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Via electronic mail to Extradition@state.gov

U.S. Department of State
Office of the Legal Adviser for Law Enforcement and Intelligence (L/LEI)
Room 5419
2201 C Street, N.W.
Washington, DC 20520

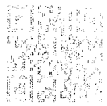
Date: **December 21, 2018**

Re: **Andres Felipe Arias-Leiva's Submission for Final Review of Extradition**

Dear Sir or Madam:

Our office represents Andres Felipe Arias-Leiva ("Dr. Arias") in connection with the enclosed submission for the U.S. Department of State's (DOS) consideration for final review of his extradition. Upon careful review and consideration, DOS should respectfully find that Dr. Arias' extradition to his home country, Colombia, would be unlawful under applicable U.S. law and would flagrantly violate the U.S.' obligations under the Convention Against Torture. Said extradition is unlawful for three (3) obvious reasons: (a) Dr. Arias was illegally convicted by a politicized and corrupt court; (b) Dr. Arias is being denied the fundamental right to appeal the illegal conviction as acknowledged by the United Nations Human Rights Committee (UNHRC) and (c) extraditing Dr. Arias would be a violation of the U.S.' obligation to protect individuals who fear being tortured or killed upon return to their home country pursuant the U.N. Convention Against Torture (CAT). *See* 22 C.F.R. 95.1 et seq.

I. STATEMENT OF LAW



The Secretary must decide whether a fugitive who has been found extraditable by a court should be extradited to a Requesting State. In determining whether a fugitive should be extradited, the Secretary may consider de novo any and all issues properly raised before the extradition court (or a habeas court), as well as any other considerations for or against surrender. Among these other considerations are humanitarian issues and matters historically arising under the rule of non-inquiry, including whether the extradition request was politically motivated, whether the fugitive is likely to be persecuted or denied a fair trial or humane treatment upon his or her return, and, whether it is more likely than not that the fugitive would face torture in the Requesting State pursuant to the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). *See* 22 C.F.R. 95.1 et seq.

The Department will consider information concerning judicial and penal conditions and practices of the Requesting State, including the Department's annual Human Rights Reports, and the relevance of that information to the individual whose surrender is at issue. Likewise, the Department will examine, materials submitted by the fugitive, persons acting on his or her behalf, or other interested parties, and will examine other relevant materials that may come to its attention.

II. STATEMENT OF FACTS

Colombia's request to extradite Dr. Arias is based on an illegal conviction decided by the Supreme Court of Colombia on July 17, 2014.

Dr. Arias is a forty-five-year-old, Colombian national known for his public service as the former Minister of Agriculture under the administration of President Alvaro Uribe Velez during 2005 through 2009. Backed by former President Uribe, he subsequently ran for the Presidency of the Republic of Colombia in 2010. He is married to Catalina Serrano-Garzon (Ms. Serrano), who is also a native and citizen of Colombia. He and Ms. Serrano have two children born in Bogota,

from wedlock, to wit: Eloisa Arias-Serrano (age 10) and Juan Pedro Arias-Serrano (age 7). Dr. Arias and his family currently reside in the U.S. and have pending asylum applications before the U.S. Citizenship and Immigration Services (USCIS) based on his political persecution.

Like many other politicians and public servants who served Colombia's former President Alvaro Uribe and affiliated with his political party, *Centro Democratico* (the Democratic Center), Dr. Arias' case of politically-motivated persecution and arbitrary detention in Colombia is the result of subordination and intimidation of judges, prosecutors, and witnesses. From 2011 to 2016, Colombia's Attorney Generals and a politicized faction of the Supreme Court illegally prosecuted, convicted, and imprisoned individuals who have ties to Uribe.

A. Case History

In 2005, President Uribe appointed Dr. Arias as the country's Minister of Agriculture. As the Minister of Agriculture, he worked alongside President Urbe and other public officials to devise a strategy to make Colombia's agricultural sector more competitive in the international market. Together, they developed the *Agro Ingreso Seguro* (AIS) program, which consisted of providing competitive irrigation subsidies. The OAS Inter-American Institute for Cooperation on Agriculture (OAS-IICA) supported and operated the irrigation subsidy program from 2007 to 2009.

In February 2009, Dr. Arias publicly announced that he would run for President in 2010 and continue Uribe's policies. As President Uribe's chosen successor, Dr. Arias gained popularity and became the leading conservative candidate in the public polls as the primary presidential elections approached. Based on his popularity, his political adversaries fabricated a political scandal against Dr. Arias to defeat him in the primary elections. Specifically, in September 2009, Dr. Arias was falsely accused of misappropriating the AIS irrigation subsidy program funds to

fund his campaign. This leak of false information spread by the media was strategically timed, so that the fake news would break following the reports of wealthy landowners manipulating the AIS irrigation subsidy program for personal gain. Following the false accusations, the Attorney General investigated the claims and cleared Dr. Arias of any wrongdoing; however, this report was not made public until a year-and-a-half-later after said elections. Consequently, the false accusations circulating throughout the Colombian media caused Dr. Arias to lose popularity and, overall, lose the primary elections in March 2010; yet, he only lost by a narrow margin, obtaining 1.1 million votes, which reflected his promising, future career in politics. With Dr. Arias out of the running, Santos won the 2010 Colombian presidential elections by a landslide in June 2010.

Despite Dr. Arias being cleared of any wrongdoing in connection with the AIS irrigation subsidy program, the General Comptroller's Office launched a second investigation, in August 2010, once more, the General Comptroller's Office found Dr. Arias innocent of any wrongdoing and concluded that the wealthy landowners were the perpetrators of fraud. In December 2010, the Administrative Court of Cundinamarca conducted a third investigation on the issue and found that the wealthy landowners had misled the Colombian government and the Ministry of Agriculture to illegally receive irrigation subsidies. In January 2011, the National Electoral Council conducted a separate, independent investigation into Dr. Arias' campaign financing and found that there had been absolutely no inappropriate or fraudulent contributions made to his campaign, thereby, refuting allegations to the contrary.

B. Dr. Arias' Politically-Motivated Detention, Trial, and Conviction

Despite the four independent investigations and favorable findings on Dr. Arias' behalf, President Santos' newly-appointment Attorney General, Viviane Morales Hoyos, initiated a new criminal investigation against him and the AIS program and ultimately charged him on two counts

of embezzlement and one count of entering into a contract with OAS-IICA without meeting the legal requirements. On July 21, 2011, Dr. Arias' criminal prosecution began with a multitude of procedural irregularities contrary to Colombian law and safeguards. The first clear indication that Dr. Arias' prosecution was politically motivated occurred at Dr. Arias' indictment hearing. Instead of holding his indictment hearing in a standard room of the Superior Tribunal of Bogota, Judge Orlando Fierro Perdomo held it in the tribunal's theater room filled with an audience cheering and applauding the Attorney General and media representatives who broadcasted the live hearing. Despite the fact that Dr. Arias was receiving state protection due to high security risks, Attorney General Morales broke from procedure and disclosed his personal information on live television. At the end of the hearing, on July 26, 2011, Judge Fierro ordered Dr. Arias' preventive detention upon which the Attorney General and the audience broke out in applause. Two days after disclosing Dr. Arias' personal information on national, live television, his family was robbed by people posing as members of the Attorney General's office.

Dr. Arias spent twenty-three (23) months in preventive detention, notwithstanding the fact that he had requested to be released on bond on three separate occasions. On June 14, 2012, his trial began before the Colombian Supreme Court because he had held a Cabinet-level position and was being charged with crimes associated with his office. On June 14, 2013 an independent judge of the Superior Tribunal of Bogota ordered Dr. Arias' release after finding that there was no justification for his detention during the trial. Following his release, Dr. Arias approached the U.S. Embassy to renew his visa and inform the Embassy's political section of his fear of being illegally convicted. The U.S. Embassy renewed his visa. In these meetings, he was straightforward regarding his intention to seek political asylum in the U.S.

The proceedings against Dr. Arias concluded in February 2014, at which time the Inspector General's Office, an independent constitutionally created public institution that oversees the conduct of public officials, requested the Supreme Court to dismiss the charges against Dr. Arias for lack of evidence. However, the Supreme Court refused and postponed the verdict three times for several months while the 2014 Presidential campaign was taking place. By then, Uribe's successor and member of the Democratic Center party, Oscar Ivan Zuluaga (who has, since, also been investigated), had defeated incumbent President Santos on the first vote. On June 13, 2014, two days prior to the run-offs, the Supreme Court illegally leaked news that Dr. Arias would be illegally convicted – notwithstanding that the Justices had yet to discuss the verdict. On that same day, the Inspector General's office concluded a two-year investigation into Dr. Arias' personal and family finances and publicly cleared him of any criminal wrongdoing.

After learning of the Supreme Court's leaks and, thus, fearing an unfair conviction, Dr. Arias contacted the U.S. Embassy on the same day to confirm that he could seek admission in the United States and request political asylum. Two different U.S. Embassy officials cleared him to enter the United States for the purposes of seeking asylum. Thus, on June 13, 2014, Dr. Arias fled to the United States with his family to follow just a few days after.

As leaked by the Supreme Court, Dr. Arias was ultimately convicted *in absentia* for contracting without fulfilling the legal requirements and embezzlement by appropriation on July 17, 2014. Even though the Court lacked evidence to make this finding, the Court unjustly sentenced him to seventeen (17) years and five (5) months imprisonment.

At the time, Colombian law did not provide a means for appeal in cases considered in the first instance by the Supreme Court. Thus, Dr. Arias was unable to appeal the illegal decision. The

Colombian justice system has subsequently changed to allow for appeals. Nonetheless, the Supreme Court has subsequently denied Dr. Arias his right to appeal.

C. Dr. Arias Seeks Political Asylum in the United States

Following their lawful admission into the United States, Dr. Arias, his wife, and two young children, applied for asylum with USCIS on September 5, 2014. On October 16, 2014, they were scheduled for an interview with the USCIS Miami Asylum Office. However, a week before the interview, USCIS cancelled it for unknown reasons.

D. Dr. Arias' Extradition

Almost two years after filing his asylum application with the U.S. government, a Complaint for Extradition of the Petitioner (the "Extradition Complaint") was filed with the United States District Court for the Southern District of Florida, by the United States acting on behalf of Colombia as the Requesting State on August 11, 2016. On August 24, 2016 (the same day that President Santos and the FARC announced a cease-fire and disarmament accord), Dr. Arias was arrested pursuant to Colombia's Extradition Complaint in Weston, Florida where he had been openly living and working since arriving in the United States. On September 29, 2017, the U.S. Federal Judge John O'Sullivan cleared Dr. Arias' extradition to Colombia.

Due to his ongoing persecution by the Colombian government and flagrant violations of Dr. Arias' fundamental rights (to appeal his conviction, to a presumption of innocence, and to be free from cruel and unusual punishment), Dr. Arias brought his case to the United Nations Human Rights Committee (UNHRC) in Geneva to challenge the Colombian Supreme Court's decision. The UNHRC had the authority to preside over his case because Colombia has sworn its compliance with the International Covenant on Civil and Political Rights, a treaty to which it is a state party.

On November 13, 2018, the UNHRC found that the Colombian Supreme Court had effectively violated two (2) of Dr. Arias' fundamental, human rights. Firstly, the Court violated his right to appeal the conviction to an independent, superior tribunal. Secondly, the Court ordered a severe punishment disproportional to Dr. Arias' alleged crimes by forever banning from serving in public office.

III. DR. ARIAS SHOULD NOT BE EXTRADITED BECAUSE HE WAS CONVICTED BY A POLITICIZED AND CORRUPT COURT WITH NO PROCEDURAL DUE PROCESS SAFEGUARDS.

The State Department should give Colombia's Supreme Court conviction against Dr. Arias no weight because it was the product of political corruption. The State Department has acknowledged that the Supreme Court of Colombia was politicized against the Uribe Administration.[1] Likewise, it acknowledged that Dr. Arias was destined to bear the brunt of the anti-Uribe campaign.[2] Supreme Court Justices accepted bribes and engaged in corrupt acts, some of which were uncovered by the DEA. This includes Leonidas Bustos, who was one of the Justices in Dr. Arias' trial and presided over the Supreme Court.[3] He is now under formal investigation for

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[1] Brownfield. Colombia in the Political Doldrums. November 17, 2009. Cable from US Embassy in Bogota to DOS. https://wikileaks.org/plusd/cables/09BOGOTA3405_a.html.

[2] Ibid at p.5.

[3] In August 2017, the US Drug Enforcement Administration (DEA) released recordings that appeared to implicate three former Supreme Court presidents, including Leonidas Bustos, in a far-reaching corruption scandal that has shaken the credibility of the Supreme Court. The recordings allegedly caught Bustos claiming that the Supreme Court "managed a fee between US $350,000 and $1 million to rule in favor of whoever had the money to bribe them." Moreover, Musa Besaile, a Colombian Senator who was accused of paramilitarism, subsequently admitted to having paid 2 billion Colombian pesos (US $689,000), supposedly destined for Bustos, in order to prevent his own arrest. Adriaan Alsema, Three of Colombia's Former Supreme Court Presidents Took Bribes: DEA, COLOMBIA REPORTS, Aug. 16, 2017, *available at* https://colombiareports.com/three-colombias-former-supreme-court-presidents-took-bribes- deal.

corruption by the Colombian Congress for bribery involving Colombia's Anti-Corruption Prosecutor (who has been extradited to the U.S. and has pleaded guilty).[4] Bustos is expected to be impeached soon,[5] and the U.S. has cancelled his visa. Gustavo Malo, another one of the Justices that signed the Court's ruling against Dr. Arias, was charged and indicted by the Colombian Congress in the midst of the same bribery case.[6] Of the eight Supreme Court Justices that convicted Dr. Arias, the two aforementioned were clearly involved in the bribery scandal uncovered by the DEA (Leonidas Bustos is under investigation, and Gustavo was charged and indicted), three (Patricia Salazar, Fernando Castro, and Luis Guillermo Salazar) were specifically mentioned in the DEA recordings as having been involved in corrupt practices, and two others (Maria del Rosario Gonzalez and Jose Luis Barceló) cannot be ruled out of being involved in the bribery case according to the recordings.[7] The only Justice not mentioned in the DEA wiretap (Eugenio Fernandez) was the only Justice to have issued a dissent against Dr. Arias' conviction. (See Table 1).

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[4] Jay Weaver. Colombia's former anti-corruption chief pleads guilty to bribery scheme at Dolphin Mall. MIAMI HERALD. Aug. 14, 2018, *available at*: https://www.miamiherald.com/news/local/crime/article216695195.html.

[5] Cartel de la toga: Comisión definirá suerte del proceso contra exmagistrado Bustos. RCN radio. June 6, 2018, *available at*: https://www.rcnradio.com/politica/decretan-cierre-de-investigacion-contra-exmagistrado-leonidas-bustos.

[6] Para Gustavo Malo, los problemas crecen por escándalo del cartel de la toga, EL ESPECTADOR, Mar. 5, 2018, *available at*: https://www.elespectador.com/noticias/judicial/para-gustavo-malo-los-problemas-crecen-por-escandalo-del-cartel-de-la-toga-articulo-742741. Adriaan Alsema, 'Corrupt' Colombia Supreme Court justice refuses to abandon post, COLOMBIA REPORTS, Sept. 15, 2017, *available at*: https://colombiareports.com/corrupt-colombia-supreme-court-justice-refuses-abandon-post/.

[7] Mark Kennedy. Colombian Corruption: How Seven Scandals Have Rocked a Nation and Eroded Faith in Justice. Finance Colombia. Dec. 6, 2017. Adriaan Alsema. Colombia's Supreme Pimp of Justice. COLOMBIA REPORTS. Sept. 22, 2017, *available at:* https://colombiareports.com/colombias-supreme-pimp-justice/. Adriaan Alsema. Colombia's Former Supreme Court Chief Justice Arrested on Corruption Charges. COLOMBIA REPORTS. Sept. 20, 2017, *available at:* https://colombiareports.com/colombias-former-supreme-court-chief-justice-arrested-corruption-charges/.
Corrupcion en la justicia, CARACOL RADIO, Aug. 31, 2017, *available at:* http://caracol.com.co/ m/ radio/2017 / 08/ 31 / judicial/ 1504137993_00855 8. (Maria del Rosario Gonzalez and Jose Luis Barceló are specifically mentioned in this recording; however, the extent of their involvement, if any, remains unclear).

Table 1.

Justice	Corruption	Vote to Convict Dr. Arias
Leonidas Bustos	Under formal investigation U.S. visa revoked	Yes
Gustavo Malo	Indicted by Congress	Yes
Jose Luis Barcelo	Ambiguous	Yes
Maria Gonzalez	Ambiguous	Yes
Patricia Salazar	Alleged Involvement	Yes*
Fernando Castro	Alleged Involvement	Yes
Luis Guillermo Salazar	Alleged Involvement	Yes
Eyder Patino	Alleged Involvement	Abstained / Recused
Eugenio Fernandez	No	No

**Patricia Salazar voted to convict Dr. Arias, even though she was never present at the trial.*

In a private conversation amongst the Supreme Justices that was leaked to the public, they openly acknowledged that, in matters of Uribe's Cabinet, they must make decisions based on political expedience without dissenting votes.[8] In addition to such a Supreme Court bias, it is also

[8] Diego Palacio entutela a la Corte por audios de la 'Mata Hari', EL TIEMPO, Oct. 16, 2015, *available at*: https://www.eltiempo.com/archivo/documento/CMS-16405895.
Los Audios de la 'Mala Ha.ri' quc Diego Palacio Revelo en la Corte, EL TIEMPO, Oct. 21, 2015, ***available at:*** http://www.cltiempo.com/politica/justicia/yidispolitica-grabaciones-cle-mata-hari-revclados-por-dicgo-palacio/161.09016.

noteworthy that the Attorney General that charged Dr. Arias was eventually removed from office when a court ruled that she had been illegally appointed by the Supreme Court.[9] Thus, the Attorney General and the Supreme Court violated their requirement of neutrality and continuously showed bias and complicity with the Santos administration's effort to target their political opposition.

There is a potential witness to the political and corrupt motivations of the Supreme Court Justices in convicting Dr. Arias. A relative of Leonidas Bustos overheard him admit to having to convict Dr. Arias because of his closeness to Uribe.[10] Moreover, a Cabinet member of the Santos Administration (who served as Minister of Agriculture at the time that the administration demanded Dr. Arias' conviction) admitted to his belief that Dr. Arias' conviction was the result of political motivations.[11]

More evidence of the flaws in Dr. Arias' trial and conviction can be seen in statements by the former Inspector General, Alejandro Ordoñez and Deputy Comptroller Roberto P. Hoyos in Colombia. Ordoñez, who has now been appointed to represent Colombia before the OAS, requested that Dr. Arias be acquitted[12] and also authored a letter to the U.S. Department of Justice in which he explained that Dr. Arias had not committed any acts worthy of criminal prosecution and that his asylum case should be considered.[13] Hoyos, the Deputy Comptroller, similarly stated that Dr. Arias acted transparently and lawfully when executing the program that formed the basis

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[9] Mary Cecilia Bittner, Colombia's Prosecutor General removed from office, COLOMBIA RESPORTS, Feb. 29, 2012, *available at*: https://colombiareports.com/attorney-general-removed-from-office/.
Edward Fox, Colombian Attorney General Removed, Amid Accusations of Paramilitary Ties, INSIGHT CRIME, Feb. 29, 2012, *available at*: https://www.insightcrime.org/news/brief/colombian-attorney-general-removed-amid-accusations-of-paramilitary-ties/.

[10] Ms. Claudia Garcia, a witness currently residing in the U.S., has agreed to provide a statement only to the U.S. government within the confidential framework of the U.S. Department of State's final review for extradition, for fear of retribution in Colombia.

[11] Affidavit of Ruben Dario Lizarralde dated Sept. 27, 2016. Enclosed as: **Exhibit A.** *See* last sentence of affidavit.

[12] Procuraduría pidió absolución de Andrés Felipe Arias, NOTICIAS RCN, Feb. 11, 2014, *available at:* https://noticias.canalrcn.com/nacional-justicia/procuraduria-pidio-absolucion-andres-felipe-arias.

[13] Letter by Alejandro Ordoñez dated Aug. 30, 2016. Enclosed as: **Exhibit B.**

of his conviction.[14] Furthermore, the current Vice-President of Colombia, Marta Lucia Ramirez, also stated her belief in Dr. Arias' transparency and innocence.[15] As if all of this was not enough, the current president of Colombia, while a Senator, co-signed a letter with all Congress Members of Dr. Arias' party, addressed to the U.S. Congress, indicating the political corruption behind his conviction.[16]

Numerous third-party legal and political experts have declared Dr. Arias' conviction to have been purely politically motivated. These conclusions were made by an established and well-respected journalist and author Plinio Apuleyo Mendoza.[17] International and Colombian legal scholars and experts have also come to the same conclusion.[18] It is noteworthy that the Minister of Justice under the Santos administration (Yesid Reyes) was on the editorial board of one of the journals that published an article on the anomalies of the conviction.[19] The political nature of the

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[14] Letter by Roberto P. Hoyos dated Nov. 10, 2016. Enclosed as: **Exhibit C.**

[15] Letter by Marta Lucia Ramirez dated Sept. 21, 2016. Enclosed as: **Exhibit D**.

[16] Letter signed by various Colombian senators including Ivan Duque Marquez dated May 9, 2017. Enclosed at: **Exhibit E.**

[17] Plinio Apuleyo Mendoza, Carcel o Exilio. Bogota, Colombia, July 2016. Chapter 3 (pp. 53-71) on Andres Felipe Arias. **Enclosed as: Exhibit F.**

[18] Fernando Velazquez Velazquez and Hernan Gonzalo Jimenez. Ni Celebracion Indebida Ni Contrato peculado. Corte Suprema de Justicia, Sent. Del 1607.2014, R 371,62. M/P/. Maria Del Rosario Gonzalez Munoz, Aprobada Acto No. 226. Estudios Criticos de la Jurisprudencia de la Corte Suprema de Justicia 4. Universidad de los Andes/Universidad Sergio Aboleda. Bogota 2017, (pp. 153-189) Enclosed as: **Exhibit G**.
Jared Censer. White Paper On the Case of Andres Felipe Arias Leiva, Citizen of the Republic of Colombia v. The Government of the Republic of Colombia. October 31, 2017. Enclosed as: **Exhibit H.**
Affidavit of Eduardo Gamara dated Oct. 9, 2014. Enclosed as **Exhibit H**.

[19] *See* Editorial Board in **Exhibit G.**

conviction has also been acknowledged by local and foreign press.[20] Additionally, non-governmental organizations have acknowledged Dr. Arias' political persecution.[21]

The fact that key personnel at the U.S. Embassy at Bogota believed that Dr. Arias was railroaded by the Colombian judiciary confirms that the conviction by the Colombian Supreme Court has no weight because it was the product of political corruption. The U.S. Consulate at Bogota renewed Dr. Arias' visa and did not revoke the visas for his family, knowing that he needed those to flee Colombia and seek asylum in the United States. The U.S. Embassy personnel aided a former Colombian cabinet minister's flight in the midst of a criminal prosecution because they knew his trial was rigged. Dr. Arias is not a criminal. The U.S. Embassy personnel knew that, and

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[20] Mary Anastasia O'Grady, Takedown of a Candidate, Bogota Style, THE WALL STREET JOURNAL, Sept. 11, 2016.
Jared Genser, The Ignoble Act of Nobel Laureate, THE WASHINGTON POST, Feb. 2, 2017.
Lia Fowler, Why the U.S. Should Care About Andres Felipe Arias, PERIODOSIMO SIN FRONTERAS, Mar. 9, 2017.
Alvaro Uribe Ongoing Political Persecution Will Turn Colombia Into Venezuela, THE HILL, May 17, 2017.
Jay Nordlinger, Asylum Now: The Awful Case of a Splendid Man, NATIONAL REVIEW, Oct. 24, 2017.
Jeanne Kuang, A plea unhear: A Colombian former official says the U.S. promised help getting political asylum. Instead he faces extradition with any asylum hearing. INJUSTICE WATCH, April 4, 2018.
Jeanne Kuang, Lawyers tell court: Former Colombian official Andres Arias is wrongly locked up, INJUSTICE WATCH, April 8, 2018.
Mary Anastasia O'Grady, Will the U.S. Extradite an Innocent Man, THE WALL STREET JOURNAL, Nov. 4, 2018.
Mary Anastasia O'Grady, A Cynical Trade With Colombia, THE WALL STREET JOURNAL, Nov. 18, 2018. Enclosed as: **Exhibit J**.
Moisés Wasserman, Hurgando en la sentencia contra Arias, EL TIEMPO, Sept. 15, 2016, *available at*: https://www.eltiempo.com/opinion/columnistas/moises-wasserman/hurgando-en-la-sentencia-contra-arias-moises-wasserman-columna-el-tiempo-53745.
Rafael Nieto Loaiza, A Propósito De Una Juicio Canalla, DIARO DEL HUILA, Oct. 14, 2018, *available at*: https://www.diariodelhuila.com/a-proposito-de-un-juicio-canalla.
Alberto J. Bernal-León, Riesgos inmensos, LA REPUBLICA, Oct. 29, 2018, *available at:* https://www.larepublica.co/analisis/alberto-j-bernal-leon-500059/riesgos-inmensos-2787083.
Plinio Apuleyo Mendoza, ¿Creer en la Corte Suprema? ¿Estará dispuesta a revisar las injustas condenas que abundan y son pecado de la justicia ordinaria? EL TIEMPO, Oct. 13, 2017, *available at:* https://www.eltiempo.com/opinion/columnistas/plinio-apuleyo-mendoza/creer-en-la-corte-suprema-140608.
Fernando Londoño Hoyos, Andres Felipe Arias, LAS 2 ORILLAS, Dec. 3, 2018, *available at*: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=2ahUKEwjV3qPPm47fAhUNOq0KHdw3CJUQFjACegQIARAB&url=https%3A%2F%2Fwww.las2orillas.co%2Fandres-felipe-arias%2F&usg=AOvVaw3po6g7R06bY7gnvKvtgaae.
Andrés Candela, 'Prefiero estar triste que estar desesperado', EL TIEMPO, Mar. 11, 2017, *available at*: https://www.eltiempo.com/opinion/columnistas/andres-candela/prefiero-estar-triste-que-estar-desesperado-66434#.

