

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT L. SCHULZ, JOHN SALVADOR, JR.,
WILLIAM VAN ALLEN, FAIRLENE G. RABENDA,
MARK N. AXINN, LLOYD F. WRIGHT,
RAYMOND F. MAHONEY, CHARLES M. RICHARDSON,
PETER CANDELA and WILLIAM E. HAASE,

Plaintiffs,

- against -

Civil Action No. 95-CV-0133
CGC DNH

THE STATE OF NEW YORK, GEORGE E. PATAKI,
GOVERNOR; THE NEW YORK STATE LEGISLATURE,
JOSEPH BRUNO, SENATE PRESIDENT PRO-TEM,
SHELDON SILVER, SPEAKER OF THE ASSEMBLY;
THE OFFICE OF THE STATE COMPTROLLER,
H. CARL MC CALL, COMPTROLLER; THE OFFICE
OF THE DIVISION OF THE BUDGET, PATRICIA A.
WOODWORTH, DIRECTOR; THE METROPOLITAN
TRANSPORTATION AUTHORITY, ROBERT R. KILEY,
CHAIRMAN; THE NEW YORK STATE THRUWAY
AUTHORITY, PETER TUFO, CHAIRMAN;
THE CITY OF NEW YORK, RUDOLPH W. GIULIANI,
MAYOR; THE UNITED STATES OF AMERICA;
WILLIAM CLINTON, INDIVIDUALLY AND AS
PRESIDENT OF THE UNITED STATES OF AMERICA;
AND ROBERT RUBIN, INDIVIDUALLY, AND AS
TREASURY SECRETARY,

Defendants.

MEMORANDUM OF LAW

DATED: February 10, 1995

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FOURTH CLAIM: PRELIMINARY STATEMENT

One of the most egregious crimes by the government against the people of the United States -- the official management of the debt-crises of developing countries in violation of the fundamental constitutional doctrine of separation of powers -- took a significant, ominous and frightening turn on January 31, 1995, when President Clinton and Treasury Secretary Rubin decided to borrow from the Federal Reserve, without congressional approval, up to 50 billion of United States dollars in order to provide loans and loan guarantees to the Mexican government who needed the dollars to pay back certain private, American and other investors in Mexican stocks, bonds and notes.

Mexico owes the world about \$168 billion of which about \$58 billion is due to be repaid this year.

The principal beneficiaries of the action taken on January 31, 1995 are the investors (primarily U.S.) who hold about \$60 billion of Mexican stocks and bonds and U.S. banks who are owed about \$18.3 billion. Supporting this view is an authoritative statement by Walker F. Todd, appearing in an article entitled, "Bailing Out The Creditor Class," The Nation magazine, February 13, 1995.¹

FOURTH CLAIM: QUESTIONS PRESENTED

1. Whether the will and intent of the people, as expressed in Article I, Section 8, Clause 2 of the Federal Constitution, for a strict separation

¹"One of the most preposterous financial crimes of the century, the official management of the 1980s developing-countries debt crisis, is being repeated before our very eyes, and by many of the original perpetrators to boot...The original crime, now being repeated, was the profligate lending of billions of dollars from the U.S. banking system between 1974 and 1982 to as gaudy a band of tinpot military dictators, kleptocratic presidents and bon vivant finance

of the powers of the Legislative and Executive branches, by restricting to Congress the power "To borrow Money on the credit of the United States" was violated by federal defendants on January 31, 1995, when they approved the borrowing, of more than \$20 billion United States dollars, by the Treasury Department, through its Exchange Stabilization Fund, from the Federal Reserve, in order to provide loans and loan guarantees to the Mexican government, who needed the dollars to pay back certain private American and other investors in Mexican securities.

2. Whether the will and intent of the people, as expressed in Article I, Section 8, Clause 3 of the Federal Constitution, for a strict separation of powers of the Legislative and Executive branches, by restricting to Congress the power "To regulate commerce with foreign nations and among the several states, and with the Indian Tribes," was violated by federal defendants on January 31, 1995, when they approved the borrowing of more than \$20 billion United States dollars, by the Treasury Department, through its Exchange Stabilization Fund, from the Federal Reserve, in order to provide loans and loan guarantees to the Mexican government, who wanted the dollars to pay back certain private American and other investors in Mexican stocks, bonds and notes.
3. Whether the will and intent of the people as expressed in Article I, Section 8, Clause 5 of the Federal Constitution, for a strict separation of powers of the Legislative and Executive branches, by restricting to Congress the power "To coin money, regulate the Value thereof, and of

