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REPORT RELATING TO THE INTERDICTION OF AIRCRAFT INVOLVED IN ILLICIT DRUG TRAFFICKING

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REPORT INCLUDING MATTERS RELATING TO THE INTERDICTION OF AIRCRAFT ENGAGED IN ILLICIT DRUG TRAFFICKING, PURSUANT TO 22 U.S.C. 2291–4 PUB L. 107–108



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THE WHITE HOUSE,
Washington, January 30, 2009.

Hon. NANCY PELOSI,
Speaker of the House of Representatives,
Washington, DC.

DEAR MADAM SPEAKER: Consistent with the authorities related to official immunity in the interdiction of aircraft engaged in illicit drug trafficking (Public Law 107–108, 22 U.S.C. 2291–4), as amended, and in order to keep the Congress fully informed, I am providing a report by my Administration. This report includes matters related to support for the interdiction of aircraft engaged in illicit drug trafficking.

Sincerely,

BARACK OBAMA.

UNITED STATES ASSISTANCE FOR THE INTERDICTION OF AIRCRAFT ENGAGED IN ILLICIT DRUG TRAFFICKING

Columbia and Brazil are the only countries for which the President made a certification under 22 U.S.C. 2291–4 in calendar year 2008. The President signed Presidential Determination 2008–24 on August 15, 2008, for Colombia and Presidential Determination 2009–4 on October 15, 2008, for Brazil. In doing so, the President certified, with respect to Colombia and Brazil, that (1) the interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) each country has appropriate procedures in place to protect against the loss of innocent life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft. Consistent with 22 U.S.C. 2291–4(c), this report contains the following information of or both Colombia and Brazil: (a) the nature of the illicit drug trafficking threat to the country; (b) an explanation of safety procedures in place to protect against the loss of innocent life in the air and on the ground in connection with interdiction, including any training and other mechanisms in place to ensure adherence to such procedures; (c) a description of assistance provided by the United States to the interdiction program; and (d) a summary of the country's aircraft interception activity for which the United States provided assistance in calendar year 2008.

COLOMBIA

(A) On August 21, 2003, the Airbridge Denial (ABD) Program in Colombia began operations. In making a sixth certification for Colombia in August 2008, the President determined that narcotrafficking continues to pose an extraordinary threat to Colombia's national security on the basis of several factors. These factors include the fact that Colombia is still the world's largest producer of cocaine and a supplier of high-quality heroin; that Colombia faces a growing domestic cocaine abuse problem; that Colombia drug trafficking organizations suborn Colombian officials and pay illegal armed groups to protect their organizations; that illegal revenue from the Colombian drug trade disrupts the licit Colombian economy and that narcotrafficking presents a corrosive threat to the democratic institutions of government and law enforcement. Significantly, drug trafficking also serves as the primary source of funding for the Revolutionary Armed Forces of Colombia (FARC) and an important source of funding for the Colombian United Self-Defense Forces (AUC) and the Colombia National Liberation Army (ELN), all of which are classified as Foreign Terrorist Organizations by the Department of State.

(B) The Colombia ABC Program's safety procedures are set forth in the bilateral Letter of Agreement, signed on December 20, 2007. In calendar year 2008, the basic procedures for aerial interception of an unidentified, assumed suspect (UAS) flight were as follows:

• Detection, Sorting, and Identification. When the Government of Colombia detects or is informed of an aircraft operating in a defined zone of control that is a candidate for possible ABD action (a "track of interest"), information on that aircraft shall be gathered by the Government of Colombia from all reasonably available sources, including radar systems, radio and visual contact with the aircraft, electronic systems (which help determine whether the plane is traveling on a filed flight plan and what type of plane it is), and relevant air traffic control centers, to begin to determine whether the aircraft is reasonably suspected to be primarily engaged in illicit drug trafficking. That determination shall be made by the Battle Commander Officer in the Colombian Air Force's Command and Control Center (CAFCCC), based upon certain factors set out in the Agreement, in conjunction with other information provided to Colombia Government and United States Government participants in the ongoing action.

