

No. 14-15128

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELOY ROJAS MAMANI, et al.,  
Plaintiffs and Appellees

v.

JOSE CARLOS SÁNCHEZ BERZAÍN and  
GONZALO SÁNCHEZ DE LOZADA SÁNCHEZ BUSTAMENTE,  
Defendants and Appellants

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF FLORIDA

**BRIEF OF PROFESSORS PHILIP ALSTON (NEW YORK UNIVERSITY  
SCHOOL OF LAW), CHRISTOF HEYNS (UNIVERSITY OF  
PRETORIA), SARAH KNUCKEY (COLUMBIA LAW SCHOOL),  
GUGLIELMO VERDIRAME (KINGS COLLEGE), CLAUS KREB  
(UNIVERSITY OF COLOGNE) AND THE COLUMBIA LAW SCHOOL  
HUMAN RIGHTS CLINIC AS *AMICI CURIAE***

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**MAMANI V. BERZAIN**  
**DOCKET NO. No. 14-15128**

**CERTIFICATE OF INTERESTED PERSONS  
AND CORPORATE DISCLOSURE STATEMENT**

Amici are law school professors who teach, research, and write about international human rights law, specializing in extrajudicial killings.

Pursuant to FRAP 26.1, Amici Curiae, through their undersigned counsel, hereby certify:

1. No Amicus is a publicly held corporation or other publicly held entity.
2. Amici have no parent corporations.
3. No publicly held corporation or other publicly held entity owns 10% or more of any Amicus.
4. None of the Amici has a financial interest in the outcome of the case.

Pursuant to 11 Cir. R. 26.1-1, the following parties, acting in their individual capacities, have a non-financial interest in the outcome of this case:

Alston, Philip, Professor of Law, New York University School of Law, former U.N. Special Rapporteur on extrajudicial, arbitrary, or summary executions;

Heyns, Christof, Professor of Human Rights Law, University of Pretoria,  
U.N. Special Rapporteur on extrajudicial, arbitrary or summary executions;<sup>1</sup>

Knuckey, Sarah, Associate Professor of Clinical Law, Columbia Law  
School, Advisor to the U.N. Special Rapporteur on extrajudicial, arbitrary or  
summary executions;

Verdirame, Guglielmo, Professor of International Law, King's College  
London, Barrister, 20 Essex Chambers London;


Kreß, Claus is a Professor of Public International Law and Criminal  
Law at the University of Cologne, Germany;

The Columbia Law School Human Rights Clinic has an institutional  
expertise in the international law on the use of force and works to advance  
human rights internationally.

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<sup>1</sup> The Special Rapporteur acts under the aegis of the Human Rights Council without remuneration as an independent expert within the scope of his mandate (most recently stated in Human Rights Council Resolution 26/12). This enables him to seek, receive, examine, and act on information from numerous sources, including individuals, in particular when an extrajudicial, summary, or arbitrary execution is imminent or threatened or when such an execution has occurred. This brief is submitted on a voluntary basis and without prejudice to, and should not be considered an express or implied waiver of, the privileges and immunities of the United Nations, its officials and experts, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.

Rebecca Sharpless, Attorney for *Amici Curiae*



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Rebecca Sharpless  
*Attorney for Amici Curiae*

Dated: March 13, 2015

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## STATEMENT OF ISSUES

*Amici* affirm that intentional killings by state security forces of unarmed protestors, bystanders, or others posing no imminent threat to government security forces or others fall clearly within the definition of “extrajudicial killing.” Further, *Amici* affirm that international law requires an effective investigation into any killing by state forces in a law enforcement context, and that a failure to investigate such a killing amounts to a violation of the right to life under international human rights law.<sup>2</sup>

## INTEREST OF *AMICI CURIAE*

Philip Alston is a Professor of Law at New York University (NYU) School of Law, and has over thirty years of experience working, writing, and teaching in the field of international human rights law. From 2004–2010, he was the U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions.

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Sarah Knuckey is Associate Professor of Clinical Law, Director of the

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<sup>2</sup> Pursuant to FRAP 29(a), all parties consented to the filing of this brief.

Human Rights Clinic, and Faculty Co-Director of the Human Rights Institute at Columbia Law School. Since 2006, she has been an Advisor to the U.N. Special Rapporteur on extrajudicial executions.

