) at 2.

disclose the extent of its relationship with Borja and his direct and ongoing involvement in the Lago Agrio Litigation, noting only that he was a *former* logistics contractor for the company.<sup>8</sup>

5. Nearly a year later, after it had become known that Borja in fact served as a Chevron contractor, Chevron was still lying about its relationship to Borja. In a July 2010 submission to the Lago Agrio Court, Chevron falsely claimed that Borja’s “functions had *nothing to do with the sampling process*; and also, his work had *already concluded at the time of the incident*.”<sup>9</sup>

6. In fact, Chevron’s own Organization Chart identifies Borja — who has served as Chevron’s contractor since 2004 — as its “sample manager” for its “Ecuador Litigation Team.”<sup>10</sup> And far from having terminated its relationship with Borja at the time of the recordings, Chevron was still authorizing payment of invoices for work performed by Borja’s company, Interintelg through **August 2009**,<sup>11</sup> which of course post-dated the illicit recordings by several months.

7. Far from being a mere “good Samaritan,” Borja has relied on Chevron payments for years. [REDACTED] he worked for two of Chevron’s Lago Agrio contractors, [REDACTED] and Severn Trent Laboratories (“STL”), [REDACTED]. Borja’s wife, Sara Portilla, worked at STL as a Chevron contractor responsible for quality control over the lab process from 2004-2007.<sup>12</sup> Borja then formed his own company, Interintelg, which functioned as a Chevron contractor from 2007 until 2009.<sup>13</sup> Most all of Interintelg’s income came from work it performed for Chevron; [REDACTED]

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<sup>8</sup> R-314, Chevron Press Release, *Videos Reveal Serious Judicial Misconduct and Political Influence in Ecuador Lawsuit* (Aug. 31, 2009) at 2; *see also* R-574, *Chevron Offers Evidence Of Bribery Scheme In Ecuador Lawsuit*, NEW YORK TIMES (Sept. 1, 2009) at 2.

<sup>9</sup> R-318, Excerpt from Chevron July 13, 2010 Filing at 1 (emphasis added).

<sup>10</sup> R-319, Chevron “Ecuador Litigation Team” Organization Chart at 11.

<sup>11</sup> R-320, Email chain copying Borja and Verstuft regarding August 2009 Interintelg invoices.

<sup>12</sup> [REDACTED]

<sup>13</sup> [REDACTED]

[REDACTED]

8. Chevron’s laboratories were hardly independent. In fact, all [REDACTED] of these companies, [REDACTED] [REDACTED] and Interintelg, used the identical office space in Quito.<sup>16</sup> The building, once owned by Borja’s uncle, is the same office building in which Chevron’s local counsel, Messrs. Pérez, Callejas, and Racines, have their offices.<sup>17</sup> [REDACTED]

[REDACTED]

[REDACTED] Borja himself has claimed that the laboratories were not independent, explaining: “I have proof that they were more than connected, *they belonged to them.*”<sup>18</sup>

9. After Chevron released Borja’s recordings to the public, Chevron paid for Borja and his wife and son to move from Ecuador to the United States in June 2009.<sup>19</sup> From August 2009 to December 2009, Chevron paid Borja a \$10,000 monthly stipend and since January 2009 they have been paying him \$5,000 a month (at least through the time of his deposition in March 2011).<sup>20</sup> In addition to the stipend, Chevron pays Borja’s rent, his cell phone bills, his car payments, his legal fees, and other miscellaneous expenses.<sup>21</sup> [REDACTED] Sara Portilla,

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 R-184, Transcript of Borja/Escobar Conversation on Oct. 1, 2009 (13:03:33) at 6-7 (emphasis added).

19 [REDACTED]

20 [REDACTED]

21 R-325, Summary of Chevron Payments to or on Behalf of Diego Borja.

Borja's wife, has been working for Chevron in Houston, Texas.<sup>22</sup> From the time that Chevron paid for his relocation to the United States in mid-2009 through September 2011, Chevron plied Borja with more than **\$2.2 million** of cash and benefits.<sup>23</sup>

**2. Chevron's Attorney Met With Borja Before His Fourth Taped Conversation And Borja Claims To Have Been Acting To Give Chevron What It Wanted**

10. Borja and Chevron's symbiotic relationship reflects the desire of the former for money and the desire of the latter to win at all costs. In recorded conversations with his long-time acquaintance, Santiago Escobar ("Escobar"), Borja explained that he expected a large reward in return for taping Judge Nuñez. He said he was looking for "something more than big . . . [t]he things you kill yourself your whole life for. I want to have them ready so I don't have to worry."<sup>24</sup> There is no indication Borja has, or ever had, the capacity to provide remediation services.

