

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, :  
 :  
 Government, : CR No. 07-55  
 :  
 v. :  
 : Washington, D.C.  
 CHIQUITA BRANDS : Monday, September 17, 2007  
 INTERNATIONAL, INC., : 10:02 a.m.  
 :  
 Defendant. :  
 :  
 : X

TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE ROYCE C. LAMBERTH  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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P R O C E E D I N G S

1  
2 THE DEPUTY CLERK: Criminal Case Number 07-55,  
3 United States of America versus Chiquita Brands  
4 International, Inc. Mr. Malis, Ms. Cheung, Mr. Ponticiello  
5 for the government. Mr. Holder, Mr. Garland, Mr. Rana, Ms.  
6 Mosier, Mr. Thompson for the defense. Ms. Panzer for the  
7 Probation Office.

8 THE COURT: Good morning, ladies and gentlemen. I  
9 take that there is no dispute over the presentence report,  
10 and we're ready to go forward to sentencing; is that  
11 correct.

12 MR. MALIS: That's correct, Your Honor.

13 MR. HOLDER: That's correct, Your Honor.

14 THE COURT: Okay. I raised one preliminary matter  
15 with counsel on Friday afternoon and discussed it with them  
16 this morning. As a result of my having raised the matter,  
17 counsel for some of the individuals have informed the Court  
18 through various means that they may wish to be heard on the  
19 question, but, first, let me just have a discussion of the  
20 matter with counsel.

21 The question I raised was whether, before the  
22 Court gives final approval and goes forward with sentencing,  
23 the names of the individuals should be made a matter of  
24 public record. The government had a footnote in their  
25 sentencing memorandum in which they indicated their position

1 to not make that public, citing a U.S. Attorney manual  
2 provision, and I wanted to give the government an  
3 opportunity to discuss that, and then I wanted to discuss it  
4 a little further as well.

5 Mr. Malis.

6 MR. MALIS: Thank you, Your Honor.

7 The government's position is that the U.S.

8 Attorney's manual prohibits the government, absent

9 exceptional circumstances not present here, prohibits the  
10 United States from disclosing the identities of uncharged  
11 individuals. That manual provision is grounded in case law,  
12 principally out of the Fifth Circuit, and the purpose for it

13 is to protect the reputational and privacy interests of  
14 individuals who the government has decided not to charge.

15 It's relying on that provision and the underlying authority.

16 The government's position in this matter is that the  
17 individuals who are identified by letter in the criminal  
18 information, as well as in the factual proffer, should not  
19 be -- their true identities should not be made public as  
20 part of this proceeding.

21 THE COURT: One reason the Court raised the  
22 question was that I was aware that in a proceeding with  
23 another component of the Department of Justice, but allegedly  
24 the same Department of Justice, a few weeks ago before Judge  
25 Bates, the government insisted on naming the names of the --

1 I guess they were division and marketing directors of  
2 British Airways and Korean Airways, and the individuals  
3 actually appeared before Judge Bates to try to persuade him  
4 to not allow the government to name the names, and they even  
5 brought a separate civil action with a temporary restraining  
6 order which he denied. The Court of Appeals then stayed it  
7 for a couple of days, but ultimately the names were

8 revealed. But it looked to me somewhat inconsistent with  
9 what the government was doing here.

10 I understand the manual has this thing about  
11 exceptional circumstances. I honestly don't know what  
12 exceptional circumstances were there that the government  
13 relied on, but I take it after I've raised the question

14 you've reconferred and the government wants to adhere to its  
15 position, that the names would not be disclosed?

16 MR. MALIS: That's correct, Your Honor.

17 THE COURT: And I will say, then, to give some  
18 comfort to those individuals, I don't find it necessary to  
19 require disclosure in order for me to approve the plea  
20 agreement here. It seems to me the plea agreement is in the  
21 public interest. It's not a judicial function to try to go  
22 beyond approving a plea agreement that's in the public  
23 interest, and so I'm prepared to go forward, and everybody  
24 else can relax that's here to try to intervene this morning  
25 or take any other action about individual names.

1 Did the company want to say anything on that  
2 question?

3 MR. HOLDER: I could only mess it up, Your Honor,  
4 so I won't say anything.

5 THE COURT: Okay. I'll hear the allocution, then,  
6 from the government first.

7 MR. MALIS: Thank you, Your Honor.

8 On March 19th of this year, the parties tendered  
9 to the Court the plea agreement that was reached between the  
10 United States of America and Chiquita Brands International,  
11 Inc., in the context of a lengthy criminal investigation  
12 into payments that defendant Chiquita made to a  
13 federally-designated terrorist organization known as the  
14 AUC.