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Claus Kreß is a Professor of Public International Law and Criminal Law at the University of Cologne, Germany. His scholarly and advisory work covers the relationship between human rights law and the law of armed conflict.

The Columbia Law School Human Rights Clinic carries out investigations of alleged human rights abuses, researches and prepares reports on international law, and conducts advocacy to uphold human rights in the United States and internationally. The clinic has a particular institutional expertise in use of force law.

*Amici* have written many books, articles, and reports on the law governing the use of force, and have applied that law to hundreds of specific incidents.

*Amici* submit this brief out of concern that the international law related to

the use of lethal force is correctly interpreted and applied.

## SUMMARY OF ARGUMENT

In this case, Plaintiffs allege that Bolivian soldiers, acting pursuant to a policy devised and implemented by the Defendants, intentionally fired at and killed unarmed civilians in order to quell and deter political protests. The alleged facts include the killing of an eight-year-old who was “killed by a military sharpshooter as she looked out a window in her home, far from the site of any protests” as well as the alleged killing of civilians not involved in demonstrations nor posing “any threat to the military.” R. at 203-8–203-9. The prohibition against “extrajudicial killing” at international law, without any doubt, encompasses Plaintiffs’ pleaded facts. International human rights law strictly circumscribes the use of force, including specifically during protests. Intentional lethal force must be strictly necessary, and intentional killings of unarmed protestors posing no threat are clear extrajudicial killings. Further, international human rights law requires an effective investigation into any killing by state security forces, including any alleged unlawful killing. A failure to investigate is itself a clear violation of the right to life under international human rights law.

## ARGUMENT

*Amici* submit this brief to provide support and context regarding the international human rights standards applicable to the present case. International law unambiguously prohibits extrajudicial killings—including killings specifically

of the form pleaded by Plaintiffs in this matter. While there are a variety of “forms” of extrajudicial killings at international law and gray areas with respect to the full scope or applicability of the prohibition in certain cases, the facts pleaded by the Plaintiffs fall squarely within the *core* definition of extrajudicial killing.

## **I. INTERNATIONAL LAW PROHIBITS EXTRAJUDICIAL KILLINGS OF THE FORM PLEADED BY PLAINTIFFS.**

The Plaintiffs pleaded that, in the context of general protests, Bolivian forces intentionally targeted and killed their deceased relatives, even though the Plaintiffs’ relatives were not involved in the protests, engaging in criminal acts, or posing a threat. The prohibition on extrajudicial killings clearly encompasses—at its core—such unjustified killings.

International law recognizes the crucial role of law enforcement and other state forces in providing security and enables them to use force, including in controlling demonstrations. However, international law unambiguously and specifically circumscribes the lawful use of force by state forces. State forces may not use intentional lethal force against unarmed protestors posing no threat to security forces or others.<sup>3</sup> *See* Human Rights Council Res. 25/38, The Promotion

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<sup>3</sup> These binding standards are incorporated into standard training manuals for police the world over. *See* Commonwealth Secretariat, *Commonwealth Manual on Human Rights Training for Police* 65 (2006) (“There has evolved an international prohibition on the State . . . itself depriving a person of their life arbitrarily



and Protection of Human Rights in the Context of Peaceful Protests, 25th Sess., Mar. 8–23, 2014, ¶ 10, U.N. Doc. A/HRC/RES/25/38 (Apr. 11, 2014) (“[L]ethal force may only be used as a last resort to protect against an imminent threat to life and that it may not be used merely to disperse a gathering . . . .”); U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Human Rights Council, ¶¶ 67–72, U.N. Doc. A/HRC/26/36 (Apr. 1, 2014); U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, transmitted by Note of the Secretary-General*, ¶¶ 33–37, U.N. Doc. A/68/382 (Sept. 13, 2013) (“[T]he intentional, premeditated killing of an individual would generally be unlawful. Where intentional killing is the only way to protect against an imminent

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(without any cause in law: a lawful justification would be self-defence or defence of others) . . . . Unnecessary and unlawful use of deadly force by a police officer would therefore constitute a violation of the right to life.”); Organization for Security and Cooperation in Europe, *Handbook on Monitoring Freedom of Peaceful Assembly* 25 (2011); Organization for Security and Cooperation in Europe, *Guidebook on Democratic Policing* 23 (2d ed. 2008) (“Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”); International Committee for the Red Cross, *Human Rights and Humanitarian Law in Professional Policing Concepts* 22 (2002) (“Firearms may be used only in specific circumstances involving an imminent threat of death or serious injury. The intentional lethal use of firearms is allowed only when strictly unavoidable to protect life.”); Geneva Academy, *Facilitating Peaceful Protests* 21, 30 (2014) (“National laws, and in particular police manuals, codes of conduct, and operational documents should explicitly prohibit use of lethal force during peaceful assemblies . . . . Firearms may be used only in response to an imminent threat to life or serious injury.”).