[21] NGO Report, DIGNIDAD COLOMBIA, Nov. 19, 2018. Enclosed as: **Exhibit K.**

that is why they helped him come to the United States. Dr. Arias should not be extradited for a conviction by a politicized and corrupt court. In fact, the U.S. Attorney explicitly represented to the Magistrate Judge, at the September 28, 2017 hearing, that the State Department would not proceed with the extradition if it found the court was politicized.[22]

IV. COLOMBIAN LAW DOES NOT PROVIDE ADEQUATE PROCEDURAL SAFEGUARDS FOR THE CONVICTION TO BE VALID UNDER INTERNATIONAL HUMAN RIGHTS LAW.

The United Nations Human Rights Committee (UNHRC), the highest international human rights tribunal, recently rendered a decision that clearly acknowledges that the Colombian Supreme Court committed two (2) egregious violations of Dr. Arias' fundamental rights when convicting him.[23] First, the Court violated his right to appeal the conviction to an independent, superior tribunal. Secondly, the Court ordered a severe punishment disproportional to Dr. Arias' alleged crimes by forever banning him to serve in public office. Thus, Dr. Arias' conviction should not be validated on an international level through the process of extradition because the Colombian Supreme Court has denied him adequate due process and procedural safeguards for the conviction to be valid under international human rights law.

V. EXTRADITING DR. ARIAS TO COLOMBIA WOULD BE A VIOLATION OF THE U.S.' INTERNATIONAL OBLIGATION TO PROTECT INDIVIDUALS WHO FEAR BEING TORTURED UPON RETURN TO THEIR HOME COUNTRY PURSUANT TO THE U.N. CONVENTION AGAINST TORTURE.

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[22] Transcript of Extradition Hearing on September 28, 2017. *U.S. v. Andres Felipe Arias*, United States District Court, Southern District of Florida, Miami Division, Case No. 16-cv-23468-JJO. *See* p. 54. Enclosed as: **Exhibit L.**

[23] Human Rights Committee Ruling, UNITED NATIONS. CCPR/c/123/D537/2015 General Distribution, Nov. 13, 2018. Original Spanish version and certified translation. Enclosed as: **Exhibit M.**

It is more likely than not the Dr. Arias will be tortured and murdered at the hands of terrorists groups if the U.S. extradites him to Colombia. There is overwhelming evidence that said terrorist groups will torture and murder Dr. Arias upon his return to Colombia.

On July 8, 2014, former High Commissioner for Peace of the Colombian government, Luis Carlos Restrepo Ramirez, issued a statement declaring that in early 2009 during his time in office, he "was informed about a terrorist attack that the illegal armed group FARC would carry out against Dr. Andres Felipe Arias."[24] Likewise, in his letter addressed to the U.S. Department of Homeland Security, current Ambassador of Colombia to the U.S. and former Vice President of Colombia between 2002 to 2010, Francisco Santos Calderon, testifies to the systematic threats Dr. Arias, his wife, and his two young children have endured at the hands of the terrorists groups due to his political opposition to drug gangs and terrorism. In this letter, Santos recognizes Dr. Arias as "one of the most threatened persecuted persons in Colombia right now."[25] Moreover, the Colombian press has reported on the assassination attempts of Dr. Arias. In the reports, the Colombian press describe how Fredy Cortes Urquijo, a well-known terrorist who operates under the alias of "Francisco," attempted to murder Dr. Arias in 2009 by planting explosives.[26] Subsequently, during Dr. Arias' detention at a Colombian military base, the same Fredy Cortes Urquijo a/k/a "Francisco" posted an article from the FARC's website, www.prensarural.org on April 14, 2013. In the posting, he specifically criticized intimate details of Dr. Arias detainment, thereby indicating the capacity of terrorist groups to infiltrate any place where Dr. Arias will be

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[24] Statement of Luis Carlos Restrepo dated July 8, 2014. Enclosed as: **Exhibit N.**

[25] Letter from Francisco Santos Calderon dated June 8, 2014. Enclosed as: **Exhibit O.**

[26] Colombia Press Articles. Frustan planes para asesinar a Presidente Uribe y a Andres Arias, JUDICIAL, Aug. 27, 2009.
Frustran planes para asesinar al president Uribe y al exministro Arias, EL UNIVERSAL, Aug. 28, 2009.
Recluyen a La Picota a Julian Urquijo implicado en plan para asesinar a Uribe, Aug. 28, 2009. Desarticulan commandos, enviados por el 'mono Jojoy', para atentar contra Uribe, Sept. 2, 2009. Enclosed as: **Exhibit P.**

detained upon his extradition to Colombia.[27] Additionally, terrorist groups have publicly disseminated propaganda against Dr. Arias, especially in the context of his ties to former President Uribe, in efforts to attack him and taint his image before the Colombian public.[28]

The harassment by terrorist groups against Dr. Arias has been so extreme that even his legal counsel (Dr. Victor Mosquera Marin) has been a victim of their persecution. So much so, that in a correspondence dated April 20, 2016, UN Human Rights Treaties Director Ibrahim Salama notes that the UN Human Rights Committee has formally requested that Colombia take measures to protect Dr. Arias' attorney, from further death threats or persecution.[29]

In addition, terrorist groups continued to issue public death threats against Dr. Arias through various social media networks. This includes Ivan Marquez, a known FARC leader who apparently opposes and has violated FARC's demobilization and peace deal with the Colombian government entered in 2016.[30]

Moreover, Dr. Arias' death threats are real and should be afforded significant weight and consideration as demonstrated by terrorist groups' history of targeting other similar victims, such as Fernando Londoño Hoyos. Ex-minister Fernando Londoño Hoyos was receiving protection from the Colombian government when he was almost murdered by a bomb that was planted in his car.[31]

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[27] Fredy Julian Cortes Urquijo, ¡Dejarte de bobadas, Andres Felipe Arias! AGENCIA PRENSA RURAL, April 14, 2013. Enclosed as: **Exhibit Q.**
[28] Terrorist propaganda against Dr. Arias. Enclosed as: **Exhibit R.**
[29] Letter from UNHRC Director Ibrahim Salama dated April 20, 2016. Enclosed as: **Exhibit S.**
[30] Twitter postings from @MuereUribe dated Dec. 26, 2016, @XUnPaisEnPaz_Of dated Dec. 31, 2016, @IvanMarquezFARC dated Jan 8, 2017, @interceptor718 dated Jan. 9, 2017, which have targeted Dr. Arias' Twitter account, @andresfel1973. Note the systematic association of Dr. Arias to President Uribe. Enclosed as: **Exhibit T.**
[31] Fui notificado por el Gobierno de una sentencia de muerte: Fernando Loñdono, RCN RADIO, Jan. 11, 2017.
Asi fue el atentado contra ex ministro del Interior Fernando Londono, EL PAIS, May 15, 2012.
¿Atentado contra Fernando Londono, otra alianza siniestra? EL ESPECTADOR, Aug. 28, 2012.

it lacked the resources and logistics to protect Dr. Arias according to his extraordinary need of protection as evidenced by emails from Unit of National Protection.[36]

Lastly, even with the government measures in place to protect Dr. Arias and his family, they still continued to be persecuted. Specifically, on December 2, 2013, the assigned security guards reported that a suspicious looking vehicle had followed the Arias family for more than thirty (30) blocks until reaching the last security checkpoint before entering their residence.[37]

Based on the overwhelming evidence of Dr. Arias' past persecution as the hands of terrorist groups, it is more likely than not that said groups will persecute, torture and murder him upon his return to Colombia. As demonstrated by the enclosed evidence, the Colombian government lacks the support and resources to protect Dr. Arias. Moreover, terrorist groups have a history of successfully and repeatedly infiltrating the Colombian government to gain intel regarding its targets' whereabouts to track them, circumvent their security measures, and murder them.

Although the FARC entered into a peace deal with the Colombian government in 2016 to end Colombian conflict between such groups and the government, a majority of FARC members oppose the agreement and have violated the demobilization terms as laid out in the peace deal. Well-known FARC leaders such as Ivan Marquez and other dissidents of the peace deal continue to operate as a terrorist organization. Consequently, many dissident members are being absorbed by other terrorist groups in the region including the National Liberation Army (*Ejército de Liberación Nacional*, ELN), which continues to threaten the region.

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[36] Emails from the Unit of National Protection acknowledging that it lacked the service and logistical support to travel to Medellin with Dr. Arias to protect him dated Dec. 11, 2013. Enclosed as: **Exhibit Z.**

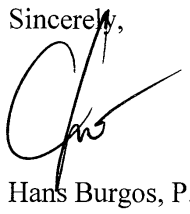
[37] Statements taken from Dr. Arias' security guards reporting the incident. Enclosed as: **Exhibit ZZ.**

Therefore, despite the Colombian government's measures to protect Dr. Arias while he serves his sentence under government custody, past events have proven that Colombian government lacks the resources and measures to protect him illegally armed groups. Consequently, it is more likely than not that Dr. Arias will be murdered at the hands of any of these groups, notwithstanding government measures taken to protect him as he serves his sentence. Thus, the U.S. extraditing Dr. Arias to Colombia would be a violation of the U.S.' international obligation to protect individuals who fear being tortured and murdered upon return to their home country pursuant to the United Nations' Convention Against Torture.

VI. CONCLUSION

In sum, the U.S. Department of State should respectfully find that Dr. Arias' extradition to Colombia would be unlawful under applicable U.S. law and would flagrantly violate the U.S.' obligation under CAT. The extradition is unlawful for three (3) clear reasons: (a) Dr. Arias was illegally convicted by a politicized and corrupt court; (b) Dr. Arias is being denied the fundamental right to appeal the illegal conviction as acknowledged by the United Nations Human Rights Committee (UNHRC); and (c) extraditing Dr. Arias would be a violation of the U.S.' obligation to protect individuals who fear being tortured upon return to their home country pursuant to CAT. Based on the foregoing, the U.S. should not extradite Dr. Arias to Colombia.

Sincerely,



Hans Burgos, P.A.

Notice of Entry of Appearance as Attorney or Accredited Representative

Department of Homeland Security

DHS
Form G-28
OMB No. 1615-0105
Expires 05/31/2021

Part 1. Information About Attorney or Accredited Representative

1. USCIS Online Account Number (if any)
▶

Name of Attorney or Accredited Representative

2.a. Family Name (Last Name): BURGOS

2.b. Given Name (First Name): HANS

2.c. Middle Name:

Address of Attorney or Accredited Representative

3.a. Street Number and Name: PO BOX 143228

3.b. ☐ Apt. ☐ Ste. ☐ Flr.

3.c. City or Town: CORAL GABLES

3.d. State: FL 3.e. ZIP Code: 33114

3.f. Province:

3.g. Postal Code:

3.h. Country: USA

Contact Information of Attorney or Accredited Representative

4. Daytime Telephone Number: 3054421240

5. Mobile Telephone Number (if any): 3053892260

6. Email Address (if any): HANS@LIVEINTHEUS.COM

7. Fax Number (if any): 3054420455

Part 2. Eligibility Information for Attorney or Accredited Representative

Select **all applicable** items.

1.a. ☒ I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest courts of the following states, possessions, territories, commonwealths, or the District of Columbia. If you need extra space to complete this section, use the space provided in **Part 6. Additional Information**.

Licensing Authority: SUPREME COURT OF FLORIDA

1.b. Bar Number (if applicable): 0963755

1.c. I (select **only one** box) ☒ am not ☐ am subject to any order suspending, enjoining, restraining, disbarring, or otherwise restricting me in the practice of law. If you are subject to any orders, use the space provided in **Part 6. Additional Information** to provide an explanation.

1.d. Name of Law Firm or Organization (if applicable): HANS BURGOS PA

2.a. ☐ I am an accredited representative of the following qualified nonprofit religious, charitable, social service, or similar organization established in the United States and recognized by the Department of Justice in accordance with 8 CFR part 1292.

2.b. Name of Recognized Organization:

2.c. Date of Accreditation (mm/dd/yyyy):

3. ☐ I am associated with _____, the attorney or accredited representative of record who previously filed Form G-28 in this case, and my appearance as an attorney or accredited representative for a limited purpose is at his or her request.

4.a. ☐ I am a law student or law graduate working under the direct supervision of the attorney or accredited representative of record on this form in accordance with the requirements in 8 CFR 292.1(a)(2).

4.b. Name of Law Student or Law Graduate:

Part 3. Notice of Appearance as Attorney or Accredited Representative

If you need extra space to complete this section, use the space provided in **Part 6. Additional Information.**

This appearance relates to immigration matters before (select **only one** box):

1.a. ☐ U.S. Citizenship and Immigration Services (USCIS)

1.b. List the form numbers or specific matter in which appearance is entered.

2.a. ☐ U.S. Immigration and Customs Enforcement (ICE)

2.b. List the specific matter in which appearance is entered.

3.a. ☐ U.S. Customs and Border Protection (CBP)

3.b. List the specific matter in which appearance is entered.

4. Receipt Number (if any)

5. I enter my appearance as an attorney or accredited representative at the request of the (select **only one** box):

☒ Applicant ☐ Petitioner ☐ Requestor

☐ Beneficiary/Derivative ☐ Respondent (ICE, CBP)

Information About Client (Applicant, Petitioner, Requestor, Beneficiary or Derivative, Respondent, or Authorized Signatory for an Entity)

6.a. Family Name (Last Name): Arias-Leiva

6.b. Given Name (First Name): Andres

6.c. Middle Name: Felipe

7.a. Name of Entity (if applicable)

7.b. Title of Authorized Signatory for Entity (if applicable)

8. Client's USCIS Online Account Number (if any)

9. Client's Alien Registration Number (A-Number) (if any)

A- 2 0 6 8 2 7 1 5 0

Client's Contact Information

10. Daytime Telephone Number: 9543715677

11. Mobile Telephone Number (if any): 9543715677

12. Email Address (if any): info@liveintheus.com

Mailing Address of Client

NOTE: Provide the client's mailing address. **Do not** provide the business mailing address of the attorney or accredited representative **unless** it serves as the safe mailing address on the application or petition being filed with this Form G-28.

13.a. Street Number and Name: 906 Nandina Dr

13.b. ☐ Apt. ☐ Ste. ☐ Flr.

13.c. City or Town: Weston

13.d. State: FL 13.e. ZIP Code: 33327

13.f. Province

13.g. Postal Code

13.h. Country: USA

Part 4. Client's Consent to Representation and Signature

Consent to Representation and Release of Information

I have requested the representation of and consented to being represented by the attorney or accredited representative named in **Part 1.** of this form. According to the Privacy Act of 1974 and U.S. Department of Homeland Security (DHS) policy, I also consent to the disclosure to the named attorney or accredited representative of any records pertaining to me that appear in any system of records of USCIS, ICE, or CBP.

Part 4. Client's Consent to Representation and Signature (continued)

Options Regarding Receipt of USCIS Notices and Documents

USCIS will send notices to both a represented party (the client) and his, her, or its attorney or accredited representative either through mail or electronic delivery. USCIS will send all secure identity documents and Travel Documents to the client's U.S. mailing address.

If you want to have notices and/or secure identity documents sent to your attorney or accredited representative of record rather than to you, please select **all applicable** items below. You may change these elections through written notice to USCIS.

1.a. ☐ I request that USCIS send original notices on an application or petition to the business address of my attorney or accredited representative as listed in this form.

1.b. ☐ I request that USCIS send any secure identity document (Permanent Resident Card, Employment Authorization Document, or Travel Document) that I receive to the U.S. business address of my attorney or accredited representative (or to a designated military or diplomatic address in a foreign country (if permitted)).

NOTE: If your notice contains Form I-94, Arrival-Departure Record, USCIS will send the notice to the U.S. business address of your attorney or accredited representative. If you would rather have your Form I-94 sent directly to you, select **Item Number 1.c.**

1.c. ☐ I request that USCIS send my notice containing Form I-94 to me at my U.S. mailing address.

Signature of Client or Authorized Signatory for an Entity

2.a. Signature of Client or Authorized Signatory for an Entity

➡ [signature]

2.b. Date of Signature (mm/dd/yyyy) 12-21-2018

Part 5. Signature of Attorney or Accredited Representative

I have read and understand the regulations and conditions contained in 8 CFR 103.2 and 292 governing appearances and representation before DHS. I declare under penalty of perjury under the laws of the United States that the information I have provided on this form is true and correct.

1. a. Signature of Attorney or Accredited Representative

[signature]

1.b. Date of Signature (mm/dd/yyyy) 12/21/2018

2.a. Signature of Law Student or Law Graduate

2.b. Date of Signature (mm/dd/yyyy)

Part 6. Additional Information

If you need extra space to provide any additional information within this form, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this form or attach a separate sheet of paper. Type or print your name at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

1.a Family Name (Last Name): Arias-Leiva

1.b. Given Name (First Name): Andres

1.c. Middle Name: Felipe

2.a. Page Number **2.b.** Part Number **2.c.** Item Number

2.d.

3.a. Page Number **3.b.** Part Number **3.c.** Item Number

3.d.

4.a. Page Number **4.b.** Part Number **4.c.** Item Number

4.d.

5.a. Page Number **5.b.** Part Number **5.c.** Item Number

5.d.

6.a. Page Number **6.b.** Part Number **6.c.** Item Number

6.d.

Notice of Entry of Appearance as Attorney or Accredited Representative

Department of Homeland Security

DHS Form G-28
OMB No. 1615-0105
Expires 05/31/2021

Part 1. Information About Attorney or Accredited Representative

1. USCIS Online Account Number (if any) ▶

Name of Attorney or Accredited Representative

2.a. Family Name (Last Name): PINERO

2.b. Given Name (First Name): CAROLINA

2.c. Middle Name:

Address of Attorney or Accredited Representative

3.a. Street Number and Name: PO BOX 143228

3.b. ☐ Apt. ☐ Ste. ☐ Flr.

3.c. City or Town: CORAL GABLES

3.d. State: FL 3.e. ZIP Code: 33114

3.f. Province:

3.g. Postal Code:

3.h. Country: USA

Contact Information of Attorney or Accredited Representative

4. Daytime Telephone Number: 3054421240

5. Mobile Telephone Number (if any): 3054679428

6. Email Address (if any): CPINERO@LIVEINTHEUS.COM

7. Fax Number (if any): 3054420455

Part 2. Eligibility Information for Attorney or Accredited Representative

Select **all applicable** items.

1.a. ☒ I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest courts of the following states, possessions, territories, commonwealths, or the District of Columbia. If you need extra space to complete this section, use the space provided in **Part 6. Additional Information**.

Licensing Authority: SUPREME COURT OF FLORIDA

1.b. Bar Number (if applicable): 0119335

1.c. I (select **only one** box) ☒ am not ☐ am subject to any order suspending, enjoining, restraining, disbarring, or otherwise restricting me in the practice of law. If you are subject to any orders, use the space provided in **Part 6. Additional Information** to provide an explanation.

1.d. Name of Law Firm or Organization (if applicable): HANS BURGOS PA

2.a. ☐ I am an accredited representative of the following qualified nonprofit religious, charitable, social service, or similar organization established in the United States and recognized by the Department of Justice in accordance with 8 CFR part 1292.

2.b. Name of Recognized Organization:

2.c. Date of Accreditation (mm/dd/yyyy):

3. ☐ I am associated with _____, the attorney or accredited representative of record who previously filed Form G-28 in this case, and my appearance as an attorney or accredited representative for a limited purpose is at his or her request.

4.a. ☐ I am a law student or law graduate working under the direct supervision of the attorney or accredited representative of record on this form in accordance with the requirements in 8 CFR 292.1(a)(2).

4.b. Name of Law Student or Law Graduate:

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1.b. List the form numbers or specific matter in which appearance is entered.

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2.b. List the specific matter in which appearance is entered.

3.a. ☐ U.S. Customs and Border Protection (CBP)

3.b. List the specific matter in which appearance is entered.

4. Receipt Number (if any)

5. I enter my appearance as an attorney or accredited representative at the request of the (select **only one** box):

☒ Applicant ☐ Petitioner ☐ Requestor

☐ Beneficiary/Derivative ☐ Respondent (ICE, CBP)

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6.a. Family Name (Last Name): Arias-Leiva

6.b. Given Name (First Name): Andres

6.c. Middle Name: Felipe

7.a. Name of Entity (if applicable)

7.b. Title of Authorized Signatory for Entity (if applicable)

8. Client's USCIS Online Account Number (if any)

9. Client's Alien Registration Number (A-Number) (if any)

A- 2 0 6 8 2 7 1 5 0

Client's Contact Information

10. Daytime Telephone Number: 9543715677

11. Mobile Telephone Number (if any): 9543715677

12. Email Address (if any): info@liveintheus.com

Mailing Address of Client

NOTE: Provide the client's mailing address. **Do not** provide the business mailing address of the attorney or accredited representative **unless** it serves as the safe mailing address on the application or petition being filed with this Form G-28.

13.a. Street Number and Name: 906 Nandina Dr

13.b. ☐ Apt. ☐ Ste. ☐ Flr.

13.c. City or Town: Weston

13.d. State: FL 13.e. ZIP Code: 33327

13.f. Province

13.g. Postal Code

13.h. Country: USA

Part 4. Client's Consent to Representation and Signature

Consent to Representation and Release of Information

I have requested the representation of and consented to being represented by the attorney or accredited representative named in **Part 1.** of this form. According to the Privacy Act of 1974 and U.S. Department of Homeland Security (DHS) policy, I also consent to the disclosure to the named attorney or accredited representative of any records pertaining to me that appear in any system of records of USCIS, ICE, or CBP.

Part 4. Client's Consent to Representation and Signature (continued)

Options Regarding Receipt of USCIS Notices and Documents

USCIS will send notices to both a represented party (the client) and his, her, or its attorney or accredited representative either through mail or electronic delivery. USCIS will send all secure identity documents and Travel Documents to the client's U.S. mailing address.

If you want to have notices and/or secure identity documents sent to your attorney or accredited representative of record rather than to you, please select **all applicable** items below. You may change these elections through written notice to USCIS.

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1.b. ☒ I request that USCIS send any secure identity document (Permanent Resident Card, Employment Authorization Document, or Travel Document) that I receive to the U.S. business address of my attorney or accredited representative (or to a designated military or diplomatic address in a foreign country (if permitted)).

NOTE: If your notice contains Form I-94, Arrival-Departure Record, USCIS will send the notice to the U.S. business address of your attorney or accredited representative. If you would rather have your Form I-94 sent directly to you, select **Item Number 1.c.**

1.c. ☐ I request that USCIS send my notice containing Form I-94 to me at my U.S. mailing address.

Signature of Client or Authorized Signatory for an Entity

2.a. Signature of Client or Authorized Signatory for an Entity

2.b. Date of Signature (mm/dd/yyyy) 12-21-2018

Part 5. Signature of Attorney or Accredited Representative

I have read and understand the regulations and conditions contained in 8 CFR 103.2 and 292 governing appearances and representation before DHS. I declare under penalty of perjury under the laws of the United States that the information I have provided on this form is true and correct.

1. a. Signature of Attorney or Accredited Representative

1.b. Date of Signature (mm/dd/yyyy)

2.a. Signature of Law Student or Law Graduate

2.b. Date of Signature (mm/dd/yyyy) 12-21-2018

Part 6. Additional Information

If you need extra space to provide any additional information within this form, use the space below. If you need more space than what is provided, you may make copies of this page to complete and file with this form or attach a separate sheet of paper. Type or print your name at the top of each sheet; indicate the **Page Number**, **Part Number**, and **Item Number** to which your answer refers; and sign and date each sheet.

1.a Family Name (Last Name): Arias-Leiva

1.b. Given Name (First Name): Andres

1.c. Middle Name: Felipe

2.a. Page Number **2.b.** Part Number **2.c.** Item Number

2.d.

3.a. Page Number **3.b.** Part Number **3.c.** Item Number

3.d.

4.a. Page Number **4.b.** Part Number **4.c.** Item Number

4.d.

5.a. Page Number **5.b.** Part Number **5.c.** Item Number

5.d.

6.a. Page Number **6.b.** Part Number **6.c.** Item Number

6.d.

A.

Bogotá, September 27th, 2016

To Whom It May Concern:

I became acquainted with Andrés Felipe Arias about 14 to 15 years ago, in his capacity as first Vice minister and later Minister of Agriculture.

At the time I was in charge of an agro-industrial African palm tree business and I had disagreed with Mr. Arias on several political positions of his. In fact, when Colombia was negotiating its FTA with the US and he was one of the Colombian Government's negotiators, while I participated as a business leader in the "side room" to the negotiations, we have several disagreements on the substance of the deal.

We also disagreed regarding some of the policies he advanced, including the program known as *Agro Ingreso Seguro,* which involved a variety of loans and subsidies.

These disagreements notwithstanding, and having been a Minister of Agricultura myself in later years (2013-2014), I cannot say that former Minister Arias is a person who poses any danger to anyone else, let alone say that I deem him to be or have been corrupt.