15 Pursuant to that agreement, defendant Chiquita  
16 agreed to plead guilty to a one-count criminal information  
17 that charged the company with the felony of engaging in  
18 transactions with a specially-designed global terrorist. As  
19 a basis for its guilty plea, defendant Chiquita agreed to  
20 admit as true the facts set forth in the factual proffer  
21 submitted in support of the guilty plea. Defendant Chiquita  
22 also agreed to cooperate in the on-going investigation.  
23 Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C),  
24 the United States and defendant Chiquita agreed that, with  
25 the Court's approval, the company should be sentenced to a

1 criminal fine of \$25 million and corporate probation of five  
2 years.

3 At the plea hearing held on that day, defendant  
4 Chiquita admitted its guilt and pled guilty. The Court  
5 provisionally accepted the plea agreement at that time. The  
6 Court deferred final acceptance of the plea agreement until  
7 the date of the sentencing hearing.

8 Pursuant to paragraph 8 of the plea agreement, the  
9 United States reserved its full right to allocute at  
10 sentencing. The United States wishes to allocute at this  
11 time about the conduct that defendant Chiquita has  
12 committed. The United States also wishes to address why the  
13 Court should accept the parties' plea agreement.

14 Turning first to the offense conduct. We are here  
15 today because defendant Chiquita, a major American  
16 multi-national corporation, has admitted to funding  
17 terrorists. This is not a corporate securities case or a  
18 corporate fraud case. This is a terrorist financing case.

19 For over six years, from sometime in 1997 through  
20 February 4, 2004, defendant Chiquita, through its  
21 wholly-owned Colombian subsidiary, paid money to a violent,  
22 right-wing terrorist organization in the Republic of  
23 Colombia, known as the "Autodefensas Unidas de Colombia" or  
24 "AUC." The AUC was formed around April 1997 to organize  
25 loosely-affiliated illegal paramilitary groups that had

1 emerged in Colombia to retaliate against left-wing guerrillas  
2 fighting the Colombia government. Defendant Chiquita paid  
3 the AUC, directly or indirectly, nearly every month. From  
4 1997 through February 4, 2004, defendant Chiquita made over  
5 100 payments to the AUC, totaling over \$1.7 million.

6 From around 1989 through 1997, defendant Chiquita  
7 paid money to two violent, left-wing terrorist organizations  
8 in Colombia, namely, the FARC and the ELN. The FARC and the  
9 ELN were federally-designated as foreign terrorist

10 organizations in October 1997. There is no evidence that  
11 defendant Chiquita made any payments to the FARC or the ELN  
12 after those terrorist groups were designated as foreign

13 terrorist organizations. Nevertheless, the FARC and the ELN  
14 were no less violent prior to their respective designations  
15 as foreign terrorist organizations. Indeed, it was their  
16 violent conduct that led to those designations.

17 In total, defendant --

18 THE COURT: But at the time of those payments, it  
19 would not have been illegal to make those payments to FARC  
20 or ELN?

21 MR. MALIS: It would not have been illegal under  
22 the material support statute or the International Emergency  
23 Economic Powers Act and the underlying regulations, that is  
24 correct, Your Honor.

25 In total, defendant Chiquita paid money to



1 Colombia terrorists - the FARC, the ELN, and the AUC - for  
2 approximately fifteen years. These terrorist groups are  
3 responsible for an astonishing loss of life in Colombia.  
4 While their victims have primarily been Colombians, they  
5 have also included Americans.

6 Defendant Chiquita began paying the AUC sometime  
7 in 1997. There were numerous points in time when the

8 company made the decision to continue to pay the AUC. We  
9 highlight here some of the significant ones.

10 Defendant Chiquita admitted to paying -- excuse me  
11 -- continued to pay the AUC even after the payments were  
12 brought directly to the attention of its senior executives

13 during a board meeting held in September 2000. Defendant  
14 Chiquita continued to pay the AUC after the United States  
15 designated the AUC as a foreign terrorist organization on  
16 September 10, 2001, and as a specially-designated global  
17 terrorist on October 30, 2001. The company, as a corporate  
18 entity, as distinct from any particular individual, had  
19 information about these federal designations in spades  
20 through the wide-spread reporting on it in the public media,  
21 both in the United States as well as in Colombia, which  
22 Chiquita had its substantial banana-producing operations.

23 Defendant Chiquita continued to pay the AUC even  
24 after an individual in its Cincinnati headquarters gained  
25 direct knowledge of the AUC's designation as a foreign

1 terrorist organization in September 2002 through an  
2 Internet-based security information service. The company  
3 had subscribed to this service in order to receive just this  
4 sort of information about important developments in  
5 Colombia.

6 Defendant Chiquita continued to pay the AUC even  
7 after its outside counsel told the company plainly and  
8 directly, beginning in late February 2003, to stop the

9 payments. Defendant Chiquita continued to pay the AUC after  
10 Department of Justice officials admonished the company on  
11 April 24, 2003 that the payments were illegal and could not  
12 continue. Defendant Chiquita continued to pay the AUC after

13 the same outside counsel advised the company on September 8,  
14 2003, that the Department of Justice had given no assurances  
15 that the company would avoid criminal charges for making the  
16 payments. Defendant Chiquita continued to pay the AUC even  
17 after one of its directors acknowledged in an internal  
18 email, on December 22, 2003, that, quote, "we appear to be  
19 committing a felony." close quote.

