Federal Court  Cour fédérale

Date: 20260205

Docket: T-503-17

Citation: 2026 FC 159

Ottawa, Ontario, February 5, 2026

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

MINISTER OF CITIZENSHIP AND IMMIGRATION AND MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS

Plaintiffs

and

JORGE VINICIO SOSA ORANTES

Defendant

JUDGMENT AND REASONS

I. Introduction

[1] By this action, the Plaintiffs, the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness, together "the Ministers," seek two declarations against the Defendant, Jorge Vinicio Sosa Orantes [Sosa], under various provisions of the *Citizenship Act*, RSC 1985, c C-29 [*Citizenship Act*].

[2] The Ministers seek a declaration that Mr Sosa, a former commissioned officer and member of the Kaibiles, an elite special operations force of the Guatemalan Army, obtained permanent residence and Canadian citizenship by "false representation or fraud or by knowingly concealing material circumstances." They claim that Mr Sosa did not disclose his military past throughout the Canadian immigration process, from the time he applied for permanent resident status in 1985, to entering Canada and becoming a landed immigrant in 1987, and to becoming a Canadian citizen in 1992, which had the effect of foreclosing or averting further inquiries.

[3] The Ministers also seek a declaration that Mr Sosa is inadmissible to Canada on grounds of violating human or international rights for committing an act outside Canada that constitutes a crime against humanity. This is based primarily on Mr Sosa's alleged involvement in the horrific murder of men, women and children by the Kaibiles that took place in the village of Las Dos Erres, Guatemala in December 1982 [Las Dos Erres massacre].

[4] It should be noted here that although Mr Sosa defended the action and was involved in all pre-trial stages of the proceeding, he elected not participate at the trial, other than to provide brief written closing submissions.

[5] For reasons set out in detail below, I conclude that the declarations sought by the Ministers should be granted.

II. Critical Findings

[6] Given the length of these reasons, I consider it useful to begin by summarizing my critical findings.

A. *There was a widespread and systematic attack perpetrated by the Guatemalan military against the civilian population in the early 1980s*

[7] It is widely accepted that an internal armed conflict took place in Guatemala from the early 1960s to 1996 between the Guatemalan army and guerilla and insurgent groups. Compelling and undeniable evidence was adduced at trial establishes that the conflict devolved over time into a widespread and systematic attack by the Guatemalan military against civilian populations, reaching a crescendo in the early 1980s. The Las Dos Erres massacre, described below, is but one of many atrocities committed during this period.

B. *The Las Dos Erres Massacre*

[8] Late in the evening of December 6, 1982, a special patrol unit of the Guatemalan army comprised of elite Kaibiles fighters and a platoon of 40 soldiers, disguised as guerilla fighters, were deployed to Las Dos Erres, a small village in the municipality of La Libertad in the department of Petén, for the purported purpose of recovering rifles that were lost during an ambush by guerillas a few weeks earlier.

[9] Mr Sosa was an instructor at the Kaibiles school and a sub-lieutenant of the unit. Mr Sosa denies being involved in the military operation at Las Dos Erres because he was performing his

duty as a liaison officer of distributing sports equipment in village schools during that period. As a witness testified, this is absurd. The uncontradicted documentary and oral evidence clearly proves that Mr Sosa was one of the officers in command of the operation at Las Dos Erres.

[10] When the patrol unit arrived at Las Dos Erres in the early morning of December 7, the villagers were asleep. The soldiers kicked open the doors of the shanty houses and dragged the residents from their homes. The women and children were taken to the village church, while the men were segregated at the local school. During their confinement, men and women were interrogated and beaten.

[11] While the soldiers searched in vain for the missing rifles, rumours circulated that some women and young girls had been raped. At around 2:00 p.m., the soldiers were informed that the mission had changed, and they were ordered by their superiors to kill everyone in the village. The soldiers began to bring people to the village's dry water well, starting with infants, followed by women and children.

[12] What followed was the methodical and horrendous murder of civilians. The first victim was a two- or three-month-old baby who was thrown alive into the well. Young children were held by their feet and bashed against walls or trees.

C. *Mr Sosa directly committed murder of villagers*

[13] When the well was almost full, some people who were still alive tried to lift themselves up to get out, while others called for help or prayed to God. Mr Sosa, who had been supervising

the killings, fired his gun into the well to silence a man who was pleading for a quick death. I find that by shooting in the direction of the man, Mr Sosa caused and intended to cause the death of the man or, at the very least, to inflict grievous bodily harm that he knew was likely to result in his death.

[14] The uncontradicted evidence is that Mr Sosa threw a grenade into the well while persons were alive inside. After the grenade exploded, the screams of the persons in the well went silent. I find that, by throwing the grenade in the well, Mr Sosa intended to inflict grievous bodily harm that he knew was likely to result in death of the persons who were still alive in the well. I find that by this act, Mr Sosa committed the act of murder of those persons.

D. *Mr Sosa abetted the murder of villagers by his subordinates*

[15] I find that as one of the officers in command of the operation, Mr Sosa, through his words and actions, encouraged and provided moral support to his subordinates to commit the systemic murders of innocent civilians at Las Dos Erres. At the beginning of the massacre, Mr Sosa ordered a soldier who reported to him to throw a three-year-old boy into the well, saying that it was “a job for men.” A woman in her thirties was shot in the back of her head, while other women and the elderly were hit in the back of the head with a sledgehammer. A girl around 16 years of age was taken away by a Kaibil officer, who raped her and then killed her. All the victims were thrown into the well. All the while, Mr Sosa ordered soldiers to bring more people to the well.

E. *Mr Sosa's acts were committed as part of the broader attack against civilians at or around Las Dos Erres*

[16] Later that day, when the well was being covered up, screams and cries of victims could still be heard. They were left to die a horrible death. Those who did not fit in the well were kept alive in the church and in the school. Women were grabbed by the hair, kicked and punched. They were then taken outside to be shot and killed. Men and teen boys were tortured and hanged from trees. Members of the patrol unit laughed as if nothing had happened. That night, they celebrated having killed everyone.

[17] On the morning of December 8, as the patrol unit was preparing to leave, some unsuspecting people arrived in the hamlet. With the well already full, they were taken to a location half an hour away and executed. Two teenage girls who had been kept alive by the patrol unit were raped repeatedly and later strangled to death. Only two young boys, one with uncommon light-coloured eyes, are believed to have survived. When the patrol unit left Las Dos Erres, the village was effectively wiped off the face of the earth.

F. *Mr Sosa's Asylum Claims*

[18] In May 1985, Mr Sosa applied for asylum in the United States of America [U.S.]. In his U.S. application form, Mr Sosa disclosed his military past in some detail, which was central to his asylum claim. However, he failed to disclose his participation at Las Dos Erres. The U.S. asylum claim was rejected in 1985, and Mr Sosa was ordered to leave the country. Two years

later, in 1987, Mr Sosa and his family, while still in the U.S. and facing deportation, made a refugee claim to Canada.

[19] Mr Sosa claims that when he applied for permanent residence in Canada, he answered all the questions contained in the application form truthfully and accurately. He also claims that the subject of his military service was discussed during multiple interviews with Canadian immigration officials. I find his claims, which are not in evidence before me, to be patently false.

[20] The evidence at trial clearly establishes that Mr Sosa used subterfuge to obtain permanent residence in Canada. There is credible and reliable evidence that in his application form, Mr Sosa fabricated his education and work history, concealed his military past and manufactured an asylum claim out of whole cloth. I find that he provided false information with the clear intent to mislead Canadian immigration officials and to foreclose and avert any further inquiries. As a result, officials were unable to make a fully informed decision as to Mr Sosa's eligibility for refugee protection and admissibility to Canada.

[21] It is agreed by the parties that Mr Sosa obtained his Canadian citizenship on the basis of his Canadian permanent resident status. Pursuant to section 10.2 of the *Citizenship Act*, Mr Sosa is presumed to have obtained his citizenship by false representation.

III. Mr Sosa's Participation in the Proceeding

[22] At the time Mr Sosa was served with the Statement of Claim, he was incarcerated in the U.S. serving a 10-year sentence for criminal immigration fraud. Mr Sosa filed a Statement of Defence denying the Ministers' allegations. Both parties later filed amended pleadings.

[23] During the pleadings and discovery phases of the case, Mr Sosa represented himself and at times was assisted by counsel.

[24] Several case management conferences were held with the parties over the years. During pre-trial conferences held in the fall of 2023, Mr Sosa was represented by two different lawyers, both of whom withdrew shortly thereafter.

[25] On January 22, 2024, the parties were offered trial dates in September 2024. After a back-and-forth between the parties, an Order was issued fixing the trial dates to commence on November 4, 2024.

[26] On April 10, 2024, Mr Sosa appointed a new lawyer. Mr Sosa informally requested that the trial be postponed allowing his new counsel sufficient time to familiarize herself with the case. His request was denied given that the parties had previously certified their trial readiness and the late retention of counsel was not considered to be an exceptional or unforeseen circumstance.

[27] On September 3, 2024, Mr Sosa filed a Notice of Intention to Act in Person. In an accompanying letter, Mr Sosa requested once again that the trial be postponed. He wrote that he had recently been diagnosed with diverticulitis and needed time to recover from the disease and to retain new counsel. Mr Sosa was directed to bring a motion in writing to request the relief, which he did on September 20, 2024.

[28] By Order dated October 2, 2024, Mr Sosa's motion was dismissed as there was insufficient medical evidence to conclude that he was unable to appear at the trial. No appeal was taken from the Order.

[29] On October 15, 2024, Mr Sosa submitted a letter describing his current health status. Attached to his letter was a note from mental health therapist dated July 16, 2024 and two prescriptions written in Spanish. Mr Sosa explained that he was seeking specialized treatment for his diverticulitis "outside of Alberta" and that he had been attending a mental health clinic since June due to a diagnosis of post-traumatic stress disorder. As there was nothing to suggest that Mr Sosa's medical condition could not be accommodated during the trial, he was put on notice that the trial would proceed as scheduled.

[30] On October 23, 2024, Mr Sosa submitted a further letter to the Court [October 23 Letter] which reads in part as follows.

> Article 11(c) of the Canadian Charter of Rights and Freedoms states that no person can be compelled to testify at their own trial, which implies the right against self-incrimination. This principle is fundamental to criminal justice in Canada.
>
> Reasons for Not Having Witnesses

> Right Not to Testify: The defense may argue that presenting witnesses would expose the accused to the possibility of self-incrimination. If the accused has to testify or if their witnesses do, this could affect his right to remain silent.
>
> …
>
> …
>
> In summary, the decision not to present witnesses in federal court is based on respect for the accused's right not to testify and the burden of proof resting with the Plaintiffs. This is essential to ensure a fair and equitable trial, thereby protecting individual rights within the framework of the Canadian legal system.

[31] On November 1, 2024, Mr Sosa submitted a letter advising that further tests had been conducted, which resulted in a diagnosis of prostatitis. He wrote that the "unexpected situation has severely affected [his] health and prevents [him] from taking any actions that could worsen [his] condition."

[32] By direction dated November 1, 2024, Mr Sosa was advised that the Court would not entertain his last-minute attempt to delay the trial. He was put on notice, once again, that the trial would proceed as scheduled. Later that day, Mr Sosa submitted a second letter [Pre-Hearing Letter] in which he denies providing false information to Canadian immigration officials and disputes the probative value of the evidence the Ministers intends to present at trial.

[33] When the trial started at the appointed time on November 4, 2024, Mr Sosa did not attend in person or attempt to join by videoconference. The Registry was unable to reach him by phone.

[34] The presence of both parties is not an absolute requirement when adjudicating a matter. As outlined in *Laponder v Birkich*, 2017 BCSC 1888, the decision to proceed in the absence of a party depends on various factors including pre-existing delays, the impact on the parties, and the reason for the absence.

[35] In terms of the first factor, I found that Mr Sosa had engaged in calculated and deliberate tactics to frustrate and delay the hearing of the action. He went through two lawyers in a matter of months when the Court was canvassing the parties regarding their availability for trial. Moreover, it was only after Mr Sosa was denied a postponement based on his retention of a third lawyer that he came up with dubious medical excuses to try to force the Court's hand. As for the second factor, I found that any further delay in this proceeding would work a serious prejudice to the Ministers. The advanced age of some of the witnesses, the substantial passage of time between the events at issue and the date of the trial, and a strong public interest in the timely conclusion of this litigation militated strongly against postponing the trial. Finally, Mr Sosa provided in no uncertain terms the reason for his absence. He made a wilful, informed, and deliberate decision not to attend the trial.

[36] There was no reason to expect that Mr Sosa would attend at another trial date if a short postponement were granted. Given that all reasonable allowances had been made for Mr Sosa to represent himself, I concluded that the trial should proceed without his participation.

[37] Over the course of the 13-day trial, Mr Sosa was invited daily by the Registry to join the trial by videoconference, but he never responded. I also directed that Mr Sosa be provided with daily transcripts to ensure he was kept apprised of developments at the trial.

[38] Mr Sosa had a full opportunity to participate remotely at the trial, to cross-examine the Ministers' witnesses and to provide whatever evidence he wished to adduce, but he chose not to. That was of course his choice, but he must accept the consequences of the decision he made. Because Mr Sosa did not participate at the trial, I did not have the benefit of observing the Ministers' witnesses under cross-examination. He left the Ministers' evidence completely unchallenged. I was also deprived of hearing Mr Sosa's testimony and assessing his credibility in light of the full picture. While nothing can be inferred from the fact that Mr Sosa did not testify when considered in isolation, his failure to testify permitted me to draw inferences from the evidence before me, if that evidence is unexplained or qualified by evidence adduced through the Ministers' witnesses.

[39] I pause here to respond to Mr Sosa's claim in his October 23 Letter that he has a right not to testify as it would violate his right against self-incrimination under subsection 11(c) of the *Canadian Charter of Rights and Freedoms*, being Part I of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK), 1982*, c 11 [*Charter*]. Section 11 of the *Charter* provides that a "person charged with an offence" cannot be compelled to be a witness "in proceedings against that person in respect of the offence." However, Mr Sosa in this case is not a "person charged with an offence" within the meaning of section 11.

[40] A citizenship revocation trial is not a criminal proceeding, but rather a civil one: *Canada (Minister of Citizenship and Immigration) v Dueck (TD)*, 1997 CanLII 6389 (FC), [1998] 2 FC 614. As stated in *Benner v Canada (Secretary of State)*, 1997 CanLII 376 (SCC), [1997] 1 SCR 358, at para 72, Canadian citizenship is a "valuable privilege," and the stakes are undoubtedly high for Mr Sosa. Nevertheless, it must be kept in mind that the Ministers only seek to deprive Mr Sosa of his citizenship through this proceeding, and not his liberty. Thus, his interests do not weigh as heavily in the balance as they would in a criminal proceeding: *Canada (Minister of Citizenship and Immigration) v Tobiass*, [1997] 3 SCR 391 at para 108, 1997 CanLII 322 (SCC), [*Tobiass*]. The question for the Court to determine for the revocation declaration is only whether he obtained citizenship by false representation, fraud or knowingly concealing material circumstances.

[41] Similar considerations apply to the Inadmissibility Declaration the Ministers are seeking. The standard of proof and evidentiary rules are more relaxed than those that apply to a revocation declaration. Although an inadmissibility declaration is a removal order, because of his Convention refugee status, Mr Sosa is a protected person under the pursuant to subsection 10.5(1) of the *Citizenship Act* and paragraph 35(l)(a) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA]. Therefore, before removal of Mr Sosa from Canada could be enforced, he would be the subject of administrative proceedings.

IV. Agreed Statement of Facts

[42] At the outset of the trial, counsel for the Ministers submitted an Agreed Statement of Facts that provides a useful chronology of facts and key events. It reads as follows:

A. Guatemalan internal armed conflict and Las Dos Erres

1. An internal armed conflict persisted in Guatemala between 1962 and 1996. As part of this conflict, Guatemalan state forces conducted counter-insurgency operations against suspected guerrillas and their supporters.

2. In the late 1970s and early 1980s, there was a rise in social movements and new insurgent groups that increased their activity throughout the country. As a result, the armed conflict and the Guatemalan government's counterinsurgency response intensified.

3. On March 23, 1982, there was a coup that led General Rios Montt to seize the position of president of the military junta, and shortly after, president of the republic and commander in chief of the armed forces. General Rios Montt remained in power until August 1983.

4. In the Amended Statement of Defence, Mr Sosa admitted that military operations by the Guatemalan military took place in Las Dos Erres, Guatemala, in December 1982. Mr Sosa denies that he was involved in the operation or had any knowledge of it.

5. Las Dos Erres was a rural settlement in the department of El Petén, Guatemala.

B. Defendant's Guatemalan military training and career

6. Mr Sosa was born in Guatemala City, Guatemala in 1958.

7. Mr Sosa received military education in Guatemala, graduating from the Politecnica military school in the 1970s.

8. Following his military education, Mr Sosa was a member of the Guatemalan military from the 1970s to 1985.

9. The Kaibiles school was a military special operations training center in Guatemala operating between 1974 and the mid-1980s.

10. The Kaibiles military training school (also referred to as Kaibiles School, or Kaibil school) was located in La Pólvora, Melchor de Mencos, in the department of El Petén, Guatemala.

11. From 1981, Mr Sosa was an Instructor and Sub-Lieutenant in the Guatemalan military with the Kaibiles. According to Mr Sosa, he was promoted to Lieutenant in 1983 and in 1984 to commanding officer at the Politecnica military school.

12. The Kaibiles military training school was focused on counter-insurgency training, including but not limited to jungle combat, survival methods, anti-communist indoctrination and psychological warfare techniques. The Kaibiles were considered to be Guatemala's military elite, mainly because the training was very difficult.

13. Individuals who served as part of the Kaibiles School together with Mr Sosa in 1982 included (but were not limited to):

Major Arevalo Lacs
Lieutenant Rivera Martinez
Lieutenant Ramírez Ramos
Lieutenant Rosales Batres
Manuel Pop Sun
Reyes Collin Gualip
Daniel Martinez Mendez
Pedro Pimentel Rios
Cesar Ibanez
Gilberto Jordan
Favio Pinzón
Santos Lopez Alonzo

14. A copy of Mr Sosa's military service curriculum vitae (CV) is attached as Appendix A, and a translation is attached as Appendix B, to this Agreed Statement of Facts. In addition, a copy of Mr Sosa's Certification of Military Service is attached as Appendix C, and a translation is attached as Appendix D.

C. Defendant's 1985 US asylum application

15. Mr Sosa left Guatemala in May 1985.

16. In the spring of 1985, Mr Sosa was in San Francisco in the United States of America (U.S.).

17. Mr Sosa requested asylum from the U.S. His U.S. asylum request was denied in 1985.

D. Defendant's Canadian permanent residence application and citizenship

18. At some time between May 10, 1985 and May 11, 1987, Mr Sosa appeared at the Canadian consulate in San Francisco to request refugee status and Canadian permanent residency.

19. In connection with his Canadian Permanent Residence Application, Mr Sosa was interviewed by a Canadian official at the Canadian Consulate in San Francisco.

20. Subsequent to the interview by a Canadian official, Mr Sosa was issued a Canadian permanent resident visa in May 1988.

21. Mr Sosa entered Canada at Calgary International Airport in May 1988 and was subject to a landing interview.

22. Mr Sosa was granted permanent resident status in Canada under the refugee class.

23. On the basis of his Canadian permanent resident status, Mr Sosa became a Canadian citizen on June 9, 1992.

E. Guatemalan arrest warrants

24. Around 1999 to 2000, Guatemalan authorities laid criminal charges against military personnel alleged to be responsible for the Las Dos Erres massacre, following which arrest warrants were issued.

25. Mr Sosa was among those individuals for whom an arrest warrant was issued.

26. The arrest warrant against Mr Sosa could not be executed because he was no longer in Guatemala.

F. Defendant's US citizenship and US conviction

27. After obtaining his Canadian citizenship, Mr Sosa married a U.S. citizen and took steps to acquire U.S. citizenship.

28. Mr Sosa was granted U.S. citizenship in September 2008.

29. A copy of forms submitted by Mr Sosa to US immigration authorities are attached as Appendix E and Appendix F to this Agreed Statement of Facts.

30. In 2010, the US government discovered that Mr Sosa had committed criminal immigration fraud.

31. In 2010, Mr Sosa was charged with criminal immigration fraud by the U.S.

32. Further to the U.S. charges, Mr Sosa was arrested in Alberta in 2011 and extradited to the U.S. to stand trial.

> 33. The criminal immigration fraud trial was heard by a jury in 2013 before US District Court for the Central District of California, and Mr Sosa was found guilty on all counts. A copy of the Court's verdict in Mr Sosa's US trial is attached as Appendix G to this Agreed Statement of Facts.
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> 34. Mr Sosa was found guilty of making false statements to a Naturalization Examiner and was sentenced to 10 years in prison in a US federal correctional institution.
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> 35. The US Court of Appeals affirmed the conviction in the decision attached as Appendix H.
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> **G. Defendant's Guatemalan birth and citizenship**
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> 36. Mr Sosa was born March 7, 1958, in Guatemala.
>
> 37. Mr Sosa is a Guatemalan citizen. He obtained Guatemalan citizenship by virtue of his birth in Guatemala and remains a Guatemalan citizen to date.
>
> [Footnotes and appendices omitted.]

V. Historical and Ancient Documents

[43] During a trial management conference, the Ministers gave notice of their intention to bring a motion, to be determined in advance of trial, seeking an order pursuant to sections 10.1 and 10.5 of the *Citizenship Act* and sections 23 and 30 of the *Canada Evidence Act*, RSC 1985, c C-5 [CEA] that copies of historical records and ancient documents they intended to rely on at trial [Historical Records] were admissible as evidence and could be filed as exhibits at trial without formal proof of authenticity.