In public service there are diverse interpretations regarding what ought to be done and what the impact of a given policy may be, and one can agree or disagree with specific policies or programs. But to think that Andrés Felipe Arias is a criminal seems to me to be an act or a decision possibly motivated by political considerations.

RUBÉN DARÍO LIZARRALDE
President
CAMPETROL

Notaria 45

DILIGENCIA DE AUTENTICACIÓN DE FIRMA

Ante el Notario Cuarenta y Cinco del Circulo de Bogotá
Compareció:

LIZARRALDE MONTOYA RUBEN DARIO DE JESUS

quien exhibió: **C.C.** **14873062**

y quien firma este documento, de lo cual doy fe.

Bogotá D.C. **04/10/2016** a las ***10:13:18 a.m.***

bhjuyg76ghbg6gb7

FIRMA

EDUARDO CAICEDO ESCOBAR
NOTARIO 45 BOGOTA D.C.

NOTARÍA 45
DEL CÍRCULO
DE BOGOTÁ
NOTARIO

B.

PROCURADURIA
GENERAL DE LA NACION

DESPACHO DEL PROCURADOR GENERAL DE LA NACION

Bogotá, D.C., 30 AGO 2016

№ 00369

Doctor
Kenneth Blanco
Vicefiscal General Adjunto de Estados Unidos
Estados Unidos de América

Ref.: SOLICITUD DE ASILO
SEÑOR ANDRÉS FELIPE ARIAS LEIVA

Respetado señor Vicefiscal General Adjunto.

En atención a la actuación de la referencia, la cual se surte por parte del hoy ex ministro de Agricultura de Colombia, doctor ANDRÉS FELÍPE ARIAS LEIVA, ante la Cancillería de ese país, dando alcance a lo normado en el numeral 2° del artículo 277 de la constitución Política de Colombia, por medio del presente y muy comedidamente me permito poner en conocimiento de su honorable Despacho los siguientes hechos, los cuales, se solicita, sean ponderados y comunicados por la autoridad que resulte competente en orden a conferir concepto positivo a la solicitud que de asilo político fuera impetrada por el señor ARIAS LEIVA ante esa Nación amiga.

En efecto, para el período transcurrido entre el cuatro (4) de febrero de dos mil cinco (2005) y hasta el siete (7) de febrero de dos mil nueve (2009), el Dr. ANDRÉS FELÍPE ARIAS LEIVA detentó el cargo de ministro de Agricultura de la República de Colombia.

Es así que, por situaciones de índole enteramente administrativa y que guardan relación al establecimiento de políticas generales para la concesión de créditos y estímulos productivos al agro, el Dr. ANDRÉS FELÍPE ARIAS LEIVA fue objeto tanto de una investigación de naturaleza disciplinaria como de una actuación de carácter penal; esta última tramitada ante la Sala Penal de la HONORABLE CORTE Suprema de Justicia de Colombia.

Producto de tales actuaciones, los operadores judiciales y disciplinario llegaron a una conclusión de responsabilidad por parte del señor ANDRÉS FELÍPE ARIAS LEIVA, ambas fundadas en la existencia de falencias en el proceso de concesión y adjudicación de créditos y apoyos al sector productivo agrícola. Igualmente coincidentes en el señalamiento, según el cual, no hubo por parte del señor ARIAS LEIVA, apoderamiento a su favor, de uno solo de los dineros comprometidos en los estímulos productivos conferidos durante su administración.

Es por ello que el fallo disciplinario sancionatorio la Procuraduría General de la Nación, concluyó: *"Por lo expuesto, y teniendo en cuenta que se atribuye al señor ARIAS la comisión de tres faltas gravísimas a título de culpa gravísima, y considerando que el disciplinado no ha tenido sanciones de tipo disciplinario ni fiscal dentro de los cinco (5) años anteriores a la comisión de la conducta, como criterio atenuante para la graduación de la sanción, este Despacho define la medida a imponer en DESTITUCIÓN E INHABILIDAD GENERAL DE DIECISÉIS (16) AÑOS,"*

Se colige de lo anterior, que por parte del señor ANDRÉS FELÍPE ARIAS no obró ánimo directo o intencionalidad dirigida a la lesión del patrimonio estatal sino que, correspondiendo al mismo el deber funcional de orientación de las políticas estatales de apoyo al agro, su falta de definición específica de las políticas aplicables y de control general en la revisión de las condiciones en las cuales se produjo la concesión de tales estímulos permitió que, algunos particulares pertenecientes a dicho sector de la producción nacional, pero de altos ingresos, se postularan para la obtención de estas líneas de crédito.

Consecuentemente con dichos parámetros esta agencia del Ministerio Público, actuando como operador disciplinario y mediante decisión del día dieciocho (18) de julio de dos mil once (2011), procedió a la emisión en contra del Dr. ANDRÉS FELÍPE ARIAS LEIVA de decisión sancionatoria disciplinaria de destitución y de inhabilidad para desempeñar cargos públicos por lapso de dieciséis (16) años, señalando al efecto, tanto el reconocimiento de no haber procedido el servidor público al apoderamiento, en provecho suyo o de sus dependientes, de dineros estatales, como que la decisión sancionatoria devino de la falta de acuciosidad que era exigible del Funcionario –como cabeza de ese rubro de la Administración- en el deber de control sobre la asignación de dichos estímulos agrarios.

Ahora bien, es igualmente notorio que, en el marco de la responsabilidad penal los delitos de CELEBRACIÓN DE CONTRATO SIN CUMPLIMIENTO DE REQUISITOS LEGALES y PECULADO POR APROPIACIÓN, del ánimo directo del servidor público para defraudar los intereses públicos, lo cual no se avizora en los presentes hechos, y es por ello que la Procuraduría General de la Nación, actuando como Ministerio Público dentro de la tramitación penal ventilada en contra del señor ANDRÉS FELÍPE ARIAS LEIVA ante la Corte Suprema de Justicia, solicitó de dicho operador judicial que, por razón de la ausencia de dolo específico en la comisión del hecho por parte del Investigado, procediera a impartir a favor del mismo de la condigna sentencia absolutoria. Si embargo el día tres (3) de julio de dos mil catorce (2014), sobrevino el fallo condenatorio en contra del señor ARIAS LEIVA por los punibles ya enunciados, no obstante haberse señalado insistentemente que, por parte del acusado ARIAS LEIVA y en esos hechos, no existió ese ánimo directo de despojo o la intención propia de apoderarse de dineros oficiales. Esto es, que el acto condenatorio devino de la falta oportuna de control al uso de tales recursos públicos, a lo que estaba funcionalmente obligado el multicitado servidor público.

En ese orden de ideas, el representante del Ministerio Público ante los magistrados de la Corte Suprema de Justicia de Colombia, resaltó en su alegación final que: "Del mismo modo, son coincidentes los testimonios al señalar a la Oficina Asesora Jurídica del Ministerio como la responsable de imprimir a los convenios la modalidad de ciencia y tecnología. Así, si en gracia de la discusión se pretendiera atribuir responsabilidad penal al Ministro, esta no sería dolosa sino culposa, dada la falta de diligencia para detectar las falencias y errores presentes en los convenios y la errónea aplicación de los Decreto 393 y 593 de 1991, con la cual se desconoció el carácter público de los recursos destinados a la financiación del programa AIS."

Es de anotar que, por ventilarse dicho asunto ante la Sala Penal de la máxima Corporación Judicial de nuestro país, conforme a la normatividad vigente para dicha época, el asunto no fue susceptible de conocimiento por vía de apelación por otra autoridad –situación actualmente revaluada en su contenido, pero sólo para procesos fallados con posterioridad al mes de abril de dos mil dieciséis (2016)-, el fallo en cuestión no fue susceptible de tal acto de revisión.

Sin embargo, señor Vicefiscal, la sanción penal, en modo alguno puede considerarse proporcional ni comparativa con la sanción disciplinaria impuesta por la Procuraduría General de la Nación al doctor Andres Felipe Arias, teniendo en cuenta que la razón de ser del derecho penal conlleva implícita como ultima ratio, la privación de la libertad, y por ello, en el proceso penal se solicitó por el representante del Ministerio Público, que se absolviera de los cargos al procesado, ya que no se demostró que el exministro hubiera actuado con dolo, pero si con negligencia, lo cual en nuestro ordenamiento jurídico conlleva una gran connotación, por cuanto la pena para el delito imprudente es ostensiblemente menor.

En estas condiciones y bajo el peso de tales hechos, aquí clarificados en su intensidad, respetando profundamente la independencia de la cual goza la Justicia de los Estados Unidos de América, pero confiando en su sabiduría, es que solicito de esa honorable autoridad, como es su costumbre, se confiera el pleno de garantías procesales al señor ex ministro ANDRÉS PELIPE ARIAS LEIVA y a su familia, en la tramitación que de asilo verifica ante las autoridades de ese país hermano.

La petición del doctor Andres Felipe Arias Leiva, tiene respaldo constitucional en el ordenamiento jurídico colombiano, en el *"Artículo 36. Se reconoce el derecho de asilo en los términos previstos en la ley."* y sobre el particular nuestra corte constitucional en sentencia C 186 de 1996, señaló: "*El derecho de asilo, es una garantía que tiene toda persona ante el ordenamiento jurídico internacional, y significa la expresión humanitaria debida a la racionalidad. El asilo surge como una medida que remedia el estado de indefensión de una persona frente a un sistema del cual es disidente, por motivos de opinión política o religiosa. Negar el derecho de asilo a una persona, no sólo equivale a dejarlo en la indefensión grave e inminente, sino que implica la negación de la solidaridad internacional. Pero se advierte que este derecho no procede en el caso de delitos comunes; el asilo, se repite,*

trata de evitar el estado de indefensión individual ante una amenaza estatal contra la persona, por motivos de índole política, filosófica, religiosa o doctrinaria"

Agradezco la atención prestada.

Cordialmente,

ALEJANDRO ORDOÑEZ MALDONADO
Procurador General de la Nación

C.

Honorable
John O´Sullivan,
United States District Court,
Southern District of Florida,
301 North Miami Avenue, 5th Floor

Honorable Judge O´Sullivan:

I consider it a moral obligation to address your Excellency and to express my deepest conviction about the injustice committed against former Minister Andrés Felipe Arias.

For four years I served as. Deputy Comptroller General of the Republic, in the Administration of Julio Cesar Turbay. Months before the end of the period, due to the resignation of the Comptroller Turbay, I was in charge of the General Comptroller of the Republic. In that condition, I order an audit to the Ministry of Agriculture, especially to the Program denominated Agro Ingreso Seguro, by the press reports that denounced abuses in the use of Development credits.

From the Auditors' report, there was no responsibility or irregularity in the performance of Minister Andrés Felipe Arias. For that reason our determination was not to present any charges.

Comptroller Sandra Morelli, whose nomination obeyed the support of President Santos, her first actions were directed to question Minister Arias. Took as an excuse a cooperation agreement with IICA that for decades had been celebrating the Colombian State, without any minister of agriculture prior to Andrés Felipe, would have been prosecuted for accepting that this body would develop these programs. IICA is an international agricultural advisory body dependent on the OEA, so any interest or economic conflict can be ruled out.

The Supreme Court of Justice, composed mostly of magistrates opposed to President Uribe, using these concepts, sentenced him to 17 years, a sentence higher than that condemned by the worst genocides in Colombian history.

The future of a young man, strong, capable, intelligent, the best student of all cloisters, who succeeded in giving an important development to Colombian agriculture, was truncated when he could have been the President that the Colombians demanded.

I have no doubt in affirming that it is a clear and unjust persecution of former Minister Andrés Felipe Arias and his extradition to Colombia would be to scorn the opponents of President Santos and the agreement signed with the world's largest drug cartel.

From the Lord Judge

ROBERTO HOYOS BOTERO

Bogotá, November 10, 2016

D.

Marta Lucía Ramírez de Rincón

Bogotá, September 21st, 2016

To Whom It May Concern:

I have been made aware of the petition made by former Minister Andrés Felipe Arias as part of the asylum application he has submitted and the cextradition process he faces before the United States justice system at the Colombian Government's behest.

I have always been and shall remain a defender of institutions, and as a lawyer, I am aware that justice and the rule of law are the foundations of democracy

I was never a personal friend of former Minister Arias', but I knew of his excellent academic record, his leadership, and his outstanding commitment to public service. Having graduates as an economist from the University of Los Andes (1999), he received a merit scholarship from his alma mater to pursue his master degree. He was subsequently awarded a scholarship from the Central Bank to continue his doctoral studies at the University of California. He performed an important role as a researcher which led the way to seeking public office upon returning to the country, this time as Director of Macroeconomic Policy at the Ministry of Finance. He was later appointed Vice Minister of Agriculture and in 2006 he took over as Minister.

One of the youngest Ministers in the country's history, Mr. Arias took up the challenge of facing the Free Trade Agreements as they affected the agricultural sector, convinced as he was—and others long with him—that Colombia could not successfully face international competition without offering support to domestic agriculture. It was for that reason that he created the **Agro Ingreso Seguro** program, which became a State policy [approved by Congress], geared towards financing improvements in the Colombian agricultural sector to increase productivity and competitiveness so as to better compete in both the domestic and world markets. The goal of this program was to better prepare the country to face international competition and as a result, it targeted small peasants as much as large agricultural industries.

AIS was a matter of dispute and interpretation from the start. At the time, the Attorney General's Office claimed that the policy was exclusively geared towards helping displaced peasants and small landowners, which is false. Since its inception, the program didn't exclude or prohibited medium-size and large agricultural producers from accessing benefits due to their impact in the competitiveness of national agriculture, rural jobs creation, their contribution to domestic alimentary self-sufficiency, and their weights in national exports and the currency flows.

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The results of the program demonstrated its success to the extent that it increased the productive use of land by 1 million hectares (20% of the country's agricultural frontier); average agricultural productivity rose by 13%; food production went up by over 5 million tons, which in turn kept food inflation in check at 2%, despite the global rise in food prices, thus benefiting the poorest consumers in Colombia.

Andrés Felipe Arias' tenure as Minister was well received given the improvement in agricultural indicators. However, the event that overshadows his achievements and results, and which became one of the most regrettable scandals of the last few years, was the result of a combination of economic as well as political circumstances.

Indeed, the criminal proceedings against the former Minister was entangled in the political crisis surrounding the administration of his boss and mentor, former President Álvaro Uribe, who after a brilliant first term faced criticism and pushback from the Colombian political establishment during his second term at a time when the possibility was contemplated of [reforming the Constitution] to allow him to run for a third term.

By then former Minister Arias had emerged as an aspiring presidential candidate and potential successor to Álvaro Uribe, and given his personal closeness with the President, he became the target of many of the attacks directed against then President Uribe. IT was then that criminal charges were brought against former Minister Arias both for the subsidies granted by the Ministry to a few agricultural businessmen and for the subscribing a contract without fulfilling legal requirements in relation to the technical cooperation agreement signed between the IICA, the agricultural division of the OAS, and the Ministry of Agriculture. The agreement was not unlike over 120 agreements signed by different administrations in previous years.

Former Minister Arias was not convicted on charges of corruption or direct misappropriation of public funds, and although there were no findings pertaining his personal finances, he was charged and convicted of allowing misappropriation of funds by third parties, as some businessmen who benefitted from the subsidies offered through Agro Ingreso Seguro fraudulently took advantage of the program. Although said businessmen testified before the Supreme Court that they acknowledged their misdeeds and they exonerated the former Ministers and his staff of any wrongdoing, and given that some of them supported his candidacy for president, the six (6) cases of corruption by private citizens overshadowed a program that benefitted over 380,000 agricultural producers and this resulted in Mr. Arias' conviction.

Andrés Felipe Arias is a young public servant who may be criticized for lack of internal controls over the programs executed under his watch, but not for fraud or personal misappropriation.

Andréa Felipe Arias has become the symbol of the political polarization in Colombia, and even though his trial was conducted according to the legal standards at the time, his family and lawyers believe that his right to due process of law has not been respected and that there his good name has been unjustly damaged, as have been his right to a proper defense and to his presumption of innocence. For these reason they have sought political asylum in the US along with his small children and his wife, Catalina Serrano Garzón, after having been detained for over 2 years pending trial in the Cavalry Academy of the Army in Bogotá. When it became apparent that he could not defend himself under just conditions, he left the country and sought asylum in the US.

In my opinion, and independently of one's assessment of Andrés Felipe Arias' decisions as Minister of Agriculture, he does not represent a threat to any member of society and should consequently be allowed to remain free while he presents his case as part of the extradition proceedings.

MARTA LUCÍA RAMÍREZ DE RINCÓN

Minister of Foreign Commerce (1998-2002)

Minister of Defense (2002-2003)

Former Presidential Candidate for the Conservative Party (2014)

E.

May 9, 2017

Honorable Bob Corker
United States Senate
Dirksen Senate Office Building SD-425
Washington DC 20510

Honorable Senator Corker:

It is our wish, as congressional representatives of the largest opposition party in Colombia, to respectfully call your attention to the case of Mr. Andres Felipe Arias, one of the most prominent leaders of our party and who is currently seeking asylum in the United States on grounds of political persecution.

Our party, Centro Democratico, was founded by former President of Colombia Alvaro Uribe Velez; Mr. Arias contributed significantly to the creation of our party and served in its leadership until he and his family were forced into exile.

Andres Felipe Arias served with distinction as Minister of Agriculture of Colombia under former President Uribe's two administrations. As one of the leading cabinet members, Mr. Arias played a central role in negotiating the U.S. – Colombia FTA. It was also Mr. Arias who spearheaded President Uribe's efforts to substitute legal crops for illegal coca plantations on a large scale. It was in large measure thanks to him that Colombia was able to reduce illegal coca plantations to unprecedented minimums by 2010. Mr. Arias ran for president of Colombia in 2010 defending our democratic security policy and its defining commitment fighting narcotrafficking and terrorism.

Unfortunately, Mr. Arias, his wife, and their young children (ages 5 and 8) were forced into exile and requested asylum in the United States in June 2014, after an relentless political persecution against him led by a politicized faction of the Supreme Court of Colombia and instigated by corrupt Attorney Generals appointed by President Santos between 2011 and 2016.

Undoubtedly, the persecution against Mr. Arias is part of the efforts by the Santos Administration and its political allies in the judiciary to decimate our party on account of our opposition to the impunity agreements reached with FARC in Havana—opposition that was backed by the majority of Colombians who voted down the agreements at the October 2016 plebiscite. Indeed, through the prolonged negotiations with FARC, many of our party's most

prominent and visible leaders have been unfairly and illegally persecuted, prosecuted, imprisoned, and convicted by a corrupt faction of our judicial system.

In 2011 Mr. Arias was unfairly imprisoned on the basis of bogus criminal charges and without prior conviction. The first alleged offense was having approved of a contract between the Ministry of Agriculture and Inter-American Institute for Cooperation on Agriculture (IICA) affiliated with the Organization of American States (OAS) without fulfilling proper legal requirements. The second alleged offense was embezzlement in favor of third parties who committed fraud against a competitive subsidy program designed by the Ministry of Agriculture and operated precisely by IICA – OAS.

The political motivation of the persecution against Mr. Arias is apparent in the fact that the exact same contract he authorized at the time had been signed over 130 times by many of his predecessors over the years. Not one of them has ever been under criminal investigation on that account.

As for the second charge, Mr. Arias was cleared of any allegation of personally benefiting from the private individuals who defrauded the subsidy program. Said individuals testified before the Supreme Court that they neither knew nor in any way supported Mr. Arias, politically or otherwise. Since the subsidy program was not even directly operated by the Ministry under Mr. Arias' charge, the accusation against him lacks any legal grounds whatsoever.

For those reasons, the Inspector General's Office emphatically requested Mr. Arias' acquittal. His conviction by the Supreme Court was so unfair that one of the Justices broke the institutions informal protocol writing a dissenting opinion in which he explicitly deplored the repeated violations of Mr. Arias' rights to due process of law, a proper legal defense, and a fair trial by an impartial judge.

Mr. Arias has also been denied the right to an appeal, in defiance of the International Covenant on Civil and Political Rights and other international treaties signed by Colombia.

Because of Mr. Arias public role as a leader of our party, the Santos Administration has exerted enormous diplomatic pressure on the United States Government to seek his extradition back to Colombia, in defiance of his basic right to seek asylum abroad on ground of political persecution.

The persecution against the leadership of our party threatens the social stability of peace in Colombia. Millions of citizens struggle to understand why a politicized sector of the Colombian judiciary continues to persecute members of our party while FARC narco-traffickers are granted full amnesty for the war crimes and human rights violations. We hope that the

United States will honor its commitment to the rule of law and the international law of asylum by protecting individuals such as Mr. Arias.

Please find attached op-eds written by American journalists, including Mary O'Grady from The Wall Street Journal, detailing the persecution against Mr. Arias and other leaders of our party.

We thank you for your consideration on this matter.

Respectfully,

Álvaro Uribe Vélez
Former President of Colombia
Colombian Senator

paola holguin - Senadora

Senadora.

RIGOBERTO BARON N.

Tatiana Cabello F.

Fernando Araujo

Juan Heinón Prada

Samuel Hoyos Mejía

Santiago Valencia G.

Pierre Garcia

María F Cabal

Ciro A. Ramírez.

Esperanza R. de Jiménez

Luis Lu

Margarita Mejía Tapa

Alfredo Ramos Maya

Ruben Darío Molano

Fernando Sierra R

Susana Correa
Senadora

Jaime Amín
Senador

Daniel Gabriel

CARLOS FELIPE MEJIA MEJIA.

IVAN DUQUE.

Fernando Nicolás.

Hugo Hernán González
R. Cámara.

MARCOS DIAZ

CARLOS ALBERTO GUERO V.

F.

PLINIO APULEYO MENDOZA

CÁRCEL O EXILIO

Mirada crítica a la sombría realidad de la justicia en Colombia

Planeta

Plinio Apuleyo Mendoza

Nació en Tunja, Boyacá, en 1932. Escritor, periodista y diplomático. Estudió Ciencias Políticas en La Sorbona, de París. En 1979 ganó el Premio de Novela Plaza & Janés con *Años de fuga*. Es autor también de *El país de mi padre*, *El día que enterramos las armas* y *Últimas noticias del nuevo idiota iberoamericano*, este último en coautoría con Álvaro Vargas Llosa y Carlos Alberto Montaner. Es Caballero de la Orden de las Artes y Letras de Francia y ganador del Premio Simón Bolívar.

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Andrés Felipe Arias

Nunca esperó un fallo condenatorio. Presentados todos los descargos, Andrés Felipe Arias estaba seguro de que la decisión de la Corte Suprema de Justicia le sería favorable. Las pruebas de su defensa habían demolido la teoría del caso de la Fiscalía durante el juicio. Adicionalmente, Andrés Felipe y su abogado habían logrado evidenciar varias pruebas adulteradas y manipuladas por la propia Fiscalía. Tanto así que varios de los periodistas que habían cubierto el juicio le informaron al propio Andrés Felipe que tenían información veraz, proveniente de los propios magistrados, según la cual la labor de la Fiscalía había sido tan precaria que, por ende, tendría que ser absuelto.

Lo único que le resultaba inexplicable era el continuo aplazamiento de la audiencia final. En efecto, el veredicto lo debió emitir la Corte pocas horas o días después de terminado el juicio. Así lo dicta el Código Penal, pues de otro modo los fallos quedan expuestos a presiones externas. Y es que, terminado el juicio contra Andrés Felipe, la sensación de todos los presentes, incluidas las caras largas de los fiscales del caso, apuntaba a una inminente absolución. Uno de los magistrados auxiliares le confesó a uno de los integrantes de la Defensa que no había manera para que Andrés Felipe pudiese ser condenado. Pero el fallo fue aplazado una primera

vez cuando se acercaba la elección al Congreso. Luego fue suspendido una segunda vez cuando se acercaba la primera vuelta presidencial en la cual Óscar Iván Zuluaga resultó triunfador.

Quizá —pensaba Andrés Felipe ingenuamente— los aplazamientos se debían a que la Corte no quería emitir su absolución en medio de la polarizada contienda electoral. Pero no era así y el exministro estaba por recibir el más duro golpe de su vida cuando el país se encontraba *ad portas* de la segunda vuelta presidencial y todas las opciones parecían asegurar el triunfo de Óscar Iván Zuluaga, rotundo vencedor de la primera vuelta. En efecto, en la mañana del viernes 13 de junio de 2014, 48 horas antes de la decisiva elección presidencial, la propia Corte Suprema de Justicia filtró ilegalmente a un periodista muy cercano al fiscal general de la Nación el rumor —que se difundió por todos los medios de comunicación— de que habría contra él un fallo condenatorio.

Cuando Andrés Felipe se dio cuenta de que el propio director de la Unidad Nacional de Protección, persona encargada de salvaguardarlo a él y a su familia debido al nivel de riesgo extraordinario que enfrentan en Colombia, estaba difundiendo y amplificando la falsa noticia de la condena a través de las redes sociales, el exministro, su familia, sus abogados, sus amigos y sus compañeros de lucha política no tuvieron la menor duda de que algo muy sucio, inducido por el propio aparato estatal, había sucedido entre la culminación del juicio, cuando la absolución era inminente, y el alborotado momento electoral.

Y es que no se puede olvidar que en ese momento tanto el Gobierno como el aparato judicial habían desatado la más

feroz cacería contra el Centro Democrático y quien se perfilaba como muy posible presidente de Colombia: Óscar Iván Zuluaga.

Catalina, esposa de Andrés Felipe, no lo tomó a la ligera. Alta, bonita, delgada, con una fosforescente vivacidad, había tenido que compartir con su marido dos caras opuestas de un destino. Feliz la primera, trágica la segunda.