20 By admitting to the facts in the factual proffer  
21 and pleading guilty to the crime charged in the criminal  
22 information, Defendant Chiquita admits it committed a crime  
23 by continuing to pay the AUC after the AUC was federally  
24 designated as a terrorist organization in the fall of 2001.  
25 Defendant Chiquita has accepted criminal responsibility for

1 the decisions and actions of company officers, directors,  
2 and employees that led to these criminal payments. The  
3 conduct of these corporate actors is, of course, imputed to  
4 the company under the law.

5 It is important to note, however, that not all of  
6 Defendant Chiquita's executives agreed with the company's  
7 course of action. There was dissent at the highest levels

8 of the company about the decision to continue to pay a  
9 federally-designated foreign terrorist organization, and the  
10 decision to risk the coming of this day, Chiquita's felony  
11 conviction for funding terrorism.

12 To begin with, on March 10, 2003, Chiquita's  
13 outside counsel advised the company, through one of its  
14 senior officers, that Defendant Chiquita, quote, "should  
15 leave Colombia," close quote. Upon first learning of the  
16 payments at a board meeting on April 3, 2003, one director  
17 echoed outside counsel's advice. That director objected to  
18 the payments and recommended that Defendant Chiquita  
19 consider taking immediate corrective action, to include  
20 withdrawing from Colombia. That same director later lodged  
21 an even stronger objection to the full board, saying, quote,  
22 "I reiterate my strong opinion - stronger now -, to sell our  
23 operations in Colombia," close quote.

24 Moreover, within one month of his arrival as  
25 Defendant Chiquita's new chief executive officer, in January

1 2004, Fernando Aguirre decided that the payments had to  
2 stop. According to an internal e-mail, Mr. Aguirre stated,  
3 quota. "At the end of the day, if extortion is the modus  
4 operandi in Colombia or any other country, we will withdraw  
5 from doing business in such a country," close quote.

6 THE COURT: So that's the current management  
7 posture, consistent since 2004, it stopped, and nothing has  
8 happened since then?

9 MR. MALIS: That's the current chief executive  
10 officer, Your Honor.

11 THE COURT: That gives the Court some hope.

12 MR. MALIS: The United States filed a sentencing

13 memorandum last week setting forth in greater detail the  
14 facts of this case. Defendant Chiquita filed a terse  
15 response to the government's sentencing memorandum. In it,  
16 Defendant Chiquita renewed its oft-repeated claim that the  
17 company was a victim here, a victim of extortion, and that  
18 the company only made these payments to protect its  
19 employees.

20 Defendant Chiquita fails to square its claimed  
21 victimhood with the facts. As a multi-national corporation,  
22 Defendant Chiquita was not forced to remain in Colombia for  
23 15 years, all the while paying the three leading terrorist  
24 groups that were terrorizing the Colombian people. To quote  
25 the company's own outside counsel, and I quote, "You

1 voluntarily put yourself in this position. The duress  
2 defense can wear out through repetition. It's a business  
3 decision to stay in harm's way. Chiquita should leave  
4 Colombia," close quote.

5 And it was good business for the company.  
6 Defendant Chiquita turned a \$49.4 million profit from its  
7 Colombia operations during the period while it was making  
8 the illegal payments to the AUC. To be clear, the time

9 period I'm referring to is from the designation in September  
10 of 2001, through the end of January 2004. Defendant  
11 Chiquita's payments may have protected its workers while  
12 they were working on the company's profitable farms, but

13 Defendant Chiquita's payments fueled the AUC's terrorist  
14 violence everywhere else.

15 We do not dispute that the company had no  
16 ideological affinity with these terrorists. Indeed, the  
17 fact that the company paid the left-wing groups, the FARC  
18 and the ELN first, and then later the right-wing group, the  
19 AUC, makes plain that this was not ideologically-driven  
20 support. But the law does not distinguish between  
21 malevolent donors and so-called benevolent donors, and  
22 that's because money is fungible.

23 Whatever Defendant Chiquita's claimed motivations,  
24 the company's money paid for the weapons and ammunition that  
25 the AUC used to kill innocent civilians, or it freed up

1 other AUC money to do the very same thing. It just doesn't  
2 matter. Terrorism depends on a funding stream. Defendant  
3 Chiquita was a substantial funding stream for the AUC. The  
4 AUC was able to purchase a lot of weapons and ammunition  
5 with the \$1.7 million that the company paid it over the  
6 years.