[44] The Historical Records include:

a) The Guatemalan military's plans and manuals, including the Military Plan Victoria 1982, Guatemalan Plan for Security and Development, and the Guatemalan military's Manual of Counter-Subversive Warfare;

b) General Orders of the Guatemalan military;

c) Other official government records obtained from the Guatemalan Prosecutor's Office, including records of military service for Jorge Vinicio Sosa and other Kaibiles instructors and sub-instructors who are alleged to have participated in the Las Dos Erres massacre;

d) The final reports of the Commission for Historical Clarification (*Comisión para el Esclarecimiento Histórico*), hereinafter referred to as the "Truth Commission," including Volume I, *Memory of Silence, Report of the Commission for Historical Clarification Conclusions and Recommendations* and the Truth Commission's case study on the Las Dos Erres massacre;

e) An agreement entered into by the state of Guatemala before the Inter-American Commission on Human Rights, in which the state of Guatemala accepted state responsibility for the Las Dos Erres massacre;

f) U.S. government records, including declassified secret intelligence documents from the 1980s provided by the Ministers' expert archivist which were obtained from U.S. agencies;

g) Other historical records of the Guatemalan government.

[45] All of the documents, other than the U.S. government records, are in Spanish. Translations were obtained by the Ministers and there is no dispute as to the accuracy of the translated versions.

[46] The Ministers conceded that, if admitted, Mr Sosa would be able to make any arguments he chose to advance concerning the weight that should be afforded to the documents or to rebut the statements contained in the documents.

[47] Mr Sosa consented to the relief requested by the Ministers, thereby obviating the need for the motion. I have set out below my reasons for admitting the documents.

[48] The rationale underlying the admission of historical documents rests on two principles: necessity and reliability: *Canada (Minister of Citizenship and Immigration) v Seifert*, 2006 FC 270 at para 7 [*Seifert*].

[49] The requirement of necessity is satisfied here as the makers of the original Historical Records, which date back decades, are not known. The documents are the only means for the Court to have important evidence and context for the Ministers' claims. They are critical in helping to establish the events that gave rise to what came to be known as the Las Dos Erres massacre and the role of the Kaibiles, the *modus operandi* of the Guatemalan military during the 1980s, Mr Sosa's role in connection with the Kaibiles special patrol, and Mr Sosa's long career in the Guatemalan military.

[50] While Mr Sosa did not dispute the reliability of the Historical Records, his lack of objection was not determinative. The reliability of the information had to be assessed based on the totality of the circumstances.

[51] On the record before me, I am satisfied that the original versions of the Historical Records are not available and the copies produced by the Ministers are reliable such that they are admissible under an exception to the hearsay rule, as demonstrated by the following indicia of reliability. First, the Historical Records are government documents authored by government officials or departments, and many of the documents bear official stamps attesting to their trustworthiness. Second, many of the Historical Records were provided to the Government of Canada directly by the Guatemalan Prosecutor's office in response to an official request. Third, most of the Historical Records have been widely relied on and cited by experts and historians, including in the Truth Commission's report. Fourth, the Historical Records were produced from proper custody and free from circumstances arousing suspicion, as evidenced by affidavits filed by the Ministers at trial. Fifth, no concerns of any forgery or suspicious circumstances regarding Historical Records has been raised.

[52] The Historical Records largely corroborate the live testimony of expert witnesses, who were fluent in Spanish, and who could verify that the information within represents a true record of what the documents purport to be. In *Canada (Minister of Citizenship and Immigration) v Fast*, 2003 FC 1139 at para 36, Justice Denis Pelletier stated that documents relied on by experts are *prima facie* reliable:

> So, as a general rule, it is my view that proof of the reliability of the documents is supplied by the fact that professional historians

> have relied upon them in coming to the conclusions which they have put before the Court. This does not preclude a challenge to particular documents, or classes of documents. Furthermore, the question of weight is always an issue. Consequently, I am prepared to receive archival documents in evidence in proof of their contents where the reliability of the documents for that purpose is asserted, implicitly or explicitly, by a professional historian or other witness whose familiarity with the documents permits them to make such an assertion.

[53] Several of the Historical Records also meet the statutory conditions for admissibility under section 30 of the CEA and are admissible as proof of the truth of their contents. This category of documents was made in the usual and ordinary course of business of the government agency, department or body that produced them. The definition of "business" under the CEA includes documents produced in the usual and ordinary course of governmental activity or operations. They also meet the requirements of the ancient documents rule, at common law, and are presumed to prove themselves: Sopinka, Lederman & Bryant, *The Law of Evidence in Canada*, 4th ed, Markham: LexisNexis Canada Inc at para 18.102; *Sawbridge Band v Canada*, 2004 FC 1721 at para 27. These records are more than 30 years old and, as stated earlier, are produced from proper custody in the absence of circumstances of suspicion. The requirements of the ancient documents rule have been subsumed under the principled exception to the hearsay rule. As a result, these records meet the requirements of necessity and reliability under the principled exception to the hearsay rule. These records do not need to be authenticated as there are no suspicious appearances on the face of the document by erasure, interlineation or otherwise.

[54] The Historical Documents were admitted as *prima facie* truth of the contents. This did not necessarily mean that I took any particular fact asserted therein as having been proved:

Seifert at para 9. It was only at the end of the trial, based on the whole of the evidence, that I was able to make findings of fact relying on the contents of the documents.

VI. The Witnesses

[55] Ten witnesses testified at trial, some in person, some remotely, and some with the aid of Spanish interpreters.

[56] Although there was no cross-examination, the witnesses' evidence was not accepted blindly given the serious nature of the allegations made against Mr Sosa. To promote a balanced and thorough consideration of the evidence, I intervened on occasion to ask questions of witnesses to seek clarification or further elaboration on some matters. I also undertook a careful assessment of their credibility to satisfy myself that the evidence they presented was reliable and trustworthy based on the factors set out in *Foomani c R*, 2023 QCCA 232 at para 73.

A. *Experts*

[57] The Ministers called five experts. The purpose of expert opinion evidence is to assist the trier of fact to understand the circumstances by providing specialized knowledge that an ordinary person would not know.

[58] At the pre-trial, Mr Sosa did not raise any objection to the proposed expert witnesses that could disqualify them from testifying. At trial, the Ministers established that the opinion

evidence satisfied the four factors set out in *R v Mohan*, 1994 CanLII 80 (SCC), [1994] 2 SCR 9 (1) relevance; (2) necessity; (3) absence of an exclusionary rule; and (4) special expertise.

(1) Elizabeth Anne Oglesby

[59] The Ministers called Dr Elizabeth Anne Oglesby, an academic and historian, to provide opinion evidence pertaining to the internal armed conflict in Guatemala between the army and insurgents. Dr Oglesby was qualified as an expert on the historical context of the Guatemalan armed conflict from the 1950s into the 1980s, including the armed conflict itself and the patterns of the Guatemalan military's abuses and human rights violations against the civilian population. She was also qualified to opine on whether the Las Dos Erres massacre fits the broader pattern of military abuses and human rights violations on the civilian population. Her expert report and testimony were focussed on the patterns of violence and human rights abuses by the Guatemalan military against civilians in the early 1980s.

(2) Rodolfo Robles Espinoza

[60] General Rodolfo Robles Espinoza [Robles] served for 37 years in the Peruvian Army and achieved the rank of Major General and is now retired. General Robles described in his report and explained during his testimony the Guatemalan military countersubversive/counterinsurgency strategy, methods, command structure, and operations in the 1980s, including the establishment, command structure and operations of the Kaibiles.

(3) Kate Doyle

[61] Ms Kate Doyle, a senior analyst of U.S. policy in Latin America, was qualified as an expert on human rights and justice in Latin America based on U.S. declassified documents and Guatemalan historical records, particularly concerning the Guatemalan internal armed conflict in the early 1980s, including the event that took place in Las Dos Erres in December of 1982, and as an expert on access to and analysis of political records on the Guatemalan internal armed conflict. Her expert report and testimony present her conclusions about the records under study.

(4) Dr Silvana Turner

[62] Dr Silvana Turner, a forensic anthropologist from the Argentine Forensic Anthropology Team, was qualified as an expert on the archaeological excavation and forensic anthropological analyses of the human remains and other evidence from the exhumation of three different sites in the Las Dos Erres area.

(5) Professor N. Alexander Aizenstatd

[63] Professor N. Alexander Aizenstatd, a practicing lawyer in Guatemala and Professor of international law at Universidad Rafael Landivar, was qualified as an expert on Guatemalan domestic law, including the areas of nationality and citizenship law, amnesty law, international law and criminal law.

B. *Lay Witnesses*

[64] Five lay witnesses were called by the Ministers.

(1) Favio Pinzón Jérez

[65] Mr Favio Pinzón Jérez **[**Pinzón**]** served in the Guatemalan miliary from 1972 to 1990, including as a cook at the Kaibil School. In late 1982, he was part of the Kaibil special patrol involved in the military operations at Las Dos Erres. Mr Pinzón provided firsthand evidence of the circumstances surrounding the Las Dos Erres massacre, including direct evidence about Mr Sosa's personal involvement in the killing of civilians.

(2) Ramiro Osorio Cristales

[66] Mr Ramiro Osorio Cristales [Cristales] was five and a half years old back in December 1982 and is one of only two known survivors of the Las Dos Erres massacre. He testified about the events he and his family experienced when armed forces carried out an attack on his community.

(3) Richard Burke Thornton

[67] Mr Richard Burke Thornton worked as a Visa Officer at the Canadian Consulate General in San Francisco, California from July 1984 to July 1988. He testified about the events surrounding Mr Sosa's application for permanent residence in Canada.

(4) Mr Brian Casey

[68] Mr Casey held the position of Consul and Immigration Program Manager at the Canadian Consulate in San Francisco from August 1987 to the Summer of 1990. He was involved in the processing of Mr Sosa's application for permanent residence and supervised Mr Thornton, who was the junior Visa Officer at the time.

(5) Ryan Christie

[69] Mr Ryan Christie, a functional specialist with the Immigration, Refugees and Citizenship Canada [IRCC] Information Management team, testified about the exhaustive efforts made to locate the paper version of Mr Sosa's permanent residence application form, commonly referred to by its document number "IMM8."

C. *Gilberto Jordan*

[70] In addition to the trial testimony of Mr Pinzón and Mr Cristales, the Ministers seek to rely on the sworn testimony of Mr Gilberto Jordan, a former member of the Kaibiles, who provided evidence in the criminal proceedings before the U.S. District Court against Mr Sosa in connection with the latter's acquisition of U.S. citizenship. Mr Jordan testified about his involvement in the Las Dos Erres massacre, as well as that of Mr Sosa [Jordan Testimony].

[71] The Ministers brought a motion in advance of trial pursuant to paragraph 220(1)(b) of *Federal Courts Rules*, SOR/98-106 [*Rules*], seeking an order that the Jordan Testimony be admissible at trial for the truth of its contents.

[72] In an unreported decision, *Minister of Citizenship and Immigration and Minister of Public Safety and Emergency Preparedness v Jorge Vinicio Sosa Orantes* (September 26, 2024), Ottawa T-503-17 (FC), I granted the Ministers' motion in part. The transcript of the Jordan Testimony was held to be admissible at trial pursuant to section 23 of the CEA, which allows evidence of any proceeding before any court of record in the U.S. to be tendered as an exhibit at trial by "an exemplification or certified copy of the proceeding or record" without any proof of its authenticity. However, the Ministers' request to admit the transcript for the truth of its contents was dismissed as premature given that there is a general reluctance on the part of this Court to determine questions of the admissibility of evidence prior to trial. As indicated in *Ag v Ritvik Holdings Inc*, 1998 CanLII 7434 (FC) at para 18, [1998] FCJ No 254, such orders should be "confined to general questions of admissibility, rather than the admissibility of evidence where the context of the evidence is required to be assessed."

[73] The Ministers renewed their request to admit the Jordan Testimony for the truth of its contents relying on affidavit evidence and in the context of the entirety of the evidence at trial.

[74] There is no question that the Jordan Testimony is hearsay. It is presumptively inadmissible because of the difficulties inherent in testing the reliability of the declarant's statement. In *R v Khelawon*, 2006 SCC 57 at para 35 [*Khelawon*], the Supreme Court of Canada

explained the importance of live testimony, given under oath or affirmation, and the purpose behind the exclusionary rule:

> The general exclusionary rule is a recognition of the difficulty for a trier of fact to assess what weight, if any, is to be given to a statement made by a person who has not been seen or heard, and who has not been subject to the test of cross-examination. The fear is that untested hearsay evidence may be afforded more weight than it deserves.

[75] Other concerns with hearsay evidence relate to the declarant's perception, memory, narration, and sincerity: *Khelawon* at para 2; *R v Starr*, 2000 SCC 40 at para 159.

[76] The Ministers submit that the Jordan Testimony should be admitted for the truth of its contents as an exception to the hearsay rule because it meets the twin requirements of necessity and reliability as articulated in the decisions of the Supreme Court of Canada in *R v Khan*, 1990 CanLII 77 (SCC), [1990] 2 SCR 531 and *R v Smith*, 1992 CanLII 79 (SCC), [1992] 2 SCR 915 [*Smith*].

[77] The onus is on the person who seeks to adduce hearsay evidence to establish the two criteria on a balance of probabilities. However, necessity and reliability are not to be considered in isolation; they may intersect and impact upon each other: *Khelawon* at paras 46 and 86.

(1) The necessity requirement

[78] The Supreme Court of Canada in *Smith*, citing John Henry Wigmore, *A Treatise on the Anglo-American System of Evidence in Trials at Common Law*, vol III, 2nd ed Boston: Little, Brown & Co, 1923, at para 1421, confirmed that necessity may arise where "the person whose

assertion is offered may now be dead, or out of the jurisdiction, or insane, or otherwise unavailable for the purpose of testing" or where "we cannot expect, again or at this time, to get evidence of the same value from the same or other sources."

[79] Circumstances that can give rise to necessity also include where the declarant is outside the compulsion of the court, despite reasonable efforts to procure their attendance, either because they cannot be found, or are outside the jurisdiction of the court. Another circumstance is where a witness refuses to testify: *R v Abdulkadir*, 2020 ABCA 214 at para 99. That is the case here.

[80] At the request of Justice Canada, Mr Jordan agreed to cooperate and swore an affidavit in 2015 and a further affidavit in 2017. At the time, he was incarcerated in a U.S. federal prison, serving a sentence of 10 years after pleading guilty to a charge of "procurement of citizenship or naturalization unlawfully."

[81] Following his release from prison, Mr Jordan was deported from the U.S. to Guatemala to stand trial in Guatemala for crimes, including murder and "Delitos Contra los Deberes de Humanidad," a Guatemalan Criminal Code section incorporating crimes against humanity into domestic law, relating to the Las Dos Erres massacre.

[82] Prior to his deportation in 2020, Mr Jordan communicated through his lawyer that he was no longer willing to assist Justice Canada in this proceeding. Despite repeated efforts by the Ministers' legal team to secure his attendance at trial, Mr Jordan refused to provide his contact details and made clear that he would not participate in this proceeding.

[83] Mr Jordan's last known country of residence is Guatemala. A witness in Guatemala cannot be compelled to testify in a Canadian proceeding through the issuance of a Canadian subpoena. A subpoena has territorial limitations and can only be issued to compel the attendance of a Canadian resident. Canadian courts therefore cannot require the attendance of foreign witnesses before them through a process that it cannot enforce.

[84] This Court's inability to compel foreign witnesses could be cured by the existence of a valid international convention between Canada and another country which provides for the enforcement of domestic subpoenas by foreign courts. However, there are currently no international agreements between Canada and Guatemala in relation to the service abroad of judicial documents or the taking of evidence abroad in civil or commercial matters. Thus, in the absence of a valid treaty between the two countries, Guatemala is under no obligation under international law to give effect to Canada's request for assistance in obtaining the testimony of the Guatemalan witness.

[85] In *Smith*, Chief Justice Antonio Lamer, speaking for the Court, referred to the Court's earlier decision in *Khan* and discussed the principles of necessity and reliability in the following passages at pages 933–34 of his reasons:

> This Court's decision in *Khan*, therefore, signalled an end to the old categorical approach to the admission of hearsay evidence. Hearsay evidence is now admissible on a principled basis, the governing principles being the reliability of the evidence, and its necessity. A few words about these criteria are in order.
>
> The criterion of "reliability" - or, in Wigmore's terminology, the circumstantial guarantee of trustworthiness - is a function of the circumstances under which the statement in question was made. If a statement sought to be adduced by way of hearsay evidence is made under circumstances which substantially negate the

> possibility that the declarant was untruthful or mistaken, the hearsay evidence may be said to be "reliable", i.e., a circumstantial guarantee of trustworthiness is established. The evidence of the infant complainant in *Khan* was found to be reliable on this basis.
>
> The companion criterion of "necessity" refers to the necessity of the hearsay evidence to prove a fact in issue. Thus, in *Khan*, the infant complainant was found by the trial judge not to be competent to testify herself. In this sense, hearsay evidence of her statements was necessary, in that what she said to her mother could not be adduced through her. It was her inability to testify that governed the situation.
>
> The criterion of necessity, however, does not have the sense of "necessary to the prosecution's case". If this were the case, uncorroborated hearsay evidence which satisfied the criterion of reliability would be admissible if uncorroborated, but might no longer be "necessary" to the prosecution's case if corroborated by other independent evidence. Such an interpretation of the criterion of "necessity" would thus produce the illogical result that uncorroborated hearsay evidence would be admissible, but could become inadmissible if corroborated. This is not what was intended by this Court's decision in *Khan*.

[86] As stated above, the criterion of necessity must be given a flexible definition, capable of encompassing diverse situations. What these situations will have in common is that the relevant direct evidence is not, for a variety of reasons, available.

[87] Based on the concluding paragraphs of the passage to which I have just referred, I find that the test of necessity is met here. Hearsay evidence will be necessary in circumstances where the declarant is unavailable to testify at trial and where the party is unable to obtain evidence of a similar quality from another source. The Ministers have established that Mr Jordan is unwilling to testify despite reasonable efforts to persuade him to attend the trial. Even if Mr Jordan's attendance could be compelled, since he is unwilling to testify, his presence would not be of assistance to the Court.

[88] The Ministers have also established that there are no other means of presenting evidence of a similar quality as that of Mr Jordan from another source: *Brash v Sims*, 2024 ONSC 6509 at para 54. All the inhabitants of the village who may have interacted with Mr Sosa the day of the massacre were killed. Only three former Kaibiles, including Mr Pinzón and Mr Jordan, are known to have testified as to their presence and participation at the Las Dos Erres massacre and as to other Kaibiles members who were present and participated. Mr Jordan's prior testimony is the only available means of putting additional, unique evidence before the Court.

[89] The necessity of Mr Jordan's prior testimony has therefore been established. However, the more critical question is whether the evidence meets the test of reliability.

(2) The reliability criteria

[90] Reliability is concerned with the circumstances under which a hearsay statement is made. "Threshold reliability" is met by showing (1) that there is no real concern about whether the statement is true or not because of the circumstances in which it came about (substantive reliability), or (2) that no real concern arises from the fact that the statement is presented in hearsay form because, in the circumstances, its truth and accuracy can be sufficiently tested by other means (procedural reliability): *Khelawon* at paras 51, 63.

[91] In *R v Hawkins*, 1996 CanLII 154 (SCC), 3 SCR 1043 [*Hawkins*], the Court held that testimony made during a preliminary inquiry will generally satisfy the threshold test of reliability since there are sufficient guarantees of trustworthiness, particularly the presence of an oath and the opportunity for contemporaneous cross-examination. I recognize that *Hawkins* involved a

specific exception to the hearsay rule for the treatment of prior statements made in a Canadian court context, as codified in section 715 of the *Criminal Code*, RSC 1985, c C-46. While the Jordan Testimony was taken in a U.S. Court, paragraph 10.5(5)(c) of the *Citizenship Act* provides that for purposes of a declaration of inadmissibility under section 10.5, the Court "is not bound by any legal or technical rules of evidence and may receive and base its decision on any evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances."

[92] I find that Mr Jordan's testimony, which was given under oath and transcribed verbatim, has sufficient procedural reliability. Mr Jordan was subject to contemporaneous cross-examination at trial where Mr Sosa was represented by counsel. The cross-examination was conducted in the context of criminal proceedings where the stakes for Mr Sosa included not only the possibility of future revocation of his U.S. citizenship but also criminal conviction and consequent lengthy incarceration. Although Mr Sosa argued in response to the Ministers' motion that Mr Jordan "was not sufficiently cross-examined," a careful reading of the transcripts reveals that there was not only cross-examination, but that further cross-examination was permitted, showing that Mr Sosa had a full opportunity to challenge Mr Jordan's testimony.

[93] I find that Mr Jordan's past sworn testimony also has sufficient substantive reliability. Hearsay statements have been found to be reliable in circumstances where the declarant had no motive to lie, where the statement is corroborated by other evidence, where there is no reason to doubt the statement, and where the traditional dangers associated with hearsay (perception, memory, credibility) are not present to any significant degree. As explained later in these

reasons, Mr Jordan's prior testimony corroborates significant points of evidence provided by Mr Pinzón in this proceeding.

[94] In 2010, Mr Jordan pled guilty to illegal naturalization and served a sentence in the U.S. In 2013, he testified regarding his own participation in the Las Dos Erres massacre, including that he shot and killed civilians and threw them into the village well. Mr Sosa's suggestion that Mr Jordan "may have had a deal … evidenced by his quick departure" and testified "under circumstances that directly led to his safe passage to Guatemala" is speculative and inconsistent with the evidence. Mr Jordan received the same length of sentence in the U.S. as Mr Sosa did on similar charges, despite having pled guilty and volunteering to testify against his own interests.

[95] All of the above indicia of reliability apply to Mr Jordan's testimony.

(3) Probative value

[96] Mr Jordan's prior testimony has a high probative value as it is directly relevant to proving that Mr Sosa has committed acts that would make him inadmissible to Canada pursuant to section 10.5 of the *Citizenship Act*. It comes from an individual that Mr Sosa admits he served with and its self-incriminatory nature can be taken as a sign of credibility. Moreover, it is corroborated by the testimonies of Mr Pinzón and Mr Cristales. Their evidence is consistent with each other's accounts, and corroborated by documentary evidence, expert evidence and the Truth Commission's findings.

[97] Any prejudicial effect on Mr Sosa is minimized in admitting Mr Jordan's prior testimony given that his then counsel already had a full opportunity to cross-examine Mr Jordan at Mr Sosa's U.S. trial on essentially the same allegations that are made against him in the present proceeding. It was open to Mr Sosa to present evidence or arguments at this trial as to why Mr Jordan's testimony ought not to be afforded any weight or should be found unreliable. He has chosen not to do so.