threat to life, it may be used.”); U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, transmitted by Note of the Secretary-General*, ¶¶ 33–45, U.N. Doc. A/61/311 (Sept. 5, 2006) (reviewing the international law on lawful force); U.N. Human Rights Comm., General Comment No. 6: Art. 6, ¶ 3, U.N. Doc HRI/GEN/1 (1982) (“The deprivation of life by the authorities of the State is a matter of utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.”); Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, U.N. Doc. A/RES/34/169, Annex, art. 3 (Dec. 17, 1979) (“[F]irearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.”); Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Aug. 27–Sept. 7, 1990, Havana, Cuba, U.N. Doc. A/CONF.144/28/Rev.1, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, principle 9 (1990) (“[I]ntentional lethal use of firearms may only be made when strictly unavoidable to protect life.”); G.A. Res 67/168, ¶ 6, U.N. Doc. A/RES/67/168 (Mar. 15, 2013) (urging states “to ensure that police, law enforcement agents, armed forces and other agents acting on behalf of or with the consent or acquiescence of the State act with restraint and in conformity with

international human rights law . . . and in this regard to ensure that police and law enforcement officials are guided by the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”).

These limits are fundamental aspects of the right to life and represent a principled balance between security and individual rights. The limits are applicable during all peacetime security operations, including during protests. *See* Human Rights Council Res. 25/38, The Promotion and Protection of Human Rights in the Context of Peaceful Protests, 25th Sess., Mar. 8–23, 2014, ¶¶ 2, 9–10, U.N. Doc. A/HRC/RES/25/38 (Apr. 11, 2014) (“States have the responsibility, including in the context of peaceful protests, to promote and protect human rights.”); U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Human Rights Council, U.N. Doc A/HRC/17/28 (May 23, 2011) (reviewing the law in relation to protests); *Giuliani v. Italy*, 2011-II Eur. Ct. H.R. 275, ¶¶ 174–75 (noting that, in peacetime, the use of force is limited to that which is “absolutely necessary” in action lawfully taken for the purpose of quelling a riot or insurrection). Killings that violate these limits violate the right to life and are one of the core forms of “extrajudicial killings” prohibited by international law.

The prohibition against killings of the form pleaded by Plaintiffs is demonstrated by an overwhelming number of sources of evidence of international law, and we refer below to only a sample of that evidence. Accepted sources of evidence of customary international law include treaties, international jurisprudence, international resolutions, actions by states reflecting the view that practices violate the law (such as condemnation), and the writing of scholars. *See* Restatement (Third) of Foreign Relations Law of the United States §§ 102, 103(2)(a)–(d) (1987).

A. The Restatement (Third) Of Foreign Relations Lists Unnecessary Killings As A Violation Of International Law.

The Restatement (Third) of Foreign Relations Law of the United States §702 comment f provides that:

[I]t is a violation of international law for a state to kill an individual other than as lawful punishment pursuant to conviction in accordance with due process of law, or as necessary under exigent circumstances, for example by police officials in line of duty in defense of themselves or of other innocent persons, or to prevent serious crime.

Comment n notes that this is a peremptory norm.

B. The Practice And Statements Of The United States And Other Governments Affirms The Universally Obligatory Prohibition Under International Law Of The Acts Alleged By The Plaintiffs.