Feliz la primera, porque cuando se conocieron en su respectivo ámbito aparecía un prometedor futuro. El de ella tenía los destellos propios de una joven ejecutiva que se había hecho notoria en el mundo financiero. El de Andrés Felipe también, pues era visto en la vida nacional como el joven ministro de Agricultura recientemente designado por el entonces presidente Uribe, con visos tan parecidos al mandatario que la opinión lo veía como un precoz heredero suyo.

Andrés Felipe y Catalina, como alguna vez lo escribí, sintieron el uno por el otro una rápida atracción. Fue un amor a primera vista. Se casaron en una ancestral iglesia de Sopó solo nueve meses después de haberse conocido.

La inesperada y sombría cara que tomó de pronto su destino apareció con el mal llamado escándalo de Agro Ingreso Seguro difundido por los medios de comunicación y aupado por los adversarios del expresidente Uribe. Catalina había dejado a un lado su exitosa carrera para dedicarse a su familia. Eloísa, su hija, contaba dos años y el pequeño Juan Pedro apenas veinte días de nacido cuando Andrés Felipe fue detenido y llevado al tétrico búnker de la Fiscalía previsto para los más peligrosos delincuentes.

"Sé que algún día, que no sé cuándo llegará, ni la Fiscalía ni nadie podrán encontrar delito alguno en el proceder de mi esposo —escribió ella entonces—. Nadie se imagina lo

que hemos tenido que aguantar, lo que ha sido esta difícil experiencia. Pero ni siquiera a quienes nos han hecho tanto daño les deseo que vivan algo parecido".

Como atrás queda dicho, desde cuando estalló el escándalo ella vivió a la sombra de aquel desastre. Cuando Andrés Felipe, luego de permanecer dos años recluido, quedó en libertad esperando el juicio, ella vio al fin posible su justa absolución. De ahí que al escuchar los rumores radiales de ese fatídico viernes 13 presintió que todas sus esperanzas se derrumbaban. Sin vacilación alguna, tomó el teléfono y llamó a su madre. No la hizo todavía partícipe de su angustia. Se limitó a anunciarle que irían al mediodía a su casa. Solo entonces, cuando se encontraron en el vestíbulo, la zozobra que una y otra habían ocultado se hizo visible. Se abrazaron y rompieron a llorar.

Una inesperada pesadilla

Los suegros de Andrés Felipe lo trataban con sumo afecto, el mismo que se le da a un hijo. Tenían el mejor concepto de él. Pese a su carácter serio e introvertido, ya en el ámbito familiar, Andrés Felipe era espontáneo y cariñoso. En su trabajo, por cierto, lo veían estricto, riguroso, metódico y siempre demasiado exigente consigo mismo. Conociendo su poco interés por el dinero, la que se encarga de llevar las cuentas del hogar, por su formación y carácter, es Catalina, la financiera de la familia, como la llaman sus padres.

El suegro de Andrés Felipe siguió siempre muy de cerca su carrera. "Si hay alguien que bien puede describir su talante profesional, sus capacidades —nos cuenta hoy— es el entonces ministro Carlos Gustavo Cano. De hecho, cuando se retiró del Ministerio de Agricultura, fue él quien le recomendó al

expresidente Uribe que nombrara a Andrés Felipe como su sucesor".

Ni Andrés Felipe ni Catalina llegaron a imaginar la pesadilla que vivirían de pronto. Toda suerte de tergiversaciones surgieron en contra del entonces joven Ministro cuando se inició el proceso en contra suya.

Por ejemplo, ella recuerda que hallándose con su marido en el restaurante Andrés Carne de Res, se les acercó un señor Dávila junto con su novia Valerie Domínguez —a quienes no conocían y quienes estaban implicados en el escándalo— a pedirles un minuto de su tiempo. Sin que nadie se lo hubiese preguntado, el señor Dávila le dijo a Andrés Felipe que en el caso de ellos todo lo habían hecho de manera correcta y transparente. Andrés Felipe se limitó a responderle que si eso era así no deberían tener problema y que, entonces, explicaran bien al país lo que hubiere sucedido.

Pues bien, los miembros de la familia Dávila terminaron reconociendo el fraude. De hecho, aceptaron dos delitos pero, como suele suceder en Colombia, no pagaron un solo día de cárcel. Valerie Domínguez, por su parte, también acusada de tentativa de peculado y falsedad en documento público, fue finalmente absuelta por un juez del Tribunal Superior de Bogotá cuando se descubrió que, engañada por su pareja, había solicitado un subsidio de Agro Ingreso Seguro para el sistema de riego y drenaje de una finca. Lo más curioso del asunto es que cuando ella, engañada por su novio, solicitó el subsidio de AIS, Andrés Felipe ya ni siquiera trabajaba en el Ministerio de Agricultura. Aun así, los medios aseguraban que Andrés Felipe le había dado a ella un subsidio.

En cualquier caso, el mencionado encuentro fortuito en Andrés Carne de Res sería presentado luego como prueba de

una supuesta complicidad entre el exministro y uno de los acusados de haber obtenido beneficios fraudulentos del programa Agro Ingreso Seguro. Tal aseveración, absolutamente falsa, fue recogida en su momento por todos los medios de comunicación. Andrés Felipe, atónito ante aquellas inesperadas especulaciones y la distorsión de lo que en realidad había sucedido en dicho encuentro, no tuvo otra opción que esperar a que el señor Dávila fuera citado al juicio como testigo de la Fiscalía.

Por supuesto, cuando el señor Dávila compareció ante la Corte Suprema de Justicia en medio del juicio, y ya bajo la gravedad de juramento, tuvo que reconocer que su familia no conocía al exministro cuando se presentaron y accedieron al programa no le habían aportado un solo peso a su campaña, no habían recibido, directa o indirectamente, orientación o recomendación alguna de su parte para presentarse al subsidio, y que la persona que los había inducido al fraude no había sido ni el exministro ni ningún otro funcionario del Ministerio de Agricultura, sino un particular llamado Enrique Angarita. Sorprendentemente, contra esta persona, aparente determinador del fraude, ni la Fiscalía ni la Corte Suprema de Justicia han hecho absolutamente nada.

Ahora bien, a los Dávila no les quedaba otra opción que exonerar a Andrés Felipe durante su testimonio en la Corte, pues la defensa del exministro había recibido del propio abogado de Valerie Domínguez, Yesid Reyes, una cadena de correos electrónicos en donde quedaba en evidencia que todo el escándalo había sido montado con propósitos eminentemente políticos y de revancha. Dichos correos son del día 19 de octubre de 2010, a las 2:03, de la tarde y fueron admitidos

en el juicio como prueba a favor de Arias. En efecto, en una parte de los correos Juan Manuel Dávila escribe:

> *Valerie (sic) sin ánimo de peliar (sic) respóndeme una cosa (sic) te lo pido. (sic) Cuál es el propósito de mandarme este correo? Hubiera pensado que tu interés era informarme de la posible sanción que mantendría al ex - ministro (sic) inhabilitado a ocupar cargo públicos (sic) por muchos años, es decir, que se olvide de ser candidato para gobernador, alcalde, senado y mucho menos presidencia (sic), algo que hoy por hoy es motivo de satisfacción por lo menos para mí (si es que se da), claramente veo que este no es tu interés,...*
>
> *FUE ALGO POLÍTICO NETAMENTE, SOLO POLÍTICO Y HOY ESTAMOS DEVOLVIENDO ESA PLATA ASÍ NO DEBAMOS!...*
>
> *... pues el 'detonante' del escándalo que solo tuvo un propósito, JODER A ANDRES (sic) FELIPE ARIAS, pero por favor no hagamos esto con orgullo, echa (sic) la cagada por lo menos hagámoslo de la mejor forma.*

Sin embargo, ni el testimonio directo de Dávila, ni estos correos, ni el cúmulo de pruebas a su favor, lograron que la Corte actuara en derecho y absolviera al exministro. Tal como lo discutió con su familia, abogados, amigos y compañeros de política cuando conoció la noticia de su condena, una intromisión muy oscura se había tenido que dar desde el propio aparato estatal para que su esperada absolución terminara convertida en injusta condena, con filtración a medios y amplificación oficial —por parte de quien lo debía proteger— dos días antes de la elección presidencial.

Y es que desde un principio él ya percibía una manipulación muy retorcida de los hechos por parte de la Fiscalía para avanzar en su contra. Por ejemplo, no se debe olvidar que los

primeros detenidos por cuenta del escándalo fueron algunos funcionarios del Ministerio. Sin sospechar que los supuestos delitos imputados a sus funcionarios lo cobijarían también a él, Andrés Felipe no lograba entender cómo aquellos ejecutivos eran objeto de tales sindicaciones. Las consideraba extravagantes, pues los detenidos eran jóvenes y brillantes profesionales que él mismo había seleccionado tomando en cuenta su alto desempeño académico y su probidad en el manejo de recursos públicos. Nunca cruzó por su cabeza que hubiesen sido sacados de sus tranquilos hogares para ser llevados a La Picota. Por eso se sintió obligado a visitarlos para reconfortarlos llevándoles comida y frazadas. No obstante, esta inocente visita sería tomada por la Fiscalía como una hábil estratagema del exministro para convenir con ellos declaraciones que le fuesen favorables. De ahí surgió algo también totalmente inesperado para él: su propia captura.

Los desvaríos de la Fiscalía

Como lo escribí alguna vez, aquí es cuando uno se tropieza con una terrible falla de nuestra actual justicia: la Fiscalía acusa ciegamente sin examinar a fondo pruebas y testimonios. De su lado, la prensa suele hacerse eco de una impugnación sin verificar su validez, de manera que se convierte fatalmente en correa de transmisión de grandes infundios o de verdades a medias. Por su parte, los enemigos políticos de un acusado sacan provecho de esta situación, y la opinión pública, bajo los fogonazos periodísticos de un escándalo, termina influenciada por ellos haciendo precipitados juicios de valor. "Algo sucio debió hacer", se escuchaba decir en las reuniones sociales.

Y en efecto, tal injusta reacción de la gente del común fue la que de pronto empezaron a padecer Andrés Felipe y Catalina.

Sin haberlo previsto nunca, la imagen pública de él dio un aterrador vuelco. El brillante exministro a quien se le veía como el mejor sucesor de Álvaro Uribe —hasta el punto de tener grandes opciones para ser candidato presidencial— acabaría recibiendo un despectivo trato, propio de un delincuente.

Aunque a él no se le acusó de robarse un solo peso, se le sindicó de haber celebrado irregularmente un convenio de colaboración con el Instituto Interamericano de Cooperación para la Agricultura, IICA. Pero las sindicaciones de la fiscal general de la Nación de ese momento, Viviane Morales, no terminaron ahí. Para sorpresa de Andrés Felipe, la funcionaria consideró que el convenio firmado era ilícito, pues lo que debía haber hecho él era una licitación que, según ella, no la había ordenado por un sospechoso interés político.

Al pronunciar este concepto, la exfiscal no tomó en cuenta varios hechos que eliminaban semejante afirmación. El primero es que el IICA tiene una sólida reputación como brazo agrícola de la OEA. Su relación es similar a la que tiene la FAO con la ONU. El segundo, es que el IICA venía celebrando convenios de cooperación con el Estado colombiano desde hacía décadas, de modo que ningún ministro de Agricultura había sido enjuiciado por aceptar que este organismo, sin ánimo de lucro y con la mayor experiencia en materia agrícola en el continente, continuara haciéndose cargo de programas dirigidos a transferir tecnología (como lo es en cualquier lugar del mundo un sistema de riego) y, así, a aumentar la productividad del campo, las exportaciones agrícolas y el empleo rural.

Pese a estas evidencias, la exfiscal Morales argumentó que la OEA era solo un ropaje a fin de permitir que Andrés Felipe Arias decidiera realmente quiénes eran los beneficiarios de los

recursos del programa Agro Ingreso Seguro. De esta manera, lo vinculaba a las irregularidades cometidas por algunos de los beneficiarios del programa que habían realizado falsos fraccionamientos de sus fincas para presentar nuevos proyectos y obtener mayores recursos. La Fiscalía les imputó cargos a una treintena de particulares y aunque al cierre de este libro algunos habían sido condenados y otros negociaron la pena, como se indicó anteriormente el verdadero artífice del fraude nunca fue requerido por la justicia.

En contraste, el 26 de julio de 2011, la exfiscal Morales, sin prueba judicial alguna, logró que se dictara medida de aseguramiento en contra de Andrés Felipe Arias. Tal solicitud fue aceptada por un magistrado del Tribunal Superior de Bogotá, quien resultó ser el ahijado de bodas de uno los más grandes enemigos del uribismo, el exmagistrado Yesid Ramírez. La razón de la enemistad obedece a que, siendo magistrado de la Corte Suprema de Justicia, Yesid Ramírez fue señalado por el entonces presidente Uribe de tener vínculos con personas cercanas al narcotráfico, desatándose así una brutal confrontación institucional en la cual la vindicta contra Uribe y sus funcionarios llegaría tarde o temprano. Es por ello que no sorprende que quien terminó enviando a la cárcel 'preventivamente' a Andrés Felipe Arias haya sido nadie más y nadie menos que el ahijado del gran enemigo judicial del gobierno al cual el exministro sirvió y defendió.

Como si fuese un linchamiento público, la sorpresiva medida de aseguramiento no se llevó a cabo en una sala de audiencias que sería lo usual, sino que tuvo lugar en un teatro dispuesto para el público. La multitud que llenaba el salón estaba constituida por adversarios políticos del expresidente Uribe, de ahí que aplaudieran con rabioso estrépito cuando el

magistrado ahijado anunció la decisión de mandar a Arias a la cárcel. La humillación y el dolor del exministro, su esposa, y sus padres fueron enormes.

Este fue un durísimo golpe para quien aparecía en ese momento como el líder más representativo de la corriente política de Uribe y uno de los más opcionados para ganar la elección presidencial de 2014. Nunca había imaginado Andrés Felipe que de la noche a la mañana abandonaría su tranquilo apartamento en el norte de Bogotá, donde vivía con su mujer y sus dos pequeños hijos, para ser recluido en un frío calabozo del búnker.

"Se me estaba violando la presunción de inocencia y el derecho a la legítima defensa —me contaría luego—. Quedé encerrado lejos de la familia, sin poder trabajar por mis hijos, sin entender claramente qué estaba sucediendo".

Dos días después de estar en prisión, un grupo de hombres, haciéndose pasar por agentes de la Fiscalía, saqueó su apartamento. Para ello se valieron de todos los datos privados y personales del exministro y su familia que la exfiscal Vivian Morales reveló públicamente ante todo el país a través de los medios de comunicación: dirección, número telefónico, correo electrónico, nombres de sus hijos, etc. Algo que no solo viola uno de los derechos humanos de cualquier persona, sino que, en el caso de Andrés Felipe, era todavía más grave si se tiene en cuenta que el propio Estado colombiano lo ha catalogado como persona en situación de riesgo extraordinario.

Trasladado a la Escuela de Caballería, Andrés Felipe Arias consideró que mientras se adelantaba la investigación en su contra debía luchar por recobrar la libertad para asumir su defensa en igualdad de condiciones y sin estar debilitado. Es-

taba seguro de que para ello contaba con razones muy válidas. Necesitaba, además, disponer de espacio, tiempo y movilidad a fin de recaudar testimonios y pruebas que servirían para demostrar su inocencia. Después de que en dos audiencias previas se le hubiese negado la libertad, una tarde de domingo lo visité en su centro de reclusión. Hablando con él y con su esposa pude comprobar que no había perdido las esperanzas de obtener el derecho a preparar su defensa en libertad. Días después, la prensa y la televisión registraron con dramáticas imágenes el momento en que, por tercera vez, un juez decidía mantenerlo en prisión. Imborrable nos quedó a todos el momento en que, con lágrimas, Catalina y Andrés Felipe se fundieron en un dolorido abrazo.

¿Qué argumentos fueron ofrecidos por la justicia para darle un viso de legalidad a su encarcelamiento? Todos fueron traídos de los cabellos. La primera tesis que esgrimió la Fiscalía fue que el exministro podría aprovechar su libertad para adiestrar testigos que declararían en su favor. Incluso se llegó a alegar que si era liberado, Arias "usaría su cuenta de Twitter para influir en el proceso".

Finalmente, pasados dos años de su ilegal arresto y ante la carencia de sólidas pruebas que permitieran prolongar su reclusión, la justicia no tuvo más remedio que dejarlo en libertad. Fue un momento del cual fui testigo. Recuerdo que lo acompañé a su apartamento y presencié la intensa emoción de Andrés Felipe cuando sus dos pequeños hijos salieron a su encuentro. Catalina, radiante de felicidad, parecía sentir que atrás quedaban aquellos dos amargos años que habían ensombrecido sus vidas. También él consideraba que, al fin libre, tenía a su alcance toda clase de pruebas y testimonios a su favor, en tanto que la Fiscalía carecía de sustento para darle

credibilidad a sus acusaciones. Andrés Felipe estaba seguro de que el juicio en la Corte Suprema de Justicia iba a culminar con su absolución.

Tanto es así que, al día siguiente de haber recobrado su libertad, su esposa recibió una llamada en la que le indicaban que el Presidente de la República quería hablar con Andrés Felipe. Ella, sorprendida, le pasó el teléfono. Andrés Felipe cuenta que Juan Manuel Santos lo felicitó y le dijo que él y su familia habían rezado mucho por ese momento. Con seriedad, el exministro le agradeció y se despidió. Intuía, cuenta él, que esas palabras no eran sinceras. El oscuro vuelco que le dieron al veredicto que debía absolverlo y la forma como la Corte Suprema filtró dicho fallo a la prensa, justo dos días antes de una elección presidencial en la que Juan Manuel Santos parecía perder, le confirmaron —relata él desde el exilio— su intuición.

Sin embargo, antes de que ocurriera semejante vuelco, varios pronunciamientos en su favor le permitieron mantener la tranquila certidumbre de su absolución. En febrero de 2014, la Procuraduría General de la Nación solicitó a la Corte Suprema de Justicia que Arias fuera declarado inocente. Sostuvo también que "la Fiscalía había desbordado los límites de la acusación" sin siquiera tener pruebas de los supuestos delitos. Tres meses después, el Tribunal Administrativo de Cundinamarca estableció la legalidad de los convenios de cooperación suscritos por el Ministro Arias con el IICA. Finalmente, en la segunda semana de junio de 2014, la Procuraduría, luego de una investigación que duró dos años en torno a las finanzas personales de él y de su esposa, determinó que no hubo nunca desviación de recursos oficiales en su beneficio.

UNA PERSECUCIÓN POLÍTICO-JUDICIAL

Además de las ilegalidades cometidas con su encarcelamiento, el juicio de fondo en contra de Andrés Felipe Arias estuvo también plagado de irregularidades que lo despojaron de los más elementales derechos y garantías propios de un proceso penal.

Hay razones para creer que la entonces fiscal general Viviane Morales estuvo movida por un oculto interés de revancha en contra del exministro Arias y su abogado Jorge Aníbal Gómez. En efecto, este último, cuando era magistrado de la Corte Suprema de Justicia, jugó un decisivo papel en el proceso y condena de Carlos Alonso Lucio, esposo de la exfiscal.

De su lado, la magistrada que dirigió el juicio, María del Rosario González, nunca ocultó que se consideraba víctima del gobierno de Álvaro Uribe, al que estuvo estrechamente vinculado el exministro Arias. A pesar de ello siguió hasta el final del proceso juzgándolo, sin tomar en cuenta que las pruebas aportadas contra él estaban basadas en apreciaciones sesgadas, descontextualizadas, incompletas y ajenas a un real acervo probatorio. Mejor dicho, la supuesta víctima juzgando a quien sirvió y defendió al supuesto victimario.

Adicionalmente, el fallo contra el exministro viola el más elemental de los derechos humanos como lo es el derecho a la presunción de inocencia. En efecto, el escrito reconoce que a la Fiscalía no se le podía exigir que probara el supuesto plan común del exministro con los demás imputados y condenados. Así nadie se salva de una condena.

Como si lo anterior fuera poco, uno de los mismos magistrados de la Corte disintió del fallo y reconoció que a Andrés Felipe Arias le habían violado el debido proceso, pues

la Fiscalía lo acusó por unas circunstancias, pero la Corte lo condenó por otras muy diferentes. Más aún, una de las magistradas que firmó la condena ni siquiera asistió a una sola de las audiencias, pues se posesionó dos meses después de terminado el juicio. Por ende, sin conocer el caso y las pruebas, lo condenó.

Pero, además, al exministro le violaron el derecho a la igualdad ante las Cortes. Es decir, a ser tratado en la misma forma como una corte o un juez trataría a cualquier otro ciudadano. Por ejemplo, no solo lo condenaron por unos convenios idénticos a los que firmaron todos los ministros que lo antecedieron, sino que el monto de la condena, ya de por sí injusta e ilegal, fue establecido de la forma más severa posible y desproporcional: más de 17 años de cárcel y una multa equivalente a dieciséis millones de dólares.

En retrospectiva se entiende por qué la Fiscalía tuvo que ocultar pruebas favorables a Arias como el documento del Cuerpo Técnico de Investigaciones que lo exoneraba de haber cometido cualquier conducta penal en torno al escándalo de AIS. Por cierto, cuando esta prueba fue registrada por un conocido medio de comunicación, la Corte la excluyó del proceso.

Adicionalmente, en las normas colombianas una persona como el exministro carece de otro derecho humano universal y fundamental reconocido: el derecho a que la condena sea revisada por un tribunal superior e imparcial.

EL INEVITABLE EXILIO

Es fácil imaginar la angustia que se apoderó de Catalina, la esposa de Andrés Felipe, cuando aquella mañana del 13 de junio de 2014 escuchó en la radio el rumor de que iba a

producirse un fallo condenatorio en contra de su esposo. Sin certeza alguna de que aquello fuera cierto, esperó la opinión de sus padres.

Cuando su madre le acercó a su regazo, sintió que también ella tenía el pálpito de una nueva y terrible realidad. Andrés Felipe, en cambio, se mantenía retraído y sombrío. No podía dar crédito a los rumores radiales que habían estremecido a su esposa. Cuando menos lo esperaba, su suegro los dio por ciertos. Alguien que estaba presente, mirándolo fijamente y sin sombra alguna de duda, le dijo con voz grave: "¡Tú te tienes que ir, aquí no hay justicia!".

Dos amigos cercanos llamaron a los padres de Andrés Felipe, que viven en Medellín, y les pidieron, sin dar mayor detalle de lo que estaba ocurriendo, que volaran de inmediato a Bogotá.

Solo en Antioquia se conoce la excepcional tarea que cumplieron, durante mucho tiempo en favor de los desamparados, Rodrigo Arias Urrea y su esposa, Sonia Leiva. Prominente médico, cuando descubrió la penosa situación en la que se encontraban muchos heridos y enfermos en Sonsón, su pueblo, decidió organizar un grupo de profesionales (cirujanos, anestesiólogos, oftalmólogos, ginecólogos, cirujanos plásticos y enfermeras profesionales) para adelantar un programa asistencial nunca visto. Más de 2.500 cirugías realizadas de manera gratuita fueron la base de esta labor que se adelantó durante 18 incansables años sin ningún interés económico. No es extraño que tal perfil de servicio y desprendimiento en torno a una tarea social fuera también un factor determinante en la vida y carrera de Andrés Felipe Arias.

Tomada la decisión de no prestarse a semejante injusticia, Catalina y Andrés Felipe se dirigieron a su casa para preparar a

toda prisa una pequeña maleta. Andrés Felipe grabó un vídeo que una amiga suya todavía guarda bajo custodia esperando el momento de darlo a conocer. Ya con el tiempo contado y en medio de profunda tristeza y agonía, abrazó como si fuera la última vez a Catalina, Eloísa y Juan Pedro. El pequeño no entendía lo que sucedía, pero Eloísa se desató en llanto. Andrés y Catalina sintieron el dolor más grande de su vida en ese momento, pero ella, como siempre, le dio fuerza para emprender el viaje.

Hasta el automóvil en que se encontraba Andrés Felipe llegaron de pronto sus padres quienes acababan de desembarcar del avión que los traía de Medellín. Fue esa una breve y muy triste despedida. Cuando llegó el momento, algunas personas que creen en su causa lo ayudaron con todo el proceso de salida. Sintió como nunca la congoja de una partida que quebraba su vida. Tendría que enfrentar solo, por ahora, un incierto destino.

Una vez que quedó claro para ella que no tenía otro camino que el exilio, Catalina, apoyada por su madre, empezó a preparar todo lo necesario para viajar con sus dos pequeños y reunirse con Andrés Felipe. Debió renunciar a su empleo, y con la ayuda de sus amigas de infancia puso a la venta muebles, vajillas y otros enseres con el afán de recoger algún dinero. Nunca había resultado más injusta la infame acusación hecha a Andrés Felipe de apropiarse de dineros públicos, cuando él y su familia, sin mayor soporte económico, debían encarar ahora las más básicas necesidades de sobrevivencia.

No fue nada fácil el viaje de Catalina y sus hijos. Surgió de repente un inesperado contratiempo. Era indispensable contar con la autorización de Andrés Felipe para que sus dos hijos menores de edad pudiesen salir del país. De modo

que para tramitar dicho permiso, el lunes 16 de junio él tuvo que acudir a un consulado colombiano. Allí lo maltrataron, humillaron y retuvieron casi dos horas hasta que los funcionarios consulares, a regañadientes, pero todavía celebrando el triunfo de Juan Manuel Santos, le tuvieron que tramitar el permiso y devolver su pasaporte, pues en ese momento lo de su condena seguía siendo un rumor ilegalmente filtrado por la propia Corte Suprema de Justicia para influir en la elección presidencial.