7 Defendant Chiquita suggests in its pleading that  
8 its conduct should only be examined from the moment in late  
9 February 2003 when certain of its senior executives learned  
10 that the AUC was a federally-designated foreign terrorist  
11 organization. That ignores the company's admission that it  
12 obtained information about the AUC's designation directly in

13 September 2002 from the security information service.  
14 Moreover, by late February 2003, when Defendant Chiquita's  
15 outside counsel advised the company to stop the payments  
16 immediately in light of the AUC's designation as a foreign  
17 terrorist organization, the payments had already been  
18 reviewed and approved at the highest levels of the company  
19 for years. The fact of the initial AUC demand in 1997 and  
20 any perceived risk to the company's employees from doing  
21 business in Colombia were not new topics to Chiquita. The  
22 payments had been discussed repeatedly in Defendant  
23 Chiquita's Cincinnati headquarters, including among the new  
24 management and the new board that took over the company  
25 after it emerged from bankruptcy in early 2002. The company

1 had long since made the business judgment to remain in  
2 Colombia, to keep pay the AUC, to record the payments in the  
3 company's books and records without ever identifying that  
4 these were payments to the AUC, and not to report the  
5 payments to the pertinent United States authorities. In  
6 short, the only new information that certain executives  
7 obtained in late February 2003, was the fact that Defendant  
8 Chiquita's well-established relationship with the AUC

9 threatened the company with a possible U.S. prosecution.

10 Defendant Chiquita also claims in its pleading  
11 that it sought guidance from the Department of Justice that  
12 it never received. Here also, Defendant Chiquita's pleading

13 ignores the admitted facts. The Department of Justice told  
14 the Company's representatives on April 24, 2003 -- and here  
15 I'm quoting from the factual proffer signed by Mr. Holder  
16 and by Mr. Aguirre -- that the payments were, quote "illegal  
17 and could not continue," close quote. Whether Defendant  
18 Chiquita could conform its conduct with the law and continue  
19 to do business in Colombia, or whether Defendant Chiquita  
20 had to withdraw from Colombia was a decision for the company  
21 to make, not a decision for the Department of Justice.  
22 Defendant Chiquita received guidance from the Department of  
23 Justice. The guidance was that the company was breaking the  
24 law. It chose to ignore that guidance and continue to break  
25 the law. That's one of the reasons we are here today.

1 Defendant Chiquita seriously misjudged what it  
2 means to self disclose criminal conduct. Self-disclosure  
3 does not, in and of itself, shield a company from  
4 prosecution. The appropriate resolution of a  
5 self-disclosure case will depend on many factors, including  
6 the nature and circumstances of the reported activity and  
7 the company's efforts to correct it. ~~But there should be no~~  
8 ~~mistake about it - self-disclosure does not give the~~  
9 disclosing party license to continue to commit the crime,  
10 and that's what happened here.

11 Defendant Chiquita well understood that. The  
12 company's outside counsel made sure of it. On September 3,  
13 2003, outside counsel advised the company in writing that it  
14 was acting at its peril and risked criminal prosecution for  
15 the continued payments. In a memorandum sent to the  
16 company, outside counsel wrote that Department of Justice  
17 officials, quote, "have unwilling to give assurances or  
18 guarantees of non-prosecution," close quote.

19 One final point here about the offense conduct.  
20 The terrorism statutes do not distinguish among listed  
21 foreign terrorist organizations or specially-designated  
22 global terrorists as to their relative criminality or their  
23 relative threat to the national security interests of the  
24 United States. Our law criminalize payments to the ACU,  
25 just as they do payments to Hamas, Hizballah, and al-Qaeda.



1 And, of course, it is no comfort to the victims of the AUC's  
2 violence that Defendant Chiquita paid a terrorist  
3 organization that may be less well known than the others  
4 I've just named.

5 Turning to the plea agreement, Your Honor. Under  
6 the plea agreement, Defendant Chiquita is required to pay a  
7 \$25 million criminal fine to the Court. The fine is to be  
8 paid in annual installments of \$5 million plus post-judgment  
9 interest. It's our understanding that the company paid the  
10 first installment this morning.

11 The plea agreement also requires Defendant  
12 Chiquita to be placed on five years' probation. One of the  
13 required terms of probation is for the company to implement  
14 and maintain an effective compliance and ethics program to  
15 ensure that this criminal conduct never occurs again.

16 Defendant Chiquita was also required to provide  
17 cooperation to the United States in the on-going  
18 investigation into the criminal payments. The United States  
19 gave serious consideration to bringing additional charges in  
20 this case. Defendant Chiquita provided substantial  
21 cooperation post-plea in that regard. Indeed, the United  
22 States consider critical evidence and information that the  
23 company provided post-plea in making its determination not  
24 to bring additional charges in this matter. This  
25 substantial post-plea cooperation came on top of the

1 company's significant pre-plea efforts to assist this  
2 investigation.

3 THE COURT: And I take it the company waived  
4 attorney/client privilege and did other things that were  
5 helpful to the investigation of the individuals?

6 MR. MALIS: Let me answer the Court's question in  
7 this way, if I may.

8 THE COURT: Okay.

9 MR. MALIS: The plea agreement makes plain that  
10 the company waived attorney/client privilege and work  
11 product protection through the period March 2004, that is,  
12 covering the period while the company was making the  
13 payments.