The U.S. Government has repeatedly affirmed the obligatory nature of the prohibition on extrajudicial killings, condemned extrajudicial killings by other governments (including killings of protesters and others), and reported extensively on such incidents. *See* President Barack Obama, Statement by the President on Violence in Bahrain, Libya and Yemen (Feb. 18, 2011) (“The United States condemns the use of violence by governments against peaceful protestors . . . . Wherever they are, people have certain universal rights, including the right to peaceful assembly.”); Venezuela Defense of Human Rights and Civil Society Act §§ 2(8), 3(7), 5, Pub. L. No. 113-278, 128 Stat. 3011 (2014) (an Act of Congress stating that Venezuela responded to antigovernment protests with violence and killings perpetrated by state security forces, that such conduct is “intolerable and . . . a matter of serious concern,” and directing the President to impose sanctions on individuals responsible); Robert Pear, *Crackdown in Beijing*, N.Y. Times, June 4, 1989, at A21 (quoting President George H.W. Bush regarding Tiananmen Square) (“I deeply deplore the decision to use force against peaceful demonstrators and the consequent loss of life.”); Jen Psaki, Statement by the Spokesperson of the U.S. Department of State on the Government Crackdown on Protests in Sudan (Sept. 27, 2013) (“The United States condemns the Government of Sudan’s brutal crackdown on protestors in Khartoum, including the excessive use of force against civilians that has reportedly resulted in dozens of casualties.”); President Barack

Obama, Remarks by the President on the Situation in Egypt (Aug. 15, 2013) (“The United States strongly condemns the [violence against protestors] . . . by Egypt’s interim government and security forces. We deplore violence against civilians.”); John Kerry, U.S. Sec’y of State, Press Statement, Situation in Egypt (July 27, 2013) (expressing deep concern about “the bloodshed and violence in Cairo and Alexandria . . . that has claimed the lives of scores of Egyptian demonstrators . . . .”); Barack Obama, Nicholas Sarkozy & David Cameron, *Joint Op-Ed by Presidents Obama, Sarkozy, and Prime Minister Cameron, “Libya’s Pathway to Peace,”* U.S. Dep’t of State Official Blog (Apr. 15, 2011) (condemning violence by security forces in Libya, and stating “the International Criminal Court is rightly investigating the crimes committed against civilians and the grievous violations of international law”); President Barack Obama, Statement by the President on the Attempted Attack on Christmas Day and Recent Violence in Iran (Dec. 28, 2009) (“The United States joins with the international community in strongly condemning the violent and unjust suppression of innocent Iranian citizens, which has apparently resulted in . . . death.”); Press Release, U.S. Dep’t of State, U.S. Condemns Ongoing Violence in Syria (July 25, 2011) (“The United States condemns the ongoing violence in Syria, particularly the brutality practiced by the Syrian Government against its own citizens—peaceful protesters and bystanders alike.”); U.N. GAOR, 65th Sess., 71st plen. mtg. at 11, U.N. Doc. A/65/PV.71 (Dec. 21, 2010) (quoting Ambassador Rick Barton, U.S. Representative to the

Economic and Social Council of the United Nations) (“[A]ll persons have the right to be free from extrajudicial killing.”). The U.S. Department of State includes in its annual reporting intentional killings of civilians by state security forces. *See, e.g.,* Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Country Report on Human Rights Practices 2000, Appendix A: Notes on the Preparation of the Reports* (Feb. 23, 2001) (noting that extrajudicial killings are “deliberate, illegal, or excessive use of lethal force” by state agents, and also are “killings committed by police or security forces in operations . . . that result[] in the death of persons without due process of law (for example . . . killing of bystanders)”); Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Country Report on Human Rights Practices 2013, Egypt*, 3–5 (2014) (noting several reports that then President Morsi and interim Egyptian governments or their agents committed arbitrary or unlawful killings during the dispersal of demonstrations); Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Country Report on Human Rights Practices 2013, Bahrain*, 2–4 (2014) (noting that there were several reports that Bahraini security services committed arbitrary or unlawful killings); Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Country Report on Human Rights Practices 2013, Yemen*, 2–3 (2014) (“Government forces and their proxies responded at times with excessive force to demonstrations and protests in various parts of the country . . . security forces opened fire to disperse a protest by Hirak activists in Aden, killing at least

four persons and wounding 40 others.”); Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Country Report on Human Rights Practices 2010, Peru*, 2 (2011) (recording that while there had been no “politically motivated” killings, there had been unlawful killings of protestors and suspects); Bureau of Democracy, Human Rights and Labor, U.S. Dep’t of State, *Country Report on Human Rights Practices 2010, Cote D’Ivoire*, 3 (Mar. 30, 2011) (noting allegations that several killings by security forces “took place as persons fled the demonstration areas and inside private residences”).