[98] In the absence of any other articulated evidentiary rule that would render the hearsay evidence inadmissible, I have concluded that the Jordan Testimony should be admitted for the *prima facie* truth of its contents.

VII. Issues to be Determined

[99] As stated earlier in the introduction, the Ministers seek two declarations from the Court:

1. a declaration, pursuant to section 10.1 of the *Citizenship Act*, that Mr Sosa obtained permanent residence in Canada, and, by operation of section 10.2 of the *Citizenship Act*, Canadian citizenship, by "false representation or fraud or by knowingly concealing material circumstances" [Revocation Declaration]; and
2. a declaration that Mr Sosa is inadmissible to Canada on grounds of violating human or international rights for committing an act outside Canada that constitutes a crime against humanity, pursuant to subsection 10.5(1) of the *Citizenship Act* and paragraph 35(l)(a) of the IRPA [Inadmissibility Declaration].

[100] The effect of a declaration that Mr Sosa obtained citizenship by false representation or fraud or by knowingly concealing material circumstances would be to revoke his Canadian citizenship: *Citizenship Act*, s 10.1(3).

[101] A declaration of inadmissibility would be a removal order against Mr Sosa: *Citizenship Act*, s 10.5(3).

[102] With respect to the order of analysis, subsections 10.5(4) and (5) of the *Citizenship Act* provide that the issue of a Revocation Declaration must first be heard and decided before turning to the Inadmissibility Declaration. If the former is denied, the latter must also be denied. If the Revocation Declaration is granted, the Court may then consider whether to grant the second declaration.

[103] Accordingly, I will proceed to determine whether Mr Sosa obtained permanent residence by false representation or fraud or by knowingly concealing material circumstances. If so, the second issue to be answered is whether Mr Sosa is inadmissible to Canada on grounds of violating human or international rights because he committed, directly or indirectly, an act outside Canada that constitutes a crime against humanity pursuant to paragraph 35(1)(a) of the IRPA.

[104] Both declarations sought by the Ministers are to be disposed of in a single judgment: s 10.5(6) of the *Citizenship Act*. However, as I explain further below, each declaration requires the Ministers to prove different facts, on two different standards of proof and with two distinct evidentiary standards.

VIII. Revocation Declaration

A. *Legal Framework*

[105] In setting out the legal framework in this proceeding, I have borrowed liberally from the Ministers' written submissions, which are detailed and which I accept as accurate.

[106] The *Citizenship Act* governs Canadian citizenship and the circumstances in which loss of citizenship may arise. Those who obtained Canadian citizenship through false representation have long been subject to having their citizenship revoked: *Canadian Citizenship Act*, SC 1946, c 15, s 21(1)(b); *Naturalization Act*, SC 1914, c. 44, s 7; Yves Le Bouthillier, Delphine Nakache, *Citizenship Law in Canada: Acquisition and Loss of Citizenship and Citizens' Rights and Obligations*, Toronto, Ontario: Thomson Reuters, 2022, pp 3–6.

[107] In the case of citizenship revocation proceedings relating to war crimes, the Supreme Court of Canada has emphasized that society has an interest "of the highest importance" in such proceedings and that such cases implicate "Canada's reputation as a responsible member in the community of nations": *Tobiass* at para 109. The Federal Court of Appeal has noted Canada's policy is to "not become a safe haven for those individuals who have committed war crimes, crimes against humanity or any other reprehensible act during times of conflict": *Oberlander v Canada (Attorney General)*, 2004 FCA 213 at para 28.

[108] The present action was commenced by the Minister of Citizenship and Immigration on April 5, 2017, when subsection 10.1(1) of the *Citizenship Act* [*Citizenship Act, 2017*] read as follows:

Revocation for fraud — declaration of Court	**Révocation pour fraude — déclaration de la Cour**
10.1 (1) If the Minister has reasonable grounds to believe that a person obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, with respect to a fact described in section 34, 35 or 37 of the *Immigration and Refugee Protection Act* other than a fact that is also described in paragraph 36(1)(a) or (b) or (2)(a) or (b) of that Act, the person's citizenship or renunciation of citizenship may be revoked only if the Minister seeks a declaration, in an action that the Minister commences, that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances and the Court makes such a declaration.	10.1 (1) Si le ministre a des motifs raisonnables de croire que l'acquisition, la conservation ou la répudiation de la citoyenneté d'une personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels — concernant des faits visés à l'un des articles 34, 35 et 37 de la *Loi sur l'immigration et la protection des réfugiés*, autre qu'un fait également visé à l'un des alinéas 36(1)a) et b) et (2)a) et b) de cette loi —, la citoyenneté ou sa répudiation ne peuvent être révoquées que si, à la demande du ministre, la Cour déclare, dans une action intentée par celui-ci, que l'acquisition, la conservation ou la répudiation de la citoyenneté de la personne ou sa réintégration dans celle-ci est intervenue par fraude ou au moyen d'une fausse déclaration ou de la dissimulation intentionnelle de faits essentiels.

[109] After the action was commenced by the Minister of Citizenship and Immigration in 2017, the *Citizenship Act*, including section 10.1, was amended. However, pursuant to the transition provisions for those amendments, actions commenced prior to the amendments, which includes the present action, are to be "dealt with and disposed of" in accordance with the provision in force on 23 January 2018, which includes the same version of subsection 10.1(1) as set out above.

(1) No issue of retroactive application

[110] Insofar as Mr Sosa's acquisition of Canadian citizenship is concerned, his substantive rights are governed by the citizenship legislation that was in force on June 9, 1992, when he obtained his Canadian citizenship. Insofar as his prior acquisition of permanent resident status is concerned, his substantive rights are governed by the immigration legislation that was in force on May 12, 1988, when he obtained his permanent resident status.

[111] However, a declaration pursuant to section 10.1 of the *Citizenship Act* does not raise any issue of retroactive application which reaches into the past to change the law or its legal effects. Rather a section 10.1 declaration applies prospectively since the effects of the declaration are forward-facing only. Parliament has expressly legislated for the revocation of citizenship obtained through past false representation, fraud or knowing concealment. This is evident from the language of section 10.1 itself, as well as the transitional provisions: *An Act to amend the Citizenship Act and to make consequential amendments to another Act*, SC 2017, c 14, s 19.1(2).

[112] Regardless, Mr Sosa has never had any substantive right to retain citizenship obtained by acquiring permanent resident status through false representation. At all relevant times, including when he applied for permanent residence in 1987, legislation provided for citizenship to be revoked if it was acquired by false representation, fraud or knowing concealment, or if citizenship was obtained through permanent residency based on false representation, fraud or knowing concealment: *Citizenship Act*, SC 1974-75-76, c 108, ss 9, 17; *Citizenship Act*, ss 10, 18; *Strengthening Canadian Citizenship Act*, SC 2014, c 22, s 8 (amending s 10 and adding ss 10.1–10.7).

(2) The Court does not need to find a section 35 fact to revoke citizenship

[113] The Ministers submit that the question for the Court to determine for a declaration pursuant to subsection 10.1 of the *Citizenship Act* is only whether Mr Sosa obtained citizenship by false representation, fraud or knowingly concealing material circumstances. They maintain that in issuing a revocation declaration, this Court does not need to find that "a fact described in section 34, 35 or 37 of the [IRPA], other than a fact that is also described in paragraph 36(1)(a) or (b) or (2)(a) or (b) of that Act" [Section Fact] has been proven by the Ministers. They say that this is evident from the plain meaning of the statutory language, from the context, and from the legislative history. I agree.

[114] I am mindful that the Ministers' position is at odds with the finding of the Court in *Canada (Citizenship and Immigration) v Jozepović*, 2023 FC 1660 at para 116 [*Jozepović*]. In that case, the Court held that in order to revoke a person's citizenship "a section 35 fact must be

proven on a balance of probabilities by the plaintiff at the revocation stage." With respect, I consider this finding to be wrong in law and conclude that it should not be followed.

[115] In *Canada (Citizenship and Immigration) v Kljajic*, 2020 FC 570 at para 99, [2020] 3 FCR 317 [*Kljajic*], former Chief Justice Paul Crampton concluded that under subsection 10.1(1), the Minister need only demonstrate "that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances." (see also *Canada (Citizenship and Immigration) v Rogan*, 2011 FC 1007 at paras 26, 430 [*Rogan*]). While the decision in *Kljajic* is not binding on me, the reasoning is persuasive.

[116] The finding in *Jozepović* contradicts the statutory scheme set out in section 10.1. According to the opening language of subsection 10.1(1), it is a condition precedent to being allowed to commence an action before this Court that the Minister have reasonable grounds to believe that a person obtained citizenship by false representation or fraud or by knowingly concealing material circumstances "with respect to a [Section Fact]." However, this qualifying language is not repeated later in the subsection. It instead uses the bare terms "material circumstances" [TRANSLATION] "de faits essentiels."

[117] If Parliament had intended for the definition of material circumstances to have the same meaning throughout subsection 10.1(1), it could have specified this; however, it did not do so. Later provisions in section 10.1 suggest otherwise.

[118] As noted in *Kljajic* at para 99: “section 10.2 of the *Citizenship Act*, which creates an important presumption for the purposes of subsections 10(1) and 10.1(1), does not refer to sections 34, 35, or 36 of the IRPA.” Moreover, subsection 10.1(4), as it appeared on April 5, 2017, was similarly silent regarding a Section Fact, and instead expressly provided that “the Minister need prove only that the person has obtained … citizenship by false representation, fraud or by knowingly concealing material circumstances.”

[119] The *Citizenship Act* provides different burdens of proof and evidentiary rules for determining inadmissibility on grounds of violating human or international rights and for revocation of citizenship. I agree with the Ministers that it would be absurd to interpret subsection 10.1(1) as requiring the Minister to prove a Section Fact on a balance of probabilities under section 10.1, when subsection 10.5(5) only requires that such facts be proved on the lower standard of reasonable grounds to believe.

[120] For the above reasons, I conclude that a finding by the Minister that there are “reasonable grounds to believe” simply acts as a precursor to seeking relief from the Court under subsection 10.1(1) and has no application to the Court’s decision on revocation.

[121] While it is not necessary for me to address the matter, I would note that the Minister is under no statutory obligation to justify their decision to commence an action within the context of the action itself. If a person wishes to challenge the decision, their recourse lies elsewhere.

(3) Representations relevant to eligibility for refugee status and admissibility

[122] In the case of a person acquiring Canadian permanent residence by claiming Convention refugee status, any false representation relevant to assessing their eligibility as a Convention refugee, or their admissibility, would be grounds for citizenship revocation. Similarly, for the concealment of material circumstances, circumstances would be material if they were relevant to the assessment of the applicant's eligibility as a Convention refugee or their admissibility to Canada: *Canada (Citizenship and Immigration) v Rubuga*, 2015 FC 1073 at paras 22, 108–109.

[123] In the citizenship revocation context, this Court held in *Rogan*:

a) To find that someone "knowingly conceal[ed] material circumstances", "the Court must find on evidence, and/or reasonable inference from the evidence, that the person concerned concealed circumstances material to the decision, whether he knew or did not know that they were material, with the intent of misleading the decision-maker." (para 32).

b) "A misrepresentation of a material fact includes an untruth, the withholding of truthful information, or a misleading answer which has the effect of foreclosing or averting further inquiries." "This is so even if the answer to those inquiries might not turn up any independent ground of deportation." (para 33).

c) In assessing the materiality of the information concealed, regard must be had to the significance of the undisclosed information to the decision in question. However, "more must be established than a technical transgression. Innocent misrepresentations are not to result in the revocation of citizenship." (para 34).

d) Misrepresentations claimed to be "innocent" must be carefully examined, and willful blindness will not be condoned. If faced with a situation of doubt, an applicant should invariably err on the side of full disclosure (para 35).

(4) False representation need only have effect of foreclosing or averting further inquiries

[124] This Court's jurisprudence provides that the Ministers do not have to demonstrate that had Mr Sosa been truthful during the immigration process, his application for permanent residence would necessarily have been rejected. Rather, the Ministers need only show that Mr Sosa gained entry to Canada by false representation, fraud or knowingly concealing material circumstances which had the effect of foreclosing or averting further inquiries.

(5) Mr Sosa's duty of candour

[125] Also relevant to the assessment of whether Mr Sosa obtained citizenship through false representation, fraud or knowingly concealing material circumstances is his legal obligation pursuant to the *Immigration Act* in force at the time of his application, to have "answer[ed] truthfully all questions put to that person by a visa officer.": *Immigration Act, 1976*, 1976-77, SC c 52, s 9(3). This duty of candour also arose from the *Immigration Regulations* of the time which required a permanent resident applicant to proactively disclose to an immigration officer at a port of entry any facts relevant to the issuance of the visa that were not disclosed at the time of the visa's issue: *Immigration Regulations, 1978*, amendment, SOR/83-540, s 12.

B. *The Evidence*

(1) Missing IMM8 Form

[126] Some time after Mr Sosa's application for permanent residence was approved in 1988 and when Canada first began searching for it in 2009, his IMM8 form was lost or destroyed. Neither the Ministers nor Mr Sosa produced it in this litigation.

[127] Mr Christie was called to explain what efforts were taken to locate the missing form. There is no credibility issue with respect to his evidence.

[128] Mr Christie testified about the record keeping practices of Canadian consulates in the late 1980s. In general, the record keeping policies were similar to those used today, however their implementation and enforcement were not as strict. The policy was for consulates to store all documents related to an approved permanent residence application for a period of about one year.

[129] Mr Christie noted that some consulates "thinned" the files they kept earlier than the policy contemplated, at times retaining only an applicant's IMM8 form, photo, and biometrics. After one year, consulates were to send the permanent residence file via diplomatic bag or secure carrier to the Information Management office in Ottawa, which coordinated long-term storage in secured facilities.

[130] Mr Christie indicated that the Canadian Consulate in San Francisco would have initially held Mr Sosa's IMM8 form. When the San Francisco office closed in July 1990, all application records were transferred to the Consulate in Los Angeles, including, Mr Christie believes, Mr Sosa's IMM8 form.

[131] Mr Christie stated that multiple federal departments, including the Canada Border Services Agency, Citizenship and Immigration Canada and the Royal Canadian Mounted Police, made efforts to locate Mr Sosa's permanent residence application continuously since early 2009, including: searching within IRCC's archives and repositories, making inquiries of the Los Angeles consulate, making inquiries of other federal departments including the Canadian Security Intelligence Service and the U.S. Federal Bureau of Investigation, physically searching through the boxes received by Ottawa from Los Angeles, and digitizing all of those records so that they could be electronically searched as well, "in hopes that we left no stone unturned." Mr Christie asserted that all possible searches were exhausted.

[132] Mr Christie explained how, despite the missing IMM8 form, he was able to determine that Mr Sosa would have completed the 1985 English version of the form, IMM8E. He looked at applications processed by the San Francisco office in 1987 and was able to identify applications that were completed just before and after Mr Sosa made his application. He noted that the applications were all part of the same file series that contained the 1985 version of the form. Mr Christie therefore concluded that Mr Sosa would have completed the same form.

(2) Canadian immigration officials

[133] Since Mr Sosa's application – specifically the IMM8E form – was not retained, the Ministers relied on the testimony of the two Canadian immigration officials at the Canadian Consulate in San Francisco who processed and approved Mr Sosa's application for permanent residence some time between 1987 and 1988.

[134] Before summarizing their evidence, I pause here to note important context about Mr Sosa's immigration status prior to making his Canadian application.

[135] Mr Sosa admits that in May 1985, he made a request to the U.S. for asylum. In that application, he disclosed his military past in some detail. Mr Sosa didn't disclose his participation at Las Dos Erres but his military background was central to his U.S. asylum claim.

[136] Mr Sosa sought U.S. asylum on the basis that as a lieutenant of the Guatemalan army he had received death threats from guerilla groups. He detailed his military education and employment and indicated his service as an instructor of "Kaibil" counterinsurgency courses. He also listed several active combat operations against guerillas that he had participated in or led.

[137] It is an admitted fact that Mr Sosa's U.S. asylum claim was rejected in 1985. He was ordered to leave the U.S. but he failed to do so.

[138] Mr Sosa commenced his application for permanent residence as a Convention refugee in San Francisco, at some time before April 1987. He was interviewed by Mr Thornton on several occasions between April 1987 and May 1988.

[139] At the time, Mr Thornton was new in his position. In July 1984, he was given his first overseas posting as the Vice Consul for Immigration at the Consulate. His main task was to assess permanent residence and temporary visa applications for Canada.

[140] Mr Thornton testified that refugee applications for permanent residence were uncommon in San Francisco. The Consulate received less than three dozen refugee applications in the four years Mr Thornton was posted there.

[141] Mr Thornton was the sole officer with carriage of Mr Sosa's application. He outlined the standard procedures he undertook to process the application, beginning with a paper screening of Mr Sosa's IMM8E form. Since the form signed by Mr Sosa could not be produced, Mr Thornton relied on blank copies of the 1982, 1985, and 1987 IMM8E form for the purpose of his testimony.

[142] Mr Thornton explained the standard lines of questioning he would have pursued based on the information provided in the form. The form required applicants to provide information about their prior education, employment, and association with political, social or vocational organizations. The form also asked applicants to disclose if they have ever been refused a visa or admission to Canada or another country or ordered to leave the same. It required applicants to

acknowledge that any “false statement or concealment of a material fact” may result in their permanent exclusion from Canada, and that a “fraudulent entry” on the application could be grounds for prosecution and/or deportation. Finally, the form required an applicant’s solemn declaration that the information provided is “truthful, complete and correct.”

[143] Upon reviewing Mr Sosa’s form and determining that it disclosed a possible refugee claim, Mr Thornton invited him, his spouse and their daughter for an interview. Mr Thornton testified that during the interview, Mr Sosa described himself as a forlorn factory worker who, along with two to three of his colleagues in Guatemala, challenged their employer on pay issues and work safety conditions. Mr Sosa told Mr Thornton that after voicing their concerns, some of his colleagues were taken away by authorities, causing him to flee with his family from Guatemala to the U.S., out of fear of political persecution.

[144] Mr Thornton testified that Mr Sosa’s application was particularly memorable for three reasons. First, it was his first time processing a refugee claim in an overseas assignment. Second, Mr Sosa’s demeanour during the interview was particularly striking. Mr Thornton remembers that while recounting his story, Mr Sosa wept and broke down emotionally. Third, Mr Thornton stated that Mr Sosa’s story resonated with him. He believed that Mr Sosa and his family had suffered significant trauma in Guatemala and required extra care and attention to transition into their new life in Canada. He testified that he had multiple interviews with Mr Sosa to explain the sponsorship process and what would happen to him if the sponsorship failed. As he explained:

> THORNTON: …I wouldn’t normally interview anyone three times or talk to anyone three times, but I believe that that was a continuum from this interview that made an impression, an indelible impression on me.

[145] Mr Thornton testified that he did not recall Mr Sosa disclosing any history of military training or involvement in his IMM8E form or during the interview. He conceded that he could not remember specifically asking Mr Sosa about any prior military involvement but maintained that had this information been disclosed it would have become a main line of questioning. He explained that prior service, training, military rank and involvement in armed combat were all factors that would have had a serious impact in his assessment of Mr Sosa's application, as he had a general awareness of the Guatemalan civil war and reports of alleged atrocities being committed by army officers, police and other authorities.

[146] At trial, Mr Thornton was shown a copy of Mr Sosa's 1985 U.S. asylum application. He testified that he was not made aware of the application until recently. According to Mr Thornton, had he seen the U.S. application or been aware of the information it contains at the time he processed Mr Sosa's application, he would have handled it differently. In particular, he would have referred the case to the Canadian Embassy in Guatemala for more information on the country conditions and questioned Mr Sosa extensively on his military background.

[147] Mr Thornton confirmed that the Consulate in San Francisco would have received an operations memorandum issued by Employment and Immigration Canada in January 1988, stating that as of October 1987, legislative amendments created a new inadmissibility category for persons who there are reasonable grounds to believe have committed a war crime or crime against humanity. He added that even before these amendments had come into effect, an applicant's prior military involvement would have been not only relevant, but central to his assessment of their permanent residence and refugee eligibility.

[148] After concluding his interview with Mr Sosa, Mr Thornton determined that he had a well-founded fear of persecution. He directed Mr Sosa and his family to complete their medical examinations and security screenings, which were the final steps to approving their applications.

[149] Once Mr Sosa and his family completed the screenings and made the required arrangements to travel to Lethbridge, Alberta, Mr Thornton issued an Immigrant Visa and Record of Landing document to Mr Sosa, commonly referred to as an "IMM1000." He coded the IMM1000 form with the occupation of "Plastic Pack Machine Tender." Mr Thornton stated that this was an unusually specific coding that corresponded to Mr Sosa's claim to have been a factory worker.

> THORNTON: [T]his is quite a specific designation and supports my recollection that the account of his persecution that Mr Sosa related to me was related directly to his occupation as a factory worker.
>
> Q. Who decided to put "Plastic Pack Machine Tender" on the form? Would that have been Mr Sosa? Was that you?
>
> THORNTON: No, that was my decision . . . having gone through his employment details at the interview, I would have correlated those to the specific occupation in – relevant occupation. I would have found it, decided it was a significant match, and decided that would be the way I would code the visa [. . .] that would have related to what he told me about his occupational background in Guatemala [. . .] I cannot recall any other case . . . in my career, where I used that particular designation. We had other generic designations available to us such as . . . there was one we used quite often called "new worker" . . . So the fact that I was that specific indicates to me that I had very solid and substantial information available to choose that particular coding.

[150] Mr Sosa was instructed to take the IMM1000, which Mr Thornton had signed, and present it at a port of entry in Canada, at which point Mr Sosa would become a permanent resident.

[151] Mr Thornton testified briefly about the file retention practices of the Canadian Consulate in San Francisco in the 1980s. The policy was to keep an applicant's file, which included all submitted documents, notes and copies of IMM1000s, for two years from the date the application was approved or finalized. After two years, if there was no further update to a file, the practice was to "thin" the file by taking the IMM8 form out to be sent to storage, and destroying the rest of the documents in the file by burning them.