• Monitoring. If the Government of Colombia determines or has preliminary reasons to believe that an aircraft is primarily engaged in illicit drug trafficking, that aircraft shall be tracked and monitored. If tracking is intermittent, positive reidentification shall be made with reasonable certainty before the ABD event may continue. If the Government of Colombia has been unable to identify the track of interest as a legitimate track, the aircraft shall be considered suspect by the Colombian Air Force (CAF) under CAF procedures and may be intercepted.

• Phase I—Interception. The interception phase includes attempts to contact the intercepted aircraft by radio and, if necessary, by visual signals in order to determine the identity of the pilot or intercepted aircraft. If, during this phase, the Colombian Government determines that the aircraft is reasonably suspected to be primarily engaged in illicit drug trafficking (on the basis of several considered factors), the CAF may order the intercepted aircraft to land at a designated place suitable for a safe landing. If, after being intercepted, the suspect aircraft does not comply with the procedures and instructions given by the CAF, the CAF pilot may request permission to proceed to Phase II.

• Phase II—Use of Warning Shots. Phase II consists of the firing of warning shots, using ammunition containing tracer rounds, in order to demonstrate to the pilot of the intercepted aircraft that he must comply with the CAF interceptor's order. If all of the procedures required under the Agreement have been followed, the information gathered continues to indicate that an aircraft is suspect, and the aircraft fails to respond to the interceptor's orders to land, the Government of Colombia may, in accordance with the following procedures, move to Phase III.

• Phase III—Firing of Weapons at Intercepted Aircraft in the Air. If, after warning shots are fired under Phase II, the intercepted aircraft does not acknowledge or follow the interceptor's directions, the Colombian interceptor aircraft may only fire weapons at the intercepted aircraft if he requests and receives permission

to do so. The Commander of the Colombian Air Force (COCAF) must review all such requests. The COCAF may approve such request after verifying that all procedures required under the Agreement have been followed. Upon receipt of the authorization, the interceptor aircraft must warn the intercepted aircraft that it will be fired upon if it refuses to comply, using International Civil Aviation Organization radio communications procedures, and using the appropriate frequencies.

The interceptor must use reasonable force to disable the intercepted aircraft, starting with a minimum level of fire in an attempt to persuade the intercepted aircraft to land as directed. The intercepted aircraft shall be given a reasonable opportunity to obey the previously issued order to land before the CAF interceptor uses additional force. Levels of force may be increased if the intercepted aircraft continues to refuse to follow the interceptor's directions. Both the United States Government and the Government of Colombia acknowledge that even the minimum level of force could result in loss of life. If the intercepted aircraft has landed or has been shot down, the interceptor aircraft or tracker aircraft shall give immediate notice to the CAFCCC of the location of the intercepted aircraft.

The safety procedures require similar identification and warning procedures when a suspected narcotrafficking aircraft has been located on the ground. Further, the United States Government and Government of Colombia have agreed upon additional restraints on the use of force, including a prohibition on the use of force against state or commercial aircraft, aircraft that have filed and are not significantly deviating from a flight plan, aircraft whose pilots appear to be incapacitated, and aircraft whose pilots genuinely appear to be under duress.

In addition to the safety procedures described above, the Letter of Agreement governing the ABD Program provide for safety oversight by two Colombian personnel (the ground safety monitor and an air safety monitor) as well as the United States (through the Joint Interagency Task Force—South (JIATF–S) Command Duty Officer). Collectively, these three individuals are referred to as the ABD "safety oversight triad" and are required to oversee all Phase I, II, and III actions.

In the past years, the United States Government trained the Colombian Government's pilots and sensor operators to operate Citation aircraft involved in the program. In 2008, as the program matured, pilot and crew refresher training, as well as training of new Colombian personnel, continued. A semiannual review of the program, held in February 2008, helped to address issues that had arisen in the program's implementation. The United States Government also received weekly and monthly reports on program events.