11. Despite declaring that the meetings had occurred "without Chevron's knowledge"<sup>25</sup> and publicly disavowing any connection to Borja's plan to record Judge Nuñez, Chevron flew their long-time contractor to the United States and met with him at the office of Jones Day, Chevron's outside counsel, before the fourth and final surreptitiously-taped conversation.<sup>26</sup> [REDACTED]

[REDACTED] Borja had but one mission after his

<sup>22</sup> [REDACTED]

<sup>23</sup> R-579, *Chevron Paid \$2.2 Million To Man Who Threatened To Expose Company's Corruption in Ecuador*, BCLC; R-325, Summary of Chevron Payments to or on Behalf of Diego Borja.

<sup>24</sup> R-188, Transcript of Borja/Escobar Conversation on Oct. 7, 2009 (21:30:56) at 12.

<sup>25</sup> R-314, Chevron Press Release, *Videos Reveal Serious Judicial Misconduct and Political Influence in Ecuador Lawsuit* (Aug. 31, 2009) at 2.

<sup>26</sup> R-324, Letter from T. Cullen to Dr. D. García Carrión (Oct. 26, 2009) at 8.

<sup>27</sup> [REDACTED]

meeting with Chevron: to return to Ecuador and continue his illegal conduct on behalf of Chevron.

12. Just days after his meetings with Chevron, Borja arranged another meeting with Mr. García, an Ecuadorian businessman who had been present during Borja’s first recorded meeting; this final, recorded conversation is the *only* meeting in which any “bribery plot” was actually discussed. This meeting, of course, did not include Judge Nuñez, any member of the court, or any government officials.<sup>28</sup> Borja then promptly returned to the United States and provided Chevron with the recording.<sup>29</sup>

13. As Borja admits, he was acting to further Chevron’s interests: “It’s because, in the end, what they . . . want is for the trial to be annulled.”<sup>30</sup> He further bragged that he had “tipped” the balance in Chevron’s favor and that he had done in “three days? [t]wo days?” what Chevron had not been unable to do on its own — get Judge Nuñez thrown out.<sup>31</sup>

14. Escobar testified under oath that Borja readily conceded to him that Chevron paid Borja to tape his conversations with Judge Nuñez.

Q: With respect to the filming, secretly filming these meetings of individuals, including the presiding judge in Lago Agrio, did you learn from Mr. Borja that he has specially been ordered to do that or are you testifying that your general understanding was that the things he did were by the orders of Chevron?

A: Yes, that he had received orders.

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<sup>28</sup> As discussed below, Mr. García did not attend either of the recorded meetings with Judge Nuñez.

<sup>29</sup> [REDACTED]

<sup>30</sup> R-583, Transcript of Borja/Escobar Conversation on Oct. 1, 2009 (13:30:56) at 9.

<sup>31</sup> R-581, Transcript of Borja/Escobar Conversation on Oct. 1, 2009 (12:51:02) at 1. [REDACTED]

Q: Did you – did Mr. Borja share any other details about his secret filming of these meetings?

A: The first time, only general details, such as these, and that he had been ordered to do this. The second time he was more specific . . . he gave me details regarding the operation they had carried out, that they had filmed the judge; that he had carried out, you know, the deal of his life; that he was going to get a lot of dough, that he was guaranteed to get a lot more dough.<sup>32</sup>

Q: In your [second June] conversation with Mr. Borja at the club, what did he tell you about his filming operation?

A: That he and Wayne Hansen had filmed – well that they had sprung a trap, and that they had filmed quite a lot of people, and that they had filmed the judge accepting or talking about a bribe, and that the judge had also – well, and that that was going to destroy the trial, and that it was going to harm the trial. And they he had received the money, right? There was a person from Chevron in charge of the issue relating to his leaving the country, and that everything was already set and that they has already only packed a small bag, and they would leave because he was in danger because of what he had done.<sup>33</sup>

### **3. Hansen Fled From the United States Before the Republic Could Depose Him**

15. Hansen, who acted in concert with Borja, is a convicted felon<sup>34</sup> with no experience in environmental remediation.<sup>35</sup> When the truth about Mr. Hansen’s criminal history was revealed, it was a “blockbuster development” that added “more questions about what motivated Mr. Hansen and [Borja] to record meetings for Chevron’s use” and called into question Chevron’s allegations and characterization of Hansen and Borja.<sup>36</sup> Chevron has

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<sup>32</sup> See R-335, Escobar Deposition at 54:2-16, 57:19-24.

<sup>33</sup> See *Id.* at 58:5-19.