[152] Mr Casey testified that most of this work was performed by Mr Thornton, who reported to him. Immediately prior to his posting in San Francisco, Mr Casey had an overseas assignment in Bogotá, Colombia.

[153] Mr Casey had a high regional awareness of the events in South and Central America in the 1980s due to his recent posting in Bogotá. He testified that he was aware of the civil war in Guatemala and the possible atrocities and war crimes being committed by actors in the conflict. He said that, had his office received an application which detailed an individual's involvement in active combat as a member of the Guatemalan military, it would have been a notable case and he would have expected to be made aware of it.

[154] Mr Sosa claims as follows in an "Affidavit of Facts" declared July 9, 2017:

> I declare and confirm that between 1986 to 1988 I had interviews with the Honorable Canadian Consul, Mr. Brian T. Casey, in San Francisco, California in the United States. The meetings focused [in] my application for permanent admission to Canada, which are in the consulate letters dated: Monday, April 27, 1987; Monday, May 18, 1987; Tuesday, February 2, 1988. All interviews were scheduled at 2:30 p.m.
>
> In order to apply for my political asylum I have to follow a procedure which was to write a statement of my political persecution from the guerrillas forces due to the fact that I was a member of the Guatemala military. The first statement request was denied.
>
> After a period of time I re-applied with another statement, reinforcing it with the violence and risk of my life and my family because the civil war in Guatemala. The second statement was approved; then, I had to follow several meetings with the Honorable Consul Mr. Casey, where I again confirmed my membership with the Guatemala army. The Canadian Consul stated in a letter dated May 11, 1987 that there was a private organization established in Edmonton (Alberta) that might be interested for helping my family and I to establish in such area, but they refused because they were from the left-wing group established in Canada as refugees.
>
> Then I had a second interview with the Canadian Consul - where again I disclosed my military membership including that I was a Kaibil from the Guatemala Special Forces. We discussed the situation of if the Kaibil was a 'Killing machine'. I told him that it was not true. We are human beings like any one else with a heart and mind but with a better military training, our mission was to protect the sovereignty and freedom of Guatemala- I always respected Guatemalan people all the way because my martial arts training and military procedures. At the end the Canadian Consul told me: "Mr. Sosa, you will be a good citizen of Canada, I guarantee."

[155] Mr Casey testified that he did not have a specific recollection of Mr Sosa's application, although many of the documents on file were signed by him. Nor did he recall ever interviewing Mr Sosa, although he conceded that it was possible he met him briefly at the office in San Francisco.

[156] Mr Casey testified he only became aware of Mr Sosa's 1985 U.S asylum application recently but was not surprised it was refused. He stated that had the Canadian Consulate received an application which disclosed the same Guatemalan military background and involvement in active combat as set out in the U.S. application, he would have expected anyone with responsibility for the file to refuse the application. Mr Casey added that had he known about Mr Sosa's military involvement, he would not have signed the final visa approval letter on May 4, 1988.

C. *Factual and Legal Findings*

[157] Based on Mr Christie's evidence, which I accept, I am satisfied that a meticulous and diligent search was conducted to locate Mr Sosa's IMM8E. It would appear that Mr Sosa's IMM8E was discarded inadvertently when files were stripped down to core documents and moved for archival purposes in the late 80s. There is no concern of spoliation of evidence and therefore nothing to support drawing a negative inference from the Ministers' failure to produce the document.

[158] I find, based on the evidence before me, that the form used by Mr Sosa when he applied for permanent residence back in 1987 was more than likely the English version of the 1985 IMM8 form.

[159] While the absence of Mr Sosa's immigration application form is certainly unfortunate, it does not preclude a finding of false representation: *Canada (Minister of Citizenship and Immigration) v Oberlande*r, 2000 CanLII 14968 at paras 126, 211. In fact, even where no notes

exist from an interview, logical inferences can be drawn from the evidence: *Canada (Minister of Citizenship and Immigration) v Furman*, 2006 FC 993 at para 170. Reasonable inferences based on all the evidence of the circumstances, even without direct evidence, can be the basis for "crucial findings" as to whether an individual knowingly concealed material circumstances on the balance of probabilities: *Canada (Citizenship and Immigration) v Odynsky*, 2001 FCT 138 at para 189.

[160] In this case, no inferences need be drawn. The Ministers were able to locate and produce two extremely reliable and credible witnesses who could testify about the processing of Mr Sosa's application almost 40 years ago. Mr Thornton and Mr Casey came across as highly intelligent, dedicated and unbiased public servants. I find that they were at all times doing their best to provide the Court with an accurate recitation of the events as they recalled them.

[161] Mr Thornton had a clear recollection of the sequence of events surrounding Mr Sosa's application for permanent residence and his interactions with him, and for good reason. As Mr Thornton explained, the circumstances surrounding the application were quite memorable for him. Refugee claims were very uncommon in San Francisco at the time, and it was his first time processing a refugee claim in an overseas assignment. He was particularly struck by Mr Sosa's demeanour during an interview. Mr Thornton recalled that Mr Sosa began to weep and broke down emotionally when telling his story of persecution as a factory worker. The detailed story of persecution stood out to Mr Thornton. He believed that Mr Sosa and his family had suffered significant trauma in Guatemala and required extra care and attention to transition into their new

life in Canada. I find Mr Thornton's evidence, which is corroborated by contemporaneous documents, to be highly credible and reliable.

[162] Mr Casey was less certain regarding his recollection of the events. This is of course not surprising given that Mr Casey did not deal directly with Mr Sosa, and he was required to oversee a high volume of immigration files over the course of his lengthy career. His memory had to be refreshed on occasion by reviewing documents put to him. Despite the frailties of his memory, he was able to explain the circumstances surrounding documents he signed, and other documents found on Mr Sosa's immigration file. He could speak clearly about the Canadian permanent residence application process and practices, and his knowledge at the time of the conflict in Guatemala and the issue of suspected war criminals or perpetrators of crimes against humanity attempting to gain Canadian immigration status.

[163] The evidence at trial shows that the defence asserted by Mr Sosa in his Amended Statement of Defence – that he did not lie in his Canadian refugee application – and his claims asserted in his unsworn affidavit lack credibility.

[164] First, there is no evidence to support Mr Sosa's bare assertion made in the Amended Statement of Defence. Secondly, the allegation that there was a discussion with Mr Casey about the Kaibiles not being a "killing machine" was rejected by Mr Casey who denied any such interaction. It defies common sense that Mr Casey would have learned such information and then not have seriously questioned Mr Sosa's eligibility for asylum. Moreover, given that Mr Casey

was not yet stationed in San Francisco for the first alleged interactions, Mr Sosa's allegations are clearly false.

[165] I have no reason to doubt Mr Casey's credibility or the reliability of his evidence.

[166] Based on the uncontroverted evidence of Mr Thornton and Mr Casey, I am satisfied, on a balance of probabilities, that Mr Sosa knowingly concealed his military history in the Guatemalan army, concocted a fake education and work history and made up a sham asylum claim when he applied for permanent residence at the Canadian Consulate in San Francisco in 1987. I find that the false information Mr Sosa provided had the effect of foreclosing and averting further inquiries that Mr Thornton and Mr Casey would have pursued, had they known about his military background, and that this had a material bearing on the assessment of his application. Let me explain how I reached these conclusions.

[167] On the IMM8E form, Mr Sosa was required to provide details of his education and his work history for the previous ten years. He also had to solemnly declare before a visa officer that the information was truthful, complete and correct, and that he made the solemn declaration conscientiously believing it to be true.

[168] Mr Sosa has admitted in this proceeding to receiving a military education in Guatemala in the 1970s at the Politécnica military school and being employed as a member of the Guatemalan military from the 1970s to 1985. He did not have any other occupation during this period.

[169] While Mr Sosa's completed IMM8E form is not in evidence, both Mr Thornton and Mr Casey were consistent in their testimony that had Mr Sosa's military background been reported on the form, his permanent residence application would have been handled in a vastly different manner. I find their evidence completely credible in this regard.

[170] The IMM8E form was the basis upon which Mr Thornton prepared his questions for his interview with Mr Sosa. He stated that had Mr Sosa's military history been disclosed, it would have raised a red flag and caused for more extensive questions to be asked, inquiries to be made with the Canadian Embassy in Guatemala, and potentially, a different decision rendered. In the same vein, Mr Casey testified that, had he known about Mr Sosa's military involvement, he would not have signed the final visa approval letter on May 4, 1988. This is simply common sense.

[171] Both officers were aware of the ongoing conflict in Guatemala, and that there was a military dictator in power and that the state military was committing massive human rights abuses across the country. They were also keenly aware of their responsibility to be attuned to potential war criminals applying for Canadian immigration status. The evidence before me is that they did not abdicate their responsibilities and did not cut corners. In the end, the two of them were completely misled by the false information provided by Mr Sosa.

[172] The evidence at trial shows that Mr Thornton and Mr Casey had no idea of the information in Mr Sosa's 1985 US asylum application when his Canadian application was being processed. Since Mr Sosa was facing imminent deportation from the U.S., he was no doubt

highly motivated to come up with a different education and work history and different refugee claim story than the one that had failed in his U.S. asylum claim. I am satisfied that this is exactly what he did to avert further inquiries.

[173] This is corroborated by the fact that Mr Thornton inserted the unusually specific intended occupation of “plastic pack machine tender” on Mr Sosa’s IMM1000 form. The form in question was completed contemporaneously with the processing of Mr Sosa’s application. The entry gives credence to Mr Thornton’s testimony that he was trying to find an occupation corresponding to the story Mr Sosa gave of being a politically persecuted factory worker in Guatemala. It is inconceivable that a visa officer would confuse a military officer position with that of a factory worker. I find that Mr Sosa did not disclose his military background in his IMM8E or at any time in his dealings with Mr Thornton. This includes the fact that he was an officer of the Guatemalan army who had been engaged in active combat roles and had been part of a special forces patrol.

[174] The concealed facts at issue were material – Mr Thornton and Mr Casey’s evidence is that they would have handled Mr Sosa’s file very differently, and with far more scrutiny, had they been aware of his position as a sub-lieutenant in the Guatemalan army. According to Mr Thornton, this detail would have been “central” to his assessment of Mr Sosa’s application. Ultimately, knowledge of the concealed facts would have either led to Mr Sosa’s application being rejected, as his U.S. application was, or Canadian government officials would have conducted further inquiries.

D. *Conclusion*

[175] Far from being a technical transgression or an innocent misrepresentation, it has been clearly established that Mr Sosa, by false representations and by knowingly concealing material circumstances, deceived Canadian immigration officials throughout the permanent residence application process, and obtained citizenship by fraud.

[176] Canada's immigration system is built on trust. At its core lies a simple but powerful principle: tell the truth. As a practical matter, applicants are expected to know that providing false or misleading information, whether intentional or accidental, can lead to significant negative outcomes. This is made clear by the explicit warning in the IMM8E form that Mr Sosa was required to complete and sign that states:

> I understand that any false statements or concealment of a material fact may result in my permanent exclusion from Canada and even though I should be admitted to Canada for permanent residence, a fraudulent entry on this application could be grounds for my prosecution and or deportation.

[177] For the reasons set out above, the Revocation Declaration is granted under section 10.1(1) of the *Citizenship Act, 2017*, with the effect of revoking Mr Sosa's Canadian citizenship, acquired through the permanent resident status he obtained in 1988: see *Citizenship Act, 2017*, ss 10.1(3), 10.2.

IX. Inadmissibility Declaration

[178] Having concluded that a declaration pursuant to section 10.1 of the *Citizenship Act* revoking Mr Sosa's citizenship should be granted, I now proceed to consider whether to make a declaration of inadmissibility pursuant to section 10.5.

A. *Legislative framework and standard of proof*

[179] On October 25, 2017, the Statement of Claim was amended to add the Minister of Public Safety and Emergency Preparedness as a Plaintiff and to request a declaration of inadmissibility pursuant to section 10.5. At that time, section 10.5 of the *Citizenship Act, 2017* provided:

10.5(1) On the request of the Minister of Public Safety and Emergency Preparedness, the Minister shall, in the originating document that commences an action under subsection 10.1(1), seek a declaration that the person who is the subject of the action is inadmissible on security grounds, on grounds of violating human or international rights or on grounds of organized criminality under, respectively, subsection 34(1), paragraph 35(1)(a) or (b) or subsection 37(1) of the *Immigration and Refugee Protection Act*.	**10.5 (1)** À la requête du ministre de la Sécurité publique et de la Protection civile, le ministre demande, dans l'acte introductif d'instance de l'action intentée en vertu du paragraphe 10.1(1), que la personne soit déclarée interdite de territoire pour raison de sécurité, pour atteinte aux droits humains ou internationaux ou pour criminalité organisée au titre, respectivement, du paragraphe 34(1), des alinéas 35(1)a) ou b) ou du paragraphe 37(1) de la *Loi sur l'immigration et la protection des réfugiés*.

[180] The *Citizenship Act* has since been amended, but the amendments do not affect this action.

[181] An action seeking an inadmissibility declaration under paragraph 35(1)(a) of the IRPA, pursuant to section 10.5 of the *Citizenship Act*, requires the Ministers to establish that there are reasonable grounds to believe that Mr Sosa committed an act outside of Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*, SC 2000, c 24, ss 4–7 [*CAHWC Act*].

[182] Section 6 of the *CAHWC Act*, in force since 2000, defines the offence of "crimes against humanity" when committed outside of Canada as follows:

crime against humanity	**crime contre l'humanité**
means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.	Meurtre, extermination, réduction en esclavage, déportation, emprisonnement, torture, violence sexuelle, persécution ou autre fait — acte ou omission — inhumain, d'une part, commis contre une population civile ou un groupe identifiable de personnes et, d'autre part, qui constitue, au moment et au lieu de la perpétration, un crime contre l'humanité selon le droit international coutumier ou le droit international conventionnel ou en raison de son caractère criminel d'après les principes généraux de droit reconnus par l'ensemble des nations, qu'il constitue ou non une transgression du droit en vigueur à ce moment et dans ce lieu.

[183] I agree with the Ministers that since a declaration of inadmissibility pursuant to section 10.5 is made following a revocation of citizenship pursuant to section 10.1, it is determined based on the law on inadmissibility at the time of the declaration. If there are reasonable grounds to believe that Mr Sosa's acts meet the definition of crimes against humanity in the *CAHWC Act*, which encompasses that the act "constitutes a crime against humanity according to customary international law … at the time and in the place of its commission," then Mr Sosa is to be declared inadmissible.

[184] Paragraph 10.5(5)(a) of the *Citizenship Act* stipulates that the standard of proof for this issue is the "reasonable grounds to believe" standard. Specifically, it states that the Court "shall assess the facts — whether acts or omissions — alleged in support of the declaration on the basis of reasonable grounds to believe that they have occurred." The Supreme Court has confirmed that the "reasonable grounds to believe" standard requires "more than mere suspicion, but less than … a balance of probabilities." (*Mugesera v Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40 at para 114 [*Mugesera*]).

[185] In addition, paragraph 10.5(5)(c) provides that the Court "is not bound by any legal or technical rules of evidence and may receive and base its decision on any evidence adduced in the proceedings that it considers credible or trustworthy in the circumstances."

B. *The Evidence*

[186] The Ministers rely on the expert evidence of Dr Oglesby, General Robles and Ms Doyle to establish that Mr Sosa's actions leading up to and during the military operation in Las Dos

Erres were part of a widespread and systematic attack by the Guatemalan military against civilian populations in the early 1980s. Their expert reports are exceptionally thorough, well-documented and well-supported. All three experts testified in an objective way to assist the Court in understanding, interpreting, and assessing historical documents in their context. I have no reason to question the experts' credibility, nor any hesitation in accepting their opinion evidence.

(1) The Truth Commission Report

[187] There is no dispute between the parties that an internal armed conflict took place in Guatemala from the early 1960s to 1996. The country was led by a series of military leaders who at first sought to quell the spread of communism and later devolved into violent counter-insurgency strategy against an "internal enemy" perceived to oppose the established order. By 1994, the internal armed conflict in Guatemala began to wind down, and in June of that year the first of the Peace Accords was signed, creating the Truth Commission.

[188] The Truth Commission's mandate was to clarify the history of what occurred during the Guatemalan armed conflict, which it did through an official report in numerous volumes [Truth Commission Report]. It was signed by the Guatemalan government and the leaders of the insurgency and was administered by the United Nations Office of Project Services [UNOPS].

[189] Dr Oglesby participated in the investigation phase of the Truth Commission's work and was involved in writing its report. She considered the Truth Commission Report as authoritative and adopted it as part of her opinion. Ms Doyle also worked with the Truth Commission. She described the report as "not only a sort of a touchstone for … scholarly work

on the armed conflict," but also as "an extraordinary document, 12 volumes, beautifully written, deeply researched." I conclude that the value the experts placed on the report is well-founded.

[190] The Truth Commission made extensive inquiries into the atrocities and human rights violations that occurred during the conflict, and its report provided a detailed historical account and analysis of those atrocities. The Truth Commission Report estimates that 160,000 people were killed, and 40,000 were disappeared over the course of the armed conflict. The vast majority of victims were civilians.

[191] The Truth Commission Report concludes that there were 12 massacres carried out in the department of Petén, making it the eighth highest of Guatemala's 22 departments in terms of number of known massacres. Three of these massacres were extensively documented: (1) the massacre in the village of Los Josefinos in April 1982, where government forces killed an estimated 28 adults and 14 children; (2) the massacre in Las Dos Erres in December 1982; and (3) the massacre in the La Técnica cooperative, occurring days after the Las Dos Erres massacre, in which Kaibil forces kidnapped and killed seven people.

(2) Expert Evidence of Dr Oglesby

[192] From 1986 to 1990, Dr Oglesby conducted substantive research in approximately 40 rural villages where massacres had taken place in 1981-1982, in the Guatemalan departments of El Quiché, Alta Verapaz, and Huehuetenango. She conducted more than 350 interviews with survivors, as well as 80 semi-structured interviews with Guatemalan civilian and military officials during this period, in Guatemala City and various towns throughout the country. She

also reviewed key Guatemalan military documents from the early 1980s. The portions of the report she drafted were based on her review of declassified documents, Guatemalan military campaign plans, and the testimonies of hundreds of survivors.

[193] According to Dr Oglesby, a salient characteristic of the conflict was the high level of civilian deaths perpetrated by agents of the Guatemalan state. The attacks against civilians were carried out pursuant to a military doctrine of "annihilation of the internal enemy."

[194] The patterns of violence to which civilians were subjected included indiscriminate killings, forced displacement, the destruction of villages and ongoing attacks against civilians, even after the massacres.

[195] Dr Oglesby explained that although the roots of the Guatemalan internal armed conflict began as early as the U.S.-sponsored military coup against President Jacobo Árbenz in 1954, attacks against civilians intensified in the 1980s. In June 1981, in an escalation that lasted for the next 18 months, the military embarked on a much more systematic attack to take control over entire rural regions, particularly in northern Guatemala. The Truth Commission referred to this as the start of the military's "scorched earth" campaign, whereby soldiers destroyed houses, crops, and entire villages in addition to committing indiscriminate massacres. Troops were deployed in a pincer operation beginning in the central highlands and moving simultaneously northwest and northeast and then closing in to drive the guerrillas toward Mexico, along with tens of thousands of civilian refugees.

[196] Land conflicts had been increasing in Petén since the 1960s. By the early 1980s, the presence of the Rebel Armed Forces (*Fuerzas Armadas Rebeldes* [FAR]), in the Petén region, combined with the social context of land conflicts, led the military in its "Victory '82" and "Firmness '83" military campaign plans to label Petén as a priority zone in the counterinsurgency war. Along with the western highlands, this meant that the military intended to pursue "total" war in the region of Petén, that is not only against the armed insurgents but also against those it viewed as the insurgents' civilian sympathizers.

[197] The Guatemalan government's focus on developing consolidated and rational countersubversive operations began when General Ríos Montt came into power through a military coup on March 23, 1982. As Dr Oglesby explained, there was a surge of resources to military zones identified as priority in Victoria '82. The plan also created "rapid deployment forces" from different branches of the armed forces, designed to go into conflict zones to carry out specific operations.

[198] Dr Oglesby testified at length about a Countersubversive Warfare Manual (*Manual de Guerra Contrasubversiva*) [CW Manual] which outlines the Guatemalan military's general doctrine and strategy in its counterinsurgency/countersubversive warfare.

[199] The CW Manual discusses an "internal enemy," which it defines as individuals, groups, or organizations that seek to disrupt the established order through illegal actions, including groups that may not be explicitly communist or identify themselves as communist. The label of

"internal enemy" applied to any individual or organization that was in political opposition to the Guatemalan government, but not necessarily engaged in armed combat.

[200] The definition of countersubversive warfare in the CW Manual states that, "[i]n short, countersubversive warfare seeks to prevent the development of any subversive movement and to annihilate it." This definition is but one example of the "annihilation" language used by the military in its doctrine and strategy.

[201] Dr Oglesby testified that the CW Manual sets out three distinct phases of the "countersubversive struggle": (1) the prevention period (protection); (2) the intervention period (response); and (3) the consolidation period (pacification or return to normality).

[202] According to Dr Oglesby, it is at the response stage that the military struggled for territory and initiated its scorched earth campaign throughout large areas of the country. This is when the massacres, forced displacements, destruction of villages and permanent military occupations occurred. The CW Manual explicitly states that:

> … in the event of an abnormal situation, a state of siege is declared in the affected area so that the use of force against the subversive movement can be authorized … declaring a state of siege removes many obstacles (especially of a moral and psychological nature) among the countersubversive forces, since the more tangible the danger is in the area, the more acceptable repressive measures will be.

[203] The CW Manual sets out three types of zones on a map of Guatemala: red, pink and white. Red zones are where the most intensive countersubversive operations were to be conducted. It states that:

> [o]nce a red zone has been selected … and a state of siege has been declared, the intervention will consist of the following steps: 1) Destruction or expulsion of the armed subversive elements. 2) Establishment of territorial control forces. 3) Establishment of contact with the population and monitoring of their movements in order to disrupt relations with the guerillas. 4) Destruction of the local political-administrative organization.