Resolutions passed by a broad spectrum of governments at the U.N. Security Council, General Assembly, and Human Rights Council also affirm the prohibition. *See* S.C. Res. 1970, U.N. Doc. S/RES/1970 (Feb. 26, 2011) (condemning and demanding an end to the violent repression of protestors by Libyan security forces, and referring the situation to the Prosecutor of the International Criminal Court); G.A. Res 69/182, ¶ 6, U.N. Doc. A/RES/69/182, (Jan. 30, 2015) (urging States to “take all measures required by international human rights law . . . to prevent loss of life, in particular that of children, during . . . public demonstrations”); Human Rights Council Res. S-18/1, *The Human Rights Situation in the Syrian Arab Republic*, 18th Special Sess., ¶ 2, U.N. Doc. A/HRC/RES/S-18/1 (Dec. 5, 2011) (strongly condemning “the continued widespread, systematic and gross violations of human rights and fundamental



freedoms by the Syrian authorities, such as arbitrary executions, excessive use of force and the killing and persecution of protestors, human rights defenders and journalists”); Human Rights Council Res. S-15/1, *Rep. of the Human Rights Council on Its Fifteenth Special Session*, ¶ 1, U.N. Doc. A/HRC/RES/S-15/1 (Mar. 3, 2011) (strongly condemning gross and systematic human rights violations including extrajudicial killings of peaceful protestors in Libya); *Prosecutor v. Gaddafi*, Case No. ICC-01/11, Warrant of Arrest (June 27, 2011) (issuing an arrest warrant for Gaddafi on the basis of his suspected criminal responsibility for killings of protestors committed by Libyan security forces). Since 1980, the U.N. General Assembly has annually passed a resolution condemning extrajudicial killings and calling on states to observe their international obligations. *See* G.A. Res. 62/222, ¶ 1, U.N. Doc. A/Res/62/222 (Dec. 22, 2007) (condemning killings of peaceful demonstrators in Myanmar); G.A. Res. 60/174, ¶ 3, U.N. Doc. A/Res/60/174, (Dec. 16, 2005) (expressing grave concern about deaths of civilians during government troop efforts to quell demonstrations in Uzbekistan); Human Rights Council Res. S-16/1, *The Current Human Rights Situation in the Syrian Arab Republic in the Context of Recent Events*, 16th Special Sess., ¶¶ 1, 3, 4, U.N. Doc A/HRC/RES/S-16/1 (May 4, 2011) (condemning “the use of lethal violence against peaceful protesters by the Syrian authorities”).

C. Treaties Evidence The Prohibition Against Extrajudicial Killings And Proscribe The Acts Alleged By The Plaintiffs.

Treaties affirm the right to life and the prohibition against extrajudicial killings. *See* International Covenant on Civil and Political Rights art. 6(1), Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR] (“No one shall be arbitrarily deprived of his life.”).<sup>4</sup> The right to life under Article 6(1) of the ICCPR is non-derogable, even during times of public emergency. *See Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶ 25 (July 8); U.N. Special Rapporteur on extrajudicial, summary or arbitrary executions, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Human Rights Council, ¶ 54, U.N. Doc. A/HRC/26/36 (Apr. 1, 2014) (“While certain rights may be restricted or suspended during times of public emergency, the right to life is non-derogable and must be respected, even during such times.”).

Jurisprudence of the Inter-American Court of Human Rights, the European Court of Human Rights, the African Commission on Human Rights, and the U.N. Human Rights Committee interpreting the treaty prohibitions against the unlawful deprivation of life consistently affirms that extrajudicial killings include the

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<sup>4</sup> This fundamental right is mirrored in other treaties. *See, e.g.*, Convention on the Rights of the Child art. 6(1), Nov. 20, 1989, 1577 U.N.T.S. 3; European Convention on Human Rights art. 2, Nov. 4, 1950, 213 U.N.T.S. 222; American Convention on Human Rights art. 4(1), Nov. 22, 1969, 1144 U.N.T.S. 123; African Charter on Human and Peoples’ Rights art. 4, June 26, 1981, 1520 U.N.T.S. 217.