14 THE COURT: Right.

15 MR. MALIS: I can address the Court and say that  
16 the company provided significant cooperation post-plea  
17 pursuant to that precise provision in the cooperation  
18 agreement.

19 THE COURT: And they get some credit for that.

20 MR. MALIS: Indeed, they do, and that's why we  
21 acknowledge that here today, and that's one of the factors  
22 that the government considered when ultimately striking this  
23 deal with the company.

24 Your Honor, the United States recommends that the  
25 Court accept the parties' plea agreement. Although

1 important differences obviously remain between the United  
2 States and Defendant Chiquita about how to view certain  
3 admitted facts, these differences should not deter the Court  
4 from approving the plea agreement. The company has admitted  
5 the facts in the factual proffer, and it has acknowledged  
6 that under those facts it has committed a very serious  
7 crime. We have a major American corporation admitting  
8 funding terrorism.

9           It is also important to note that many corporate  
10 cases end with a financial penalty, but without a criminal  
11 conviction. Many corporate cases are resolved with deferred  
12 prosecution agreements. The Court is not being asked to  
13 approve a deferred prosecution agreement. This agreement  
14 leaves the company with a criminal conviction, a very  
15 serious one, and with whatever collateral consequences that  
16 may case.

17           The \$25 million criminal fine represents a  
18 substantial penalty here. If accepted, it would be the  
19 largest financial penalty ever imposed under the Global  
20 terrorism sanctions regulations, the regulations at issue  
21 here.

22           Finally, Your Honor, this plea agreement brings to  
23 a close a lengthy criminal investigation that has lasted  
24 several years, and thoroughly probed conduct here and in  
25 Colombia. For all these reasons, the United States

1 respectfully recommends that the Court approve the plea  
2 agreement and sentence Defendant Chiquita accordingly.

3 THE COURT: Thank you, Mr. Malis.

4 MR. MALIS: Thank you, Your Honor.

5 THE COURT: Mr. Holder.

6 MR. HOLDER: May it please the Court.

7 Let me just say that the company does not, through  
8 the remarks I'm about to make, try to minimize its role in  
9 the matter that brought us here today, or in any way give an  
10 indication to the Court that does anything other than accept  
11 responsibility for its actions.

12 I think, as the Court asked, and I think the  
13 response was not really an adequate one, the company has  
14 cooperated, I think, in an extraordinary way - waiving the  
15 attorney/client privilege, making its lawyers available. I  
16 sat through seven four-hour sessions with the lead lawyer  
17 for the company, at which time he was asked a variety of  
18 questions, every one of which I think he answered, except  
19 those that went beyond the privilege waiver time. If you  
20 think about that, 28 hours - 28 hours of our chief lawyer  
21 being questioned and answering those questions.

22 However, I think that certain things said by Mr.  
23 Malis are either unfair, incorrect, or draw inappropriate  
24 inferences. Frankly, I don't think they are worthy of the  
25 office that he represents.

1           The plea and the factual proffer were carefully  
2 worked out. The government's sentencing memorandum and Mr.  
3 Malis' comments this morning, I believe, are not in the  
4 spirit that led to that plea agreement, and as a result I  
5 believe we have to respond, not to everything with which we  
6 disagree, but just to those things that I think are most  
7 worthy of comment.

8           First and foremost, and I think this has to be  
9 made clear, Chiquita was extorted. That is why the payments  
10 began, that is why the payments continued. This was not a  
11 business decision. No one at Chiquita decided: "Do you  
12 know what, let's just try to come up with a way in which we  
13 can stay in this country, make these payments. This is a  
14 profitable center for us."

15           The payments were made because the company was  
16 extorted. The company faced real threats. Those threats  
17 were expressed by the leader of the AUC, and they were  
18 consistent with the actions that lead to the deaths of two  
19 company employees on two separate occasions before the AUC  
20 took over. The government, as you look through its  
21 sentencing memorandum, and even in the comments that Mr.  
22 Malis made today, I think almost concedes that in some way,  
23 that the company was a victim of extortion, but cannot bring  
24 itself to utter the "e" word, but extortion is really what  
25 this was all about.

1           The company had to pay, as Mr. Malis says, over 15  
2 years a variety of terrorist groups because those were the  
3 groups that controlled the areas in which the company  
4 operated. The government of Colombia did not control those  
5 areas. The company had no choice. The notion that the  
6 company had, as Mr. Malis indicated, a well established  
7 relationship with the AUC, well, THAT'S like saying that  
8 people in North Jersey had a well established relationship  
9 with Tony Soprano. It's all the same thing. It's all about  
10 extortion and force.