[204] The term “guerillas” refers to armed subversive elements, while “political-administrative organization” is a civilian population’s community organization.

[205] The military’s intervention in red zones included psychological operations to keep the population’s support and maintain the air of a threat.

[206] To demonstrate that the army considered the internal enemy to include at least some portions of the civilian population, Dr Oglesby referred to a section of the CW Manual which states that operations against guerilla forces “must include appropriate action against clandestine support they receive from the population, without which the guerilla forces cannot operate.” It further elaborates: “[a]ll actions aimed at eliminating the support of the population for guerilla forces must be carried out with determination. Government forces must identify which elements of the civilian population are supporting the guerrilla forces.”

[207] As reflected in the Victoria ‘82 campaign plan, the military’s doctrine and strategy also targeted “local clandestine committees” (*comités clandestinos locales* [CCL]). These CCLs were comprised of non-combat civilians. The plan also refers to “local irregular forces” (*fuerzas irregulars locales* [FIL]), a group the army believed were unarmed civilian supporters of the

guerillas who provided logistical support and resources to the insurgent forces. Victoria ‘82 called for the destruction of both the CCL and the FIL.

[208] Dr Oglesby described the massacre at the village of San Francisco Nentón. The army first surrounded the community, then separated the population by gender into different buildings. There was sexual violence against women and girls before all but one person in the village was eliminated. She then proceeded to describe the events of April 3, 1982, in the village of Chel, Quiché. Soldiers arrived early in the morning, surrounded the village and separated the population by gender into different community buildings. There was sexual violence against women and girls. The population was brought to a bridge at the entrance to the village and the men were shot. The women were attacked with machetes. The soldiers killed the children by throwing them over the bridge and onto the boulders below. Two children survived, one with grave and permanent injuries. Two weeks after the massacre, soldiers returned to kill the villagers who had been hiding in the mountains and returned to bury their dead. Dr Oglesby stated that another massacre took place in Los Encuentros, where soldiers methodically killed 79 people in May 1982.

[209] Based on her analysis of the Truth Commission Report, Dr Oglesby was of the opinion that there were over 600 documented rural massacres, 95% of which were committed by Guatemalan government forces.

[210] Dr Oglesby analyzed the repetition of destructive actions carried out by the military against civilians. In her opinion, there was a pattern by which the massacres were carried out that demonstrated a meticulous planning and execution. As she explained:

> a) Massacres typically began at times intended to surprise the population; soldiers would arrive in the pre-dawn hours or on Sundays when the population would already be gathered.
>
> b) Soldiers surrounded the village and gathered the population together.
>
> c) The population was divided by gender into different buildings; men separate from the women and children.
>
> d) Sexual violence usually occurred once the population was separated.
>
> e) The population was then "slaughtered," with extreme cruelty against even the most vulnerable.
>
> f) After the massacre, the village was burned, and the livestock and animals killed and pillaged.
>
> g) Sometimes operations would occur over several days, with soldiers taking breaks in between steps.

[211] According to Dr Oglesby, these patterns demonstrate that the attacks against civilians between 1981 and 1983 were not excesses; they were methodically planned and executed in accordance with a military doctrine and strategy. Specifically, their logic was laid out in the CW Manual, Plan Victoria '82, and Plan Firmness '83, which gave instructions on how to implement strategies of control over territory and population.

[212] In Dr Oglesby's opinion, what occurred in Las Dos Erres on December 7, 1982 is consistent with what occurred in massacres against civilian populations in other regions of Guatemala during the same time period.

(3) Expert Evidence of General Robles

[213] General Robles provided an expert report dated November 14, 2024, entitled "Military Expert Report, 'Structure and Counter-insurgent Operations of the Guatemala Army in the Internal Armed Conflict. Participation of its Units in the Dos Erres Massacre in El Petén – Guatemala.'"

[214] General Robles studied the Guatemalan military doctrine during the armed conflict, including how operations were carried out and its planning at the political, strategic and operational levels. He has acted as a special witness for the Guatemalan Attorney General's office concerning several massacres and assassinations in Guatemala and testified as an expert witness in Guatemalan courts.

[215] General Robles provided a chronology of the key events which led to the development and implementation of the Guatemalan military's national strategy between 1982 and 1983:

a) March 23, 1982: General Ríos Montt's coup d'etat to become the President of a self-declared Military Government Junta [JMG].

b) April 1, 1982: New military government issues its political-strategic plan, the "National Security and Development Plan."

c) April 27, 1982: New military government enacts the Fundamental Government Statute, through which it assumes the executive and legislative functions of the state.

d) June 9, 1982: General Ríos Montt dissolves the JMG and declares himself President of the Republic and Commanding General of the Guatemalan Army, attributing to himself the executive and legislative functions.

e) June 16, 1982: Launch of counterinsurgency campaign plan Victoria ‘82.

f) July 1, 1982: State of siege is declared and General Ríos Montt orders an increase of armed forces and the partial mobilization of the army to annihilate subversive forces (General Order 18-82).

g) Mid-July to Mid-August 1982: Implementation of plan Victoria ‘82 in the Quiché region via operations set out in Plan Sofía.

h) 1983: Launch of counterinsurgency campaign plans Firmness ‘83 and Firmness 83-1.

[216] General Robles explained that the Guatemalan military’s counterinsurgency policy abided by the Doctrine of National Security, a US-supported doctrine used to combat international communism and its entry to Latin America. Pursuant to this doctrine, the army in each country was to suppress “the enemy within.”

[217] In 1956 the new Political Constitution of the Republic of Guatemala declared communism to be an “internal enemy,” and, as stated by General Robles, “the army’s mission was to destroy it.” This remained in effect in subsequent constitutions, including in 1985.

[218] General Robles explained that the military’s definition of “internal enemy” became increasingly broad in the 1970s and 1980s. Initially, it was seen as including members of the Communist Party. With time, it encompassed any collaborators, sympathizers or supporters of the ideology, as well as any political adversaries seen as enemies of the state.

[219] General Robles noted that the definition of “internal enemy” in the CW Manual was not restricted to members of guerilla organizations, but included people who, for any reason, were not in favour of the established regime. It read as follows:

> Internal enemy is constituted by all those individuals, groups or organizations that, through illegal actions, try to break the established order. The internal enemy is represented by the elements that, following slogans of international communism, develop the so-called “Revolutionary War” and subversion in the country. It is important to keep in mind that those individuals, groups and organizations that, without being communists, try to break the established order.

[220] He opined that in plan Victoria ‘82, the arbitrary concept of the internal enemy could have been used to classify trade unions, associations, cooperatives and even the Catholic church as “mass revolutionary organizations.”

[221] General Robles explained that with the implementation of the U.S. Doctrine of National Security, the Guatemalan military reached a “peak” in its operational forces and intelligence in

1982. As reflected in plan Victoria ‘82, the military relied on the Kaibil patrol, Civil Self-Defence Patrols [PAC], and other “creative organizations.”

[222] The Kaibil patrol, comprised of officer instructors and sub-instructors from the Kaibil school, were used as strategic sub-units in special operations authorized by orders of the Army General Staff. These special operations required specifically trained personnel, those who were “bold, courageous, strong,” and had the ability to endure.

[223] According to General Robles, the Kaibiles operated in accordance with “normal operating procedures,” meaning the routine patterns of actions which did not need to be included in the general orders sent down to the patrol because they were already known as standard steps to be taken.

[224] The Kaibil special patrol fell under the “special command” category of the Guatemalan military’s hierarchical organization. It was authorized to act, reported to, and received its orders from the General Army Staff. In 1982, General Hector Mario Lopez Fuentes was the Chief of General Staff of the armed forces, and, together with General Ríos Montt, who was both President and Minister of Defence, comprised the “High Command.”

[225] Prior to General Ríos Montt’s 1982 military coup, counterinsurgency strategies were decentralized, based in Guatemala’s various regions. However, after 1982 operational plans were developed by the High Command at the national level. In this way, plan Victoria ‘82 represented

a new, centralized type of planning which made it possible for the military to succeed over the insurgent forces.

[226] General Robles testified that by declaring a state of siege in 1982, the Guatemalan government was able to suspend or curtail the constitutional rights of the entire population. Furthermore, the General Staff of the Guatemalan army was able to make key changes to the Kaibiles' operations; namely suspending courses and creating a strategic combat patrol.

[227] General Robles opined that the counterinsurgency power strategy applied a "systematic use of terror" far removed from international rules of war, human values, and legality. The state responded to "terrorist or subversive acts" with its own acts of terror, such as accusing anyone of being an "enemy within," leading to fatal consequences for that individual. Troops acted with "total violence," with the knowledge that they would have state support. Civilians were victims, caught in the middle of subversive and state terrorism.

[228] The so called "state terrorism" was carried out in a unified and controlled manner by the military police, paramilitary bodies, security and intelligence services, etc. This was made possible by the combination of a centralized power in the High Command and the functional autonomy of individual forces in 1982-1983.

[229] Although campaign plan Victoria '82 never directed the army to terrorize civilians, General Robles said that this is what occurred in practice – murder and the burning of villages. The army did not comply with the code of conduct towards the civil population. The code was in

fact ignored in Firmness ‘83, which specifically mentioned burning fields and the scorched earth strategy. In General Robles’s view, this progression between plans shows how things changed over the course of the year.

[230] General Robles testified that while Kaibiles would not have received or been directly familiar with plan Victoria ‘82, they would have been aware of the counterinsurgency strategy of annihilation and of the concept of an internal enemy because the operational plans under which they operated were pursuant to the dictates of Victoria ‘82.

[231] Victoria ‘82 stipulated that the “mission of all patrols” included: “1. To annihilate, capture and [harass] the enemy. 2. To obtain information and report it on time and correctly. 3. To prevent access by guerilla groups to the civilian population. 4. To gain the people’s support for the Government and the Army.” These were part of the standing orders given to the various military zones, which would cause their operational units to actualize the mission through aggressive actions to locate guerillas and destroy any connections they had to the civilians who were supporting them.

[232] The CW Manual specifies rigidly controlling and doling out severe administrative measures to populations that “collaborate with the guerilla forces.” It also employs strict control measures to sever the close relationship between civilians and the subversive forces such as, where necessary, “relocat[ing] the entire population from some sites.” The manual contemplates that operations against subversive units would be carried out by “small unit actions,” such as the Kaibil patrol.

[233] In General Robles's opinion, a Kaibil instructor and officer would have been informed of the strategy and instructions set out in the CW Manual, both at the Politécnica and Kaibil schools. The Kaibiles' specialty was countersubversive warfare. Therefore, a Kaibil officer would have known about the CW Manual's steps for conducting an incursion against subversives, including, where deemed necessary, "police-type operations" and "repressive measures" against women, children and the ill within the civilian population. He testified that it was probable that a Kaibil officer would have known in 1982 that the army's counterinsurgency strategy involved violence against civilians.

[234] When asked whether he found credible Mr Sosa' claim that in December 1982 he was performing duties as a liaison officer in villages, including providing schools with materials and sports equipment, General Robles responded bluntly "it is absurd" and continued as follows:

> A. No, it is not credible. No Army in Latin America and in Guatemala as well would invest so much so that -- in their soldiers to have them just distribute or supply sport materials in a red zone.
>
> Q. Is it credible that a Kaibil Officer in 1982 would have had no involvement in counterinsurgency combat operations?
>
> A. Absolutely incredible. It is not possible because they have been trained specifically for these kind of operations, and no Army can waste budget or resources, training for this type of use. No Army can afford to have had this training for its soldiers and then use them for a different task. They are all trained for this purpose.

[235] According to General Robles, plan Victoria '82 permitted and facilitated the Kaibiles' intervention in Las Dos Erres because it made provisions for the resources required for the operation, such as vehicles and weapons. He described the operation at Las Dos Erres as an "incursion," which the CW Manual specifically defines as a surprise attack on an enemy unit,

followed by withdrawal once the mission is complete. Las Dos Erres would have been considered an “enemy unit” or a unit with subversive forces in it, because it was categorized as a red zone.

[236] General Robles noted that the way that the Kaibil patrol organized itself, into a command, attack, support and security group, each led by a Kaibil officer, fit within the typical structure dictated for military operations. The nearby Las Cruces detachment had also set up roadblocks to prevent victims from escaping Las Dos Erres and prevent others from coming to their aid. The use of roadblocks was also a common part of the military’s methods and systems at the time.

[237] Consistent with the system of orders and intelligence flow in 1982, the Kaibiles’ weapons recovery mission in Las Dos Erres would have been ordered by the Army General Staff. When the incursion did not lead to the weapons’ recovery, the army still engaged in actions of punishment and terror which ultimately came to be known as the Las Dos Erres Massacre.

[238] General Robles concluded that the Kaibiles’ operation in Las Dos Erres was planned, ordered, and, from a military standpoint, efficient due to its coordination. However, the mission could not ultimately be considered a military victory; the rifles were never recovered and the operation caused increasing horror in the general population’s sentiment towards the state.

(4) Expert Evidence of Ms Doyle

[239] Ms Doyle’s report analyzes several declassified Guatemalan and U.S. documents concerning the counterinsurgency campaign and conflict that took place in Guatemala, with a

particular focus on the Las Dos Erres Massacre and the investigation of the massacre over time. In addition to her Freedom of Information Act requests to obtain declassified U.S. documents, Guatemalan records were obtained in limited circumstances by the Truth Commission and general orders were leaked to journalists and have since been affirmed as authentic by Guatemalan courts. Between 1997-1999, Ms Doyle would directly receive leaked documents due to her work with the Truth Commission.

[240] According to Ms Doyle, the U.S. helped engineer a coup of the democratically elected Guatemalan President, Jacobo Árbenz, in 1954. This was part of a broad U.S. anti-communism policy. Over the following 30 years, the U.S. provided millions of dollars of weapons, equipment, training, intelligence, and technological support to Guatemala. This lasted into the late 1970s and early 1980s, when the U.S. Congress and President Jimmy Carter prohibited direct military assistance, but permitted continued intelligence support until the mid-1990s, when the Guatemalan government and insurgent organizations signed the Peace Accords.

[241] Echoing General Robles, Ms Doyle noted that the U.S. was the architect of the Guatemalan military's anti-communist National Security Doctrine. Guatemala was one of many Latin American countries to adopt such a doctrine.

[242] In 1994, Ms Doyle learned that the U.S. government was involved in some manner with the Guatemalan military in its counterinsurgency project. Before the final Peace Accord was signed in 1996, she began to file Freedom of Information Act requests with U.S. federal agencies.

[243] By the time the Truth Commission was established, Ms Doyle had collected a “critical mass” of declassified documents concerning the armed conflict, the role of the armed forces and police, and specific human rights concerns. She offered to assist the Truth Commission in its investigation by providing it with a curated collection of documents.

[244] Ms Doyle explained that the existence of the Kaibiles and the nature of their activities is well-documented, both in the Truth Commission Report, which drew on interviews with former members, and in declassified U.S. documents she obtained, which describe them as a special operations strategic unit. The Kaibiles also appear regularly in the Guatemalan military’s general orders, which documented the movements of officers between different units around the country.

[245] A U.S. Military Intelligence Summary on Latin America, issued in December 1980, describes the Guatemalan army as having no special forces-type units, but notes that the armed forces “operate a kaibil (ranger) training center,” that “[e]ach infantry battalion has a kaibil platoon, which may be deployed as a separate small unit,” and that these platoons “are used as cadre for training other conscripts in insurgency and counterinsurgency techniques and tactics.” Ms Doyle confirmed that the Kaibiles would have been perceived as having special training in violent confrontations and counterinsurgency.

[246] Ms Doyle testified that the Las Dos Erres massacre came at the “tail end” of the most intensive phase of the army’s counterinsurgency strategy, after hundreds of massacres had already occurred throughout Guatemala. In her opinion, the Las Dos Erres massacre fits into the military’s pattern of using mass murder as a counterinsurgency policy and instrument.

[247] Ms Doyle highlighted one possible reason that the Guatemalan army targeted Las Dos Erres: its refusal to join a PAC. According to Ms Doyle, the villagers' refusal to form a PAC angered the army commander in nearby Las Cruces, Lieutenant Carlos Carias, who began to spread a rumor that Las Dos Erres was a guerilla stronghold. This may have been the reason why the village was blamed for the guerilla ambush in Palestina, which caused the death of around 19 soldiers, and theft of around 21 rifles. The exact number of deceased soldiers and stolen rifles differ slightly between the Truth Commission Report and declassified U.S. documents that Ms Doyle obtained.

[248] The records obtained by Ms Doyle show that prior to the Las Dos Erres Massacre, there were around 250-350 inhabitants. There are only a handful of known survivors from the massacre, including one of the Ministers' fact witnesses, Mr Cristales. The documents reflect the U.S. investigation of a rumored massacre at Las Dos Erres, and the information it obtained which led the investigators to conclude that the village had been "wiped out," most likely by army forces.

[249] A declassified report authored by the U.S. State Department's Bureau of Intelligence and Research dated March 3, 1983 discusses the Guatemalan military's counterinsurgency strategy as being guided by General Ríos Montt's "Rifle and Beans Policy." It describes the policy as rewarding those who support the government with good work and housing assistance, and meeting those who oppose the government with force. The report also discusses the classifications of various villages as white, pink and red zones based on their level of allegiance.

Residents of red villages "were warned to move to 'strategic villages' or face the consequences when army operations were conducted in the area."

[250] Another section of the report attempts to allocate blame for the devastating effects of the internal armed conflict on the population between the government and the insurgency groups. Under the heading "Both Sides Have Engaged in Massacres," it says: "[a]llegations that the army has regularly massacred every man, woman, and child in 'red' villages are countless." It finds that many of these countless reports are fabricated but concedes that "government responsibility for at least two such incidents is well established." The report references the army's massacre of 70 civilians in September 1982 near La Estancia de la Virgen in Chimaltenango, as well as the Las Dos Erres Massacre, where "troops killed every one of the several hundred inhabitants of the region …"

[251] Further portions of the report summarise the operations and threat levels of several guerilla groups in Guatemala, one being the FAR, who operated in the Petén region. The FAR was described as the most dangerous group, posing the greatest threat to the government.

[252] The report describes the FAR's ambush of Guatemalan troops in October 1982, when it killed 19 troops and stole some Galil rifles. It states that "[s]hortly after the attack, the army responded by burning the homes and crops of two nearby villages for their support of FAR activities. The FAR retaliated with an attack on a neighboring village. The army's massacre of the people of Los Dos R's came shortly thereafter."

[253] The report further states that:

> An important aspect of the government's recent program has been its emphasis on combatting the latent insurgency created by government and societal abuses of the population. If similar progress is to be made in El Peten, the army will have to prevent incidents like the one at Los Dos R's. In that instance even CDF members who had demonstrated their loyalty to the government were slaughtered. Such incidents, outrageous enough in the abstract, are particularly unwise …

[254] Ms Doyle analyzed a secret cable from the U.S. Embassy in Guatemala to the State Department dated December 28, 1982, three weeks after the Las Dos Erres Massacre. Its subject line is "Alleged Massacre of 200 at Village of Dos R's." The cable states that a reliable Embassy source relayed second- and third-hand information on a possible army massacre of 200 villagers in "Los Dos R's," Petén Department. The people of Las Cruces told the Embassy source that on the evening of December 12, an army unit disguised as guerillas entered Las Dos Erres, gathered the villagers, and demanded food. While the Embassy's source was not clear on what occurred thereafter, the people of Las Cruces told him that the army returned again after December 12 to take roofing and furniture back to the army base, and that the village was completely deserted. No one claimed to have seen any bodies.

[255] The cable further discusses three theories about the incident at Las Dos Erres: (1) the army arrested all the villagers and took them to the jungle; (2) the army took the men to the army base in Poptún, and the women and children to the base in San Benito; or (3) the army killed everyone in the village, dumped them into the well, and covered the well over. The third theory was based on the word of people who went into Las Dos Erres and discovered the well was covered over. The cable also notes the prevailing rumor that the army was suspicious of the

people of Las Dos Erres ever since guerillas attacked the army at Palestina six months prior. The cable advises that, given “the seriousness of the allegation that the army massacred 200 people, and because of the reliability of this source’s information in the past,” an Embassy Officer would fly over the area on December 30 to investigate.

[256] The Embassy reported on the results of its investigation in another secret cable, dated December 31, 1982. The subject of the cable is “Possible Massacre in ‘Dos R’s’, El Peten.” It relays that on December 30, three mission members and a country diplomat visited Poptún and Las Cruces, in Petén. It describes Las Dos Erres as a group of scattered houses, not even a village or a hamlet. The cable report says that some 200-500 people had lived in Las Dos Erres, although no one was sure about the exact number.

[257] Upon flying over Las Dos Erres, the mission members found that it was deserted and many of the houses were “razed or destroyed by fire.” The helicopter pilot, who was a reserve officer in the Guatemalan air force, refused to touch down in Las Dos Erres, but the mission members could tell there was no sign of life when they flew low over the area.

[258] Guatemalan army officials told them the area near Las Cruces was exceptionally dangerous because of recent guerilla activity, including ambushes of army patrols, and that guerillas had “taken the people away in early December.” The Mayor in Las Cruces called what happened at Las Dos Erres a “mystery.” However, a civil defense member and confidant of the army in Las Cruces told a mission member that it was the army who was responsible for the disappearance of the villagers. The source was apparently told to stay out of the area on a certain

day because the army “was going to sweep through and ‘clean out’ the area.” The source said that the army did indeed sweep through the area in civilian clothing, carrying Galil rifles. The cable notes that this information is consistent with rumors in the area.

[259] The cable further states that “[t]here was a definite atmosphere of fear in Las Cruces. The local army Commander, a Lieutenant, was no where to be found.” It opines that it “is somewhat difficult to believe that the disappearance (and possible liquidation) of hundreds of people so close to Las Cruces could remain a ‘mystery’ for weeks.”

[260] The cable concludes that “the settlement called ‘Dos R’s’ in El Peten has been wiped out.” It states that, based on the information reported and on-site observations made on December 30, “the Embassy must conclude that the party most likely responsible for this incident is the Guatemalan army.”