A los pocos días, pero ya en el exilio, el rumor se convirtió en realidad y se conoció la sentencia de la Corte Suprema condenándolo a 17 años y cinco meses de prisión y a pagar una multa equivalente a dieciséis millones de dólares. De esta manera, quien fuera considerado como un eficiente funcionario y una reveladora opción política del país, quedó convertido en un prófugo de la justicia.

Ignorando que este fallo es una prueba más de los desvaríos judiciales que tienen hoy como sustento falsos testigos, imputaciones sin fundamento y amañadas condenas, el ciudadano común está muy lejos de conocer la verdad sobre este caso. Mantiene dudas y sospechas. No ve que el exilio de Andrés Felipe y otros personajes, lejos de ser una prueba de culpabilidad es la triste consecuencia de una clara persecución política. Algún día y de alguna manera habrá que reparar la iniquidad que se ha cometido con él.

PLINIO APULEYO MENDOZA

CARCEL O EXILIO

Del horror que recogen estas páginas he sido testigo. Militares que arriesgaron sus vidas luchando contra el terrorismo han sido condenados a prisión. Hombres y mujeres sin mancha alguna, que gracias a sus talentos, a sus capacidades profesionales y a su vocación de servicio llegaron a ocupar importantes cargos públicos, se encontraron enredados en tortuosos procesos judiciales. Algunos de ellos, advirtiendo el propósito de ser condenados injustamente, han tomado junto con sus familias el triste camino del exilio. Otros, que confiaron en demostrar su inocencia, se encontraron de pronto privados de su libertad.

La verdad es que la justicia en Colombia, durante los últimos años, se ha convertido en un instrumento político.

Algo realmente escandaloso. La justicia colombiana hoy en día da valor a un testimonio sin importar quién lo presenta, sin investigar previamente quién es el testigo y, lo que es más grave, sin corroborar la veracidad de lo dicho por él.

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ESTUDIOS CRÍTICOS DE JURISPRUDENCIA DE LA CORTE SUPREMA DE JUSTICIA 2

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EL DELITO DE ESTAFA

VELASQUEZ V., FERNANDO; POSADA M., RICARDO
CADAVID Q., ALFONSO; MOLINA L., RICARDO
SOTOMAYOR A., JUAN OBERTO

DERECHO PENAL Y CRÍTICA AL PODER PUNITIVO DEL ESTADO
HOMENAJE A NODIER AGUDELO BETANCUR

POSADA MAYA, RICARDO

DELITO CONTINUADO Y CONCURSO DE DELITOS

MOLINA LOPEZ, RICARDO

LA CONFORMIDAD EN EL PROCESO PENAL
ANÁLISIS COMPARADO DE LAS LEGISLACIONES ESPAÑOLA Y COLOMBIANA

RICARDO POSADA MAYA
FERNANDO VELÁSQUEZ VELÁSQUEZ
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4

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Comentario VI

NI CELEBRACIÓN INDEBIDA DE CONTRATOS NI PECULADO

Corte Suprema de Justicia, Sent. del 16.07.2014, R37462, M.P.: María del Rosario González Muñoz. Aprobado Acta N°. 226.

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I. INTRODUCCIÓN

De particular interés resulta la sentencia proferida el día 16 de julio de 2014 por la Sala de Casación Penal de la Corte Suprema de Justicia contra el exministro de Agricultura y Desarrollo Rural, Señor A.F.A.L., que aquí se examina para verificar si en sentir de los comentaristas ella se ajusta o no a los dictados del orden jurídico. Con miras a lograr una mejor ilación el escrito se ocupa, en su orden, del supuesto fáctico, de la imputación, un necesario distingo académico, del delito de celebración indebida de contratos, del delito de peculado, de la falta de congruencia entre acusación y sentencia, de la falta de motivación y de precisión de los cargos y, para culminar, de la determinación de la sanción penal.

II. SUPUESTO FÁCTICO

Aunque el proveído en estudio hace una exposición sobre el asunto es prudente, desde la perspectiva de los analistas, hacer un resumen del

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caso. En efecto, en desarrollo de precisas normativas constitucionales y legales, el Congreso de la República expidió la Ley 1133 de nueve de abril de 2007 –publicada en el Diario Oficial No. 46.595 de 10 de abril de 2007–, por medio de la cual se crea e implementa el programa denominado como "AGRO INGRESO SEGURO –AIS", normativa que se inscribe dentro del conjunto de estrategias para promover la productividad y la competitividad, reducir la desigualdad en el campo, y preparar al sector agropecuario para enfrentar la internacionalización de la economía, como se deriva del contenido del artículo 1º de la misma: "OBJETO. *La presente Ley tiene como objeto la creación e implementación del programa "Agro, Ingreso Seguro - AIS", destinado a proteger los ingresos de los productores que resulten afectados, ante las distorsiones derivadas de los mercados externos y a mejorar la competitividad de todo el sector agropecuario nacional, con ocasión de la internacionalización de la economía*".

Como elementos de ese esquema, según se deriva del artículo 3º de la misma ley, se tienen los siguientes: "*El programa "Agro, Ingreso Seguro" tendrá dos componentes, el de* ***apoyos económicos directos*** *que busca proteger los ingresos de los productores durante un período de transición, en el cual se espera mejorar en competitividad y adelantar procesos de reconversión. Por su parte el componente de* ***apoyos a la competitividad*** *busca preparar el sector agropecuario ante la internacionalización de la economía, mejorar la productividad y adelantar procesos de reconversión, en todo el sector Agropecuario*". Es más, el parágrafo 1º de ese artículo advierte sobre los susodichos apoyos económicos lo siguiente: "*Para todos los efectos, se debe entender que* ***los apoyos económicos directos o incentivos*** *son una ayuda que ofrece el Estado* ***sin contraprestación económica alguna a cambio, por parte del particular****. Se entregan de manera selectiva y temporal, dentro del ejercicio de una política pública,* ***siendo potestad del Gobierno Nacional, seleccionar de una manera objetiva, el sector que se beneficiará con el apoyo económico directo o incentivo y el valor de los mismos****, así como determinar dentro de estos, los requisitos y condiciones que debe cumplir quien aspire a convertirse en beneficiario. /Los apoyos económicos directos o incentivos no son derechos, ni contratos y serán siempre una mera expectativa hasta que haya decisión*

definitiva de la autoridad competente, o de quien ésta haya designado para hacer la selección, que señale al particular como beneficiario; por tanto, hasta ese momento, ***los apoyos económicos directos o incentivos*** *no generan obligaciones, contraprestaciones o derechos adquiridos*" (las negrillas, cursivas y subrayas son añadidas). Esta Ley, adviértase, fue objeto del respectivo control por parte de la Corte Constitucional entidad que mediante sentencia C-373 de 27 de mayo de 2009, la declaró ajustada a la Carta Fundamental porque se observó el rito exigido para su expedición.

Naturalmente, dentro de los apoyos a la competitividad –que buscaban preparar al sector agropecuario de cara a la internacionalización de la economía– el artículo 5º de la susodicha Ley previó tres instrumentos: los incentivos a la productividad, el apoyo a través del crédito y los apoyos a la comercialización, el primero de los cuales "[...] *incluye la destinación de recursos del programa orientados a fortalecer la asistencia técnica, el desarrollo y transferencia de tecnología, así mismo promover la cultura de buenas prácticas agrícolas y pecuarias, la asociatividad entre los productores, y* ***cofinanciar adecuación de tierras e infraestructura de riego y drenaje***".

Con tales miras, el entonces Ministro de Agricultura y Desarrollo Rural celebró diversos convenios con el Instituto Interamericano de Cooperación Agropecuaria IICA, entre los cuales se deben mencionar el 003 de 2 de enero de 2007 por $ 47.000.000,000,oo, el 0055 de 10 de enero de 2008, por $ 140.428.000.000,00 y el 0052 de 16 de enero 2009 por la suma de $ 100.837.934.000,00. Esta entidad, recuérdese, era la encargada de administrar los recursos a los cuales se podía acceder por parte de los interesados, una vez cumplidas ciertas exigencias legales; la ley creó, además, unos mecanismos de control estrictos a cuyo efecto diseñó un Comité Intersectorial integrado por altos funcionarios del Estado y directivos de los sectores de la industria, el comercio y el campo (artículos 8° y 9º).

En virtud de la celebración de cada uno de esos convenios el Ministerio de Hacienda desembolsó los recursos correspondientes al IICA, y se hicieron las convocatorias para la presentación de proyectos por parte

de los interesados, acorde con los pliegos de referencia que fueron publicados en los medios [ver el *Diario el Tiempo*, del once de enero 2008]. Dentro de aquellos –más concretamente el convenio 055 de 2008– se presentaron diversas personas quienes con base en la Convocatoria 01 de 2008 destinada a otorgar los beneficios para riego y drenaje –hecha por el Comité Administrativo integrado por el Viceministro de Agricultura y Desarrollo Rural, Señor J.C.S.; R.C.S., Gerente General del INCODER; J.R.M., Director de Desarrollo Rural; y, J.A.C.C., representante del IICA–, luego de reunir las exigencias correspondientes, accedieron a los beneficios y –previa constitución de un fideicomiso exigido al efecto– obtuvieron los desembolsos para cumplir con los programas propuestos, los cuales se ejecutaron en su totalidad hasta donde alcanzó el suministro de los recursos, lo que se frustró porque –atendidas diversas situaciones de orden político– estalló un escándalo de proporciones gigantescas que dio al traste con el programa.

III. LA IMPUTACIÓN

Como se desprende del texto del proveído examinado, los cargos enrostrados al hoy condenado fueron los de celebración indebida de contratos y peculado:

> El doctor *A.F.A.L.* fue acusado por la Fiscal General de la Nación como presunto autor responsable de los punibles de celebración de contrato sin cumplimiento de requisitos legales y peculado por apropiación, definidos y sancionados, en su orden, en los artículos 410 y 397 de la Ley 599 de 2000, conductas que estimó cometidas en concurso homogéneo y heterogéneo, material y sucesivo, en las circunstancias de mayor punibilidad establecidas en el artículo 58 numerales 9° y 10° del mismo ordenamiento, esto es, en su orden, la posición distinguida que el acusado ocupe en la sociedad por su cargo, posición económica, ilustración, poder, oficio o ministerio y obrar en coparticipación criminal (folio 2).

Por supuesto, a poco reflexionar sobre el asunto se percibe que el punto central de la discusión se afinca en la forma de contratación a la cual se debió acudir para implantar el AIS; en efecto, de un lado, el juez de única instancia entiende que ello se debió hacer bajo las pautas de la Ley 80

de 1993: "[...] *la Sala debe insistir en que, como en este caso los convenios 03 de 2007, 055 de 2008 y 052 de 2009 no tenían por objeto directo aquel tipo de actividades, la normativa llamada a regir dichos acuerdos, suscritos para desarrollar las convocatorias de riego era la Ley 80 y sus decretos reglamentarios*" (folio 213; véase también, folios 201, 204-205).

De otro lado, el condenado a través de su defensa (y con ellos el Salvamento Parcial de Voto suscrito por el Magistrado FERNÁNDEZ CARLIER) entiende que el régimen de contratación era el directo por tratarse de convenios que versaban sobre ciencia y tecnología: "*Los convenios 03 de 2007, 055 de 2008 y 052 de 2009 suscritos entre el Ministerio de Agricultura y el IICA sí tienen por objeto el desarrollo de actividades de ciencia y tecnología. /El módulo de riego del programa AIS constituyó no solo la adopción de una nueva tecnología de producción, sino que, a su vez, implicó un conjunto de modificaciones o mejoras tecnológicas en el proceso productivo*" (folio 94).

Por supuesto, todo el debate en relación con las tesis enfrentadas es rico en matices y en argumentos de tal manera que una lectura desapacible de los planteos esgrimidos por las dos partes, demuestra que el objeto contractual no era tan claro como lo pretendió la Fiscalía. Como es apenas obvio, el punto de partida que se asuma en este frente es vital de cara a saber si la conducta realizada –y no solo la del entonces Ministro, pues en todo el proceso intervino un grupo muy calificado de funcionarios y solo se investigó, a dedo, a algunos de ellos– es o no punible.

IV. UN NECESARIO DISTINGO

Al respecto, se debe diferenciar entre el *contrato estatal* y el *convenio estatal de asociación*, como modalidades de actos jurídicos de carácter bilateral que puede realizar la Administración pública; dos institutos que tienen una naturaleza jurídica radicalmente distinta desde la perspectiva del derecho administrativo porque, como afirma José Vicente BLANCO RESTREPO, al analizar la sentencia que nos ocupa, "[...] *en derecho administrativo se distinguen con claridad dos modalidades de actos jurídicos bilaterales de la administración siendo una de ellas el*

contrato y la otra el convenio, sin que pueda afirmarse técnicamente que los contratos son el género y los convenios la especie. Al contrario, ambos son la especie de una clasificación más amplia que son los actos bilaterales de la administración. Esto para distinguirlo de los unilaterales como lo son los actos administrativos [...]"[3].

Es más, añade Blanco Restrepo, ese distingo es fundamental para poder entender a cabalidad los tipos penales de celebración indebida de contratos y, por ende, aplicarlos:

> Reconocer entonces que los convenios de cooperación interadministrativos, interinstitucionales, de asociación, de colaboración o como quieran llamarse, son diferentes a los contratos estatales, **es fundamental para poder interpretar y aplicar el tipo penal de "celebración indebida de contratos" bajo la modalidad de "Contrato sin cumplimiento de requisitos legales"**, pues no sólo permitirá establecer si la celebración irregular de un "convenio" encuadra en la descripción típica, sino también para saber cuáles serían entonces los "requisitos legales esenciales" de los convenios pues desde el punto de vista del derecho administrativo podemos afirmar que los requisitos no son los mismos para los convenios que para los contratos... **En el caso específico de la sentencia proferida por la Corte Suprema de Justicia en el caso de A.F.A., observó entonces que para la Corte resultó intrascendente verificar si los actos bilaterales celebrados entre el Ministerio de Agricultura y el IICA eran verdaderos contratos o eran convenios de colaboración; simplemente analizó si el objeto era de ciencia y tecnología para efectos de verificar si aplicaba o no la excepción contenida en el artículo 24 de la ley 80 de 1993, pero no se preocupó de verificar si, a pesar de que no fueran de ciencia y tecnología, aun conservaban la naturaleza jurídica de convenio de colaboración, caso en el cual la selección directa del asociado era posible, puesto que para estos efectos ninguna norma vigente exige que para los mecanismos asociativos (creación de entidades sin ánimo de lucro o celebración de convenios), sea necesario un mecanismo de invitación pública**[4] (subrayas y negrillas añadidas).

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3 Blanco Restrepo, "La diferenciación entre convenios de colaboración y contratos, frente al tipo penal de celebración de contratos «sin cumplimiento de requisitos legales esenciales»".

4 Ibíd.

El mismo autor, ya desde el día catorce de abril de 2006, en un trabajo que aparece en su blog intitulado "La diferencia entre contratos y convenios" y que es pertinente transcribir *in extenso*, señala:

> Es muy común observar que en la administración pública se utilizan, como si fueran sinónimos, los conceptos "contratos" y "convenios", para referirse a los contratos interadministrativos, a los convenios interadministrativos o a los convenios de colaboración, etc. Por ese motivo considero importante hacer unos breves comentarios sobre la diferencia entre ambas figuras, haciendo la claridad de que los convenios interadministrativos constituyen una especie dentro del género de los convenios de colaboración, pues mientras los primeros se celebran con la participación exclusiva de entidades estatales, en lo segundos también pueden intervenir los particulares y que los contratos interadministrativos constituyen una especie dentro del género de los contratos estatales [...] quiero transcribir a continuación las diferencias esenciales que en mi opinión existen entre ambas figuras jurídicas:
>
> 1. En el contrato existe una contraposición de intereses mientras que en el convenio encontramos objetivos comunes.
>
> 2. En el contrato existen prestaciones recíprocas pues cada una de las partes asume una obligación a favor de la otra que para una será la prestación de un servicio, la transferencia de un bien, etc. y para la otra será el pago de una remuneración lo que además implica que existe un precio como elemento esencial del contrato; en el convenio no existen prestaciones recíprocas pues ninguna de las partes le brinda un servicio a la otra, ya que lo que existe en el fondo es la distribución de actividades entre las partes interesadas con el fin de desarrollar un objetivo común, pudiendo incluso existir aportes en dinero de una parte y aportes de trabajo por la otra parte.
>
> 3. En el contrato estatal, el Estado garantiza las utilidades al contratista; en el convenio no existe ese tipo de garantía estatal puesto que ninguna de las partes está recibiendo una remuneración por la labor desarrollada.
>
> 4. Es de la esencia del contrato estatal la equivalencia entre las prestaciones recíprocas, tanto que se establece como principio general de interpretación del contrato que se tengan en cuenta "la igualdad y equilibrio entre prestaciones y derechos que caracteriza a los contratos conmutativos" (artículo 28 de la ley 80 de 1993). En los convenios no se presenta este carácter conmutativo ni se exige que exista equivalencia entre las obligaciones asumidas por las partes pues, se insiste, no existen prestaciones recíprocas.

5. En el contrato estatal se aplica la institución de la conservación del equilibrio contractual que obliga a la entidad estatal a restablecerla en caso de que se rompa por razones no imputables al contratista, generándose en consecuencia la posibilidad de pagar indemnizaciones o compensaciones a favor del contratista por la ruptura del equilibrio económico del contrato por causas no imputables a éste. En el convenio no existe esa posibilidad puesto que ninguna de las partes le presta un servicio a la otra ni mucho menos existe una remuneración por el servicio prestado, lo que excluye la posibilidad de la ruptura del equilibrio económico financiero del contrato.

Todas estas diferencias nos muestran con claridad la razón por la cual la legislación española de manera expresa exceptuó del ámbito de aplicación de la ley de contratos de las administraciones públicas, a los convenios de colaboración celebrados entre una entidad estatal y un particular, pues resulta claro que dichos actos bilaterales no son contratos.

En este mismo orden de ideas, podemos afirmar, no solo que en Colombia pueden existir convenios de colaboración o cooperación entre el Estado y los particulares, si no también que al igual que ocurre en España, en Colombia este tipo de convenios no se rigen por el Estatuto General de la Contratación Estatal (Ley 80 de 1993), pues no tienen una naturaleza contractual[5].

Y añade, a continuación, algo que es de trascendencia para entender a cabalidad los hechos objeto de análisis:

Ya para terminar, y a manera de conclusión, veamos cuales son las algunas de las consecuencias prácticas del no sometimiento de los convenios a la ley 80 de 1993:

1. En principio, a menos que existiera una regla especial que lo permitiera, no es posible pactar cláusulas exorbitantes.

2. Como la entidad estatal no está pagando un precio por un servicio prestado o por un bien adquirido, no puede hablarse de anticipo ni de pago anticipado que son figuras referidas al cumplimiento anterior de la contraprestación del Estado a favor de los particulares; técnicamente se hablaría de aportes al convenio y nada se opone a que se acuerde entregar el aporte, total o parcialmente, inmediatamente sea suscrito de manera

[5] Ibíd.

similar a lo que ocurre al constituirse una sociedad, una asociación o una fundación para facilitar y hacer posible la ejecución del mismo.

3. La exigibilidad de las garantías de cumplimiento dependerá de la naturaleza de los compromisos asumidos y estará librada al principio de la autonomía de la voluntad; por ejemplo, en un convenio a través del cual se delegan funciones de la Nación a un Departamento carece de sentido la constitución de una garantía de cumplimiento; sin embargo, si se trata de un convenio entre una entidad estatal y un particular a través del cual se le otorgará al particular la facultad de administrar dineros públicos, sí se justifica la necesidad de exigir una póliza para garantizar el adecuado manejo de los dineros públicos, pero si la obligación que asume la entidad estatal es la de reembolsar los gastos que en nombre del convenio ejecute el particular, carece de sentido la constitución de una garantía pues el particular en este caso no está administrando dineros públicos. Lo que sí es claro es que carece de sentido la exigencia de una póliza para garantizar el cumplimiento de las obligaciones del particular en la cual la beneficiaria sea la entidad estatal pues si se trata de un verdadero convenio no deben existir obligaciones de aquel a favor de ésta. Sería razonable, al contrario, que las partes acordaran suscribir una póliza conjunta para garantizar los daños a terceros cuando la actividad conjunta que van a realizar implique algún grado de riesgo como ocurriría por ejemplo en la ejecución de convenios para la prestación de servicios conjuntos de salud (como sería la ejecución de una campaña de vacunación para evitar los riesgos derivados de una vacuna defectuosa, de una inyección mal aplicada, etc.).

4. No son aplicables las reglas relacionadas con la selección del contratista a través de licitación pública; la regla general será la libertad de la entidad para seleccionar a la otra parte sin tener que acudir a mecanismos que garanticen la concurrencia de oferentes.

5. Las reglas que rigen los convenios son las propias de la autonomía de la voluntad; es decir que las partes tienen plena libertad para llegar a los acuerdos que sean necesarios para alcanzar los objetivos de la respectiva entidad. De todas maneras, como a través de los convenios se está ejerciendo una función administrativa, deberán respetarse ciertas reglas propias de la actividad estatal como por ejemplo las relativas a la planeación, a la concordancia con los planes y programas de la entidad, la existencia de la respectiva apropiación presupuestal si el convenio implica gastos para la entidad, el respeto de los principios de igualdad, moralidad, eficacia, economía, celeridad, imparcialidad y

publicidad contenidos en el artículo 209 de la Constitución Nacional, etc. Igualmente, cuando sea del caso, deberán acordarse mecanismos de control o de interventoría sobre la ejecución del convenio, etc."[6].

Pero es que también la Corte Constitucional ha hecho el distingo anotado como se infiere, por ejemplo, de la sentencia C-239 de 29 de marzo de 2006:

> *Los convenios de cooperación técnica no son otra cosa que acuerdos especiales en virtud de los cuales una entidad nacional, internacional o extranjera, aporta bienes, servicios o recursos, sin contraprestación económica a cargo del Estado, para el diseño o implementación de planes, programas o proyectos de desarrollo. Al no ser contratos onerosos que tengan como contraprestación el pago de recursos públicos, los convenios de cooperación suelen estar regulados por normas especiales que establecen excepciones a las reglas de contratación administrativa e, incluso, a las normas tributarias o presupuestales.* (Cursivas añadidas).

Como si lo anterior fuera poco, en la guía de contratación que se emplea en el Distrito Capital de Bogotá, sus autores hacen la siguiente y muy pertinente afirmación sobre las materias ya dichas:

> **Se entiende por Cooperación Internacional7 la acción conjunta para apoyar el desarrollo económico y social del país, mediante la transferencia de tecnologías, conocimientos, experiencias o recursos por parte de países con igual o mayor nivel de desarrollo, organismos multilaterales, organizaciones no gubernamentales y de la sociedad civil. También se la conoce como cooperación para el desarrollo y es un concepto global que comprende diferentes modalidades de ayuda que fluyen hacia los países de menor desarrollo relativo.**
>
> **La Cooperación Internacional se realiza mediante diversas modalidades, entre las cuales se cuentan la cooperación técnica, científica y tecnológica; la cooperación financiera no reembolsable; la cooperación financiera reembolsable o concesional; las donaciones;**

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6 Blanco Restrepo, Ibíd. Del mismo expositor se puede consultar otro trabajo publicado hace diez años, intitulado "Los convenios de colaboración: una modalidad de actuación de la Administración que no se encuentra sometida a la ley 80 de 1993", pp. 139-150.

7 Concepto adoptado por la Dirección de Cooperación Internacional de Acción Social, a partir de la definición de la OCDE y derivado de los Tratados y Convenios de Cooperación Internacional que ha suscrito el Gobierno Nacional.

la acción humanitaria; la cooperación cultural y educativa; la cooperación política; y la cooperación militar[8].

Por ello, cuando en el seno del juicio oral el Delegado de la Procuraduría General de la Nación se expresó sobre la materia –y sus apreciaciones no no se tuvieron para nada en cuenta– y afirmó que los actos jurídicos de carácter bilateral en cuestión tenían una naturaleza jurídica ambigua, no hizo otra cosa que llevar al escenario jurídico-penal todo un debate de hondas repercusiones. Suyas son las siguientes palabras transcritas en la sentencia: "*Los convenios, tal y como fueron estructurados e implementados, muestran que verdaderamente se trataban de contratos* ***con objeto ambiguo; no obstante, no todo problema o controversia de carácter contractual es penalmente reprochable****, así lo sea administrativa y disciplinariamente*" (véase folio 59) (negrillas por fuera del texto).

Para acabar de ajustar, lo cual demuestra que la sentencia no es imparcial y desprevenida en estas materias, dígase que con anterioridad a la administración del Ministro A.F.A.L. –cuya actividad se buscaba a toda costa criminalizar– sus antecesores en el cargo acudieron a la contratación directa para este tipo de eventos y a nadie, que sepamos, se le ocurrió cuestionar desde la perspectiva penal o disciplinaria su actuar ni la legalidad de dichos convenios, máxime si como –con toda claridad reitera el texto de la ley 1133 de 2007– se trataba de "***apoyos económicos directos o incentivos***" para el sector agrícola. En efecto, entre 1993 y el cuatro de febrero de 2005 (día de la posesión de A.F.A.L.) los Ministros de Agricultura de Colombia suscribieron 132 convenios de manera idéntica (y sin licitación pública) con el IICA–OEA.