11           The government makes much of the fact, in both its  
12 statements today and in its sentencing memorandum, about the  
13 length of the payments, the time period. The government  
14 says that the payments were paid even after they were  
15 discussed at a board meeting in September of 2000. This is  
16 on page three. Well, one thing that is never -- that seems  
17 to kind of get lost here is that the payments at the time,  
18 at that time, were not illegal. The payment prior to 2001  
19 were not illegal. The government skips over that fact, it  
20 seems to me, entirely too much. Everything that happened  
21 before September of 2001 did not violate the law of the  
22 United States. Everything that Mr. Malis talks about before  
23 that is interesting but ultimately not relevant to that  
24 which brought us here today, or the reason why Chiquita  
25 plead guilty.

1 On page six of the sentencing memoranda, the  
2 government says Chiquita never reported payments before the  
3 April '04 meeting. Well, the company only found out about  
4 the payments two months before, did a bit of research to  
5 find out what was going on, and as soon as they possibly  
6 could, got into the Justice Department and, in fact, did

7 report the payments. Again, payments before September 1st  
8 were not illegal under U.S. or Colombian law.

9 Much is made about the fact that outside counsel  
10 said the payments have to stop, stop the payment. Well,  
11 what you have not heard, Your Honor, is what that same  
12 lawyer who went through those 28 hours of debriefing, what

13 you have not heard is what he said in the grand jury. He  
14 said that he was not shocked that the company decided to  
15 continue the payments.

16 I think also I'm disturbed by the fact that the  
17 government selectively quotes from the memo prepared by  
18 outside counsel on September 8, 2003, where lawyers know the  
19 payments are continuing, the lawyers who prepared this memo,  
20 and they discussed legal defenses that are not raised, are  
21 not discussed by Mr. Malis here, and at no point in that  
22 memo is there an indicated that the lawyers say that the  
23 payments have to stop.

24 Now, let's talk about that April 24th meeting.  
25 The government would have you believe in its memorandum and

1 comments today that it was crystal clear that the company  
2 was told that the payments had to stop. Well, what you did  
3 not hear is that Mr. Chernoff (ph. sp.) said --  
4 THE COURT: He didn't go that far. The government  
5 said the payments were illegal.

6 MR. HOLDER: Well, Your Honor --

7 THE COURT: He didn't make the extra step there, I

8 don't think, from what I heard him say.

9 MR. HOLDER: Well, as I look at the memorandum --

10 THE COURT: Maybe he did in the memo.

11 MR. HOLDER: It seems to me that they said

12 payments had to stop. Chernoff said, "This is a heavier

13 meeting than I expected." Future payments were a  
14 complicated issue.

15 The government that it was going to get back to  
16 the company. No real conduct had been for a period of five  
17 months. An undercover operation was talked about between  
18 the parties up until December of 2003.

19 In August of 2003, the then Deputy Attorney  
20 General said that the company had done the right thing by  
21 coming forward and was not a target or subject of an  
22 investigation.

23 In September of 2003, a government prosecutor was  
24 asked by that same lead lawyer for the company, asked did  
25 the government want the payments to stop. They reply was



1 not "yes," but I'll stand on what Mr. Chernoff said. A  
2 simple "yes, stop the payments," could have been made at  
3 that point, could have been made on April 24th, was not.

4 We have refrained from saying this before, but,  
5 Your Honor, I will tell you why we believe this was so. The  
6 government did not want to say "stop" explicitly and then

7 have blood on its hands if someone was, in fact, killed. It  
8 couldn't say "continue" because it did not want to hurt its  
9 case, and so it looked for what I considered to be a middle  
10 position.

11 In the sentencing memorandum, the government says  
12 that it's not in a position of providing advice. The

13 government doesn't provide advice. This, to me, it seems,  
14 is worrisome. If a company came in and said that they were  
15 paying al-Qaeda, would the government not give advice or not  
16 take immediate action of some sort?

17 As I told these gentlemen in a meeting that we  
18 had, I think, early on in this process, if I as Deputy  
19 Attorney General, a post I was honored to hold, had heard  
20 that the government had the concerns that they expressed in  
21 this very important area, national security, and they  
22 decided not to say that this conduct had to stop, or took  
23 immediate action, heads would have rolled. It seems to me  
24 that the government, say it's not in the business of giving  
25 advice, but if this is as important as it says it was, it

1 needed to do something - either give the advice, tell the  
2 company to stop, or take immediate action to make those  
3 activities stop, and it did none of that.

4 When did Chiquita know of the designation? Here,  
5 I believe again, the government is being a little too cute,  
6 a little too crafty, and this is not what you would expect

7 to hear from the United States. It's not what you would  
8 expect to hear from a good prosecutor.

9 If you look at the sentencing memorandum, there's  
10 an indication -- the quote is, "The Defendant Chiquita had  
11 information," and then it talks about the fact that public  
12 media -- it's on page seven of the sentencing memorandum --

13 the public media was out there. There's no proof that  
14 anybody that the company was aware of the fact of the  
15 designation. If the government had that proof, that fact  
16 certainly would have been something we would have heard  
17 today, and certainly something you would have seen in  
18 sentencing memoranda. The fact is that although that  
19 information did appear in the public media, there is no  
20 proof - there is no proof that anybody in the company ever  
21 had that information.