[261] The findings of the U.S. Embassy’s December 31 secret cable are also reflected in a January 4, 1983, confidential cable from the Canadian Embassy in Guatemala to Ottawa’s “External Affairs” department.

[262] Ms Doyle notes that in 1994, the Association of Family Members of the Detained and Disappeared of Guatemala (*Asociación de Familiares Detenidos-Desaparecidos de Guatemala* [FAMDEGUA]) began to investigate several major human rights crimes, including the Las Dos Erres massacre, and obtained a judge’s order to allow an Argentine forensic team to start an

exhumation. This was the first step in what the organization hoped would be a full investigation. A proper investigation would not begin until six or seven years later.

[263] When the Argentine forensic team began its work in 1994, it was only able to sustain its investigation for one year. According to declassified U.S. documents, this was due to the hostile environment created by the Guatemalan government, which sent its military members, dressed in civilian clothes, to monitor, photograph and harass the team. Another reason it was difficult to sustain the exhumation work was a lack of finances. While FAMDEGUA was able to obtain a court order, it had no government funds to support the investigation.

[264] In April 2000, the offices of the Inter-American Commission facilitated a “friendly agreement” between the Archbishop’s Office for Human Rights and FAMDEGUA on the one hand, and the government of Guatemala on the other [Friendly Agreement]. In the Friendly Agreement, the government accepted institutional responsibility “for the events that took place between December 6 and 8, 1982, in the hamlet of Dos Erres, village of Las Cruces, situated in the municipality of La Libertad, department of Petén … where members of the Guatemalan Army massacred approximately 300 persons … men, children, the elderly and women.” The government also took responsibility for the delay in investigating the massacre and agreed to, among other things, conduct “a serious and effective investigation culminating in a criminal trial to individually identify and punish those responsible for the massacre, both direct perpetrators and masterminds.”

[265] On March 29, 2000, a Guatemalan judge issued arrest warrants for several Kaibiles members connected to the death of approximately 350 individuals in Las Dos Erres, including Mr Sosa.

[266] On April 6, 2000, the National Civil Police received an official telegram directing it to immediately proceed with the arrest or apprehension of named individuals linked to the Las Dos Erres Massacre, including Mr Sosa.

[267] Guatemala's Public Prosecutor's Office (*Ministerio Público*) compiled a list in May 2002 naming persons implicated in the "crime" committed at Las Dos Erres. According to Ms Doyle, the list was sent to the Department of Justice in the U.S., to find and presumably arrest these individuals. Once again, the named individuals include Mr Sosa.

[268] Ms Doyle also referenced the Inter-American Court's November 2009 judgment on the Las Dos Erres massacre. The judgment was the result of petitioners' efforts to have the Guatemalan government finally comply with the Friendly Agreement it had signed. The judgment, in effect, ordered the government to uphold its commitments from the Friendly Agreement.

[269] The Inter-American Court's judgment prompted the continuation of the exhumation work that was initially commenced by the Argentine forensic team, this time by the Forensic Anthropology Foundation of Guatemala [FAFG]. FAFG's exhumation work in 2010 was, in effect, the third exhumation of the human remains which the Argentine forensic team had re-

interred in a mass grave at Las Cruces following their first two exhumations in 1994 and 1995. FAFG's initial report catalogued the recovery of many fragments of human bones.

[270] During her testimony, Ms Doyle reviewed a number of the death certificates that were issued in 1995 and 1998 to the victims of the Las Dos Erres Massacre. The certificates note the date of death as December 7, 1982. Some certificates name known residents of the village, while others simply indicate "XX, XX" as the name of the deceased. The ages of the deceased range from 11 months to 50 years old. The cause of death most commonly indicated is "firearm projectile injuries."

[271] Ms Doyle also reviewed a ballistics expert report dated September 19, 1996. It lists findings of several types of fragmented and corroded projectiles and cartridges which can be fired by Galil, M16 and AR-15 firearms. Ms Doyle noted that the discovery of this ballistic material is not what one would expect from a village of agricultural workers who were not part of a PAC, unless a violent episode involving weapons took place there.

(5) Expert Evidence of Dr Turner

[272] Dr Turner provided an expert report dated September 2, 2020, entitled "Forensic Anthropology Investigation on Las 2 RR Massacre. Guatemala 1994–1995." The report is based on her original, 1995 Spanish archaeological report following the exhumation she conducted at Las Dos Erres; sections of the 1995 report were co-authored with colleagues. The 1995 report has been referenced by international organizations such as the Untied Nations and the Inter-American Commission. Her report is well documented, thorough, objective and internally

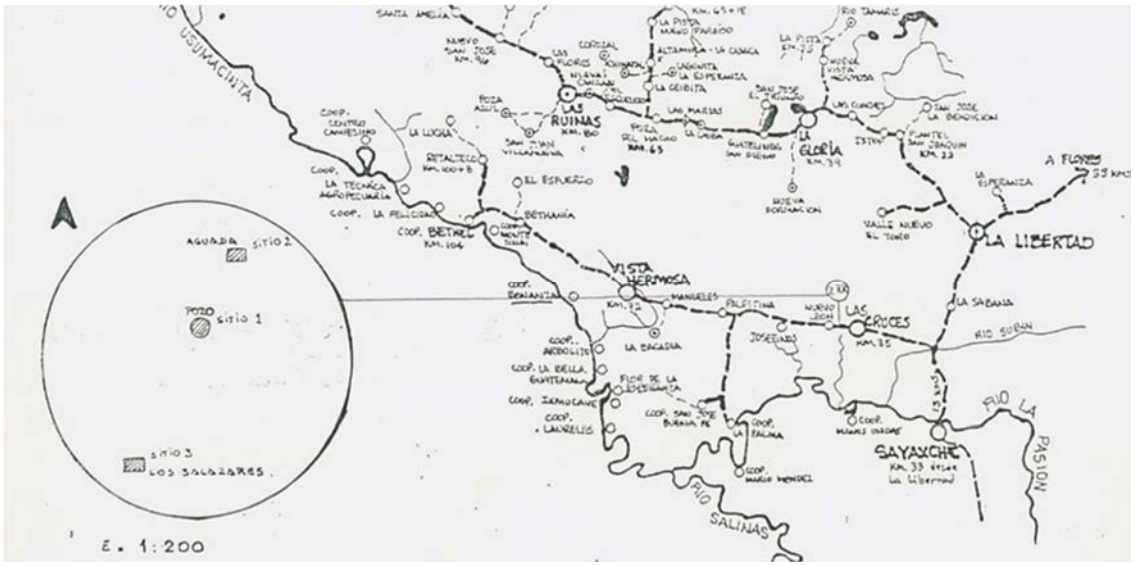
consistent in every respect. There are no issues as to Dr Turner's credibility and I accept her evidence unconditionally.

[273] Dr Turner has been working for the FAFG since 1988. She was with the team when it received a request from FAMDEGUA in 1994 to visit Las Dos Erres and verify the existence of human remains. She was part of the group that conducted an archaeological excavation at Las Dos Erres in 1994 and 1995. While she had around six years of experience prior to the excavation at Las Dos Erres, it was the first instance in which she had to exhume children.

[274] The excavation was conducted in two parts. First, the team took a preliminary trip in 1994 to verify the information they were provided and plan for a bigger mission in 1995.

[275] Human remains from the Las Dos Erres Massacre were discovered in three different sites: (1) the well at Las Dos Erres; (2) Los Salazares (30-minute walk from the well); and (3) La Aguada (1 hour and 30 minute walk from the well).

[276] The 1995 investigative team created the following map to show where the three sites were situated relative to one another:

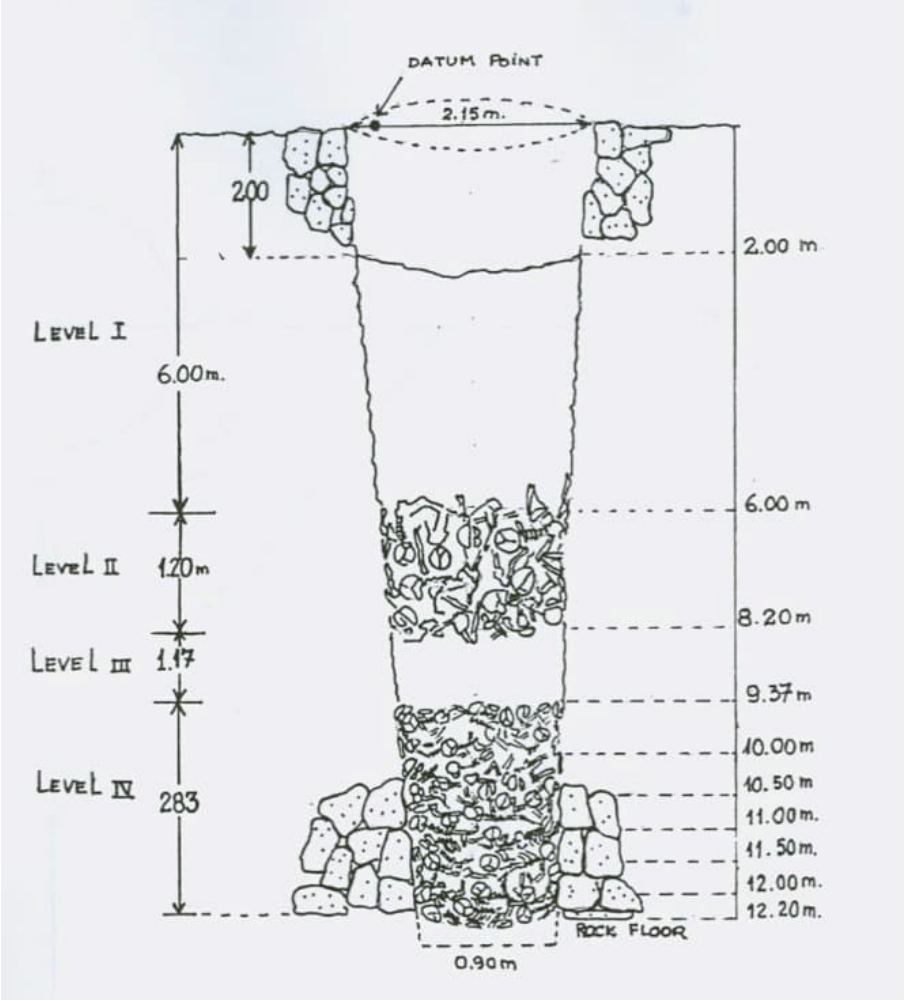


[277] As reflected on the map, the area where all three sites are located were indicated as the “2 RR” area. According to Dr Turner, this is because there was no longer a town or village that existed there when they arrived.

[278] A minimum of 162 skeletons were found at Site One. Exhumation at this site was difficult due to environmental conditions and because, by 1994, a tree was growing inside of the well, as shown in a photo taken by Dr Turner.

[279] The well was two meters wide at surface level, and 90 cm wide at its base. When exhuming bodies from the well, Dr Turner’s team started from the top of the well and worked towards the bottom, assigning each of the remains a number. The remains assigned greater numbers were found towards the bottom of the well. Children under 12 years old tended to be found towards the bottom of the well, while adult males were mainly located at the top. On this

basis, she determined that the women and children were thrown into the well first. The following is her depiction of the structure and contents of the well as it was found.



[280] The sketch shows that level one is comprised of soil, while levels two and four are comprised of skeletal remains, separated by little more than a meter of earth and soil at level three. Dr Turner said the soil at level three was not “natural soil,” it was softer than normal. In her opinion, this would suggest that soil was added to the well in between the bodies that were thrown in.

[281] Given the technology available to the team in 1995, it was not possible to establish a date for the remains at the site. Therefore, the team examined the other evidence associated with the remains, including clothing. From the pockets of the clothing found they recovered coins dated 1977 and 1978, as well as a calendar dated 1982. From this, it became apparent that the remains were buried sometime after 1978, and not before 1982.

[282] Dr Turner discovered bullets in the well, which coincided with markings on skulls and long bones related to bullet trajectories. A laboratory report reflects that green marks on skull fragments with circular fractures were associated with a projectile, suggesting injury caused by gunshot wound.

[283] Certain remains, typically those of male adults had ropes associated at the cervical/neck level, and the ankles. When asked about any evidence of blunt force trauma to the head, Dr Turner advised that, in the majority of cases, the skulls were fractured. Although it was sometimes difficult, the team tried to differentiate between premortem fractures (during a person's life), perimortem fractures (around the moment of death) and postmortem fractures (after death). Dr Turner found that, in most cases injuries or fractures may have occurred when people fell into the well, or from other undetermined causes. Analyzing the injuries was difficult, owing to the poor preservation of the remains.

[284] Towards the top of the well the team located the remains and clothing of a skeleton identified as the remains of a child around nine years old. Because it was located near the top of the well, it was more complete than others. The fractures found on the bones of this skeleton

were typical of postmortem damage. Dr Turner explained that, where there is a lot of postmortem damage, it is difficult to identify perimortem injuries.

[285] Dr Turner concluded that the well was used to dispose of the bodies found inside, and that this was not a cultural practice of any kind she was aware of. She further determined the well was a mass/common grave and the "primary site," meaning that it was the first place that the bodies were deposited. She was able to deduce that the well was a primary site due to the anatomical positions of the remains when they were discovered.

[286] Dr Turner's report provides a chart with an age and sex distribution of all skeletons found at the well. The total number of children under 12 years of age is 67. The remains of the youngest child found at the well is around two months old. The sex of the skeletal remains could not be determined for the children, because indicating features would not yet have developed.

[287] A minimum of three skeletons were found at Site Two, La Aguada, which is a strip of land covered with wild plants. A minimum of four skeletons were found at Site Three, Los Salazares, which is a dry watering hole.

[288] These were "secondary superficial sites," meaning the remains found were moved by the environment, climate and animals and were therefore not in anatomical position.

[289] The team was able to identify “concentrations” of remains and associated evidence at the sites. Eighteen concentrations, or “sets of remains,” were found in Site Two, and 14 were found in Site Three.

[290] The team found many long bones at Site Three. While the remains were poorly preserved, they recovered more long bones because they are stronger and better able to withstand environmental degradation. Nevertheless, they also discovered some skulls.

[291] In addition to disarticulated bones, the team discovered another calendar in the pocket of some clothing found at Site Three. Similar to the calendar found at Site One, this calendar was for the years 1981/1982.

[292] Finally, Dr Turner’s team recovered a spent shell at Site Three, which was consistent with an Israeli-made Galil rifle.

(6) Mr Pinzón

[293] Mr Pinzón was one of the Kaibiles present at the Las Dos Erres Massacre. He testified about his years of experience working at the Kaibiles school as a cook and steward. He explained that he had multiple interactions with Mr Sosa at the Kaibiles school and that he knew him well.

[294] The Kaibil school was a training school built to prepare students to be the best combatants against guerilla forces in Guatemala. There were around 40-45 soldiers/students at

any given time, coming from different military zones throughout the country. Typically, Kaibil students wore a camouflage uniform and military boots.

[295] Not all students would graduate from the Kaibil course, only around 10-15. Many were injured and others died in the course of the survival training. Mr Pinzón testified that he enrolled in the course but was unable to complete more than 15 days. Beyond his own experience in the course, he would often hear from the instructors and sub-instructors about how the classes were being run. He would also observe the classes as they were held.

[296] The Kaibil course was known to be the toughest. The school's creed or motto was: "If I advance, follow me. If I stop, urge me on. If I retreat, kill me. Kaibil." Mr Pinzón also recalled the school's "decalog," and although he could not recite its precise words, he believed part of it included something along the lines of: "I am a Kaibil. I belong to the Attack [or Strike] Forces. We have the strength of two tigers. We are a killing machine." When asked what was meant by the term "killing machine," he explained that a Kaibil soldier could kill a member of their own family without a care. Students were being trained to develop a willingness to kill.

[297] In addition to forced marches, obstacle races, and courses on navigation, swimming and survival, Kaibil students were taught to capture, then torture and/or kill the guerillas they encountered. Students received specific training on torture techniques.

[298] Mr Pinzón testified that Mr Sosa was among the instructors who taught the class on torture. The torture lessons took place in classrooms and in a practice area known as the "zombie

area," where students learned to torture, kill, and bury prisoners. When Mr Pinzón was invited to bring food to the zombie area one day in 1981, he observed the torture class himself – he saw a prisoner being injected with a formaldehyde substance. He also observed people being suffocated with plastic bags, shocked with car batteries, and having their fingernails pulled. He believed the torture methods being taught were intended to be used against the guerillas. While Mr Pinzón observed the captives being tortured and suggested that they never left the school because they were killed, he could not confirm that they killed on Mr Sosa's orders.

[299] Mr Pinzón testified that he recalls a meeting in mid-1982 during which the Director of the Kaibiles school announced the closing of the school and the creation of a Kaibiles special combat patrol. He understood that the purpose of the patrol was to form a mobile unit that could engage in combat against the guerillas. At that time, the Kaibiles school stopped operating as a school and was used as a military detachment. Mr Pinzón testified that Mr Sosa was in charge of the school from around August through to at least September 1982.

[300] Mr Pinzón testified that after initially staying back at the school, both he and Mr Sosa joined the Kaibiles special patrol in September-October 1982. In Mr Pinzón's first two months with the patrol, they were flown to areas where there was supposed guerilla activity, although they would not find any guerillas upon arrival. Nevertheless, when the group would come across an individual while on patrol, they would capture, torture and kill them. Those captured were threatened with death so that they would tell "the truth," and those deemed untruthful would be hung, among other things.

[301] When questioned about what “truth” the patrol was seeking from the individuals it captured, tortured and killed, Mr Pinzón said they were looking for information about the location of the guerillas’ weapons, arms, commanders or “mates.” He further stated that, upon joining the patrol in mid-October of 1982, Mr Sosa “a[l]ways wanted to be there. Anywhere the patrol went, he wanted to be there. Or more exactly, he had to be there.”

[302] In December 1982, the patrol, including Mr Sosa, was flown by military plane to the Santa Elena air base where, at a meeting, they were informed that they were being sent to Las Dos Erres to recover 21 rifles. They were told to wear civilian clothing to confuse the villagers.

[303] Mr Pinzón testified that the whole patrol travelled together to Las Dos Erres, with Mr Sosa being fourth in command of the group. The Kaibiles were divided into four groups before they got to Las Dos Erres: a command group, a support group, a strike group (*asalto*) and a security group, each with an officer in charge. He testified that Mr Sosa led the security group.

[304] The Kaibil patrol, joined by a platoon of 40 other Kaibiles from the Poptún base, left Santa Elena for Las Dos Erres at around 10:00 PM on December 6, 1982. They travelled using two civilian trucks and arrived in Las Cruces at around 1:00 AM.

[305] The Kaibiles relied on a guide to get to Las Dos Erres and used mountain trails since they did not want the community to be aware of their presence. The Kaibiles were armed with R-15s and Galil rifles and arrived at Las Dos Erres at 3:00 AM.

[306] Mr Pinzón stated that they dragged all the villagers from their homes. Women and children were taken to the church, and men were taken to a little school. The villagers did not resist.

[307] At about midday, the patrol officers informed the commanding officer, Lieutenant Rivera Martínez, that no weapons had been found following a search. They were then instructed to eat. Mr Pinzón recalled seeing a group of women making them tortillas, and noticed they were crying. He testified that he did not know why they would have been crying.

[308] After the group finished eating, at around 1:30 PM, Rivera Martínez was communicating with a radio operator. Mr Pinzón did not know what they spoke about. However, he overheard the officers' ensuing conversation and gathered that they did not agree with a "great error" an officer had committed; namely, raping a girl from the village.

[309] Mr Pinzón heard an order being delivered by the radio operator to Rivera Martínez, but he could not say what the order was because operators spoke in coded language. Rivera Martínez communicated the order to the group – "to execute," meaning to start killing the villagers of Las Dos Erres.

[310] At around 2:00 PM, Mr Pinzón observed Mr Jordan carrying a baby, perhaps two months old, who he threw into the village well. It was unclear to him whether this occurred before or after the order from Rivera Martínez to begin executing the villagers.

[311] The Kaibiles began to drag blindfolded women and children to the well. Mr Sosa was stationed at the well, along with other officers. Mr Pinzón dragged a girl, about ten years old, to the well. He saw that she was crying and asked her why. She asked him what the Kaibiles were going to do to her – he told her they were going to give her a vaccine. Mr Pinzón witnessed another officer drag her behind some nearby bushes to rape her, before bringing her back to the well to hit her over the head with a sledgehammer.

[312] The villagers were dragged to the well to be hit over the head with one sledgehammer that the Kaibiles passed around. After being hit with the sledgehammer, villagers were thrown into the well. According to Mr Pinzón, the officers were ordering the sub-instructors to do this.

[313] One man who was dragged to the well slipped upon arrival, causing his blindfold to come loose. When he saw what was going on, the man asked them: “why don’t you kill me all at once?” Mr Sosa responded, “you motherfucker.” Mr Pinzón saw Mr Sosa take a rifle and shoot towards the man, who was at this point already in the well. He also saw Mr Sosa throw a grenade into the well, where it exploded.

[314] After Mr Sosa threw the grenade inside the well, the officers began to laugh at what he did. Mr Pinzón heard Mr Sosa instruct soldiers to bring more people to the well and throw them in. The process of dragging villagers to the well, executing them, and throwing them in lasted from 2:00 PM to 5:30 PM. By the end, all villagers who had been rounded up had been killed. The bodies of the deceased reached the top of the well. The Kaibiles covered the well with earth and dirt to hide the bodies.

[315] The next day, December 8, the entire Kaibil patrol was mobilized to go elsewhere. Again, they took the foot trail through the mountain, accompanied by the guide, two boys, aged around 3 to 4 years old, and two girls, aged 10 to 12 years old. Mr Pinzón was put in charge of one of the girls. However, an officer took her from him, stating, "[i]t is Lieutenant Rivera's time." Mr Pinzón said he did not know why the girl was taken, but that both girls were later killed, about 40-50 metres away from the group. Mr Pinzón observed the girls' bodies afterwards. Their throats were slit, but they were still breathing when he saw them. He noticed they had on no undergarments. He covered them with some branches and leaves and left them there.

[316] According to Mr Pinzón, the group journeyed on, walking for 15-20 days. Those they encountered along their path were captured and tortured for information.