(C) In 2008, the United States Government provided personnel to staff positions in Colombia's ABD Program, including a Department of Defense JIATF–S Tactical Commander and JIATF–S Command Duty Officer, and a Host Nation Rider Assistant.

JIATF–S's Tactical Commander exercised command and control of United States Government ABD assets through JIATF–S's Joint Operation Center (JOC). The JIATF–S Command Duty Officer was

the Tactical Commander's senior watch officer at the JOC. The Host National Rider Assistant served as a United States Government representative who assisted the Host Nation Rider on board the detection aircraft. One employee of the Narcotics Affairs Section in the United States Embassy in Bogota is devoted exclusively to overseeing implementation of this program.

From January 1, 2008, until December 31, 2008, the United States Government provided maintenance support to the Colombian Government's five Citation aircraft for the ABD Program. On January 1, 2008, the title to these aircraft was transferred to the Government of Colombia. The United States Government also provided radar information and intelligence to the Colombian Government. Additional United States Government assets (both aircraft and personnel) from the Departments of Defense and Homeland Security have provided support for this program under the conditions contained in the Agreement.

(D) From January 1, 2008, until December 31, 2008, the Government of Colombia, with the assistance of the United States Government, located 60 UAS flights within Colombian airspace. Of these 60 UAS flights, ten were determined to be legitimate flights. Of the remaining aircraft, none were subject to warning shots or lethal force, nor were any aircraft forced to land. In part due to the efficacy of the ABD Program, most UAS flights were located near the Venezuelan border and remained only briefly in Colombian airspace, thereby reducing the Colombian Government's ability to engage the aircraft via ABD procedures. While conducting law enforcement inspections as part of the ABD Program at airfields throughout the country, the Government of Colombia impounded two aircraft, seizing one metric ton of cocaine from those aircraft, and arresting five persons. The United States Government is unaware of any deaths or injuries resulting from the Government of Colombia's actions with respect to these flights.

BRAZIL

(A) Brazil's ABD Program began operations on October 17, 2004. In making a fifth certification for Brazil pursuant to 22 U.S.C. § 2291–4, the President determined that narcotrafficking continues to pose an extraordinary threat to Brazil's national security on the basis of several factors. These factors include the fact that aerial drug shipments are a key component of this threat and a preferred method of narcotrafficking; that the amount of cocaine shipped through Brazil has increased over the last decade; and that it is estimated that well over 100 metric tons of cocaine enter Brazil annually, with one-third to one-half of it remaining in-country, making Brazil the second largest consumer of illicit drugs. In addition, there are confirmed ties between drug traffickers and those involved in illegal arms trafficking. The resulting domestic drug trade has fueled widespread urban violence in Brazil, notably in Sao Paulo and Rio de Janeiro, as organized criminal gangs fight to control a share of the lucrative enterprise.

(B) The Brazil ABD Program's operating guidelines are contained in the Operational Guidelines of the Aerospace Defense System, the details of which have been disclosed to the United States in the form of Brazilian responses to U.S. questions appended to a 2004

exchange of diplomatic notes. According to that 2004 exchange of notes and subsequent discussions with Brazilian officials, the key safety procedures built into the Brazil program include that interdiction is restricted to presumed illegal drug distribution routes and areas without high population density. Also, commercial aircraft, hijacked aircraft, aircraft with innocent people on board, or aircraft in which the pilot appears incapacitated or under duress are not subject to interdiction. Furthermore, International Civil Aviation Organization procedures for visual and electronic means of communication are adhered to during the identification and communication phases. The decision-making authority throughout the interdiction process is limited to specifically defined Air Defense personnel.