specific form pleaded by Plaintiffs. See *Neira-Alegria et al. v. Peru*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 20, ¶¶ 74–76 (Jan. 19, 1995) (finding that while security forces had a duty to quell a riot, they used unlawful force and violated the right to life); *Villagran-Morales et al. v. Guat. (The Street Children Case)*, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶¶ 139–47 (Nov. 19, 1999) (finding the right to life is fundamental and *jus cogens*, and that unjustified police killings of children violated the norm); *Güleç v. Turkey*, 1998-IV Eur. Ct. H.R. 1698 (finding that security forces, even though they were otherwise legitimately attempting to stop a violent protest, used unlawful force with respect to the killing of a fifteen-year-old boy); *Musayev and Others v. Russia*, Eur. Ct. H.R. ¶¶ 141, 155 (2007) (finding that the right to life was violated when Russian security forces killed several unarmed civilians without any lawful justification); *McCann v. United Kingdom*, 21 Eur. Ct. H.R. 97 (1995) (looking to the planning and control of operations, and not merely the actions of the shooters, when finding a violation of the right to life); *Camargo v. Colombia*, U.N. Human Rights Comm., Commc’n No. 45/1979, ¶¶ 13.1–13.3, U.N. Doc. CCPR/C/OP/1 (1985) (finding a violation of the right to life where police killings of suspected criminals were intentional, without warning, and not justified by self-defense or any other ground); *Suarez de Guerrero v. Colombia*, U.N. Human Rights Comm., Commc’n No. 45/1979, ¶ 137, U.N. Doc. CCPR/C/15/D/45/1979 (1982) (finding that lethal action taken by police violated the right to life as it was not necessary in their own

defense or that of others); *African Comm'n on Human and Peoples' Rights v. Libya*, App. No. 004/2011, Order for Provisional Measures ¶¶ 2–3 (Afr. Ct. on Human and Peoples' Rights Mar. 25, 2011) (concluding that Libyan security forces' act of “open[ing] fire at random on . . . demonstrators,” killing some, constituted a “serious violation[] of the right to life”).

The clear prohibition of such killings expressed in international case law is unsurprising given that national legal systems around the world, including the U.S. legal system, prohibit similar conduct. In *Tennessee v. Garner*, 471 U.S. 1, 3, 11 (1985), for example, the Court held the use of deadly force is only permissible when “the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others . . . . A police officer may not seize an unarmed, nondangerous suspect by shooting him dead.” See Aimee Sullivan, *The Judgment Against Fujimori for Human Rights Violations*, 25 Am. U. Int'l L. Rev. 657, 765–66 (2010) (translating the Supreme Court of Peru's decision finding former President Alberto Fujimori responsible for killings committed by Peruvian security forces of unarmed and innocent individuals); *Ex parte Minister of Safety and Security and Others: In re S v. Walters and Another* 2002 (4) SA 613 (CC), ¶¶ 37–40 (S. Afr.) (citing with approval to *Tennessee v. Garner* and other similar foreign court decisions limiting the use of lawful lethal force).

D. The Writings Of Scholars Indicate That The Acts Alleged By The Plaintiffs Violate The Norm Against Extrajudicial Killing.

Leading international law experts have consistently written that extrajudicial killings are among the clearest of customary international law violations. *See, e.g.*, Curtis A. Bradley & Jack L. Goldsmith, *The Current Illegitimacy of International Human Rights Litigation*, 66 *Fordham L. Rev.* 319, 366 (1997) (describing the prohibition against extrajudicial killing as a “settled and central” human rights norm); Rachael Schwartz, *And Tomorrow - The Torture Victim Protection Act*, 11 *Ariz. J. Int’l & Comp. L.* 271, 290 (1994) (arguing that the prevalence of laws against extrajudicial killing “in the domestic law of many countries” is evidence that the prohibition is a violation of international law and is *jus cogens*). Scholars also affirm that the form of killing pleaded by Plaintiffs violates the international law prohibition against extrajudicial killing. *See* Ralph Crawshaw et al., *Human Rights and Policing* 155–57 (2d ed. 2007); Stuart Casey-Maslen, *Weapons Under International Human Rights Law* 9 (2014).