<sup>34</sup> R-332, Grant Fine, Report of Investigation re Wayne Hansen (Oct. 29, 2009) at 4. Hansen pled guilty in 1986 for his role in a conspiracy to smuggle 275,000 pounds of marijuana from Colombia to the United states.

<sup>35</sup> See R-584, *Felon Involved In Clandestine Videos*, Associated Press (Oct. 29, 2009); R-332, Grant Fine, Report of Investigation re Wayne Hansen Oct. 29, 2009) at 1.

<sup>36</sup> R-577, *Revelation Undermines Chevron Case in Ecuador*, NEW YORK TIMES (Oct. 30, 2009) at 1.

disclaimed any connection to Hansen but nonetheless agreed to pay his reasonable attorney's fees and security costs.<sup>37</sup>

16. The Republic sought discovery from Hansen to further investigate his role in the taping of the conversations with Judge Nuñez.<sup>38</sup> After Section 1782 discovery was granted, Hansen fled the United States.<sup>39</sup> The Republic later learned that Hansen had fled to Peru. He wrote to Chevron's investigators to let them know his status, whereabouts, and monthly costs — with an invitation that they should visit him there.<sup>40</sup>

**B. There Is No Evidence To Support Chevron's Claims That Judge Nuñez Was Involved In An Unlawful Scheme**

**1. Claimants' Own Evidence Establishes That Judge Nuñez Did Not Participate In Any Bribery**

17. Almost two months after Chevron received the recordings from Borja, Chevron released the tapes to the public and to public authorities in Ecuador and the U.S., declaring, falsely, that the tapes implicated Judge Nuñez in a bribery scheme.<sup>41</sup> In fact, the recorded conversations with Judge Nuñez neither implicate him in any bribery scheme nor do they suggest that he was even aware of any plans to bribe him.

18. **First**, there is no discussion of bribery in the recorded meetings with Judge Nuñez.

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<sup>37</sup> R-324, Letter from T. Cullen to Dr. D. Garcia Carrion (Oct. 26, 2009) at 9.

<sup>38</sup> R-585, Application for an Order under 28 U.S.C. § 1782 to issue a subpoena to Wayne Hansen for the taking of a deposition and the production of documents for use in a foreign proceeding (Sept. 14, 2010).

<sup>39</sup> R-586, Order granting the Republic of Ecuador's Ex Parte Application for the issuance of a subpoena (Wayne Hansen) (Oct. 14, 2010).

<sup>40</sup> R-334, Email from W. Hansen to E. Mason and C. Harris (Dec. 3, 2010).

<sup>41</sup> R-314, Chevron Press Release, *Videos Reveal Serious Judicial Misconduct and Political Influence in Ecuador Lawsuit* (Aug. 31, 2009).



19. **Second**, despite Borja and Hansen’s efforts to discuss how he might rule in the Lago Agrio Litigation, Judge Nuñez repeatedly told the men that he could not tell them what his ruling would be:

- “What you want to find out is whether it’s going to be guilty or not, I’m telling you that I can’t tell you that, I’m a judge, and I have to tell you in the ruling, not right now.”<sup>42</sup>
- “So in the ruling, Sir, I’ll say it. I haven’t come here to tell you that . . . no, no, no, there’s a, there will be a ruling.”<sup>43</sup>
- “There will be a ruling, as I tell you, that is the amount they’re claiming. I will say in the ruling whether it is more or it is less . . . it’s more or it’s less, I can’t tell you.”<sup>44</sup>

20. When Borja and Hansen pushed Judge Nuñez to discuss remediation, he similarly refused: “My obligation, sir, is just to issue the ruling . . . that’s it. That’s my role. . . . In other words, the court has nothing to do with how they’re going to remediate and who’s going to remediate.”<sup>45</sup> When Borja and Hansen asked Judge Nuñez whether their fictitious company could perform remediation work and sought *unsuccessfully* to entrap the Judge in some way, he explained: “The ruling, there will be one. But I repeat, I as a judge, Sir, as to telling you or not telling you whether your company will do the remediation, I can’t say.”<sup>46</sup>

21. U.S. judges and media outlets who have reviewed the recordings made by Borja and Hansen have found no evidence of a bribery scheme. Judge Chen, a district court judge in California, admonished Chevron, saying:

[Y]ou quote from the Borja declaration in which he claims that Novoa asked for him for \$3 million to be divided: A million dollars for the judge, which is an assertion of the payoff, the bare knuckle kind of payoff to the judge -- a very serious allegation. **And I read the transcript, at least of the two transcripts you**

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<sup>42</sup> C-267, Tr. Of Recording 3, at 10.