22 On page 13 of the sentencing memorandum -- I will  
23 call this the infamous page 13 -- it talks about financial  
24 support to the AUC. Again, Your Honor, that, it seems to  
25 me, is simply an unbelievable thing. This was simply

1 extortion.

2 A staggering loss of life is described. There was  
3 a staggering loss of life. What is not mentioned is that  
4 among the people who were killed as a result of terrorists  
5 who control that area were people who worked for the  
6 company. The company, quote, "funded terrorism." I would

7 agree with that. Yes, in the same way that an extortion  
8 victim funds the mafia. The money that is extorted from the  
9 company and goes to the AUC is not something that was  
10 willingly given, it was given at the barrel of a gun and  
11 threats.

12 On page 13 again, that Chiquita's motive is  
13 irrelevant. That's just not legally true, and it's a prime  
14 reason why the government has substantial risk had this case  
15 gone to trial.

16 We've heard a lot today about \$1.7 million going  
17 to the AUC. Well, that is true, but, again, that's a little  
18 -- that's almost -- that's a little deceptive. The reality  
19 is that \$825,000 went to the AUC after the time period in  
20 which the money became illegal, after the designation. So  
21 the time -- the money that ought to be talked about is not  
22 \$1.7, but \$825,000. This, to me, seems a little too typical  
23 of a shading that has happened here, both in the sentencing  
24 memorandum and the comments that we heard today.

25 This motion of withdrawing from Colombia,

1 mentioned on page 16 and again today, would the 4,000  
2 employees that Chiquita had in Colombia be better off -- are  
3 they better off now, in fact, that the company has  
4 withdrawn? Given the company's strong labor record around  
5 the world, and it's strong environmental record around the  
6 world, are the people now better off?

7           You know, in the end, Your Honor, it seems to me  
8 it's an easy thing to sit in the comfort of your office in  
9 Washington, D.C., and with the benefit of hindsight and tell  
10 the world how easy the choices were.

11           The company does not say that it was legally  
12 correct. That, among other reasons, is why it entered the  
13 plea of guilty here today. But Mr. Malis' inability to see  
14 that this was a difficult decision, a moral decision,  
15 concerns me. It concerns me a great deal. Great power is  
16 given to prosecutors, and the single-minded focus of some on  
17 the prosecution team to get this company, without  
18 consideration of what I believe are rather obvious nuances,  
19 is alarming.

20           In the end, we stand by our plea with these  
21 corrections as to the government's statements and ask the  
22 Court to impose the agreed upon sentence.

23           Thank you, Your Honor.

24           THE COURT: All right, I'll give you a chance, Mr.  
25 Malis, if you want to say anything further.

1 MR. MALIS: I am not going to respond to what I  
2 view as the ad hominine attacks on this prosecutor. I stand  
3 before the Court as a representative of the United States,  
4 and on behalf of the United States. The United States does  
5 not retract one word from its sentencing memorandum or the  
6 allocution that we provided to the Court this morning.

7 What I would like to simply remind counsel and the  
8 defendant, Chiquita, is that Chiquita did not make, one, or  
9 two, or three payments in response to a demand that was made  
10 in 1997. No doubt in 1977 this was a horrible situation for  
11 the company to face when the AUC said, "Pay this money or  
12 else." We don't shy away from that. That's part of the  
13 factual assertion, and the factual proffer, and in the  
14 criminal information.

15 What makes this conduct so morally repugnant is  
16 that the company went forward month after month, year after  
17 year, to pay the same terrorists. It did so knowing full  
18 well that while its farms may have been protected, and while  
19 its workers may have been protected while they literally  
20 were on those farms. Chiquita was paying money to buy the  
21 bullets that killed innocent Colombians off of those farms.  
22 A decision to engage in a course of conduct over years for  
23 an individual would fail to make out any duress claim or any  
24 extortion claim. For a multinational corporation with  
25 choices about where to do business in the world, which

1 markets to enter, which markets to exit, as Chiquita did  
2 throughout this time period -- it made business choices  
3 about withdrawing from Panama, for example, later purchasing  
4 farms in other countries, in other places in the world --  
5 for this corporation to stand before the Court and say it  
6 had no choice but to be, quote, a "victim" of extortion for  
7 years while it reaped the profits of those Colombian  
8 operations, it does not stand any legitimate scrutiny. I  
9 understand that that's the company's position and it's the  
10 position the company has maintained from day one. It does  
11 not withstand any scrutiny.

12 Nevertheless, Your Honor, we believe that this  
13 plea agreement is in the best interest obviously of both  
14 parties or we wouldn't have a plea agreement, and we believe  
15 that the Court's acceptance of this plea agreement in  
16 entering judgment on Defendant Chiquita is the appropriate  
17 result here.