Por ello, cuando se lee de forma apacible la sentencia condenatoria examinada es viable concluir con BLANCO RESTREPO, en el primero de sus trabajos citado, que "*La Corte no abordó entonces seriamente el tema de la diferencia entre convenio y contrato lo que le impidió ver que se trata de dos instituciones jurídicas diferentes y por tanto no se percató de las consecuencias de dicha diferencia, no sólo frente a la normatividad que*

[8] SANÍN DÍAZ/PEÑARANDA VILLAMIZAR/RODRÍGUEZ CASTILLO. 5. *Guía de contratación estatal. convenios de cooperación internacional en el distrito capital*, p. 33.

se le aplica, sino también frente a la ausencia de tipicidad de la conducta investigada"[9].

Esta confusión, por supuesto, tiene graves repercusiones en el campo jurídico y pone sobre el tapete de la discusión la posibilidad de que por este aspecto se haya incurrido en una posible vía de hecho [entendida, en términos generales, dice la T-395 de 2010, como "una clara amenaza a la seguridad jurídica y a la estabilidad del ordenamiento jurídico", sea que ello se presente por emplear normas inaplicables (defecto sustantivo), se carece de supuesto probatorio para aplicar el supuesto legal (defecto fáctico), no se tiene competencia (defecto orgánico), o la actuación no corresponde al procedimiento establecido (defecto procedimental)], máxime si se ha dado por cierto lo que era y es objeto de intensos debates, tantos como para poner de manifiesto la existencia de una ***duda razonable*** sobre esta materia a la hora de valorar los múltiples medios de prueba que se arrimaron al debate; por eso, justo es recordarlo, el artículo 372 del Código de Procedimiento Penal vigente (Ley 906 de 2004), expresa: "*Las pruebas tienen por fin llevar al conocimiento del juez, más allá de duda razonable, los hechos y circunstancias materia del juicio y los de la responsabilidad penal del acusado, como autor o partícipe*".

En cualquier caso, se observa una aplicación indebida del artículo 410 del Código Penal lo que, en condiciones normales (y conste que este no es el caso) posibilita invocar el recurso extraordinario de casación como de forma clara dice el artículo 181 numeral 1° del Código de Procedimiento Penal, cuando ello es viable:

> *Procedencia.* El recurso como control constitucional y legal procede contra las sentencias proferidas en segunda instancia en los procesos adelantados por delitos, cuando afectan derechos o garantías fundamentales por: 1. **Falta de aplicación**, interpretación errónea, o aplicación indebida **de una norma del bloque de constitucionalidad, constitucional o legal, llamada a regular el caso**. (Negrillas por fuera del texto original)

[9] Blanco Restrepo, *Op. cit.*

V. CONSIDERACIONES SOBRE EL DELITO DE CELEBRACIÓN INDEBIDA DE CONTRATOS

Como producto de la confusión anotada entre los institutos *convenio* y *contrato*, la sentencia emitida por la Sala de Casación Penal de la Corte Suprema de Justicia –que se apoya en la acusación hecha por la Fiscalía General de la Nación–, opta por formular en contra del ex Ministro el cargo de celebración indebida de contratos por el que finalmente se le condena, en los siguientes términos:

> En el trámite y celebración de estos negocios jurídicos se desconocieron los principios de transparencia, planeación, economía y responsabilidad propios de la contratación estatal y los rectores de la función pública, por cuanto el entonces Ministro, aduciendo la aplicación del literal d, numeral 1° del artículo 24 de la Ley 80 de 1993, acudió a la contratación directa para celebrar los convenios aludidos, pese a que su objeto no comportaba el desarrollo directo de actividades científicas y tecnológicas. Por ello, la mención de este tipo de labores para justificar el procedimiento contractual utilizado, se muestra como la forma ideada para justificar la escogencia directa del IICA como cooperante y eludir la licitación pública a la cual debía acudirse dada la cuantía de los dineros comprometidos y el real objeto de los convenios, pues las labores pactadas se orientaron exclusivamente a administrar recursos del erario. De igual forma, respecto de cada uno de ellos se incumplió la obligación de elaborar los estudios previos que justificaran su celebración, de fijar los términos de referencia de manera completa, precisar la actividad de ciencia y tecnología sobre la cual versaban y su ejecución comenzó antes de que fueran suscritos. Las situaciones descritas, señaló la Fiscalía, además de los principios oportunamente enunciados, desconocen aquellos que de manera general rigen la función administrativa, los cuales son aplicables a la contratación pública como forma de actuación administrativa (folios 3 y 4, 133 y ss.).

Mucho más adelante lo reitera: "*Entonces, como el verdadero objeto de estos negocios jurídicos no permitía, por expresa prohibición legal, contratar de manera directa con el IICA, se recurrió a celebrarlos como convenios especiales de ciencia y tecnología para acudir a esa forma excepcional de elegir al contratista, con lo cual se obvió, de una parte, el deber de selección objetiva y, de otra, que en este concreto evento cualquier negocio*

jurídico celebrado por el Ministerio debía estar precedido de la licitación o concurso públicos, dada la cuantía de los recursos comprometidos" (folios 210-211; cursivas añadidas). Ello, por supuesto, máxime si está claro que los contratos eran de mayor cuantía (sumados, los aportes que correspondieron al Ministerio fueron de $ 287.000.000.000.00, mientras que el IICA y el INCODER debieron aportar montos adicionales, aunque mucho más elevados en el caso del segundo ente: ver folio 211, pies de página 148-151).

Por eso se asevera:

> *se concluye la estructuración, desde el punto de vista objetivo, del punible de contrato sin cumplimiento de requisitos legales, en concurso homogéneo, pues en el trámite y la celebración de los convenios especiales de cooperación técnica y científica 003 de 2007, 055 de 2008 y 052 de 2009 se vulneraron en la forma indicada los principios de legalidad, transparencia, economía y responsabilidad, rectores de la contratación pública, al igual que los deberes de selección objetiva y planeación surgidos de éstos, todo para cumplir el único interés que guió el proceso contractual: iniciar cuanto antes y de manera controlada, el gasto de los recursos* (folio 237; cursivas añadidas).

Como es apenas obvio, si se parte de esa construcción académica y se estima que ella es la única válida –cosa que no se corresponde con una administración de justicia penal neutral e imparcial–, es apenas entendible que desde el punto de vista objetivo se afirme que se configura el aspecto objetivo de la figura de celebración indebida de contratos por ausencia del cumplimiento de los requisitos legales que plasma el artículo 410 del Código Penal, cuando reza: *"El servidor público que por razón del ejercicio de sus funciones tramite contrato sin observancia de los requisitos legales esenciales o lo celebre o liquide sin verificar el cumplimiento de los mismos, incurrirá..."* (cursivas *añadidas).*

No obstante, el Salvamento Parcial de voto –con argumentos que no admiten replica– demuestra que los contratos realizados fueron de ciencia y tecnología y, en consecuencia, la contratación a llevar a cabo era la directa; así lo concluye en el folio 29:

> En este caso dada la conclusión a la que se arribó en el acápite anterior, **no debió acogerse el trámite de licitación pública para los convenios 003, 055 y 052, sino el de contratación directa**, pues siendo el objeto

la instalación de riego y drenaje para agricultores y esta actividad corresponde al concepto de ciencia y tecnología, se involucraban aquellos en la excepción del artículo 24 de la Ley 80 de 1993. Es la naturaleza, el objeto y la finalidad la que determina el régimen de la contratación y no la cita equivocada de algunos textos legales en el escrito contentivo de los convenios 003, 055 y 052 (negrillas añadidas).

Pero lo que bajo ninguna premisa es entendible es que la sentencia afirme que hubo dolo, que es el componente subjetivo de dicha construcción legal, porque la forma como se razona es la propia de quien acude a la presunción de dolo y, por ende, a una grosera forma de responsabilidad objetiva proscrita por la propia ley penal en cuyo artículo 12 se lee: "*Sólo se podrá imponer penas por conductas realizadas con culpabilidad. Queda erradicada toda forma de responsabilidad objetiva*"). Por eso, se asevera: "[...] los mismos medios de convicción enunciados muestran que el doctor *A.F.A.L.*, **de manera voluntaria y con conocimiento de la ilicitud, se apartó del ordenamiento jurídico para tramitar y celebrar los convenios cuestionados**" (folio 238; subrayas y negrillas añadidas). Y luego se añade: "*la prueba aportada acredita, no la violación a un deber objetivo de cuidado, sino la realización de una conducta eminentemente dolosa*" (folio 254; cursivas añadidas). En fin: "*Esa voluntad de imponer su criterio, a despecho de las pautas legalmente establecidas para la contratación estatal que conocía a cabalidad, es precisamente la que configura el dolo requerido para la estructuración del punible de contrato sin cumplimiento de requisitos legales que se le atribuye, en concurso homogéneo, por el trámite y celebración de los convenios 003 de 2007, 055 de 2008 y 052 de 2009*" (folio 259; cursivas añadidas).

En otras palabras, en contravía del programa penal de la Constitución que diseña un Derecho penal de acto y de culpabilidad (a las personas se les castiga por lo que hacen, no por lo que son) como se infiere, con toda claridad del texto del artículo 29 constitucional y de los artículos 1 a 13 del Código Penal, en el acápite destinado a las llamadas "Normas Rectoras de la Ley Penal colombiana", a A.F.A.L. se le condena sin que exista prueba "más allá de duda razonable" de su culpabilidad y se da por demostrado lo que era necesario probar, esto es, que actuó con dolo. De otra forma expresado: se incurre en una de las falacias más comunes

y peligrosas de la lógica y de la retórica que los expertos denominan como "llamada a la ignorancia", esto es "la declaración de que todo lo que no ha sido demostrado debe ser cierto, y viceversa"[10].

Esa es la razón por la cual el Salvamento Parcial de Voto, sostiene la tesis de la posible concurrencia de un *error de tipo* como causal excluyente de la tipicidad y, por ende, de la responsabilidad penal (folio 30):

> Pero, además, si alguna duda quedase con las referencias hechas respecto al objeto de los contratos, concurre una razón más para no estructurar juicios de responsabilidad penal en contra de quienes intervinieron en la celebración de los convenios demarras al hacerlo por la vía directa, entre ellos A.F. A.L., pues obró con la convicción errada de que esa era la modalidad contractual (directa y de ciencia y tecnología) llamada jurídicamente a aplicar y que debía seguirse en el caso de los convenios 003, 055 y 052 de 2007 a 2009 y no importa que el yerro fuere invencible, dado que la ilicitud contractual solamente admite la modalidad dolorosa (sic).

De allí, entonces, que fuese imposible configurar responsabilidad penal por la realización de la susodicha hipótesis de celebración indebida de contratos; ello, máxime si se demostró que con el IICA se hicieron con antelación diversas contrataciones con base en el mismo régimen, como el mismo Salvamento Parcial de Voto lo destaca (ver folio 31). Por eso, pues, concluye: "***En otros términos dicho, los convenios 003, 052 y 055 no se celebraron dolosamente para obviar la modalidad contractual establecida en la ley, ni esa fue la intención al entender que el objeto era de ciencia y tecnología***" (subrayas, cursivas y negrillas añadidas).

Es más, ya en el acápite que la providencia destina al estudio de la antijuridicidad y para demostrar la **dañosidad social de la conducta** de celebración indebida contratos, se dijo de manera perentoria:

> *La función pública se puso, entonces, al servicio de intereses particulares, los del Ministro, a través de la adopción de decisiones discrecionales, con las cuales se prohíja la corrupción y el desgreño administrativo, la inequidad y*

[10] Sagan, *El mundo y sus demonios. La ciencia como una luz en la oscuridad*, p. 235.

> *el exclusivismo, además del deterioro de la imagen del Estado, precisamente en sectores donde su acción debía fortalecerse en beneficio de los agricultores, abocados en su mayoría, a circunstancias que dificultan el ejercicio de su actividad e inciden de forma negativa en sus condiciones de vida* (folio 261).

O sea: en vez de hacer un estudio académico en torno al peligro o daño corrido por el bien jurídico –cosa que también se habría podido llevar a cabo en sede del juicio de tipicidad, atendidas las elaboraciones propias de la teoría de la imputación objetiva–, se acude a un discurso de tintes políticos con el que no se demuestra lo que se quiere probar; esto es, la falacia conocida como *post hoc, ergo propter hoc* (después de esto, luego a consecuencia de esto).

Incluso, y esto también es válido para el examen que se hace en materia del peculado por apropiación, las conductas (o a la conducta) se le imputan a A.F.A.L. a título de *coautor*, pero no se dice con quién o quiénes la (las) llevó a cabo, como era de esperar si se parte del texto del artículo 29 del C. P. en sus dos primeros incisos, que a la letra rezan: "*Es autor quien realice la conducta punible por sí mismo o utilizando a otro como instrumento. Son coautores los que, mediando un acuerdo común, actúan con división del trabajo criminal atendiendo la importancia del aporte*". En efecto, al hablar de la celebración indebida de contratos se indica: "se encuentra acreditada, en los términos del artículo 381 de la Ley 906 de 2004, la ocurrencia de la conducta constitutiva del punible de contrato sin cumplimiento de requisitos legales descrito en el artículo 410 de la Ley 599 de 2000, cometido en concurso homogéneo y sucesivo, atribuible al doctor *A.F.A.L.* en calidad de **coautor**" (folio 263) (negrillas añadidas). Incluso, más adelante se añade:

> "[...] de manera formal o material, aquellos que resultaron acusados en los otros procesos y el aquí investigado, conjugaron voluntades, pero dividieron tareas para la consecución del fin propuesto, bajo el entendido, no que el ex Ministro se valió de los otros partícipes, a título de instrumentos ciegos, sino que impartió órdenes o tomó la decisión que permitió direccionar la selección interesada hacia aquellos beneficiarios que se buscaba favorecer" (folio 348).

Por supuesto, cuando la defensa del condenado reclama –como es apenas obvio– que se le demuestre dónde está el "plan común"

que se predica, la Sala responde con evasivas, como la que aparece a folios 349:

> "[...] no es posible obligar a la Fiscalía que en este asunto concreto, donde se busca determinar la responsabilidad exclusiva del doctor *A.F.A.L.*, se alleguen todos los elementos de juicio o perfeccione la responsabilidad individual de los otros comprometidos y resulta, así mismo, contrario al principio de libertad probatoria reclamar que se tenga prueba especial de cómo se fraguó el plan común, con lo que se pasa por alto, entre otras cosas, que por lo general este tipo de acuerdos no cuentan con registro documental o terceros que lo corroboren" (subrayas añadidas).

En fin, entra en escena –de nuevo– la falacia denominada como "llamada a la ignorancia"[11]: no ha sido demostrado que es un coautor, pero sea afirma que eso es cierto. Con semejante manera de razonar (una verdadera **vía de hecho** que desquicia todo el ordenamiento jurídico), en contra de las leyes más elementales de la lógica y de la retórica, termina cualquier tipo de debate porque así no hay nada que discutir y la administración de justicia penal empieza a caminar por el despeñadero institucional, con el consiguiente sacrificio de la legalidad –¡Ese altar sagrado que depara el Estado de Derecho y que nadie puede profanar! –.

VI. CONSIDERACIONES SOBRE EL DELITO DE PECULADO

En la providencia, que habla de "un concurso de delitos de peculado por apropiación, en favor de terceros" (folio 264), se hace referencia al asunto en los siguientes términos:

> Los convenios especiales de cooperación técnica y científica números 003 de 2007, 055 de 2008 y 052 de 2009 permitieron que, de manera injustificada, particulares se apropiaran de dineros del Estado destinados a la política estatal Agro Ingreso Seguro.
>
> La apropiación se produjo en dos formas de concurso homogéneo diferentes, en cuantía que supera el valor de doscientos salarios

[11] Sagan, *El mundo y sus demonios. La ciencia como una luz en la oscuridad*, p. 235.

mínimos legales mensuales vigentes, razón por la cual la acusación se hace a términos del artículo 397-2 del Código Penal. Dichas formas de apropiación se concretaron:

1. A favor del Instituto Interamericano de Cooperación para la Agricultura, IICA, porque en desarrollo de los convenios 03 de 2007, 055 de 2008 y 052 de 2009, el Ministerio de Agricultura y Desarrollo Rural, MADR, canceló a esa entidad $17.111.945.238 por gastos de administración y operación, los cuales incluían algunos conceptos como divulgación del programa AIS, costos de operación y administración, al igual que imprevistos, los cuales ya habían sido pagados con ocasión de los acuerdos 078 de 2006, 018 de 2008 y 037 de 2009, vinculados con el programa AIS y ejecutados igualmente por el IICA en forma paralela con los enunciados.

Por esta razón, el Ministerio pagó doblemente al Instituto por los mismos rubros, esto es existió duplicidad de pagos por la misma actividad.

Además, el solo hecho de suscribir los convenios aludidos desconociendo las normas rectoras de la contratación estatal, implica que los rubros cancelados por administración carecen de sustento legal, con lo cual se estructura el punible citado.

2. A favor de beneficiarios del programa AIS, quienes recurrieron a presentar como proyectos separados, los vinculados a predios producto del fraccionamiento artificioso de sus fincas.

Otra modalidad consistió en que personas naturales y jurídicas accedieron dos o más veces a los beneficios del programa de riego, contrariando de manera expresa lo dispuesto en el artículo 92 de la Ley 1152 de 2007.

Una última forma consistió en que proyectos calificados como inviables por carecer de los requisitos señalados en la convocatoria, lograron la entrega de los beneficios mediante una nueva valoración favorable, efectuada por el *grupo de expertos*, instancia no prevista en el proceso de selección.

En las situaciones descritas, que comportan un concurso material, homogéneo y sucesivo de punibles de peculado por apropiación, se encuentran los grupos distinguidos como *J.F.V.L., CI Banapalma S.A., A.L.D., Orlandesca S.A. Biofrutos S.A., Inverjota S.A., Daabon, Agroindustrias JMD, Inagros S.A., Almaja S.A.* y *Riveros Páez*, respecto de quienes la acusación precisa el monto de recursos apropiados por cada uno de ellos.

> Estas conductas acaecieron porque los requisitos establecidos en los términos de referencia de las convocatorias, aprobados por el aforado, favorecían la entrega de subsidios a determinados sectores y, adicionalmente, no previeron ni establecieron controles para evitar la entrega irregular de recursos del Estado, que ascendió a $ 26.496.186.061" (folios 4-6 de la providencia; negrillas y subrayas añadidas).

Esta conducta punible, como se sabe, está descrita en el artículo 397 del C. P. –que antes de la adición realizada por el artículo 33 de la Ley 1474 de 2011–, rezaba así: "*El servidor público que se apropie en provecho suyo o de un tercero de bienes del Estado o de empresas o instituciones en que éste tenga parte o de bienes o fondos parafiscales, o de bienes de particulares cuya administración, tenencia o custodia se le haya confiado por razón o con ocasión de sus funciones, incurrirá* [...]"; y su inciso 2° añadía: "*Si lo apropiado supera un valor de doscientos (200) salarios mínimos legales mensuales vigentes, dicha pena se aumentará hasta en la mitad. La pena de multa no superará los cincuenta mil salarios mínimos legales mensuales vigentes*".

Pues bien, si se mira el proveído examinado (¡que en las transcripciones hechas más arriba habla, una y otra vez, de **convenios**, no de **contratos**, para mostrar la vía de hecho en la que se incurre!) se infiere lo siguiente:

En primer lugar, así aparezca muy obvio, lo que se debe demostrar dado que se trata de un peculado "por apropiación", es que el autor o autores han realizado la conducta que denota el verbo rector, esto es, se debe probar la apropiación y el monto exacto de la misma; sin ello, el juicio de tipicidad emitido no es factible. El texto del artículo 397 inc. 1°, ya transcrito, emplea el verbo *apropiarse* ("El servidor público que ***se apropie***..."), por lo cual para poder afirmar la tipicidad de la conducta es indispensable que el sujeto activo calificado no solo realice la acción, sino que se produzca el resultado, esto es, la *apropiación*.

Al respecto, debe señalarse que el Diccionario de la Real Academia de la Lengua Española, en su edición 22ª, tomo I, páginas 188 y 189, señala: "Apropiación. *Acción y efecto de apropiar o apropiarse*"; "Apropiar. Tr. Hacer algo propio de alguien. 2. Aplicar a cada cosa lo que le es

propio y más conveniente. 3. Acomodar o aplicar con propiedad las circunstancias o moralidad de un suceso al caso de que se trata... 5. Prnl. Dicho de una persona: tomar para sí alguna cosa, haciéndose dueña de ella, por lo común de propia autoridad. *Se apropió del vehículo incautado*"].

Por supuesto, si está claro que según la Ley 1133 de 2007 el programa de Agro Ingreso Seguro tenía dos componentes: el de los **apoyos económicos** y el de los **apoyos a la competitividad** los auxilios debían ser entregados a los beneficiarios para "[...] *proteger los ingresos de los productores durante un periodo de transición, en el cual se espera (ba) mejorar en competitividad y adelantar procesos de reconversión*" y para "*preparar el sector agropecuario ante la internacionalización de la economía, mejorar la productividad y adelantar procesos de reconversión, en todo el sector Agropecuario*", como reza el artículo 3° de la misma. Es más, el parágrafo 1° de ese artículo, también ya citado al comienzo, dispone que los dineros eran "***una ayuda que ofrece el Estado sin contraprestación económica alguna a cambio, por parte del particular***" y que "***se entregan*** *de manera selectiva y temporal, dentro del ejercicio de una política pública,* ***siendo potestad del Gobierno Nacional, seleccionar de una manera objetiva, el sector que se beneficiará con el apoyo económico directo o incentivo y el valor de los mismos***" (las negrillas, cursivas y subrayas son añadidas).

Así las cosas, si no era necesario acudir a los trámites de la Ley 80 de 1993 para celebrar un contrato y se podía acudir a un convenio (para el caso no importa si era de ciencia o tecnología), y con base en él se hicieron las inversiones porque "entregas" propiamente no hubo, no se entiende cómo se habla de "*apropiación*" en favor de terceros; ahora bien, si algunos de esos terceros (como se ha afirmado) dividieron ficticiamente sus predios para hacerse acreedores a mayores beneficios eso no significa que sea el hoy condenado quien deba responder por tales conductas, entre otras cosas, porque no se ha establecido que él se hubiese coaligado con aquellos para proceder de dicha manera.

Con razón, la doctrina que se ocupó del similar texto contenido en el artículo 133 del C. P. de 1980, al hablar del tema, dijo: "Por lo tanto, si apropiación, como lo explicamos, es efectuar con un bien actos de

dueño no siéndolo, o como suele decirse, comportarse frente a el *uti dominus*, mediante actos que reflejan de modo cierto la intención de no devolverlo (venta, donación, consumo, destrucción), y si, de otra parte, el modelo legal exige en forma expresa, como ingrediente o elemento subjetivo, el propósito de provecho para el agente o un tercero, no hay duda alguna de que el delito no se perfecciona mientras el peculador no haya realizado el acto de disposición y, de contera, obtenido el beneficio buscado, o haya hecho ingresar el respectivo bien al patrimonio de un tercero"[12].

Así mismo, en segundo lugar, si los dineros fueron empleados de la forma indicada no se puede pretender que la cuantía de lo "apropiado" sea el monto de los auxilios otorgados; por ello, resulta evidente que tampoco la sentencia logra determinar la cuantía del objeto de la apropiación en materia de peculado, requisito sin en el cual tampoco se puede hablar de la realización de una conducta típica de peculado en las condiciones ya dichas por lo cual el juicio de tipicidad emitido es, a todas luces, improcedente.

Además, en tercer lugar, se dice que la actuación del condenado fue dolosa porque "...Los medios de convicción recaudados en el debate muestran al doctor *A.F.A.L.* como coautor responsable, **a título de dolo**, de los delitos de peculado por apropiación, cometidos en la forma descrita" (folio 337; mayúsculas y negrillas añadidas), pero tampoco se indica cómo y de qué manera esos instrumentos de cognición demuestran el susodicho aserto; en otras palabras: de nuevo se da por demostrado lo que se tiene que probar y –como se supone probado– se asevera que lo está. Este vicio en el arte del buen razonar, que también afecta las leyes elementales de la lógica, es denominado por H. De Saint Albin, en su *Lógica Judicial*, como un *paralogismo o sofisma*:

> "Empecemos por averiguar la etimología de esta palabra, que importa definir bien, porque el sofisma es el mayor enemigo de la lógica. *Sofisma* viene del griego *sofisma*, que viene de *sofizo*, usar de engaños, y es un razonamiento sutil e insidioso, que sirve para inducir **en error, y que no tiene sino la apariencia de verdad (...). Cuando la falsedad se encuentra**

[12] Cfr. Peña Ossa. *Estudio del Peculado*, pp. 143 y 144.

en los razonamientos, ya porque los principios y las premisas no son verdaderos, ya porque de premisas verdaderas no se deducen consecuencias legítimas, tales razonamientos vienen a ser *sofismas* o *paralogismos*"[13].

Es más, el profesor italiano Nicola FRAMARINO DEI MALATESTA máximo exponente de la ciencia conocida como Critología, señala al referirse a este tipo de razonamiento:

> [...] es preciso que no olvidemos que el acusado no siempre es delincuente, y que constituye gravísimo error lógico en la apreciación de las pruebas presuponer probado lo que solo se quiere probar. Siendo el delito lo que se trata de establecer en el proceso penal, no puede admitírsele antes que las pruebas den base para aceptarlo[14].

Es más, llama de forma poderosa la atención que los mismos hechos sean valorados como CULPOSOS por la Procuraduría General de la Nación (véase, por ejemplo, providencia de segunda instancia del seis de diciembre de 2011, radicado: D-2009-878-183667) y como DOLOSOS por la Sala de Casación Penal de la Corte Suprema de Justicia. La Defensa insistió en ello, pero la providencia despachó el planteo como siempre sin responder: "[...] tal como se ha señalado en relación con actuaciones judiciales y/o administrativas adelantadas en otras jurisdicciones, el objeto del proceso disciplinario difiere del penal y parte de criterios distintos. Por ello, la calificación de un comportamiento puede comportar (sic) diferencias significativas, según el enfoque que se dé a la investigación" (folio 379; subrayas y mayúsculas añadidas).