ministers as ever graced a Connecticut Avenue diplomatic reception...[I]t was not practical politics to recognize the stupidity of the situation and call the lenders into account. No, orthodoxy and good form required the ongoing pretense that the loans were still good, with a host of jerry-built solutions from the Treasury, the Federal Reserve, the International Monetary Fund and the World Bank. So, as an African economist once told me, 'One class of people borrowed the money, and a different class of people had to pay it

foreign Coin, and fix the standard of weights and measures," was violated by federal defendants on January 31, 1995 when they approved the borrowing of more than \$20 billion United States dollars, by the Treasury Department, through its Exchange Stabilization Fund, from the Federal Reserve, in order to provide loans and loan guarantees to the Mexican government, who wanted the dollars to pay back certain private American and other investors in Mexican stocks, bonds and notes.

4. Whether the will and intent of the people, as expressed in Article I, Section 9, Clause 7 of the Federal Constitution, for a strict separation of powers of the Legislative and Executive branches, by requiring that "No money shall be drawn from the Treasury, but in consequence of appropriations made by Law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time," was violated by federal defendants on January 31, 1995, when they approved the borrowing of more than \$20 billion United States dollars, by the Treasury Department, through its Exchange Stabilization Fund, from the Federal Reserve, in order to provide loans and loan guarantees to the Mexican government, who wanted the dollars to pay back certain private, American investors in Mexican stocks, bonds and notes.
5. Whether the will and the intent of the people, as expressed in Article I, Section 8, Clauses 2, 3 and 5 and Section 9, Clause 7 of the Federal Constitution, to a strict separation of powers between the Legislative

back'...In 1982 Mexico owed U.S. banks about \$25 billion. The dirty secret of Debt Crisis-I was that foreign banks had deposits of flight capital from rich residents of the debtor nations that would have covered much (and in some cases all) of the banks' claims on the debtor countries...But here is where the truly intolerable part begins again: The governing elites in both countries who caused, exacerbated or covered up this mess expect to escape censure, just as happened in 1982. Secret credit lines for Mexico from the

and Executive branches was violated by federal defendants in 1934 when they adopted the Gold Reserve Act and created the Exchange Stabilization Fund.

6. Whether the will and intent of the people, as expressed in the Thirteenth Amendment to the Federal Constitution, to live a life free of "involuntary [economic] servitude" was violated by federal defendants on January 31, 1995 when they approved the tax-supported borrowing of more than \$20 billion of United States dollars, by the Treasury Department, through the Exchange Stabilization Fund, from the Federal Reserve, in order to provide loans and loan guarantees to the Mexican government who needed the money to pay back certain private, American, and other, investors in Mexican stocks, bonds and notes.

FOURTH CLAIM: STATEMENT OF FACTS

Prior to December 20, 1994, the Mexican peso floated against the dollar within a band. On December 20, 1994, the Mexican government widened the band. In effect, this was a devaluation of about 13%. Pressure on the peso continued and the Mexican government eliminated the band completely on December 21, 1994, leaving the peso to float freely. Over the succeeding weeks, the peso fell as much as 40 percent at times compared with its value of 3.4 pesos per dollar before December 20, 1994. Despite rising Mexican interest rates Mexico was unable to attract adequate short-term capital to refinance its maturing long-term debt.

United States, Japan and European governments amounting to as much as \$12 billion were negotiated twice in the past fifteen months or so, ostensibly to defend the peso, but it is now clear that the only possible use of those lines would have been to finance the flight from the peso of Mexico's governing elites and their compatriots in the international financial system. Amusingly, through a tripartite credit line involving Canada as well as Mexico, which was announced publicly in April 1994, the United States

On January 3, 1995, an international support package of \$18 billion was announced. This package included \$9 billion from the U.S. Treasury, through its Exchange Stabilization Fund, which borrowed the \$9 billion it "loaned" to Mexico.

After continued turmoil in financial markets, on January 12, 1995, defendant Clinton and Rubin proposed that Congress approve a \$40 billion loan and loan guarantee program in which Mexico could refinance its short-term debt for medium term obligations.

On January 31, 1995, it became clear to defendants Clinton and Rubin that while the congressional leadership was in favor of the proposed \$40 billion program to temporarily bail out the Mexican peso, most United States Representatives and Senators were listening to their constituents and would not approve the program.