Also, according to the Government of Brazil, Brazil has a multistage procedure to identity, evaluate, and take action against an aircraft reasonably suspected of being primarily engaged in illicit drug trafficking. The key stages of that process are as follows:

- Initial Classification. When the Government of Brazil detects an aircraft that displays irregular air traffic traits, it will consider that aircraft to be "unidentified" (also referred to as "track of interest") and a candidate for possible aerial interception. The Brazilian Government will proceed to gather information on the aircraft to determine whether the aircraft is reasonably suspected to be primarily engaged in illicit drug trafficking. If the Brazilian Government is unable to identify the aircraft as legitimate, the aircraft will be considered "surveillance worthy" by the Brazilian Air Force and may be intercepted.
- Interception. During interception, the Government of Brazil will attempt to determine with greater certainty the identity of the intercepted aircraft. The tracker or interceptor aircraft will take all reasonable measures to identify the intercepted aircraft by visual or electronic observation of the nationality markings, registration number, license number, or identifying features of the intercepted aircraft. The Government of Brazil will further attempt to gather information regarding the intercepted aircraft that may help determine whether the intercepted aircraft is reasonably suspected to be primarily engaged in illicit drug trafficking. If the aircraft is determined to be reasonably suspected of being primarily engaged in illicit drug trafficking, the Brazilian Air Force classifies the aircraft as "suspicious" and may proceed to the interrogation phase.
- Interrogation in the Air. The tracker or interceptor aircraft will attempt to establish communications with the intercepted aircraft through radio communications or visual signals and order the intercepted aircraft to change its routing or to land, if factors continue to support a determination that the aircraft is primarily engaged in illicit drug trafficking.
- Use of Warning Shots. The Government of Brazil will move to the firing of warning shots to demonstrate to the pilot of the intercepted aircraft that he must comply with the interceptor's order if the gathered information continues to indicate that an aircraft is suspect and the aircraft fails to respond to the interceptor's order to land. Warning shots may only be ordered and authorized by the Airspace Defense Senior Authority or the Air Operations Commander after verification that all requisite procedures have been

satisfied. The intercepting aircraft will fire the warning shots from abeam of the intercepted aircraft, in a position that will permit the intercepted aircraft to see the intercepting aircraft but that will avoid damage to the intercepted aircraft. Intercepted aircraft that comply with the orders of the interceptor aircraft after warning shots have been fired will be escorted to land at a designated airfield, where law enforcement authorities will subject it to ground control measures.

Firing of Weapons at Intercepted Aircraft in the Air. If, after warning shots are fired, the intercepted aircraft does not acknowledge or follow the interceptor's directions, the aircraft will be designate as "hostile." The Brazilian Air Force Commander-in-Chief may only authorize the use of lethal force after verifying that all requisite procedures have been followed. The first burst of fire used against the intercepted aircraft will be as brief as possible and preferably avoid using ammunition capable of causing a fuel tank explosion. After the first burst of fire, the pilot of the intercepting aircraft will relay information regarding the effect of the fire to the Air Force Commander-in-Chief and try to contact the intercepted aircraft again, if possible, before requesting authorization to fire again. Once an intercepted aircraft lands, the Brazilian federal police will attempt to take control of the aircraft for law enforcement purposes.

(C) Brazil's aerial interdiction program differs from Colombia's in that, among other things, Brazil independently administers its program. The Government of Brazil is solely responsible for all actions relating to each aerial interdiction event, but has committed to share pertinent operational information about such events after the fact with the United States Government in a timely and transparent manner. The United States does not provide significant or direct assistance to Brazil's program. Some United States Government activities that could potentially contribute to Brazil's ABD Program indirectly are the Department of Defense's training program for pilots and other Government of Brazil officials, United States Government authorization of sales of defense articles to the Government of Brazil, and real-time radar track data made available to Brazil's Liaison Officer at JIATF–S.

(D) During the 2008 reporting cycle, the United States is unaware of any incidents in which the Brazilian Air Force security forces, including the Brazilian Air Force, federal police, and other law enforcement agencies, used lethal force against aircraft under Brazil's interdiction program or any deaths or injuries resulting from Brazilian Air Force action related to the program.

The Government of Brazil has shared with the United States its official statistics for the operation of its interdiction program between January and September 2008 on the condition that the information be treated confidentially. The data is not included in this report, but can be made available upon request to Members and staff. The United States Embassy in Brasilia is seeking from the Government of Brazil the program's operational statistics for the

remainder of 2008 and will make those statistics available upon request as well.

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