El argumento, por supuesto, es sofístico. Es más: nadie duda que las actuaciones disciplinarias sean distintas a las penales, pero, no se olvide, ambas son expresión clara del ejercicio de la potestad punitiva del Estado y, adviértase, atenta contra todos los principios lógicos y los postulados más caros del Derecho sancionador el sostener que los mismos hechos puedan ser, a la vez, dolosos y culposos; allí, pues, se evidencia una vía de hecho que no tiene razón de ser.

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13 Cfr. CONCHA, *Elementos de pruebas judiciales*, pp. 352 y 353.

14 FRAMARINO DEI MALATESTA, *Lógica de las Pruebas en materia criminal*, p. 189.

Incluso, en cuarto lugar y también sin demostrarlo, más adelante se dirá que "la culpabilidad en este evento es igualmente clara" (folio 353; subrayas añadidas) como lo fue al hablar de la celebración indebida de contratos: "Los mismos aspectos considerados en torno a este punto al referirse al concurso de punibles de contrato sin cumplimiento de requisitos legales atribuido al doctor *A.F.A.L.* permiten considerar que la culpabilidad en este evento es igualmente clara" (folios 352-353: subrayas añadidas). En otras palabras: se dice que aquí hay culpabilidad porque también allí la había, pero allá tampoco se logró demostrar; se trata, pues, de una "culpabilidad" construida sobre sofismas con el irrespeto de elementales leyes lógicas.

Y para ello, sin volver a citar al profesor español José Cerezo Mir (véase folio 262, que menciona la sentencia del 22 de junio de 2011, emitida en el radicado 35943, donde se hace la cita del autor hispano), se retoman las mismas ideas (folio 353). Esto hablando del peculado por apropiación en favor de los particulares por $ 25.087'449,066 (suma percibida por los once grupos y por nadie más: véase folio 336) porque, por supuesto, también la providencia alude al peculado en favor del IICA (folio 353 y siguientes) que, según la Fiscalía, tuvo dos modalidades: a) duplicidad de pagos (folios 353 y ss.), y b) por la suscripción de los convenios (folios 366 y ss.) que, según dice la Sala de Casación Penal, no se configura (folio 367).

También, en quinto lugar, resulta harto extraño que el peculado se edifique solo en relación con las personas vinculadas a once grupos económicos pero nada se diga en relación con los pequeños beneficiarios, a quienes estaba destinada una contribución bastante elevada y que, en cualquier caso, así el asunto haya quedado en ciernes, como mínimo comportaba actos de ejecución que –con la misma lógica manejada– han debido ser objeto de investigación porque allí también debería hablarse de posibles infracciones a la ley penal así fuesen tentadas. Sin embargo, de forma inconsecuente y tendenciosa, ello no se hizo. En otras palabras: si hubo celebración indebida de contratos y peculado en relación con los miembros de los grupos empresariales, no es de recibo que en tratándose de los demás beneficiarios el actuar del ex Ministro sea lícito; para unos efectos ilícito, pero para otros lícito. Aquí

se observa, entonces, otro "camelo" o vicio en el arte del buen razonar, una falacia más que atenta contra la retórica y la lógica, que bien puede constituir una exclusión de medio o falsa dicotomía, porque "si no eres parte de la solución eres parte del problema"[15].

De igual forma, después de contrariar los postulados que orientan la normatividad penal vigente –para la cual está claro que dolo y culpa son formas de conducta y que el concepto de acción que se levante a partir del derecho positivo no puede desconocer la categoría de la finalidad[16], la sentencia en estudio parte de un concepto causal de acción acorde con el cual se entiende por conducta la causación de un resultado. Por eso, lo que en principio ha debido entenderse como una conducta de celebración indebida de contratos y de peculado (porque los auxilios dados a cada uno de los beneficiarios apenas son segmentos de un solo comportamiento guiado por una misma finalidad, la cual los arropa en una sola unidad de acción), se convierten en tantas conductas cuantos auxilios se concedieron; por ello se habla, según ya se dijo, de un "concurso de delitos de peculado por apropiación, en favor de terceros", que se entiende además como "*ilícitos de contrato sin cumplimiento de requisitos legales y peculado por apropiación, ambos cometidos en concurso homogéneo y heterogéneo*" (folio 387).

Razón, pues, tuvo el Salvamento Parcial de Voto defendido por uno de los Magistrados que, pese a admitir la comisión de la conducta de peculado en favor de terceros por fraccionamiento de predios, advierte –de forma coherente con lo que el supremo juez ha defendido en sus publicaciones de corte académico– que se trata de un delito continuado y no de una pluralidad de conductas típicas constitutivas de un concurso material homogéneo. En efecto, señala (folios 52-53 de dicha pieza): "*Discrepo de la calificación jurídica de la conducta al tratarla como un concurso homogéneo, pues a mi juicio el obrar de Andrés Felipe Arias (por su designio) corresponde a un delito continuado, ejecutó varios actos conforme a su interés, plan o propósito, pero manifestando siempre una unidad de acción, la cual constituye un delito único, criterio*

15 SAGAN, *El mundo y sus demonios. La ciencia como una luz en la oscuridad*, p. 239.
16 Sobre ello, in extenso, VELÁSQUEZ VELÁSQUEZ, *Op. cit.*, pp. 579 y ss.

del suscrito que no es de ahora ni para este caso, pues este ha sido mi criterio desde 1999, así lo expresé en la tercera edición de la obra que publiqué bajo el título "Estructura de la Tipicidad Penal" (Editorial Ibáñez, Bogotá, pág. 315 a 316)" (cursivas añadidas). Es más, el mismo Magistrado insiste:

> Que la consumación del peculado corresponde a un delito continuado, lo evidencia el análisis que hace la sentencia, en la que se admite que la conducta del procesado estuvo motivada por la misma finalidad, plan que mantuvo y estuvo presente en la acción óntica ejecutada, las diferentes manifestaciones hacen parte de la misma realidad jurídica delictiva, ejecutada por idéntico sujeto activo y respecto del Estado en calidad de sujeto titular del bien jurídico afectado y con la que se agotaron los elementos constitutivos del delito de peculado por apropiación (subrayas añadidas).

También, debe decirse que las constancias transcritas por esta pieza procesal son irrefutables (véase folios 54 y ss.); por eso, es que se ha producido un error evidente a la hora de llevar a cabo la adecuación típica de la conducta no solo por parte de la Fiscalía sino de la Sala de Casación Penal (véase folio 56). Dicho de otra manera: se dejó de aplicar el contenido claro y preciso del artículo 31 del Código Penal que no solo en su texto sino en su parágrafo hace referencia a la figura del delito continuado; en efecto:

> Artículo 31. *Concurso de conductas punibles.* El que ***con una sola acción u omisión*** o con varias acciones u omisiones *infrinja* varias disposiciones de la ley penal o *varias veces la misma disposición*, quedará sometido a la que establezca la pena más grave según su naturaleza, aumentada hasta en otro tanto, sin que fuere superior a la suma aritmética de las que correspondan a las respectivas conductas punibles debidamente dosificadas cada una de ellas. /Modificado, Art. 1º de la Ley 890 de siete de julio 2004. En ningún caso, en los eventos de concurso, la pena privativa de la libertad podrá exceder de sesenta (60) años. / Cuando cualquiera de las conductas punibles concurrentes con la que tenga señalada la pena más grave contemplare sanciones distintas a las establecidas en ésta, dichas consecuencias jurídicas se tendrán en cuenta a efectos de hacer la tasación de la pena correspondiente. /Parágrafo. En los eventos de ***los delitos continuados*** y masa se impondrá la pena correspondiente al tipo respectivo aumentada en una tercera parte.

Para nada, pues se ha tenido en cuenta lo dicho por la Corte Constitucional al referirse a dicha materia: "[...] *la teoría del concurso tiene como finalidad determinar conforme a la ley vigente, la teoría de unidad y pluralidad de conductas y tipicidades y los criterios de política criminal como proporcionalidad, razonabilidad, necesidad, autonomía del bien jurídico, non bis in ídem e igualdad material, una sanción punitiva adecuada que refleje el verdadero grado del injusto penal y la culpabilidad existente, según las distintas estructuras de pluralidad normativa de tipos penales*" (sentencia C-464 de nueve de julio de 2014, cursivas añadidas).

Y ello, no solo afecta la determinación de la sanción penal, sino que, incluso, se erige por la propia ley procesal penal en causal para invocar el recurso extraordinario de casación, como ya se dijo, justamente porque se tipifica una verdadera vía de hecho.

VII. LA FALTA DE CONGRUENCIA ENTRE ACUSACIÓN Y SENTENCIA; LA FALTA DE MOTIVACIÓN Y DE PRECISIÓN AL FORMULAR LOS CARGOS

Otro de los vicios que cabe atribuirle al cuerpo de la sentencia objeto de análisis son los enunciados en este acápite; baste lo afirmado por el Salvamento Parcial de Voto suscrito por el Magistrado FERNÁNDEZ CARLIER, quien a folio 22 del escrito señala de forma clara y perentoria:

> En los capítulos siguientes de este salvamento parcial de voto se hace un examen por el suscrito del supuesto fáctico comunicado en la acusación, lo demostrado en el juicio oral y lo decidido en la sentencia por la mayoría de la Sala, para poner de presente que, en algunas situaciones los cargos no se atribuyeron en la acusación con los requisitos que demandaba la motivación de los mismos como expresión del debido proceso, o también las circunstancias a las que se refirió el acusador no corresponden exactamente a las que se probaron y se estimaron en la condena, amén que en otras eventualidades los yerros diman del **FALSO JUICIO DE IDENTIDAD** con el que se valoran algunas pruebas, estimación probatoria que fue sugerida por la Fiscalía, todo lo cual incidió sustancialmente en el fallo (mayúsculas, negrillas y subrayas añadidas).

Obsérvese, pues, como se habla de la incongruencia entre la acusación y la sentencia y de la falta de precisión y motivación de los cargos; y, si ello es así, se pisotea el debido proceso legal con el consiguiente entorpecimiento del derecho de defensa, pues si algo está claro es que los procesados en el sistema penal colombiano tienen derecho a saber, con absoluta claridad, cuál o cuáles son los cargos que se les imputan, para poder ejercer a cabalidad el derecho a defenderse; así, por lo demás, lo ha dicho en múltiples oportunidades la jurisprudencia de la propia Sala de Casación Penal de la Corte Suprema de Justicia, en uno de cuyos más recientes y dicientes pronunciamientos, fechado el ocho de junio de 2011, radicado: 34022, se puede leer:

> [...] en un Estado Constitucional y Democrático de Derecho, la punibilidad de una hipótesis normativa tiene como exclusivo fundamento *la conducta concreta del sujeto* en la ejecución de un hecho previsto como delito, y la sanción correlativa tiene también a la vez como sustento *solamente ese hecho individual*, respondiendo tal concepto a lo que comúnmente se denomina *Derecho Penal de Acto* [...] De suerte que esa prerrogativa, constituye, sin lugar a duda, la primera y principal concreción para el desenvolvimiento del derecho fundamental de defensa, ya que el conocimiento del procesado acerca de los hechos que se le imputan y la correspondencia de estos en las normas que los tipifican como delitos, le permite ejercer la contradicción efectiva y equilibrada de la pretensión punitiva, sin que resulte admisible entonces una acusación tácita o implícita o aquella respecto de la cual no ha tenido ocasión de defenderse o refutar todos y cada uno de los elementos fácticos de la conducta punible atribuida [...] En conclusión, la atribución de un comportamiento reprochado como delictivo debe ser expresa, clara, precisa y circunstanciada, como lo demandan los Convenios Internacionales atrás evocados, resultando ineficaces, por obstrucción o imposibilidad de ejercer el derecho de defensa, las enunciaciones genéricas, ambiguas, vagas, oscuras u omisivas de los cargos.
>
> Y no puede constituir excusa válida o aceptable para cumplir con esas exigencias la complejidad de los sucesos o la cantidad de hechos investigados, dado que si no es posible delimitar de manera detallada el comportamiento atribuido a una persona y que como hecho histórico halla correspondencia en una hipótesis normativa penal, es porque en realidad no hay mérito para formular una acusación deviniendo

> improcedente la convocatoria del ciudadano para someterlo a un juicio en el que la *res iudicanda* persigue ser transformada en *res iudicata* penal, con todas las consecuencias que de ello se derivan [...] Consecuente con lo anterior, resulta indiscutible que la Fiscalía General de la Nación, a través de sus delegados, tanto en el acto procesal de formulación de la imputación como en el de la acusación, tiene la obligación de expresar los hechos jurídicamente relevantes, de manera precisa y clara con el fin de que el procesado y su asistencia técnica conozcan sin asomo de duda el concreto comportamiento (de acción u omisión) acaecido en el mundo real y la manera como el mismo se acomoda en los preceptos que definen la hipótesis normativa constitutiva del delito endilgado (relativos, entre otros aspectos, a formas de participación, modalidad de ejecución, circunstancias de agravación o atenuación, etc.) y las correspondientes consecuencias (naturaleza y magnitud de las sanciones a imponer).
>
> El cumplimiento estricto de ese requisito, como ya se advirtió, asegura el eficaz y efectivo ejercicio del derecho de defensa, pues el conocimiento claro de los hechos de connotación jurídico-penal atribuidos y sus correspondientes consecuencias, permite que debido a esa comprensión, desde la imputación, libre y voluntariamente pueda el procesado allanarse voluntariamente a los cargos o preacordar o negociar con la Fiscalía la aceptación de responsabilidad frente a los mismos con miras a lograr una rebaja de la pena, o continuar el trámite ordinario para discutir en el juicio los supuestos fácticos condicionantes de la hipótesis delictiva allegando pruebas en su favor o controvirtiendo las que se aduzcan en su contra (subrayas y destacados en el original).

Además, se ponen en evidencia falencias en la valoración de las pruebas que el escrito se atreve a calificar como "falso juicio de identidad". Y ello es de importancia porque, en el lenguaje propio de la casación (recurso que aquí no cabe porque el juzgamiento ha sido de única instancia; algo que además, desconoce los pactos mundiales de derechos humanos vigentes también en Colombia), ello da lugar a un **error de hecho** (que supone una violación indirecta de la ley sustancial) pues, como lo expresa la propia Sala de Casación Penal de la Corte Suprema de Justicia, "*en materia probatoria subyace una actitud frente a lo descriptivo, en el sentido de que se transgrede la información suministrada por la prueba o se finge la que ella pueda suministrar*" (cursivas añadidas), y ello lo generan tres falsos juicios: el de existencia, el de identidad y el falso

raciocinio. Aquí interesa el segundo que, añade esa corporación, es "en el que incurre el juzgador cuando en la apreciación de una determinada prueba le hace decir lo que ella objetivamente no reza, erigiéndose en una tergiversación o distorsión por parte del contenido material del medio probatorio, bien porque se le coloca a decir lo que su texto no encierra u haciéndole expresar lo que objetivamente no demuestra" (cfr. Providencia del 16 de junio de 2006, Radicado: 23395, folios 5 y 6; subrayas añadidas).

Así las cosas, está claro que para el Magistrado disidente hubo un falso juicio de identidad con lo cual, a la hora de apreciar los elementos de prueba, se les puso a decir lo que objetivamente no rezaban, esto es, uno de los eventos en los cuales es procedente interponer un recurso de casación como bien lo señala el artículo 181 de la Ley 906 de 2004, cuando él procede. Razón de más, por supuesto, como para pensar en que aquí se ha incurrido en una vía de hecho.

VIII. LA DETERMINACIÓN DE LA SANCIÓN PENAL

También, el examen de la sentencia muestra que a la hora de emprender el proceso de determinación de la sanción penal que se edifica en calificaciones jurídicas inexistentes o equivocadas (no solo porque no hubo celebración indebida de contratos y, de contera, peculado, sino porque esas figuras jurídico-penales se construyen a partir de un inexistente concurso delictual de carácter homogéneo y sucesivo, con olvido claro de la figura del delito continuado), al Ex Ministro A.F.A.L. se le tasó la misma de la manera más severa posible. Fruto de ello es que se le deduce, de forma contradictoria e ilegal -en contravía de la jurisprudencia de la propia Sala-, la circunstancia de agravación contenida en el numeral 9° del artículo 58 por su sola condición de servidor público; véase lo dicho en el proveído:

> Sobre el particular debe indicarse que como ha sido decantado por la Sala, por regla general la condición de servidor público no apareja necesariamente la aplicación de esta causal, pues no siempre la calidad aludida implica tener una posición distinguida en la sociedad. Sin embargo, en este caso, es claro que la condición de Ministro de Estado

ejercida por el doctor *A.F.A.L.* sí comporta una posición de preeminencia social (folio 388; subrayas añadidas).

Se escarnece, pues, todo lo dicho por esa corporación sobre esta materia en la que reivindica el llamado *principio de la prohibición de la doble valoración* (véanse sentencias de 23 febrero 2005, radicado: 19762; trece abril 2005, radicado: 21447; 25 mayo 2005, radicado: 20281; diez agosto 2005, radicado: 21546; 29 septiembre 2005, radicado: 23568; 27 octubre 2005, radicado: 18788, entre muchas otras). Esa forma de razonar incide en el proceso de determinación de la sanción penal sobre todo porque, una vez reconocida la buena conducta anterior (artículo 55-1 del C. P.; véase folio 388), al condenado se le deducen dos circunstancias de agravación (las contenidas en los numerales 9° y 10° del artículo 58).

Como es obvio, el mandato contenido en el artículo 61, inc. 3º del Código Penal, en el sentido de que a la hora de determinar la sanción penal correspondiente se debe tener en cuenta la "naturaleza" de las susodichas situaciones, obliga al juzgador a acatar el postulado mencionado –también conocido con el nombre de "principio de la inherencia" o, sencillamente, entendido como una manifestación del postulado del *non bis in idem*, por lo que sirve para resolver posibles casos de concurso aparente de tipos o de normas penales con base en el principio de la especialidad– a cuyo tenor no se pueden tomar en consideración aquellas "circunstancias" de mayor o de menor punibilidad que ya han sido previstas como tales al redactar la respectiva norma penal –lo que entrañaría, además, tener en cuenta consideraciones propias de la prevención general positiva y negativa al momento de individualizar la pena en el caso concreto, prohibidas constitucional y legalmente–, trátese de un supuesto de hecho básico (como aquí sucede con la calidad de servidor público prevista en el artículo 397, inc. 1º, cuando describe el tipo de peculado por apropiación, elemento que no puede ser tenido de nuevo en cuenta como expresamente lo dispone el numeral 12 del artículo 58) o de uno complementado agravado o atenuado (*verbi gratia*: si se comete un homicidio "valiéndose de la actividad de un inimputable", al tenor de lo dispuesto en el artículo 104, numeral 5, no se puede tener en cuenta

el numeral 11 del artículo 58: "ejecutar la conducta punible valiéndose de un inimputable")[17].

Es de tal trascendencia la observancia del apotegma en examen que, tanto al iniciar la redacción del artículo 55 como la del artículo 58, el legislador expresamente lo consigna al utilizar expresiones que no dejan ninguna duda al respecto: "son circunstancias de menor punibilidad, *siempre que no hayan sido previstas de otra manera* [...]" y "son circunstancias de mayor punibilidad, *siempre que no hayan sido previstas de otra manera*". Es más, al redactar algunas de esas situaciones, expresamente se reitera la observancia del postulado de la inherencia como, según ya se mostró, sucede en el numeral 12 del artículo 58: "[...] salvo que tal calidad haya sido prevista como elemento o circunstancia del tipo penal"; en este texto, obsérvese, se emplea otra expresión como sinónima de "circunstancia" y de "causal": "elemento".

Incluso, si se parte del presupuesto de que el delito de peculado realizado no fue sino uno –como lo impone el concepto de acción final que es el plasmado en el C. P.– y que el condenado es un mero "autor" no un coautor (como afirma la providencia sin demostrar con quién o quiénes lo hizo) parece claro que la determinación de la sanción penal para este evento debe ser la que señala el artículo 397 inciso 2° caso en el cual el ámbito punitivo de movilidad es: "[...] de 77 meses y 7 días, los cuales determinan un primer cuarto de 96 meses a 173 meses y 7 días", como se dice (folio 391), del que se ha debido partir; amén de las demás sanciones allí dispuestas.

Así mismo, si se entiende que no se celebraron indebidamente tres contratos sino uno solo, la sanción para este comportamiento específico se ha debido tasar "De acuerdo con el artículo 410 del C.P., modificado por el artículo 14 de la Ley 890 de 2004, la pena para este ilícito se extiende de 64 a 216 meses de prisión, multa de 66.66 a 300 salarios mínimos legales mensuales vigentes e inhabilitación para el ejercicio de derechos y funciones públicas de 80 a 216 meses" (folio 394).

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17 Velásquez Velásquez, *Op. cit.*, p. 1324.

Por supuesto, como en esa hipótesis se hablaría de un concurso ideal porque la conducta encaja en dos tipos penales distintos, el mínimo del cual se debió partir es el de 96 meses de prisión que se deben incrementar como lo ordena el artículo 31 del C.P. Ello, sin embargo, no se hizo y en su lugar se dio aplicación a la que se puede llamar la multiplicación de los panes y de los peces punitiva, gracias a lo cual se impuso una sanción desmesurada. Para acabar de ajustar, lo condenan imponiéndole los incrementos que hace la Ley 890 de 2004 a la conducta de peculado cuando esa imputación no se le hizo en el pliego de cargos; muy claro al respecto, es el Salvamento Parcial de Voto (folios 58, 62 y 64) cuando concluye:

> Si como viene de verse en la citada jurisprudencia, la Fiscalía en la acusación en el proceso de A.F.A. no hizo de manera completa las citas normativas, no precisó los artículos del Código Penal y las normas que complementaban la sanción para agravarla y por ende omitió determinar la circunstancia de agravación genérica del tipo sancionatorio y que corresponde al supuesto del artículo 14 de la Ley 890 de 2004, **no hay duda que la sanción impuesta en el fallo proferido por la Sala resulta incongruente** (folio 66; subrayas y negrillas añadidas).

IX. A MANERA DE SÍNTESIS

En fin, ya para concluir, de todo lo dicho se puede colegir lo siguiente:

1- Un análisis desprevenido de los hechos, tal y como se muestran en los documentos examinados, permite colegir que la realización de la conducta punible de celebración indebida de contratos es en extremo discutible y que, cuando menos, atendido el debate jurídico existente sobre el asunto, la duda ha debido imponerse en favor del reo con la consiguiente absolución por ese cargo, como lo demandó el Delegado de la Procuraduría General de la Nación en el seno de la Audiencia Pública.

2- En concordancia con lo anterior y, sobre todo en atención al contenido claro y preciso de la ley 1133 de 2007, parece evidente que quien en desarrollo de los convenios 03 de 2007, 055 de 2008 y 052 de

2009 –suscritos entre el Ministerio de Agricultura y el IICA, que todo indica que sí tenían por objeto el desarrollo de actividades de ciencia y tecnología–, haya ordenado la entrega de los auxilios de que da cuenta esa normatividad no puede incurrir en la conducta de apoderarse de bienes del erario, máxime si se trataba de auxilios autorizados por la propia Ley consistentes en ***apoyos económicos directos*** o en ***apoyos a la competitividad*** que podían ser manejados por la Administración a condición de que mediara una selección objetiva (véase artículo 3°).

3- Agréguese que, pese a las afirmaciones en contrario, no está demostrado el actuar doloso del agente y todo indica que ese componente subjetivo de las figuras delictivas –después de hacer ejercicios contrarios a toda lógica y a la retórica–, se presume; se acude, pues, a una grosera forma de responsabilidad objetiva proscrita por la propia ley penal (artículo 12 del Código Penal).

4- Así mismo, cuando la sentencia criminaliza esa actividad incurre en una desigualdad manifiesta porque solo se entiende como punible el comportamiento de suministrarle esos auxilios o apoyos a personas pertenecientes a once poderosos grupos económicos, pero no lo es cuando se trata de los auxilios dispuestos para pequeños propietarios a quienes se debían suministrar en las mismas condiciones y con cuantías también muy elevadas.

5- Suscita perplejidad, máxime si en ambos casos se trata del ejercicio de la potestad punitiva del Estado sometida tanto a unos controles formales como materiales (principios que orientan el llamado programa penal de la Constitución), que los mismos hechos al ser valorados en las instancias disciplinaria y penal tengan un contenido subjetivo tan distinto, culposo o imprudente en un caso y doloso, intencional y de mala fe, en el otro.

6. Así mismo, si se tienen en cuenta los principios informadores del concurso de personas en el delito incorporados a la ley penal (artículos 28-30 y 61) y defendidos por la doctrina, llama la atención que en el caso particular se califique la conducta del autor declarado de las conductas como la propia de un coautor y, en ningún caso, se indique con quién o quiénes se coaligó (el llamado acuerdo común), cuál fue el reparto de

funciones y, por supuesto, como exige el artículo 29 del C. P., cuál fue el aporte. Se llega, pues, a la construcción de una figura que no tiene respaldo en la ley penal: la de ser coautor sin coautor; la del coautor que actúa solo. En fin, por esta vía, se observa una evidente falta de aplicación de la ley sustancial y un quebrantamiento burdo de todas las construcciones legales y dogmáticas en esta materia.