On January 31, 1995, defendant Clinton and the leadership of the Congress released a statement which said that they were in agreement that the United States should use the Exchange Stabilization Fund to provide appropriate financial assistance to Mexico.

On information and belief, defendant Clinton signed an Executive Order on January 31, 1995, which authorized defendant Rubin to enter into loan and loan guarantee agreements on behalf of Mexico, and to use the Treasury's Exchange Stabilization Fund, ("ESF") (\$20 billion), the International

essentially has agreed to lend Canada dollars that Canada can then lend to Mexico, which further weakens the U.S. dollar...But at bottom what is needed is a prompt and full disclosure of what the \$40 billion will be used for. The names and amounts paid for each disbursement under the credit line would be published. If there are Charles Keatings, Ferdinand Marcoses and M. Danny Walls lurking, the public is entitled to know..." Walter F. Todd is Counsel to the Cleveland law firm of Buckingham, Doolittle & Burrough, was formally assistant general counsel and research officer at the Cleveland Federal Reserve.

Monetary Fund ("IMF") (\$17.8 billion) and the Bank of International Settlements ("BIS") (\$10 billion).

While the ESF has assets in the form of, say, German and Japanese currency, it does not have U.S. dollars. The ESF is to borrow the dollars. The money the Treasury will make available to the IMF and the BIS will also be borrowed.

FOURTH CLAIM: ARGUMENT

POINT I

THE EXECUTIVE ORDER VIOLATES THE CONSTITUTIONAL PRINCIPAL OF THE SEPARATION OF POWERS

The Executive Order signed by defendant Clinton on January 31, 1995, to have the Executive, through the Treasury Department, and its Exchange Stabilization Fund, borrow more than 20 billion United States dollars to provide to Mexico (so that Mexico can pay back private, American and other investors in Mexican stocks, bonds and notes), violates the constitutional principal of separation of powers. The power of the purse is reserved to the legislature (the power of the sword is reserved to the Executive) Buckley v Valeo, 424 U.S. 1, 90 (1976).

The Executive Order, and any loan and loan guarantees made pursuant thereto, usurp certain powers reserved to Congress by the Federal Constitution. Specifically, the power to borrow money on the credit of the United States (Article I, Section 8, Clause 2), and the power to regulate commerce with foreign nations (Article I, Section 8, Clause 3), and the power to regulate the value of foreign coin (Article I, Section 8, Clause 5), and the power to appropriate (approval) the withdrawal of money from the U.S. Treasury (Article I, Section 9, Clause 7).

POINT II

THE ACTION BY DEFENDANTS CLINTON
AND RUBIN IS VIOLATIVE OF THE
THIRTEENTH AMENDMENT TO THE
FEDERAL CONSTITUTION

The action taken on January 31, 1995 serves to drive plaintiffs further into a condition of involuntary (economic) servitude in violation of the Thirteenth Amendment to the Federal Constitution.

The United States of America has gone from being the world's largest creditor nation to the world's largest debtor nation. The United States now owes creditors nearly \$5 Trillion. The United States is currently borrowing nearly \$1 Billion every day just to pay the interest on its debt.

Mexico has fundamental fiscal problems. It now wants to "borrow" money from the U.S. taxpayers to pay the investors from whom it borrowed tens of billions of dollars, short-term and mid-term (at 15% to 50% interest), to make the payments coming due on all of its long-term debt.

There is no one to pay back the U.S. taxpayers who will end up further in debt (bondage).

Even if the Executive Order was not violative of Article I, Sections 8 and 9 of the Federal Constitution, which it is, it is violative of the Thirteenth Amendment. It will cause a situation in which American citizens will be placed further into a condition of involuntary (economic) servitude to "the government."

FOURTH CLAIM: CONCLUSION

WHEREFORE, it is respectfully requested that this court grant a preliminary injunction and a final order:

- a) declaring the Executive Order signed by defendant Clinton on January 31, 1995, to be violative of Article I, Sections 8 and 9 of the Federal Constitution, and

- b) preliminarily enjoining defendant Rubin from entering into any loan or loan guarantee agreements with Mexico pursuant to said Executive Order, or alternatively, from transferring any U.S. dollars to any foreign-owned bank account pursuant to said Executive Order, and
- c) for such other and further relief as to the court may seem just and proper.

DATED: February 10, 1995

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