<sup>43</sup> *Id.* at 11.

<sup>44</sup> *Id.* at 12.

<sup>45</sup> C-267, Tr. Of Recording 2, at 4, 7.

<sup>46</sup> C-267, Tr. Of Recording 3, at 15.

**provided me**, and while I could see why the judicial authorities in Ecuador found Judge Nuñez in violation of his ethical duty by exposing and discussing his opinion, **there was no hint in there about him taking a bribe or payoff, and I didn't see anything in the two transcripts provided to me on that.**<sup>47</sup>

22. Respected media outlets likewise have been uniform in confirming that there is no evidence that Judge Nuñez was involved in a bribery scheme or that he willingly discussed the verdict in the ongoing case.

- **New York Times:** “The recordings, made by a former Ecuadorean contractor for Chevron by using hidden recording devices, **do not make clear whether Judge Nuñez was involved in a bribery scheme — or even whether he was aware of an attempt to bribe him.**”<sup>48</sup>
- **Los Angeles Times:** “On the tapes, the men . . . press Nuñez to say how he will rule, without success. Then as Nuñez appears to leave, one of the men maintains that Chevron is guilty, and Nuñez replies, ‘Yes, sir.’ To Chevron, this clinches the argument. **But on the video, it’s unclear to whom the judge is speaking and whether he is responding to the question or just trying to end the meeting.**”<sup>49</sup>
- **San Francisco Chronicle:** “[T]he taped conversations with the judge himself **do not ever explicitly discuss bribes.** Nuñez repeatedly tells the businessmen that **he can’t discuss the verdict in advance.**”<sup>50</sup>
- **Financial Times:** “The judge refuses several times on the tape to reveal the verdict, before saying, ‘Yes, sir,’ when asked if he will find Chevron guilty. However, **the video raises the question as to whether Judge Nuñez understood what he was being asked.**”<sup>51</sup>

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<sup>47</sup> R-197, Transcript of Proceedings (Nov. 10, 2010), *In re Application of the Republic of Ecuador re Diego Borja*, No. C 10-00112 (N.D. Cal.) at 38:19-39:5 (emphasis added).

<sup>48</sup> R-315, *Under Pressure Ecuadorean Judge Steps Aside in Suit Against Chevron*, NEW YORK TIMES (Sept. 5, 2009) at 1 (emphasis added).

<sup>49</sup> R-316, *Chevron’s Legal Fireworks*, LOS ANGELES TIMES (Sept. 5, 2009) at 2 (emphasis added).

<sup>50</sup> R-317, *Chevron Judge Says Tapes Don’t Reveal Verdict*, SAN FRANCISCO CHRONICLE (Sept. 2, 2009) at 1 (emphasis added).

<sup>51</sup> R-576, *Chevron Steps Up Ecuador Legal Fight*, FINANCIAL TIMES at 2 (Sept. 1, 2009) (emphasis added).

23. Even Chevron's contractor, Diego Borja, has admitted that there was no bribery scheme. In his conversations with Escobar, Borja conceded: "Because really, there was no bribe. I mean, there[] was never . . . there was never a bribe."<sup>52</sup>

**2. Judge Nuñez Recused Himself From The Lago Agrio Litigation And The Prosecutor General Is Conducting An Investigation Into Chevron's Allegations**

24. Although Chevron met with Borja in early June 2009 and received three of his four recordings then, it did not notify prosecutors of the tapes until August 31, 2009 when it released the tapes to the public.<sup>53</sup> The Office of the Attorney General responded immediately and assured Chevron that it would "thoroughly, aggressively and fairly investigate Chevron's allegations."<sup>54</sup> The Prosecutor General has led the formal investigation into the videotapes provided by Chevron.<sup>55</sup> The final results of the Prosecutor General's investigation are pending.

25. Shortly after Chevron released the recordings, Judge Nuñez recused himself from the case to avoid any appearance of impropriety and to allow a full and impartial investigation to proceed.<sup>56</sup> Notwithstanding his recusal, Judge Nuñez has denied any role in a bribery scheme and has explained that he met with Borja and Hansen at the request of Dr. Avila, an Ecuadorian citizen and friend Judge Nuñez, to discuss the procedure for environmental lawsuits and the role of environmental experts in such lawsuits.<sup>57</sup>

26. Chevron filed a complaint against Judge Nuñez with the Provincial Court of Sucumbíos to have him sanctioned and to have "each and every one of [his] orders" declared null

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<sup>52</sup> R-582, Transcript of Borja/Escobar Conversation on Oct. 1, 2009 (23.59.31) at 11.