18 Thank you.

19 THE COURT: All right. Well, I will accept the  
20 parties' written plea agreement, and I will sentence  
21 Chiquita in accordance with the agreement. I agree with the  
22 parties, that the plea agreement is a fair resolution of the  
23 company's criminal culpability. It gives me some pause that  
24 no individuals are held accountable, but that's really  
25 beyond the matters that this Court can resolve. The Court

1 resolves the question before it, which is the company's  
2 culpability for the crime.

3           Whether or not the characterization given by Mr.  
4 Holder, that it started as extortion and remained extortion,  
5 is correct, the company admits and Mr. Holder admits it was  
6 criminal from the time that the statutes passed, and

7 certainly the company acknowledges, once the terrorist  
8 organization went on the list in 2001 there's some  
9 dispute whether some people in the company knew in 2002,  
10 certainly they all knew by 2003, and they continued the  
11 payments. Clearly, the law makes the company liable  
12 criminally from that point.

13           I agree with Mr. Holder, that there is some risk  
14 associated with trial by jury to both sides. The risk to  
15 the company, obviously, is that I would impose, after the  
16 trial and conviction, a criminal fine of \$98 million rather  
17 than \$25 million. Obviously the risk to the United States  
18 is that a jury could decide that under these unique  
19 circumstances that a criminal conviction was not warranted.  
20 So as in all plea agreements, I suppose there is a  
21 compromise, and I find that the public interest supports  
22 settling this matter and putting it behind us with the  
23 company's admission that what it did was illegal. The  
24 company's cooperation in the investigation, which it clearly  
25 has done, and I have been impressed during the numerous

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1 chambers' conferences we've had with both Mr. Malis and Mr.  
2 Holder, in the cooperative way that this matter has  
3 proceeded to this date.

4 Pursuant to the Sentencing Reform Act of 1984,  
5 it's the judgment of the Court that the defendant  
6 corporation Chiquita Brands International, Incorporated, is

7 hereby placed on probation for a period of five years. The  
8 corporation shall abide by the general conditions of  
9 supervision adopted by the Probation Office and the  
10 following special conditions.

11 One, the corporation shall implement and maintain  
12 an effective compliance and ethics program that comports  
13 with the criteria set forth in U.S. Sentencing Guidelines,  
14 Section 8(b)(2.1), including but not limited to:

15 A. Maintaining a permanent compliance and ethics  
16 office, and a permanent educational training program  
17 relating to federal laws governing payments to, transactions  
18 involving, and other dealings with individuals, entities, or  
19 countries designated by the United States Government as  
20 foreign terrorist organizations, specially-designated global  
21 terrorists, specially-designated narcotics traffickers,  
22 and/or countries supporting international terrorism, and any  
23 other such federally designated individuals, entities or  
24 countries.

25 B. Ensuring that a specific individual remains



1 assigned with overall responsibility for the compliance and  
2 ethics program, and;

3 C. Ensuring that the specific individual reports  
4 directly to the chief executive officer and to the board of  
5 directors of Chiquita Brands International, Incorporated, no  
6 less frequently than on an annual basis on the effectiveness  
7 of the compliance and ethics program.

8 The second special condition is: The corporation  
9 shall provide the probation office with income tax returns,  
10 authorization for release of credit information, and any  
11 other business or financial information of which it has a  
12 control or interest.

13 It is ordered that the corporation pay a special  
14 assessment of \$400, required to be imposed by statute, due  
15 immediately.

16 It is also ordered that the corporation pay a fine  
17 in the amount of \$25 million on Count One. Payment of the  
18 fine shall be according to the following schedule: \$5  
19 million payable upon entry of judgment today; \$5 million  
20 plus post-judgment interest computed pursuant to 18 U.S.C.  
21 Section 3612(F)(2), payable on the anniversary date of the  
22 entry and judgment until the full judgment is satisfied.

23 The Probation Office shall release the presentence  
24 investigation report to all appropriate agencies in order to  
25 execute the sentence of the Court.

1           The defendant has the right to appeal the sentence  
2 imposed by this Court. If the defendant chooses to appeal,  
3 the defendant must do so within 10 days after the Court  
4 enters judgment.

5           Anything further we need to do today, counsel?

6           MR. HOLDER: Nothing for the defense, Your Honor.

7           MR. MALIS: Nothing for the government. Thank

8 you.

9           THE COURT: Thank you very much, counsel.

10           (Whereupon, the proceedings in the above-entitled  
11 matter were adjourned.)

12

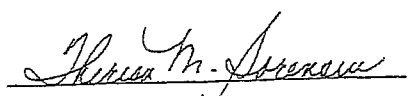
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14           CERTIFICATE OF REPORTER

15           I certify that the foregoing is a  
16 correct transcript from the record of proceedings in the  
17 above-entitled matter.

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19



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Theresa M. Sorensen, CVR-CM

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Official Court Reporter

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