[317] The Kaibil patrol was eventually met by a helicopter, which they boarded along with the two young boys they found in Las Dos Erres. The helicopter transported them to the Santa Elena base.

[318] Mr Pinzón stated that he was motivated to testify and speak up about the events to prevent another atrocity like Las Dos Erres happening to his children, and that he did not agree with the killing of so many innocent people. Mr Pinzón stated that he did not intervene in the killings that took place because he would have been killed if he had done so. He stated that he assisted with FAMDEGUA's investigation and the criminal trials against the perpetrators of the Las Dos Erres massacre, and that he did so voluntarily.

[319] I find Mr Pinzón to be credible in his testimony. On the whole, his account of his service with the Kaibiles, working under Mr Sosa, and of the events that took place during the Las Dos Erres massacre is consistent with the evidence of Mr Cristales, Mr Jordan and the expert witnesses. He struck me as a person still haunted by the brutal and appalling events that took place in Las Dos Erres. This may explain why at times he professed ignorance of certain facts or downplayed his role in the crimes committed by the Kaibiles. I do not find that this impacted his overall credibility.

[320] Mr Pinzón did not attempt to exonerate himself from acts of torture and killing he himself committed. He testified as a witness voluntarily, despite implicating himself in serious crimes. Mr Pinzón provided deeply personal reasons for speaking out. He testified that after he left the army, he heard in the news in 1993 that there was an organization representing victims that was looking into the Las Dos Erres matter. Mr Pinzón explained that he decided to meet with the FAMDEGUA out of concerns for his family's future. He went on to testify at several criminal trials before the Guatemalan courts against fellow soldiers.

[321] Mr Sosa submitted in his closing submissions that Mr Pinzón is a "false witness." He claims that Mr Pinzón "collaborated" with FAMDEGUA and provided false evidence "to unjustly include [him] in this case, a claim that is without merit." He claims that Mr Pinzón's testimony was dismissed as false by the Guatemalan Court in November 2023. He also claims that Mr Pinzón received $500 and free lodging for himself and his family for his testimony before the U.S. District Court, insinuating without stating, that Mr Pinzón was paid off to wrongly implicate him in various crimes. None of these allegations stand up under scrutiny.

[322] First, there is no evidence that Mr Pinzón was induced in any way by FAMDEGUA to provide false evidence against Mr Sosa. Second, Mr Sosa cannot point to any finding by the Guatemalan Court that Mr Pinzón provided false testimony. Quite the opposite, the evidence of Mr Pinzón has been accepted by the Guatemalan courts in several criminal trials arising from the Las Dos Erres massacre. In 2018, his evidence was given probative value by the Guatemalan criminal court in the trial of Santos Lopez Alonzo, who was found guilty on counts of murder and crimes against "the duties of mankind." Mr Pinzón's evidence was used to make several key findings of fact about the events leading up to and during the attack at Las Dos Erres. Third, the fact that Mr Pinzón was paid conduct money by the prosecution – a standard practice that consists of defraying travelling and living expenses of a witness, as well as a witness fee for daily attendance – is immaterial and does not call into question his credibility or the reliability and trustworthiness of his evidence.

(7) Mr Cristales

[323] Mr Cristales testified that he was a young boy of five and half years in December 1982. He has light eyes, which he describes as being "hazel." He says they are remarkable among those of Guatemalan ethnicity, who tend to have brown eyes.

[324] He remembers Las Dos Erres as a rural green landscape, inhabited by a farming community. Besides the small wood houses, there was a church and school in the village. He lived there with his mother, Petrona, his father, Victor, and his five siblings. He recalled his youngest sibling, a sister, was around two months old at the time of the massacre. While he could not say precisely, he believes he was the fourth child in his family.

[325] Mr Cristales could not remember the month in which the Las Dos Erres massacre occurred, but he knew his mother was already preparing for Christmas. He guessed it would have been in December.

[326] He described how armed men entered his family's home in the middle of the night and beat his father and tied his and his older brother's hands behind them. He described the men taking his family to the centre of the village and separating them – his father and older brother were taken to the school and he and his younger siblings were placed in the church with his mother.

[327] He described being surrounded by all the other women and children of the village in the church, who were crying and scared. He described what he could hear and see from the church, which included men screaming nearby in the school. He explained how the women were then dragged by armed men out of the church.

[328] The armed men dragged the women out of the church by their hair, and although he did not know the word at the time, Mr Cristales now understands that the women were raped.

[329] Eventually, the armed men came for his mother. He and his brothers grabbed onto her legs, but the men dragged her outside of the church by her hair. After the men returned him back to the church, he ran to the back of the building – where he saw through either a window or the spaces between the wooden slats – that his mother was being taken to a tree. He saw a man take

his youngest sister from his mother's arms, grab her by the legs, and smash her against the tree. He began to cry and could hear his mom begging for her children's lives.

[330] His mother was then taken further back, until she was beyond his line of sight. He fell asleep under the bench of the church, and when he woke up the church was empty except for himself and two other boys, neither his siblings. Two men took the three children out of the church, and around the back of the building. Mr Cristales walked past the tree where his two-month-old sister was killed, and all the way to the village well. He could see that there were "bodies all over."

[331] The boys were then walked away from the well. He saw bodies hanging from the trees. The men asked the boys if they knew anyone who was hanging from the trees. Mr Cristales saw his brother and father hanging there but answered "no," because he was scared he would be killed if he admitted to recognizing them.

[332] Mr Cristales described what happened to him after the massacre, including his "adoption" by one of the Kaibiles soldiers, his difficult life and the abuse he experienced at his hands. Mr Cristales then discussed how he joined the Guatemalan military to escape this man, which occurred following the signing of the Guatemalan peace accords in 1996. Prompted by advocacy groups for families who had lost loved ones during Guatemala's armed conflict, investigations began by prosecutors with the Attorney General of Guatemala into the disappearances and massacres, including the one at Las Dos Erres, Mr Cristales was approached by FAMDEGUA and the prosecutor to ascertain whether he was one of the children who had survived the

massacre at Las Dos Erres. He described the steps taken to ensure his safety and his eventual move to Canada, where he received refugee status in 1999.

[333] I find Mr Cristales to be a credible witness. His evidence, while bearing certain frailties given his young age at the time of the massacre and the passage of time since, remains largely consistent with Mr Pinzón's account. It is also consistent with the evidence of the Ministers' expert witnesses.

[334] Mr Cristales testified that he was tired and fell asleep numerous times while being held captive in the village church with his mother. By his own admission, he only remembers snippets of the events. Mr Cristales was nevertheless able to describe vividly and with great clarity the beating and brutal murders of his mother and baby sister, an impactful event that was no doubt seared into his memory. His account of his kidnapping at the hands of the Kaibiles and his "adoption" by one of the officers is also corroborated by Mr Pinzón.

[335] I am satisfied that Mr Cristales had no motive to lie about what happened and who was responsible but was instead determined to bear witness for his family members who could no longer speak for themselves.

(8) Jordan Testimony

[336] The Jordan Testimony is largely consistent with the evidence of both Mr Pinzón and Mr Cristales; their corroboration leads me to find it to be ultimately reliable.

[337] Mr Jordan joined the Guatemalan military in 1973, at the age of 16. After serving on the Guatemalan president's security detail, he joined the Kaibil school in 1982. He described the Kaibiles as "a group of special forces" which only the best Guatemalan soldiers had the capacity to join; more than half of those who tried did not make the cut.

[338] When Mr Jordan arrived at the Kaibil school in 1982, he found it was already closed. He then went to the department of Quetzaltenango to meet the Kaibil instructors and sub-instructors. When asked about Mr Sosa in particular, Mr Jordan said he first met him in Quetzaltenango, and that he was known for his special skills in martial arts.

[339] In early December 1982, Mr Jordan was deployed with the Kaibil patrol to the Santa Elena airport in Petén. Like Mr Pinzón, Mr Jordan recalled that there were four officers in charge of the patrol at the time, including Mr Sosa.

[340] After one week in Santa Elena, the patrol left for the military base in Poptún, where they met a platoon of 40 additional Kaibil soldiers. From Poptún, they boarded trucks to carry out a mission in Las Dos Erres.

[341] There are a few minor differences and inconsistencies in the testimony of Mr Jordan and Mr Pinzón's regarding how the events subsequently unfolded. While Mr Jordan did not recall the date of the mission, he stated that they were dropped off at Las Dos Erres. Mr Pinzón for his part testified they disembarked in Las Cruces and then travelled by foot into the village. Mr Jordan said they arrived in Las Dos Erres late in the evening, "almost night", whereas Mr Pinzón

testified they arrived in the early hours of the morning. However, I find that these discrepancies fall within the realm of the frailties of the imperfect human memory. In my view, they are minor and not material. In the end, there is no dispute between the two that they arrived late at the village and that some villagers were laying down when they were removed from the homes.

[342] The patrol was told their mission in Las Dos Erres was to search for and recover military weapons that had been stolen by guerilla soldiers. Mr Jordan understood that if they encountered guerillas, they were to combat them and kill them if needed.

[343] Upon entering the village, Mr Jordan was armed with a high-powered rifle, grenades, and his machete, among other things. He and the other Kaibiles were ready for war that night. However, when they entered Las Dos Erres they encountered no resistance.

[344] Mr Jordan recalled knocking on doors, taking people out of their homes, and searching for weapons. Villagers were taken to a school and a church; the men were separated from the women and children.

[345] According to Mr Jordan, part way through the operation in Las Dos Erres, the Kaibiles' mission changed. He observed Rivera Martínez becoming angry about something that an officer had done, and discussing it with several officers, including Mr Sosa. After this, Mr Jordan said the mission became to "kill all the people."

[346] The first villager Mr Jordan grabbed was a child. He remembered the child was a boy of around three years old because that was the age of his own son at the time. Mr Jordan states that he cried as he took the boy to the well, thinking about his son. When they arrived at the well, Mr Sosa saw Mr Jordan crying and said that this was a "job for men." Mr Jordan then threw the boy into the well.

[347] The next person Mr Jordan took to the well was a woman, around 30 years old. He shot her in the back of the head, and then pushed her body into the well.

[348] Mr Jordan testified that the officers, including Mr Sosa, ordered the Kaibiles to bring more people to the well. Some of the villagers in the well were only "half-dead," and Mr Jordan could hear their screams. In response to the screams, Mr Jordan observed Mr Sosa use a Galil rifle to shoot into the well, and then throw a grenade into it. Afterwards, the well was silent for some time, but only until more villagers were thrown in.

[349] Mr Jordan stated that the killing lasted the entire day and that all 20 Kaibil patrol soldiers participated. Mr Jordan estimated the villagers killed that day to number over 100. He indicated that the Kaibiles never found the 21 stolen military rifles.

[350] When asked about the mission of the Guatemalan army, Mr Jordan said it was to protect the civilian population. However, he did not believe the mission at Las Dos Erres was done "in compliance." In his opinion, what they did that day was not protecting the population. He further

testified that the operation in Las Dos Erres was different than prior missions he participated in because instead of fighting guerillas, they were killing civilians.

[351] In Mr Jordan's view, he could not have stopped the Las Dos Erres massacre because he was only a sergeant. He believed that Mr Sosa was in a position to stop what happened, because he was a higher rank, an officer. However, Mr Jordan also acknowledged that there were at least three more senior officers to Mr Sosa, and that he suspected the orders in Las Dos Erres came from higher up in the Ministry of Defence.

C. *Factual and Legal Findings*

[352] As the Supreme Court has articulated in *Mugesera*, at paragraph 128, what distinguishes a crime against humanity from an ordinary crime is the context in which the crime takes place. To constitute a crime against humanity, the underlying act in question, such as murder, must be committed in the context of, and as part of, a widespread or systematic attack against a civilian population or an identifiable group: *Mugesera* at para 130; Guénaël Mettraux, *International Crimes: Law and Practice*, Oxford, England: Oxford University Press, 2020, s 5.1.[Mettraux].

[353] Drawing from *Mugesera* at paragraphs 119, 128 and Extraordinary Chambers in the Courts of Cambodia, 26 July 2010, *Prosecutor v Kaing Guek Eav alias Duch*, Case File/Dossier No 001/18-07-2007/ECCC/TC (Cambodia) [*Kaing Guek Eav*], the elements of crimes against humanity may be divided follows:

1. there was a widespread or systematic attack;
2. the attack was directed against any civilian population;

3. one of the acts proscribed in section 6 of the *CAHWC Act* was committed;
4. the proscribed act was committed as part of the attack; and
5. the person committing the proscribed act knew of the attack and knew or took the risk that his or her act comprised a part of that attack.

[354] At the risk of repeating myself, all of these elements are met in the present case, well beyond the requisite "reasonable grounds to believe" standard.

[355] The Ministers need only prove that there are reasonable grounds to believe that Mr Sosa committed a crime against humanity through his participation in the Las Dos Erres massacre, as defined in the IRPA and *CAHWC Act*, in order for him to be declared inadmissible per section 10.5(1) of the *Citizenship Act, 2017*.

[356] The reasonable grounds to believe standard "requires more than 'mere suspicion' but less than proof on a balance of probabilities": *Gebremedhin v Canada (Citizenship and Immigration)*, 2013 FC 380 at para 19, citing *Mugesera* at paras 114–115.

[357] Moreover, evidence in support of the Inadmissibility Declaration which was not already relied upon for the Revocation Declaration is "not bound by any legal or technical rules of evidence," and may be considered by the Court so long as it is "credible or trustworthy.": para 10.5(5)(c) of the *Citizenship Act*.

(1) There was a widespread and systematic attack in Guatemala

[358] An “attack” is often defined as “a course of conduct involving the commission of acts of violence.” (*Mugesera* at para 153.) The attack must be widespread or systematic.

[359] A widespread attack is “a massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims.” (*Mugesera* at para 154.)

[360] A systematic attack is one that is “thoroughly organized and follow[s] a regular pattern on the basis of a common policy involving substantial public or private resources” and is “carried out pursuant to a ... policy or plan,” although the policy need not be an official state policy.” (*Mugesera* at para 155.) “The adjective ‘systematic’ signifies the organized nature of the acts of violence and the improbability of their random occurrence. Patterns of crimes – that is the non-accidental repetition of similar criminal conduct on a regular basis – are a common expression of such systematic occurrence.” (*Mugesera* at para 155 citing *Prosecutor v Kunarac, Kovac and Vukovic*, ICTY, Case Nos IT-96-23-T-II & IT-96-23/1-T-II, 22 February 2001, aff’d Case Nos IT-96-23-A & IT-96-23/1-A, 12 June 2002.)

[361] The widespread or systematic nature of the attack is to be determined by examining the means, methods, resources and results of the attack upon a civilian population. Importantly, it is not the acts of Mr Sosa that must be widespread or systematic, but rather, the broader attack. As the Supreme Court articulated: “Even a single act may constitute a crime against humanity as

long as the attack it forms a part of is widespread or systematic and is directed against a civilian population." (*Mugesera* at para 156.)

[362] While the Ministers were only required to show that the attack was widespread or systematic, the evidence presented at trial makes clear that the attack perpetrated by the Guatemalan military in the early 1980s was both widespread and systematic. Based on the expert evidence of Dr Oglesby, General Robles and Ms Doyle, as well as the analysis and conclusions reached by the Truth Commission, I have no hesitation in finding that the Guatemalan military's actions during this period constituted a large-scale and systemic attack directed against a multiplicity of civilian victims. Indeed, this is so widely accepted by experts, as well as conceded by the Guatemalan government, that I consider it to be a notorious fact.

[363] The violence against civilians covered a vast geographic scope and a broad range of human rights abuses. As Dr Oglesby explained, the period of most intense violence against civilians occurred in 1981 and 1982, when the Guatemalan military carried out a systematic campaign of annihilation against rural villages in numerous regions, that it viewed as sympathetic to the insurgency. This included mass killings, torture, and sexual violence in over 600 villages, as well as the destruction of houses and infrastructure in those villages, the killing of livestock and other animals. The Truth Commission and human rights reports have referred to this as the military's "scorched earth" campaign against civilians.

[364] The Ministers' experts described the highly centralized military campaign – orchestrated by then President and Commander in Chief Ríos Montt – to annihilate the "internal enemy"

through coordinated counter-insurgency operations across the country. As Dr Oglesby stated, "the military's attacks against civilians were not random, isolated incidents, or excesses"; rather, the attacks "constituted the military's modus operandi…"

[365] The massacres described by the Ministers' experts followed a sequential logic that is laid out in the CW Manual (specifically, the section on "intervention" in combat zones) and in the military campaign plans of 1982 and 1983, which give instructions on how to implement the overall strategies of control over territory and population. General Robles and Dr Oglesby explained that the military deployed a large amount of resources into the "red zones" or "conflictive" areas, and created new rapid deployment forces for these regions. The Kaibil special patrol was created as part of this strategy to be a mobile tactical unit that could quickly be deployed to red zones.

[366] The experts' opinion evidence is supported by contemporaneous military documents, including the CW Manual and the military campaign plans, that demonstrate the highly planned and coordinated nature of the military's counter-insurgency campaign against anyone perceived to be an "internal enemy" of the state or supportive of the insurgency. Certain regions were identified as conflictive zones in the military campaign plans themselves. La Libertad (in which Las Dos Erres was based) was one of those regions.

[367] I agree with Dr Oglesby that the way in which the massacres were carried out shows that they were not isolated incidents but were instead planned and carefully executed.

(2) The attack was directed against a civilian population

[368] To constitute a crime against humanity, the attack must be directed against any civilian population: The civilian population must be "the primary object of the attack," and not merely a collateral victim of it: *Mugesera*, para 161. The reference to "any" civilian population means that membership in a particular group (e.g., religion or ethnicity) is not necessary for a crime against humanity to have been committed: Mettraux, s. 5.3.3 'Any' civilian population. In addition, the fact that non-civilians also form part of the group will not change the character of the population as long as it remains largely civilian in nature: *Mugesera*, para 162.

[369] It was well-established by Dr Oglesby that a salient feature of the Guatemalan internal armed conflict was the high number of civilian deaths and displacement. More than 200,000 civilians were killed or disappeared in the conflict, the vast majority (approx. 93%) at the hands of the state. Based on the evidence adduced by the experts, I find that the Guatemalan military strategy was to target anyone seen to be against the established order, including women, children, and the infirmed. Dr Oglesby and General Robles opined that the military's counter-insurgency doctrine and strategies, in particular its definition of "internal enemies," led to systematic acts of violence against civilians, particularly in the period from 1981 to 1983. This included acts committed in the region of El Petén.

[370] As Dr Oglesby testified: "Attacking civilians deemed to be subversive was at the core of the … military's counterinsurgency strategy…" This included the period of most intense violence against civilians in 1981 and 1982, when the military carried out a campaign of

annihilation against rural villages. Dr Oglesby described how this period was characterized by frequent and violent, indiscriminate attacks against civilians, including entire communities.

[371] I find that the violence against civilians at Las Dos Erres was part of this broader pattern.

(3) Mr Sosa committed murder at Las Dos Erres

[372] The Ministers had the burden of proving that Mr Sosa committed, directly or indirectly, an underlying act proscribed in section 6 of the *CAHWC Act*. They must show "that both the physical element and the mental element of the underlying act have been made out": *Mugesera* at para 130. The evidence of Mr Pinzón and Mr Jordan amply demonstrates that Mr Sosa committed the underlying act of murder in Las Dos Erres in December 1982.

[373] Mr Sosa denies that he was present at Las Dos Erres when the massacre took place; however, I place no credence in anything he says. It begs credulity that an officer of Mr Sosa's stature would have been relegated to menial tasks while his unit was embarking on an important and resource-intensive military operation.

[374] Indeed, I consider Mr Sosa to be a consummate liar. By way of example, in response to written examination questions, he stated that he could not remember any combat missions, actions, operations or other combat activity in which he participated. He also feigned ignorance of the atrocities committed by the Kaibil unit. In addition, Mr Sosa's credibility as a truthful participant in immigration processes is severely undermined by having lied when taking steps to acquire U.S. citizenship in 1997. One of the questions he was required to answer on the U.S.

application form was whether he had ever served in a foreign military, to which Mr Sosa answered “None.” The answer was certified by Mr Sosa to be true and correct under penalty of perjury, for which he was found guilty in 2013.

[375] Mr Sosa’s credibility is further undermined by the fact that various documents in evidence show him giving varying accounts of his occupation in Guatemala. On his Guatemalan passport issued on April 23, 1985, he described himself as a “student” despite the evidence before this Court demonstrating that he was a lieutenant in the Guatemalan army at the time. On his marriage certificate issued on May 24, 1985, 14 days after he entered the U.S. on May 10, 1985, he described his occupation as “teacher.”

[376] Finally, Mr Sosa’s credibility is undermined by his lack of respect for the Court’s process in the present proceeding, including misrepresenting to the Court and swearing an affidavit that he was in Alberta, when, as it later came to light, he was not in Canada at the time.

[377] I find that in December 1982, Mr Sosa participated in the horrific massacre as part of the Kaibil patrol operation at Las Dos Erres. It has been clearly established that he was the fourth in command of the operation conducted by the Kaibil special patrol with the support of a 40-person platoon. Mr Sosa was the officer in charge of one of the four groups formed to carry out the attack.

[378] As described by Mr Pinzón and corroborated by Dr Turner's expert evidence, virtually the entire village, consisting of women, men, children and infants, were massacred. Most of them were thrown into a deep well pit.

(a) *The legal elements of murder*

[379] The legal elements for the underlying criminal acts (murder) are to be based on customary international law as of the time that the crimes were committed. Customary international law is the "common law of the international legal system," arising from the practice of states and evolving over time: *Nevsun Resources Ltd v Araya*, 2020 SCC 5 at para 74. For the present case, the judicial body with the jurisdiction most temporally proximate to the crimes at issue is the Extraordinary Chambers in the Courts of Cambodia (ECCC). It had a mandate to try serious crimes committed during the Khmer Rouge regime from 1975-1979 and therefore reflects the state of international customary law at the time.

[380] At the applicable time, 1982, the legal elements for murder under customary international law were substantially the same as the definition established by the Supreme Court in *Mugesera*. The defendant must have: (1) caused the death of another person, and (2) intended to cause the person's death or to inflict grievous bodily harm that he or she knew was likely to result in death.