<sup>53</sup> R-314, Chevron Press Release, *Videos Reveal Serious Judicial Misconduct and Political Influence in Ecuador Lawsuit* (Aug. 31, 2009).

<sup>54</sup> R-587, Letter from Dr. R. Parreño to T. Cullen (Sept. 2, 2009).

<sup>55</sup> R-588, Letter from D. Carrión to T. Cullen (Oct. 8, 2009).

<sup>56</sup> R-589, *Ecuador Judge Recused in Chevron Case*, CBS NEWS (Sept. 29, 2009).

<sup>57</sup> R-590, Sworn Statement of Judge Nuñez (Nov. 18, 2009) at 1.

and void.<sup>58</sup> On October 27, 2010 the Judicial Council, sitting en banc, issued a decision in which it sanctioned Judge Nuñez and removed him from his post of Judge of the Provincial Court of Sucumbíos.<sup>59</sup> The Judiciary Council found that Judge Nuñez had violated Articles 103 and 128 of the Organic Code of Judicial Branch, which prohibit judges from discussing their opinions about ongoing cases and disclosing information that may favor or injure one of the parties.<sup>60</sup>

27. Judge Nuñez later successfully appealed the order removing him from his post. Upon reconsideration, the Judicial Council found that the only evidence against Judge Nuñez were the clandestine recordings, which were made in violation of Articles 155 and 156 of the Code of Criminal Procedure and Article 76 of the Constitution and were therefore inadmissible as evidence.<sup>61</sup> The Judicial Council further noted:

[T]here is no evidence that the individuals the [Judge] met with are parties to the trial at issue and, therefore, that they were interested in the environmental remediation trial the [Judge] was hearing, or that the [Judge] knew that these individuals had any interest in the trial; further, neither the videos nor their reproduction show the [Judge] soliciting money, and there is no exchange in which he solicited money or they offered him money to decide the case a certain way.<sup>62</sup>

28. The Judicial Council therefore granted Judge Nuñez's request to revoke the resolution to remove him from his post. Chevron's motion to annul all of Judge Nunez's rulings was considered but denied by Judge Zambrano because he found that the Code of Civil Procedure does not provide for such a remedy in this case.<sup>63</sup>

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<sup>58</sup> C-229, Chevron Motion to Annul (Sept. 11, 2009) at 1.

<sup>59</sup> C-662, Judicial Council Resolution (Oct. 27, 2010) at 8-9.

<sup>60</sup> *Id.* at 8.

<sup>61</sup> R-591, Judicial Council Resolution (Nov. 19, 2010) at 5.

<sup>62</sup> *Id.* at 6.

<sup>63</sup> C-230, Order Denying Chevron Motion to Recuse (Oct. 21, 2009) ¶ 13 (noting that Articles 346 and 1014 of the Civil Code of Procedure provide the exhaustive list of acts which could render a lawsuit null and void and finding that the acts at issue here did not fall under either Article).

### 3. Neither Mr. García Nor Mr. Novoa Represents The Republic In Any Capacity

29. Perhaps understanding that there is no evidence to connect Judge Nuñez to any bribery scheme, Chevron alleges that “two other people with political connections participated in discussions of a bribe relating to the Lago Agrio Judgment: Carlos Patricio García Ortego and Juan Pablo Novoa.”<sup>64</sup>

30. Neither of these men has any record of being employed by the Government or of representing the Republic in any way.<sup>65</sup> Mr. García’s position at La Adelantada, the offices of a political party, is not a position within the Government and does establish a connection to the Republic. Nor did Mr. García participate in any of the meetings with Judge Nuñez or even know Judge Nuñez.<sup>66</sup>

31. For his part, Mr. Novoa currently serves as a bank liquidator.<sup>67</sup> He is employed in this capacity as a private citizen and his salary is paid by the banks.<sup>68</sup> In any event, Mr. Novoa participated in only one meeting, during which there was no discussion of a bribery scheme at all.<sup>69</sup>

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<sup>64</sup> Claimants’ Merits Memorial ¶ 287.

<sup>65</sup> R-592, Certification from Ecuadorian Institute of Social Security (Aug. 28, 2012) at 3-4; R-593, Certification from National Institute of Public Contracting (Aug. 24, 2012) at 1; R-594, Certification from Ministry of Labor Relations (Sept. 27, 2012) at 2.

<sup>66</sup> C-570, *Interview with Patricio García*, La Luna Radio (Sept. 4, 2009) at 8.

<sup>67</sup> R-595, Letters appointing Mr. Novoa as bank liquidator (Nov. 30, 2009).

<sup>68</sup> *Id.*

<sup>69</sup> *See* C-267, Tr. Of Recording 1.