**II. INTERNATIONAL LAW REQUIRES AN EFFECTIVE INVESTIGATION INTO KILLINGS BY STATE SECURITY FORCES.**

It is uncontroversial that international law requires governments to effectively investigate any killing by state security forces, including any alleged extrajudicial killing. The legal requirement to effectively investigate is a core part

of the state obligation to respect and ensure the right to life,<sup>5</sup> and fundamental to the prohibition against extrajudicial killings. *See e.g. Ergi v. Turkey*, App. No. 66/1997/850/1057, Judgment, Eur. Ct. H.R., ¶ 82 (July 28, 1998) (“[T]he mere knowledge of the killing on the part of the authorities gave rise *ipso facto* to an obligation . . . to carry out an effective investigation into the circumstances surrounding the death.”); *McCann and Others v. United Kingdom*, App. No. 18984/91, Eur. Ct. H.R., ¶ 161 (1995) (holding that states must carry out an “effective official investigation when individuals have been killed as a result of the use of force by, inter alios, agents of the State”); Juliet Chevalier-Watts, *Effective Investigations Under Article 2 of the European Convention on Human Rights*, 21(3) Eur. J. Int. L. 701, 701–21 (2010) (reviewing European Court of Human Rights jurisprudence on the duty to investigate); *Juan Humberto Sánchez Case*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 99, ¶¶ 112–13 (June 7, 2003) (citing to, and agreeing with the European Court of Human Rights decision in *McCann*); *Myrna Mack Chang v. Guatemala*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 101, ¶ 157 (Nov. 25, 2003) (“[S]afeguarding the right to life requires conducting an effective official investigation when there are persons who lost their life as a result

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<sup>5</sup> The obligation to respect and ensure the right to life is set out in e.g. International Covenant on Civil and Political Rights arts. 2, 6, Dec. 16, 1966, 999 U.N.T.S. 171; European Convention on Human Rights arts. 1, 2 Nov. 4, 1950, 213 U.N.T.S. 222; American Convention on Human Rights arts. 1, 4 Nov. 22, 1969, 1144 U.N.T.S. 123; African Charter on Human and Peoples’ Rights arts. 1, 2, 4, June 26, 1981, 1520 U.N.T.S. 217.

of the use of force by agents of the State.”); G.A. Res 67/168, ¶ 6, U.N. Doc. A/RES/67/168 (Mar. 15, 2013) (urging states to “ensure the effective protection of the right to life of all persons under their jurisdiction, to investigate promptly and thoroughly all killings”); U.N. Human Rights Comm., General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ¶¶ 15, 18, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) (“A failure . . . to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”); Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Aug. 27–Sept. 7, 1990, Havana, Cuba, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, U.N. Doc. A/CONF.144/28/Rev.1, principles 6, 11, 22 (1990); Amichai Cohen and Yuval Shany, *Beyond the Grave Breaches Regime: The Duty to Investigate Alleged Violations of International Law Governing Armed Conflicts*, Research Paper No. 02-12, Yearbook of International Humanitarian Law, 12–23 (2012); Stuart Casey-Maslen, *Weapons Under International Human Rights Law* 4 (2014) (“[A]ny use of a weapon, including a firearm, where death or serious injury results must be followed by an independent investigation to determine the legality of that use of force and to ensure accountability for any unlawful acts.”); Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* 176–79 (2013) (reviewing decisions of the U.N. Human Rights Committee and concluding that states “must investigate all

killings . . . . A failure to investigate, or an inadequate investigation, will generate a breach of the right to a remedy . . . in conjunction with [the right to life]”).

## **CONCLUSION**

Customary international law universally prohibits extrajudicial killings, including killings of the form pleaded by Plaintiffs. The use of intentional lethal force against unarmed protestors posing no threat to state security forces or others is prohibited by international law, and would constitute an “extrajudicial killing” in violation of the right to life. Further, international law requires an effective investigation into any killing by state forces in a law enforcement context. A failure to investigate such a killing amounts to a violation of the right to life under international human rights law.



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Respectfully submitted,<sup>6</sup>



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**CERTIFICATE OF  
SERVICE**

I hereby certify that, on March 13, 2015 I served one copy of the foregoing BRIEF OF PROFESSORS PHILIP ALSTON (NEW YORK UNIVERSITY SCHOOL OF LAW), CHRISTOF HEYNS (UNIVERSITY OF PRETORIA), SARAH KNUCKEY (COLUMBIA LAW SCHOOL), GUGLIELMO VERDIRAME (KINGS COLLEGE), CLAUS KREß (UNIVERSITY OF COLOGNE), AND THE COLUMBIA LAW SCHOOL HUMAN RIGHTS CLINIC.

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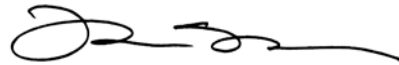
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## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(d), I hereby certify that the attached Brief of *Amici Curiae* is proportionately spaced, has a typeface of 14 points or more and, according to computerized count, contains 9,405 words.

DATED: March 13, 2015



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