(b) *Direct murder of the villagers by Mr Sosa*

[381] The Ministers have adduced credible and uncontradicted evidence establishing that, at Las Dos Erres, Mr Sosa caused and intended to cause the death of persons or to inflict grievous bodily harm that he knew was likely to result in death.

[382] Mr Pinzón saw Mr Sosa fire a rifle at one of the villagers who had slipped into the well and shouted at Mr Sosa. Mr Sosa then threw a grenade into the well.

[383] At the point when Mr Sosa was firing into the well, at least one of the villagers was alive (the shouting man) and others in the well were more likely than not still alive. Mr Sosa's shooting into the well in these circumstances demonstrates that he intended to kill or inflict harm likely to result in death. While Mr Pinzón did not see the bullet hit the man, I find that the man's death can be ascertained from the fact that his shouting ceased.

[384] In Mr Pinzón's own words:

> PINZÓN: And the well was filled almost halfway, and then a man came.
>
> He was blindfolded, but then he slipped and he could see, because he lost the blindfold. And [. . .] as soon as he saw what was going on, he said, Why don't you kill me all at once? Just kill me all at once. And Sosa Orantes was there, so he took the rifle and he shot this man. And he not only shot the man [. . .] He took the rifle and shot inside the well, and after that, he not only was shooting into the well, but he had a grenade with him, and he threw the grenade into the well for it to explode there.
>
> JUSTICE LAFRENIERE: I am going to just ask a question of Mr. Pinzon. Mr. Pinzon, where on the man's body was he shot by Mr. Sosa?

> PINZÓN: The thing is that the man had already slipped into the well, so Sosa shot actually into the well. [. . .]
>
> COUNSEL: When -- Mr. Pinzon, when the man was -- you said he was shouting, Kill me now, or words to that effect, did Sosa say anything at that point?
>
> PINZÓN: Sosa was very rude in his words. He said, You motherfucker. And then he just shot his rifle into the well. And after that, he used a grenade, [...] when it had finished, I mean, after Sosa shot with his rifle and threw the grenade into the well, all Officers were laughing at what he did.

[385] Mr Pinzón's account of Mr Sosa's firing at the villagers in the well is corroborated by Mr Jordan's testimony, in which Mr Jordan also describes Mr Sosa shooting a rifle and throwing a grenade into the well. Furthermore, the firing of a rifle is supported by the physical evidence of ballistics remnants. The fact of the killing of the villagers is confirmed by the human remains uncovered from the well site, as testified to by Dr Turner.

[386] The Ministers submit that Mr Pinzón's testimony also provides reasonable grounds to believe that Mr Sosa killed other villagers by attacking them with a sledgehammer and throwing them into the well. On this point, the evidence is very weak. In the transcript, the interpreter's summary of Mr Pinzón's lengthy account about sledgehammers being used by officers reads as follows:

> THE WITNESS: At that point, everybody was being dragged. We were dragging people, and even children, all these people, and this was being done by Officers and Sergeants. And they had sledgehammers, and they were hitting people on their heads. Not all at the same time. They were, like, handing over the sledgehammer one to the other. And we didn't bring everybody at the same time to the well. It was more like one by one. And so they would hand the sledgehammer to one another and hit the person in the head and threw all those people into the well. […]

[387] I am unable to conclude, based on this summary, that the term “they” included Mr Sosa. In any case, it is unnecessary to find that Mr Sosa participated in hitting villagers over the head, in light of the evidence establishing his direct involvement in the murder of those in the well.

[388] I find that by shooting into the well and throwing a grenade into it, Mr Sosa intended to kill or inflict harm likely to result in death of persons alive the well. All of the villagers in the well were ultimately killed as demonstrated by the fact that the Kaibiles continued to throw bodies into the well until it was full and covered it over with dirt. I find that those killings were done under the watch and orders of Mr Sosa.

(c) *Murder of other villagers by Mr Sosa’s subordinates, which Mr Sosa abetted*

[389] In addition to directly killing civilians at the well, the evidence demonstrates that Mr Sosa abetted his subordinates to kill other villagers at the well, including children.

[390] The evidence, both from Mr Pinzón and Mr Jordan, proves that Mr Sosa’s subordinates committed murder by hitting villagers on the head with a sledgehammer or shooting them, and throwing them in the well. In doing so, they caused and intended to cause the deaths of the villagers, or to inflict grievous bodily harm that they knew was likely to result in death.

[391] Mr Jordan admitted under oath in the U.S. proceedings that he killed civilians, including a three-year-old boy and a woman, and threw them into the well. Mr Jordan testified that he took the woman to the well, shot her in the back of the head with a 5.56 Galil rifle and pushed her into

the well. This was consistent with Mr Pinzón's testimony about the sequential manner in which the patrol, including the sub-instructors, killed civilians at the well.

[392] Based on the circumstances, it is clear that the intention of Mr Jordan and the Kaibil sub-instructors was to kill the villagers, and that the villagers were in fact killed.

[393] The trial evidence demonstrates that Mr Sosa abetted these murders, as set out below.

(d) *The legal test for "aiding or abetting" a crime against humanity*

[394] A person can be found to have committed a crime against humanity if they "aided or abetted" the commission of the crime: *R c Jacques Mungwarere*, 2013 ONCS 4594 at paras 49–51 [*Mungwarere*]. The Ministers submit that the applicable definition for aiding and abetting in this case is the one arising from customary international law and not from domestic Canadian criminal law. I agree.

[395] In *Ezokola v Canada (Citizenship and Immigration)*, 2013 SCC 40 at paras 9, 43, 46–47, the Supreme Court indicated that when defining modes of commission applicable in refugee and immigration cases, Canada must refrain from interpreting and applying international criminal law as if it were simply the mirror of our domestic criminal law. In assessing the relevant test for the applicable mode of commission, the Supreme Court stated that a change in the test for complicity was necessary to bring Canada in line with international criminal law, which includes customary international law. The same approach should apply to other modes of commission, namely aiding and abetting.

[396] As held in *Kaing Guek Eav* at paragraphs 533–535, under customary international law in 1982 and today, the elements for aiding or abetting a crime are that:

1. the person practically assisted, encouraged or provided moral support which has a substantial effect on the commission of the crime; and

2. the person knew that a crime would probably be committed and that their conduct would assist the commission of that crime.

[397] The test applied in the context of a criminal prosecution does not reflect – and is higher than – the above test under customary international law: *Mungwarere* at paras 62 and 1189. In particular, aiding and abetting under the Criminal Code requires intent, which is not a requirement under customary international law. Specifically, the criminal test requires: (1) an act or omission that had a substantial effect on the crime; (2) that the person had knowledge that the perpetrator intends to commit the crime although he or she need not know precisely how it will be committed; and (3) the person intended to assist in the principal offence.

[398] I agree with the Ministers that it is the lower customary international law standard that should apply in this civil case.

(e) *Mr Sosa abetted murders by his subordinates*

[399] I find that as one of the officers in command of the operation in Las Dos Erres, Mr Sosa, through his words and actions, encouraged and provided moral support to his subordinates to commit murders and condoned the murders.

[400] The sworn testimony of Mr Jordan supports the finding that Mr Sosa encouraged an otherwise reluctant Mr Jordan to throw a three-year old boy to his death into the well. Mr Jordan also testified that, when he shot a young woman and threw her into the well, Mr Sosa was at the well during that time, ordering others to go bring more people to the well. Similarly, Mr Pinzón testified that Mr Sosa, as one of the officers in charge, ordered the sub-instructors to bring villagers to the well, kill them, and throw them into the well. As Mr Pinzón testified:

> PINZÓN: [The officers'] instructions were that we all had to do the same, kill people . . .They just passed the sledgehammer to one another, and they kept passing it, and, like that, this is what had to be done. [...]
>
> Q. Did you hear Sosa telling soldiers to bring villagers to the well?
>
> PINZÓN. Yes. He would say, Bring more, like that.
>
> Q. Did Sosa tell others to throw people in the well?
>
> PINZÓN. Yes, He would say, Bring more people, or tell a sergeant, for example, Now you do it. And the Sergeant had to do it because it was an order and orders are to be obeyed.

[401] The evidence of Mr Pinzón and Mr Jordan supports the finding that Mr Sosa's presence at the well, his actions and words, encouraged others to commit murder, and that he knew he was doing so. Given his leadership role as fourth in command of the operation, and his presence at the scene of the crimes, I find that Mr Sosa's actions had a substantial effect on the commission of the crimes by his subordinates.

[402] It is also evident that the knowledge elements of the test for aiding and abetting are met here. Mr Sosa was an experienced officer leading a patrol that openly carried out a massacre. Based on the evidence before me, and in the absence of rebuttal evidence, I find that Mr Sosa

knew that crimes were being committed and that his subordinates would carry out his orders. To be clear, I find that Mr Sosa was well aware that his words and actions would encourage them to kill villagers. His own participation in murder is further evidence of this intent. In the circumstances, I find that the customary international law test is met and, moreover, that the Canadian criminal law test is also satisfied.

(f) *Mr Sosa's acts were committed as part of the attack*

[403] As explained below, I find that Mr Sosa's actions in Las Dos Erres were committed as part of the widespread and systematic attack occurring in Guatemala at the time.

[404] The requirement for a link between the proscribed acts and the attack is commonly expressed as "in the context of" or "forming a part of." These phrases require that the defendant's acts "be objectively part of the attack in that, by their nature or consequences, they are liable to have the effect of furthering the attack.": *Mugesera*, para 165. As the Supreme Court has confirmed, this nexus element between the act and the attack does not mean that no personal motive for the underlying act can exist. The question is an objective one: "is the act part of a pattern of abuse or does it further the attack?": *Mugesera* at para 166.

[405] Moreover, "the proscribed act need not be undertaken as a particular element of a strategy of attack." While the act must fit the pattern of the attack, "it need not comprise an essential or officially sanctioned part of it.": *Mugesera* at para 167.

[406] Based on the expert evidence before me, I find that the murders and other violent acts committed by Mr Sosa at Las Dos Erres formed part of the broader attack against civilians across Guatemala at that time. Mr Sosa's acts fit the pattern of violence perpetrated at the time both in Petén and other regions of the country, in particular the systematic murder of many civilians, which are proscribed acts.

[407] This was well established by Dr Oglesby, who opined that the methods and patterns of violence perpetrated in Las Dos Erres fit the pattern of other massacres committed preceding it. She summarized the patterns of the massacres as including:

- Gathering the population at a specific point in the village;
- Grouping people by gender in different buildings (men in the community hall and women and children in the church, for example);
- Sexual violence against women and girls;
- The slaughter itself, carried out with extreme cruelty, including against vulnerable groups such as women, children, and the elderly;
- Burning the village after the massacre;
- Killing or pillaging livestock and other animals, and destroying crops;
- Destroying or pillaging victims' possessions;
- The use of radio communication among the soldiers committing the massacres;
- Attacks against people trying to flee, including grenades thrown by soldiers or aerial attacks from helicopters.

[408] The fact witness testimony from Mr Pinzón, Mr Cristales and Mr Jordan, shows that the Las Dos Erres operation closely fit the pattern described above. The villagers were rounded up,

with men taken to the school and women and children to the church. There was sexual violence against women and girls. There was extreme cruelty including the killing of babies and children. Children were abducted, which Ms Doyle described as characteristic. As Ms Doyle testified, the massacre at Las Dos Erres "was not an anomaly," but "part of a pattern."

[409] In addition, there is reliable and credible evidence that orders for the operation were received from higher up in the military chain of command. By November 1982, the command and control of the Kaibil patrol was placed directly under the Army General Staff (*Estado Mayor General del Ejército*) with operational command based in Quetzaltenango, and in December, the operational command shifted to the military brigade in Poptún, Petén.

[410] Moreover, the accounts of Mr Pinzón and Mr Jordan reveal that the military's organizational powers and resources were integral to the operation. The Kaibiles used radio communications to receive orders. Military aircraft were provided, both a military plane and helicopter, to transport the patrol before and after Las Dos Erres. Trucks were procured. A platoon of 40 soldiers from Military Zone 23 was provided to support the Kaibil patrol.

[411] Furthermore, the Las Dos Erres operation was implemented in accordance with military plans and the CW Manual. Las Dos Erres was identified by military intelligence to be a "conflictive" or red zone. The formation of soldiers into groups for command, strike group, security and support, as described by Mr Pinzón, matched the guidance in the manual for incursions. The surprise element employed for the operation, as shown through Mr Pinzón's testimony, including arriving at Las Dos Erres at night when villagers were sleeping, wearing

civilian clothes, approaching on foot through trails so as to avoid being seen, all fit with the military's strategy.

[412] Finally, the fact that the Las Dos Erres operation was a result of orders and a plan, rather than a random or rogue event, is demonstrated by the fact that, despite the contemporaneous "rumor" as to what had occurred, after Las Dos Erres there was no negative outcome for the Kaibil patrol members. There was no military discipline or sanction. To the contrary, Guatemalan military records show that key members of the Kaibil patrol, including Mr Sosa, were promoted afterwards, and the other commanders of the patrol went on to have long military careers.

[413] As noted by the expert witnesses, written orders of the Guatemalan military have not been seen that include written instructions to commit mass killings of civilians. However, that does not mean that the killings and other acts at Las Dos Erres, or any of the hundreds of other massacres, were not ordered. As Ms Doyle testified:

> We have never seen an order that said rape all the women, but in every single massacre, the women are raped. We have never seen orders that said steal the children, but in massacre after massacre, still children are stolen. We have never seen orders that said specifically separate men and women into two different buildings and then kill them in different ways, but that is what happened in massacre after massacre. So there are orders on paper and there are orders that happen in other ways.

(g) *Mr Sosa's knowledge of the attack*

[414] Finally, the Ministers must show that Mr Sosa knew of the attack occurring in Guatemala and knew or took the risk that his acts comprised a part of the attack.

[415] Mr Sosa's knowledge of events, prior to Las Dos Erres, supports the inference that he had knowledge of the attack, i.e. the military's campaign against insurgents and the targeting of civilians. As General Robles testified, it is probable that a Kaibil officer would have known in 1982 that the army's counterinsurgency strategy involved violence against civilians. I find that Mr Sosa would have, at the very least, known generally about military operations being conducted in the region against subversives and what was happening in other military zones.

[416] Indeed, Mr Sosa's knowledge of the military's campaign against insurgents and the targeting of civilians, prior to Las Dos Erres, can be inferred from the specific factual evidence including: (1) his own admitted participation in combat operations in 1981; (2) his role as an Officer and Instructor at the Kaibil school from 1981-mid-1982; (3) his role in charge of the school in August-September 1982; and (4) his role as part of the mobile Kaibil special patrol from October through November 1982; as further detailed below.

[417] Mr Sosa was an active combatant in the internal armed conflict in 1981, such that it can be inferred that he knew of the military's campaign and the way it was being carried out. Mr Sosa's own answers on discovery admit an assumption of civilian casualties because there were "many guerillas fighting in civilian clothes" and "it would have been impossible to tell if they were truly civilians or not." This demonstrates a failure to distinguish between civilians and combatants.

[418] Mr Sosa was also in a leadership role at the school, an important institution for the Guatemalan military, providing the toughest training to officers and soldiers so that they would

be “better combatants … against the guerilla or whoever there were fighting against or any enemy.” The Kaibiles specialty was countersubversive warfare, and an instructor would have been informed of the military strategy of the time. Mr Sosa obviously knew the purpose of the school’s training and the types of activities being carried out there.

[419] Based on Mr Pinzón’s testimony, I find that Mr Sosa was present at the very significant meeting at the school in July 1982 where the Director Arevalo Lacs announced the state of siege, the mobilization of forces, and the creation of the Kaibil special patrol. Mr Sosa would therefore have known the purpose of that patrol was as a mobile unit with orders to combat and to go wherever they were needed. It can therefore be inferred that Mr Sosa knew the nature of the countersubversive operations the patrol was involved in, in the months prior to Las Dos Erres, operations which included capturing, torturing and killing anyone in the patrol’s path.

[420] In addition to his knowledge prior to Las Dos Erres, Mr Sosa’s knowledge of the attack can be inferred from his presence and role at the Las Dos Erres operation itself. For instance, prior to the killings at the well, even Mr Pinzón, the cook, had been informed of the order to execute all of the villagers. Mr Pinzón’s testimony that Mr Sosa ordered others to kill people supports a finding that Mr Sosa was aware of the order. Indeed, as one of the four officers in charge, Mr Sosa likely had greater and possibly even advance information about the orders. In any case, I find that once the killings at the well commenced, Mr Sosa, who was participating in a leadership role and ordering the bringing of villagers, including babies and small children to be slaughtered by sledgehammer and thrown into the well, knew full well that civilians were being

targeted and killed. He not only condoned the killings but encouraged it voluntarily with apparent purpose.

[421] In light of my conclusion that Mr Sosa knowingly committed murder in furtherance, and as a part of, two distinct systematic and/or widespread attacks, I need not deal with the Ministers' alternative argument that the Las Dos Erres massacre was itself a systemic attack on a civilian population.

D. *Conclusion*

[422] For the above reasons, I conclude that a declaration that Mr Sosa is inadmissible to Canada on grounds of violating human or international rights for committing an act outside Canada that constitutes a crime against humanity, pursuant to section 10.5(1) of the *Citizenship Act* and section 35(l)(a) of the IRPA should be granted.

X. Mr Sosa's Defences regarding Guatemalan Citizenship and Amnesty

[423] Mr Sosa pled in his Statement of Defence that he no longer has Guatemalan nationality and that an amnesty applies in Guatemala to crimes committed during the internal armed conflict. Neither of these points appeared in the Amended Statement of Defence.

[424] Mr Sosa admitted in the Agreed Statement of Facts that he obtained Guatemalan citizenship by virtue of his birth in Guatemala and remains a Guatemalan citizen to date.

Moreover, since he did not call any evidence at trial, he failed to establish that an amnesty would apply to him or what relevance it would have to this proceeding.

[425] The Ministers pre-emptively called Professor Aizenstatd to rebut Mr Sosa's claims. He confirmed that Mr Sosa is a Guatemalan national by birth. He testified that nationality and citizenship are different concepts in Guatemala. Nationality is the legal link between a person and their country, whereas citizenship arises from nationality when someone turns 18 years old and gives any Guatemalan national the right to vote amongst political rights.

[426] Professor Aizenstatd testified that the Guatemalan constitution guarantees the right to nationality to Guatemalan nationals of origin and that the only way to renounce nationality of origin is by mandatory renunciation. Mandatory renunciation would occur when a Guatemalan national seeks to obtain nationality in another state where dual or multiple citizenship is not allowed. In such a case, any Guatemalan national would have a valid reason to renounce to his or her nationality. Professor Aizenstatd indicated that the request needs to be approved by the Guatemalan government. He testified that a Guatemalan of national origin (someone born in Guatemala or of Guatemalan parents) can request for their nationality to be restored after its renunciation. In reviewing Mr Sosa's birth certificate, Professor Aizenstatd opined that Mr Sosa is a Guatemalan national of origin, and that he would not become stateless as a result of being deprived of his Canadian citizenship.

[427] In analyzing a letter from Mr Sosa renouncing his citizenship, Professor Aizenstatd testified that the expiry of a passport is not a basis to lose Guatemalan citizenship and that

spending three consecutive years outside of Guatemala has no impact on a Guatemalan's nationality. He also determined that Mr Sosa's request to renounce his nationality was filed in the consulate and no further action was taken.

[428] Professor Aizenstatd testified that the laws of Guatemala do not, as asserted by Mr Sosa, grant amnesty from crimes against humanity committed during the internal armed conflict. In his opinion, any person who participated in the Las Dos Erres massacre would certainly face criminal charges in Guatemala. He emphasized that Guatemala has an obligation to find the individuals specifically responsible for the massacre and to prosecute them.

XI. Costs

[429] By letter dated December 19, 2024, counsel for the Ministers submitted a revised bill of costs removing certain costs and items as directed by the Court. The Ministers seeks costs calculated based on Column III of the Tariff for various services, including preparation of pleadings, discovery and examinations, conferences, and attendance of counsel at trial, in the amount of $88,155.00. They also seek reimbursement of $146,725.19 for disbursements incurred over the course of the proceeding, such as trial transcripts, translation of documents, travel expenses and the cost of experts.

[430] I see no reason to deviate from the general rule that costs follow the event. The Ministers were put through great expense to prove their case.

[431] Given the nature of the file, in my view, it would reasonably necessitate such expenses being incurred, and the total amount claimed appears to be within a reasonable range. Therefore, I will allow the total amount claimed of $234,889.19.

JUDGMENT IN T-503-17

THIS COURT'S JUDGMENT is that:

1. The action is allowed.

2. Pursuant to subsection 10.1(1) of the *Citizenship Act*, the Court declares that the Defendant, Jorge Vinicio Sosa Orantes, obtained his Canadian citizenship by false representation or fraud.

3. Pursuant to subsection 10.5(1) of the *Citizenship Act*, the Court declares that the Defendant, Jorge Vinicio Sosa Orantes, is inadmissible to Canada under paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*, on the basis that there are reasonable grounds to believe that he committed acts outside of Canada that constitute crimes against humanity, as referred to in section 6 of the *Crimes Against Humanity and War Crimes Act*.

4. Costs are awarded to the Plaintiffs, the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness, in the amount of $234,889.19.

"Roger R. Lafrenière"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-503-17
STYLE OF CAUSE:	MINISTER OF CITIZENSHIP AND IMMIGRATION AND MINISTER OF PUBLIC SAFETY AND EMERGENCY PREPAREDNESS v JORGE VINICIO SOSA ORANTES
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	NOVEMBER 4, 5, 6, 12, 13, 15, 18, 19, 20, 21, 22, 2024 AND DECEMBER 11, 12, 2024
JUDGMENT AND REASONS:	LAFRENIÈRE J.
DATED:	FEBRUARY 5, 2026

APPEARANCES:

Ms. Zoe Oxaal Ms. Samar Musallam Ms. Sonja Pavic Mr. Aman Owais Mr. Alexandre Petterson	FOR THE PLAINTIFFS
No appearance	FOR THE DEFENDANT (ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

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