

Congress of the United States
Washington, DC 20515

August 11, 2014

Juan Manuel Santos
President of the Republic of Colombia
Casa de Nariño
Bogotá, Colombia

Dear President Santos,

Please let us begin by extending our best wishes on your re-election as President of Colombia and our continuing support for your efforts to continue peace negotiations and end Colombia's long conflict. We write to you as Members of the U.S. House of Representatives who strongly support peace, development, human rights and the rule of law in Colombia and a sustained partnership between the United States and Colombia. As you know, we have supported your landmark and historic Law on Victims' Rights and Land Restitution and other initiatives you have undertaken to strengthen and modernize the Colombian state.

It is for these reasons that we write to express our continuing concerns about legislation presented by your Administration and moving through the Colombian Congress that would alter the balance of legal jurisdiction between military and civilian courts (*justicia ordinario*). This legislation is often referred to as the *fuero militar*. We recognize that these are complex issues that have emerged from a long history of how grave human rights abuses by the Colombian military against Colombian civilians have been undertaken in both military and civilian courts. It is within this context that we raise with you several basic issues.

First, we have followed human rights issues and individual cases in Colombia for many years. We have seen no indication that the military justice system is capable or willing to try and punish human rights violations against citizens. Therefore, we remain deeply concerned about this legislation and see no reason why Colombia would need to alter existing jurisprudence limiting military jurisdiction to "acts of service."

Second, it is our understanding that the current bill excludes from military jurisdiction the crimes of "extrajudicial execution" and "sexual violence." But neither of these crimes exists as such in Colombian law. This gives reason for concern that, due to lack of legal clarity, soldiers accused of rape and homicide of protected civilians – including perpetrators of so-called "false positive" killings – could evade justice. Using legal maneuvers based on this law, their defense lawyers may succeed in moving their cases to the far more lenient military court system. The draft law states that "homicide," "aggravated homicide," or "homicide of protected persons," would go to the military justice system. These are the charges currently leveled against "false positives" defendants.

Third, U.S. foreign aid law mandates that 25 percent of U.S. military assistance to Colombia must be withheld each year until the State Department can certify that all cases of human rights violations "are promptly referred to civilian jurisdiction for investigation and prosecution, and the Colombian Armed Forces are not opposing civilian jurisdiction in such cases; and the Colombian Armed Forces are cooperating fully with civilian prosecutors and judicial authorities." As it promises to erode civilian jurisdiction, particularly through ambiguous language covering crucially important types of violations, the *fuero militar* legislation, if passed, would make it impossible in our view for the State Department to certify that cases are systematically going to civilian jurisdiction. The effect on military assistance to Colombia would be significant, and a holdup of such assistance would be likely.

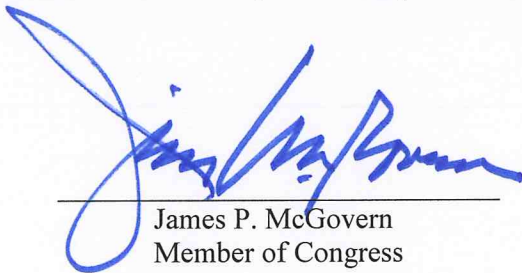
Fourth, U.S. and Colombian officials frequently tell us that, despite recent scandals involving alleged illegal wiretapping of civilians, the Colombian military has changed and evolved over the past 15 years. The armed forces, they say, are now led by a new generation of officers that understands the importance of human rights and values accountability. If that is true, then on whose behalf is this legislation being proposed and promoted?

And finally, Mr. President, we are concerned that passage of legislation that affects the judicial jurisdiction over human rights crimes perpetrated by the military against civilians could undermine negotiations and potential agreements taking place as part of the peace process. No one knows better than you how sensitive and difficult the issues of accountability, truth, justice, reparations, no repetition and reconciliation are, both within the context of the negotiating table and in their acceptance and implementation by the broader Colombian society. Legislation that might be perceived as providing protections to the military are not likely to be welcomed by those who suffered the loss of loved ones at the hands of State actors. This legislation, unless you anticipate it to be nullified by potential peace accords, will make it even more difficult to find that careful balance for transitional justice that applies to all of Colombia's armed actors. Its current consideration in Congress could not be more ill-conceived and ill-timed.

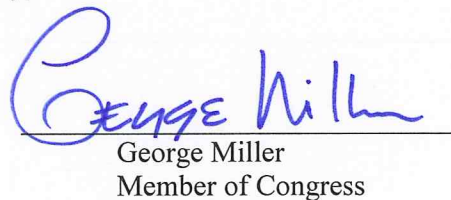
It is our hope, Mr. President, that as a champion of peace, justice and human rights, you share our concerns and will give serious consideration to removing the legislation from any further consideration by the Congress, or, at a minimum, drastically narrow its scope.

We thank you in advance for your serious attention and consideration of our concerns and we look forward to observing the impact of your interventions on this grave matter. Please know that you continue to have our support and close collaboration in your efforts to secure peace, promote human rights and the rule of law, and develop Colombia to the benefit all of its citizens.


Sincerely,



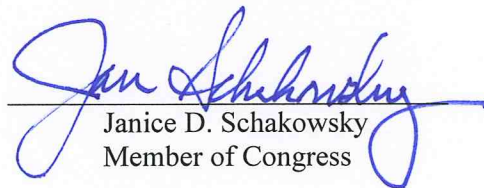
James P. McGovern
Member of Congress



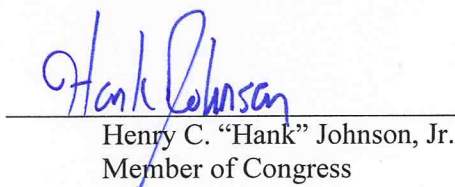
George Miller
Member of Congress



Sam Farr
Member of Congress



Janice D. Schakowsky
Member of Congress



Henry C. "Hank" Johnson, Jr.
Member of Congress