

Office of the Attorney General of Honduras
Honduras, Central America

Tegucigalpa, M.D.C.
April 24, 2003

Attorney General of the United States of America
The Honorable John Ashcroft
Washington, D.C.

Dear Mr. Attorney General:

I am pleased to address you in my capacity as Attorney General of the Republic of Honduras and, accordingly, the legal representative of the **Government of Honduras** in accordance with the provisions of Article 228 of the Constitution of the Republic, very respectfully state and request the following:

The Honduran Government is aware of the recent decision rendered by a simple majority of the United States Court of Appeals for the Eleventh Circuit in the case of the Honduran citizen **David Henson McNab** (Case No. 01-15148 JJ, 02-11264-JJ), in which case I am appearing as an amicus curiae, through your Embassy, pursuant to what is set forth in the Vienna Convention on Diplomatic Relations.

The aforesaid decision has caused great concern because it has deemed as valid laws that the Government of Honduras, through all appropriate channels, has determined not to be applicable to the case.

FACTS

The Government of Honduras is aware of and grateful for the efforts undertaken by your Government to help Honduras enforce its own laws through the Lacey Act. Nevertheless, in the case at hand, the U.S. Attorneys who have handled the case, aided by agents of the National Marine Fisheries Service, relied on Honduran employees who had neither the legal capacity nor the authority to interpret Honduran law, much less speak for the Government of Honduras.

The result of the various communications between the U.S. Attorneys assigned to the case and the lower-ranking Honduran authorities who collaborated with them has been a mistaken interpretation of the validity, meaning and scope of the laws in question. Honduras wholly rejects the opinions of these lower-ranking functionaries, who at no time can speak legally on behalf of the Government of Honduras, for which reason their criteria was challenged, within the proceedings pursued, and, therefore, cannot be taken into account on the Official Position maintained by the Government of Honduras.

The New Office of the Attorney General

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Mr. McNab, invoking his legitimate right to present a defense under Honduran laws, succeeded in establishing through a ruling from the Administrative Courts and through an Administrative Resolution from the Ministry of Agriculture and Livestock that the evidence on which the U.S. Attorneys based the case with respect to the laws of Honduras was mistaken.

Inasmuch as the prosecutors assigned to the case disregarded this evidence, the Government of Honduras, through its Embassy and with my opinion as the Legal Representative of the Honduran Government, intervened as an amicus curiae to apprise the Court of Appeals of its official position, which once again was disregarded by the U.S. Attorneys assigned to the case, which induced the Court to come to a decision contrary to the position of the Government of Honduras.

We consider that the prosecution failed to recognize on that occasion the capacity of the Government of Honduras to interpret its own laws and took no heed of the official processes of the Republic of Honduras to certify in court the validity and interpretation of its own legal standards.

The sentence imposed under the Lacey Act on Mr. McNab depends entirely on the Laws of Honduras. Considering that it is the position of the highest authorities of this Country, as well as the official position of the [Honduran] Government that the aforesaid laws are not applicable, either because they were not valid at the time the conduct charged took place or else did not prohibit it, I very respectfully request your valuable intervention to the effect that you order the U.S. Attorneys assigned to the case to adopt the Official Position of the Government of Honduras with respect to the validity and scope of the laws of Honduras during the processing of the petition for a new hearing submitted by the concerned parties and likewise inform the Court of Appeals as quickly as possible that said U.S. Attorneys erred in asking said Court to reject the Official Position of the Government of Honduras.

Without anything further, I am respectfully yours,
[signature]

Dr. Sergio Zavala Leiva

Attorney General of the Republic of Honduras

[Seal with a coat-of-arms in the center: "OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC. HONDURAS, CENTRAL AMERICA".]

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TRANSLATOR'S CERTIFICATION

I, THE UNDERSIGNED TRANSLATOR, HEREBY CERTIFY that I am a Spanish-English translator accredited as such by the American Translators Association and a