7. De igual forma, dado que se habla de la falta de aplicación de la ley penal sustancial por parte del tribunal sentenciador de única instancia, también se debe poner de presente la no aplicación del contenido del artículo 31 del Código Penal en cuanto prevé la figura del delito continuado que, ni si siquiera, se tuvo en cuenta. Otro tanto debe decirse, de la falta de aplicación de los artículos 21-24 del Código Penal en cuanto, al asumir un concepto de conducta que recoge los postulados del finalismo welzeliano, no fueron observados a la hora de valorar los hechos que fueron calificados como un "concurso homogéneo y sucesivo" de conductas de celebración indebida de contratos y de peculados, cuando era evidente que se trataba de una sola conducta. Se optó, pues, por la fórmula ilegal de los concursos materiales de delitos en detrimento de la del concurso ideal.

8. Ello, por supuesto, ha incidido en el proceso de determinación de la sanción penal que, con esos puntos de partida, se ha endurecido al máximo, previa una serie de análisis que en apariencia –y solo en apariencia– se compadecen con los dictados del artículo 61 del Código Penal pero que, en realidad, terminan por desquiciar esos presupuestos toda vez que el ejercicio dogmático hecho en el seno de la Teoría del Delito es a todas luces equivocado.

9. Como síntoma de lo acabado de expresar, se debe mencionar la forma franca como se desconoce el principio de la prohibición de la doble valoración o de la inherencia, cuando en el proceso de determinación de la sanción se tiene en cuenta como circunstancia de agravación la calidad de servidor público del condenado que, ya se dijo, forma parte de la descripción típica. Algo prohibido por la ley (artículos 55 y 58) y que, de contera, desconoce los desarrollos jurisprudenciales de la propia Sala de Casación Penal que ha emitido la condena final, como ya se indicó.

10. Tampoco pueden pasarse por alto las vulneraciones al debido proceso y, más concretamente, al derecho de defensa, cuando no se observa a cabalidad el postulado de la congruencia entre la resolución de acusación y la sentencia, como muy bien lo mostró el Salvamento Parcial de Voto suscrito por uno de los magistrados.

11. Es más, en la misma línea de análisis se deben destacar los yerros en la valoración probatoria, los mismos que han llevado al Magistrado disidente a plantear que se ha incurrido en falsos juicios de identidad que generan verdaderos errores de hecho, con todas consecuencias desde el punto de vista procesal y probatorio que ello supone.

12. Adicional a lo ya dicho, se observa que la investigación de los hechos no ha cobijado a todos los que intervinieron en ellos (que no son, por supuesto, aforados) y todos los esfuerzos se han dirigido hacia la persona del Ex Ministro. Incluso, resulta sorprendente que solo ahora se criminalice la susodicha actividad cuando es evidente que, antes del paso de A.F.A.L. por el Ministerio, los antecedentes que datan de 1993 indican que antes se realizaron 132 convenios similares que nunca fueron cuestionados por ninguno de los organismos de control.

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OTROS TÍTULOS DE LA COLECCIÓN

PABÓN GÓMEZ, GERMÁN

DE LA CASACIÓN PENAL EN EL SISTEMA ACUSATORIO

CADAVID LONDOÑO, PAULA

COAUTORÍA EN APARATOS ORGANIZADOS DE PODER DE CARÁCTER DELINCUENCIAL

MONTIEL, JUAN PABLO

ANALOGÍA FAVORABLE AL REO
FUNDAMENTOS Y LÍMITES DE LA ANALOGÍA *IN BONAM PARTEM* EN EL DERECHO PENAL

FAKHOURI GÓMEZ, YAMILA

¿QUÉ ES EL TERRORISMO?
UN INTENTO DE PONERLE SÁBANA AL FANTASMA

POSADA MAYA, RICARDO

DELITOS CONTRA LA VIDA Y LA INTEGRIDAD PERSONAL. TOMO I
EL HOMICIDIO, EL GENOCIDIO Y OTRAS INFRACCIONES

DELITOS CONTRA LA VIDA Y LA INTEGRIDAD PERSONAL. TOMO II
DE LAS LESIONES PERSONALES, ABORTO, LESIONES AL FETO, ABANDONO DE PERSONAS, OMISIÓN DE SOCORRO, MANIPULACIÓN GENÉTICA Y DELITOS DE DISCRIMINACIÓN

La presente obra de estudios de jurisprudencia constituye un esfuerzo continuo realizado por los profesores de derecho penal de las facultades de derecho de la Universidad de los Andes y de la Sergio Arboleda (Bogotá, Colombia), algunos de ellos colombianos y otros extranjeros invitados, y, desde luego, jueces y abogados en ejercicio.

La idea fundamental es analizar, de manera seriada, algunas sentencias escogidas de la Sala de Casación Penal de la Corte Suprema de Justicia colombiana, para acercar la jurisprudencia de esta corporación, como una herramienta imprescindible, a la realidad y práctica de los tribunales, a las aulas de clase y al ejercicio profesional, con el objetivo de generar nuevo conocimiento.

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H.

White Paper
On the Case of

Andrés Felipe Arias Leiva

Citizen of the Republic of Colombia

v.

Government of the Republic of Colombia

Authored By:
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October 31, 2017

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TABLE OF CONTENTS

Executive Summary

Colombia is widely perceived as one of the more democratic and stable countries in Latin America. However, Colombia has also been plagued by human rights abuses, narcotrafficking, and paramilitary groups. Among the documented human rights abuses, arbitrary arrest and detention of political opponents is becoming more prevalent in a country increasingly divided by political ideology. The Center for Research and Popular Education/Program for Peace (CINEP/PPP) has reported 87 cases of arbitrary detention in Colombia. This problem may be attributed to the "subornation and intimidation of judges, prosecutors, and witnesses," which impedes overall judicial fairness and transparency in the country.

Some of these arrests occurred in the context of the 2010 presidential election and subsequent fallout between President Juan Manuel Santos and President Álvaro Uribe. Although Santos had served in Uribe's cabinet as Minister of Defense, once Santos was elected in 2010, he broke from Uribe on many key issues – particularly Uribe's stance against the FARC guerrilla movement. Santos' pivot was seen as a "tacit critique of his predecessor" and led to a rupture within their party, *Partido Social de Unidad Nacional* (the Social Party of National Unity). As a result, Uribe founded the *Centro Democrático* (Democratic Center) party and has since become one of Santos' greatest opponents, re-joining the Senate and acting as the leader of the opposition.

Santos' administration has responded to this opposition by publicly persecuting many close allies of Uribe. The 2011-2016 Attorney Generals and a politicized faction of the Supreme Court have and continue to illegally prosecute, convict, and imprison individuals who have ties to Uribe and his prior administration on the basis of pre-textual charges and false witnesses – and despite their blatant lack of impartiality to prosecute and judge any cabinet member, high-ranking official or family member of Uribe.

Among those that have been subjected to politically-motivated investigations, prosecutions, and/or detentions are: Uribe's family members Santiago Uribe, Tomás Uribe, and Jerónimo Uribe; the former High Commissioner for Peace of Colombia under President Uribe, Luis Carlos Restrepo; the former Chief of Colombia's Administrative Department of Security under President Uribe, Maria del Pilar Hurtado; the former Colombian Ambassador to the Organization of American States under President Uribe, Luis Alfonso Hoyos; the former Vice President of Colombia under President Uribe, Francisco Santos; the former Chiefs of Staff under President Uribe, Alberto Velasquez and Bernardo Moreno; the former Minister of Health under President Uribe, Diego Palacio; the former Minister of the Treasury under President Uribe and 2014 Presidential Candidate, Oscar Ivan Zuluaga, as well as his son and campaign manager David Zuluaga; and the former Minister of Agriculture under President Uribe and 2010 Presidential Candidate, Andrés Felipe Arias Leiva.

Andrés Felipe Arias Leiva was born in Colombia on May 4, 1973. He is married to Catalina Serrano and they have two children, Eloisa, 8, and Juan Pedro, 5. Arias and his family currently reside in the US and are seeking asylum based on the persecution Arias suffered at the hands of the Colombian government and judiciary as a result of his political opinions and close relationship with Uribe. Since Arias' arrival in the US, Colombia has continued to persecute him by pressing for his extradition.

Prior to becoming involved in politics, Arias was an economist. In February 1994, Arias enrolled at the *Universidad de Los Andes* in Bogotá where he graduated *magna cum laude* in December 1998 with a BA in Economics. While at the *Universidad de Los Andes*, Arias interned with the Central Bank of Colombia in June 1996. In 1998, with the sponsorship of the Central Bank of Colombia, Arias enrolled at UCLA as a PhD student. While at UCLA, Arias completed the required dissertation for an MA from the *Universidad de Los Andes* and obtained another MA in economics from UCLA. In the summer of 2001, he interned at the International Monetary Fund in the Policy Supervision and Development Division. In July 2002, he successfully completed his PhD studies in economics at UCLA.

Also during his time at UCLA, Arias became increasingly interested in politics. In the summer of 2000, when Álvaro Uribe was first running for president, Arias became one of Uribe's economic advisors. Upon Arias' graduation in 2002, the newly-elected President Uribe appointed Arias as Director of Macroeconomic Policy at the Ministry of the Treasury. On February 16, 2004, Uribe appointed him Vice Minister of Agriculture. As Vice Minister, Arias headed the Colombian Agricultural Negotiating Team during the Free Trade Agreement (FTA) negotiations with the US. On February 4, 2005, Arias was appointed Minister of Agriculture under Uribe.

As Minister of Agriculture, Arias worked with Uribe and other officials to devise a strategy to make the Colombian agricultural sector more competitive in the international market, given that the FTA with the US had put Colombian farmers in competition with highly subsidized US farmers, threatening economies in some rural areas of Colombia. The program that was ultimately developed was *Agro Ingreso Seguro* (AIS). A major component of the AIS program was a competitive irrigation subsidy. Instead of administering the subsidy program itself, the Ministry of Agriculture sought the technical support of the Organization of American States' Inter-American Institute for Cooperation on Agriculture (OAS-IICA), whose help had similarly been requested by prior Ministers of Agriculture on more than 130 occasions. From 2007 until 2009, OAS-IICA supported and managed the irrigation subsidy program; in particular, OAS- IICA identified the potential beneficiaries, evaluated program applications, and approved or denied those eligible for the subsidy. During this time, the Government was never accused of any wrongdoing by domestic or international institutions regarding the AIS program, and neither was Arias.

In February 2009, as then President Uribe's second term was coming to an end, Arias resigned as Minister and announced that he would run for president in 2010 with the platform of continuing Uribe's policies. As Uribe's chosen successor, Arias was extremely popular. Uribe was a popular president in Colombia and Arias' close personal and political relationship with the former president increased his own popularity. As the primaries approached, Arias was the leading conservative candidate in public polling.

The popularity Arias received led him to become the target of political adversaries. In September 2009, Arias was falsely accused of misappropriating funds in favor of his campaign from the AIS irrigation subsidy program after news broke that wealthy landowners had manipulated the program to their advantage. These accusations overshadowed the primaries and caused Arias to lose to Noemí Sanín in March 2010. Five days prior to the primaries, the

Attorney General's Office had actually completed its private investigation into the very same allegations of misappropriation and written a report *clearing* Arias of any wrongdoing. The existence of this report and its conclusions would not be made public until a Colombian newspaper obtained it a year-and-a-half later. With Arias out of the running, Santos easily won the presidential election in June 2010.

Although Arias had already been cleared of wrongdoing by the Attorney General's Office, the General Comptroller's Office conducted a separate investigation and, in August 2010, issued its report clearing Arias of any wrongdoing while identifying private individuals as the source of fraud in the AIS irrigation subsidy program. Similarly, in December 2010, the Administrative Court of Cundinamarca held hearings on the issue and found that private individuals had misled the Colombian government and Ministry of Agriculture in order to illegally receive irrigation subsidies. In January 2011, the National Electoral Council concluded an independent investigation into Arias' campaign financing by announcing that there had been no inappropriate or fraudulent contributions and refuting allegations to the contrary.

Even though Arias had already been directly or indirectly cleared of wrongdoing by various government entities, Santos' newly-appointed Attorney General Viviane Morales Hoyos decided, as one of her first actions, to initiate a new investigation into Arias and the AIS program. Even prior to her appointment, Morales, as a panelist on a radio show, had publicly stated her bias against Arias due to the AIS program.

Beyond the clear bias against Arias, Morales' appointment was controversial because of her husband's reported ties to criminals, paramilitaries, and narcotraffickers. In fact, Arias' defense counsel was the lead Supreme Court Justice that, more than a decade earlier, had led the investigation against Morales' husband that resulted in his conviction and incarceration. In June 2011, now acting as Attorney General, Morales announced that Arias was to be charged with two counts of embezzlement and entering into a contract with OAS–IICA without meeting the legal requirements.

Arias' case began on July 21, 2011. Instead of holding his indictment hearing in a standard room of the Superior Tribunal of Bogotá, Judge Orlando Fierro Perdomo held it in the Tribunal's theater room, filled with supporters of the Attorney General and media representatives who broadcasted the hearing live. During the hearing, Attorney General Morales broke from procedure and disclosed all of Arias' personal information on live television – an especially aberrant act given that Arias was receiving state protection due to security risks. The hearing ended on July 26, 2011, and, when Judge Fierro ordered Arias to be held in preventive detention, the Attorney General's supporters burst into applause.

Judge Fierro, who presided over the hearing, also had a proven conflict of interest that was not disclosed until several weeks after the hearing. Judge Fierro's mentor and best man at his wedding was Justice Yesid Ramirez, a former Supreme Court Justice who, as President of the Supreme Court, openly clashed with President Uribe. Their disagreements stemmed from political differences surrounding the relationship between the Supreme Court and the Constitutional Court, as well as accusations that Justice Ramirez had ties to narcotraffickers. As a result of these disagreements, the Supreme Court led by Justice Ramirez began a persecutory campaign against President Uribe and his allies.

Arias spent 23 months in preventive detention. He was denied bail three times based on legally insufficient and highly unusual arguments. On June 14, 2012, Arias' trial began at the Supreme Court. Because he had held a Cabinet-level position and was being charged with crimes associated with his office, his case went immediately before the Supreme Court. On June 14, 2013, an independent judge of the Superior Tribunal of Bogotá ordered Arias' release after finding that there was no justification for his detention during his trial.

Now aware of the very real danger of political persecution in Colombia, Arias applied to renew his US B-1/B-2 visa at the US Embassy in Bogotá. Initially, Arias' application was rejected on the basis of the legal proceeding that he was facing. However, after connecting with officials at the Embassy through Uribe, he was able to have his application reconsidered. Embassy officials requested a document from Arias explaining the charges of his case. In October 2013, after reviewing the document that Arias had prepared, the US Embassy approved his visa renewal.

After receiving his visa, Arias was called by the Political Office of the Embassy for a meeting, which took place on the Embassy's premises a few days later. Another meeting at the Embassy followed a few months later, in early 2014. During these conversations, the Embassy acknowledged that the United States was aware that former Uribe officials were being targeted through politically-motivated judicial proceedings – often at the level of the Supreme Court. The general awareness of the US Embassy of these issues has been further confirmed by WikiLeaks cables.

The proceedings against Arias concluded in February 2014, at which time the Inspector General's Office, an independent constitutionally-created public institution that oversees the conduct of public officials, requested the Supreme Court to dismiss the charges against Arias for lack of evidence. However, the Court refused. Instead, it postponed the verdict three times for several months while the 2014 presidential campaign was taking place. During such campaign the candidate of Uribe's and Arias' *Centro Democrático* party (former Minister of Finance Oscar Ivan Zuluaga – who has since also been investigated) had defeated incumbent President Santos and all other candidates on the first vote. A run-off was to take place on June 15, 2014.

On June 13, 2014, two days prior to the run-off and with incumbent President Santos losing in the polls to Zuluaga, the Supreme Court of Colombia illegally leaked the news that Arias was going to be convicted — despite the fact that the Justices had not yet met to discuss the verdict. On that same day, the Inspector General's office concluded a more than two–year investigation into Arias' personal and family finances and publicly cleared him of any criminal wrongdoing.

After hearing about the Supreme Court leaks, and fearing an unfair conviction, Arias contacted the US Embassy on the same day to reconfirm he would be able to enter the United States. Arias fled Colombia for the United States on that same night of June 13, 2014. His family followed just a few days later. As expected, on July 17, 2014, despite the lack of evidence, the Supreme Court convicted Arias *in absentia* of the charges against him – contracting without fulfilling the legal requirements and embezzlement by appropriation in favor

of third parties (not in favor of himself) – and sentenced him to 17 years and 5 months in prison and a fine of 50,000 Colombian legal monthly minimum wages, or $15,398,134.

In an unprecedented act, the Supreme Court openly recognized in its ruling against Arias that there were no witnesses or documentary evidence with which to prove the supposed "criminal plan" for which he was being convicted. Moreover, the Supreme Court's ruling against him also established that there was no diversion of public funds in favor of Arias or his campaign. In sum, the Supreme Court convicted Arias without evidence, blaming him for an "embezzlement" that lacked any *quid pro quo* whatsoever, and for adhering to the Ministry's longstanding custom of seeking the technical cooperation of the OAS-IICA. At that time, Colombian law did not provide a means for appeal in cases considered in the first instance by the Supreme Court, and so Arias was unable to appeal the decision. A later change to the Colombian judicial system fixed this issue and should have allowed Arias to appeal his case, but the Supreme Court denied its retroactive application.

Arias' trial and conviction were used as tools by the Colombian government to persecute him for his political opinions and affiliations and to neutralize the political threat he posed to the Santos administration. As punishment for exercising his rights to freedom of expression and opinion, freedom of association, and his right to participate in public affairs and be elected to office, the Colombian government targeted Arias with trumped up charges of misconduct while in office. Throughout his detention, trial, and conviction, Arias was deprived of the right to appeal his conviction, the right to the presumption of innocence, and the right to be free from cruel and unusual punishment. He was also deprived of the right to an independent and impartial judiciary: not only did several of the Supreme Court Justices who convicted him have a conflict of interest in his case hold blatant biases against him because of his affiliation with the Uribe Administration, but recent developments in Colombia have unearthed a far-reaching corruption scandal within the Supreme Court allegedly involving a plurality of the Justices who convicted Arias. Between August and September of 2017, the US Drug Enforcement Administration (DEA) released wiretap recordings seemingly implicating at least five of these Justices.[2] Given the information in the DEA wiretap, it appears that these Justices in an unknown number of circumstances did not act according to the rule of law but rather may have been subject to rule based on financial payments made to them, thereby demonstrating their rulings were not necessarily independent nor impartial.

Arias is currently seeking asylum in the United States, and yet, the persecution continues. Shortly after his sentencing, Colombia requested that the United States extradite Arias back to Colombia to serve out his arbitrary 17-year-and-5-month prison sentence. Despite the fact that the United States only extradites individuals under valid treaties, and that Colombian President Juan Manuel Santos and several of his cabinet members have publicly stated there is no extradition treaty between Colombia and the United States in force, the US government is actively pursuing Arias' extradition on behalf of Colombia. On September 28, 2017, US Federal

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[2] *Exclusiva: Caracol Radio revela apartes de las grabaciones de la DEA entre Leonardo Pinilla y Alejandro Lyons*, CARACOL RADIO, Aug. 31, 2017, *available at* http://caracol.com.co/radio/2017/08/31/judicial/1504137993_008558.html

Judge John O'Sullivan cleared Arias' extradition to Colombia.[3] Arias' defense vowed to fight the decision, stating that "the [US] government made a mistake and they do not know how corrupt and politicized his case has been."[4] The defense has filed an appeal and has been granted 30 days to form their argument.[5]

The ongoing persecution by the Colombian government, and the extraordinary circumstances that denied Arias his right to appeal, have led Arias to bring his case to the UN Human Rights Committee in Geneva, which oversees Colombia's compliance with the International Covenant on Civil and Political Rights, a treaty to which it is a state party.

I. Background Context and Current Situation in Colombia

a. Colombia Country Context

Colombia gained initial independence from Spain in 1810 and in 1830, after the collapse of Gran Colombia, it emerged as the independent nation it is today. It is located in northern South America, and borders the Caribbean Sea and Pacific Ocean. The Government of Colombia is a presidential republic. Despite sustained internal conflict between the Government and paramilitary or guerilla groups, Colombia maintains a reputation in the Western Hemisphere for being a relatively stable and democratic nation.[6]

Colombia's internal insecurity and violence are due primarily to the prevalence of the illegal drug trade, armed guerilla groups, and large disparities in wealth. These issues have drawn the concern of international observers, resulting in a large amount of international assistance, most prominently from the US, which poured money and military assistance into a "war on drugs" in Colombia in the 1980s. The largest of these armed groups remains the Revolutionary Armed Forces of Colombia (the FARC), which began their guerilla war against the Government in 1966. In 2012, the Government under President Santos began peace negotiations with the FARC aimed to end the decades-long conflict.[7] In 2016, President Santos signed a peace deal with the FARC, despite intense political opposition and a popular referendum rejecting the terms of the deal.[8] In the wake of the peace deal, there appears to be a rise in murders of human rights activists in areas previously occupied by FARC rebels that produce coca.[9] Coca production in Colombia has also soared to the highest level in two decades.

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[3] *Andrés Felipe Arias será extraditado,* EL ESPECTADOR, Sep. 28, 2017, *available at* https://www.elespectador.com/noticias/judicial/andres-felipe-arias-sera-extraditado-articulo-715469

[4] *Id.*

[5] Sergio Gómez Maseri, *Defensa de Arias evalúa acudir a Trump para evitar extradición,* EL TIEMPO, Sep. 29, 2017, *available at* http://www.eltiempo.com/mundo/eeuu-y-canada/abogados-de-andres-felipe-arias-buscarian-indulto-de-trump-para-evitar-extradicion-135990

[6] *The World FactBook: Colombia,* CIA, *last updated* Jan. 12, 2017, *available at* https://www.cia.gov/library/publications/the-world-factbook/geos/co.html; and *Colombia Profile: Timeline,* BBC, *last updated* Apr. 6, 2017, *available at* http://www.bbc.com/news/world-latin-america-19390164.

[7] *Id.*

[8] Andres Schipani, *Colombia's Santos Signs New Peace Deal with Farc Rebels,* FINANCIAL TIMES, Nov. 24, 2016, *available at* https://www.ft.com/content/0d7078dc-b1e8-11e6-a37c-f4a01f1b0fa1.

[9] *Dozens of Rights Activists Killed in Colombia in 2016,* BBC, Mar. 16, 2017, *available at* http://www.bbc.com/news/world-latin-america-39299865.

It is believed that the peace deal has created a perverse incentive for the increased production of coca in the country.[10]

While media coverage tends to focus on very tangible casualties of the internal conflict and drug trade, the Government of Colombia's failure to ensure civil and political rights has received relatively little attention. Of particular concern has been the disregard for the constitutionally-protected freedom of the press. Media outlets face lawsuits related to their coverage of sensitive topics, such as organized crime and corruption.[11] While hewing closely to the letter of the law, these suits typically aim to deter and repress free speech – violating the spirit of the law. The majority of suits are eventually dropped, but fighting them in court requires substantial financial resources and time.[12] The harassment of these media outlets contributes to a culture of fear, where journalists must practice "self-censorship," especially on sensitive topics such as corruption, organized crime, indigenous rights, and extrajudicial killings.[13] This harassment is frequently serious, and yet "[i]mpunity for those who threaten, attack, or kill members of the press continues to prevail in Colombia."[14] Additionally, in recent years, government surveillance of the press has come to be an issue.[15]

Another serious problem for civil and political rights in Colombia emanates from the inefficiency and bias of the judicial system. Arbitrary arrest and detention are legally prohibited, however, there have been substantial allegations that authorities are in fact consistently detaining people arbitrarily – most notably in 2015, when 87 cases of arbitrary detention were reported.[16] This problem comes from both overburdened and inefficient judicial system, as well as the subornation and intimidation of judges, prosecutors, and witnesses.[17] As of July 2015, some 2,381 people were detained in prisons, jails, or under house arrest under allegations of "rebellion or aiding and abetting the insurgency."[18] Some 1,332 of those same people were convicted and sentenced.[19]

b. US-Colombia Relations

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[10] *Colombia's Coca Production Soars to Highest Level in Two Decades, US Says,* THE GUARDIAN, Mar. 14, 2017, *available at* https://www.theguardian.com/world/2017/mar/14/colombia-coca-cocaine-us-drugs.
[11] *Freedom of the Press 2015: Colombia,* FREEDOM HOUSE, *available at* https://freedomhouse.org/report/freedom-press/2015/colombia.
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] In February 2014, the Miami-based television network Univision reported on allegations of illegal Colombian government surveillance during peace talks between the Colombian authorities and the FARC rebel group that were held in Havana in January. The revelation centered on the interception of some 2,600 e-mail messages between representatives of the FARC and both foreign and Colombian reporters. *Id.*
[16] COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2015: COLOMBIA, U.S. DEPT. OF STATE, *available at* https://www.state.gov/documents/organization/253213.pdf [hereinafter STATE DEPARTMENT 2015 HUMAN RIGHTS REPORT]; and Hannah Matthews, *Colombia's Smiley Face Hides Torture and Repression,* THE NEW INTERNATIONALIST BLOG, July 3, 2014, *available at* https://newint.org/blog/2014/07/03/colombias-political-prisoners/.
[17] STATE DEPARTMENT 2015 HUMAN RIGHTS REPORT, *supra* note 16.
[18] *Id.*
[19] *Id.*

The US and Colombia have had a historically close relationship. Diplomatic relations have endured since 1822, shortly after Colombian Independence.[20] Colombia has been a close ally of the US since the 1940s, and even contributed troops to the Korean War.[21] In the 1960s and 1970s Colombia became one of the largest recipients of US assistance.[22] This considerably close relationship endured into the 1980s with minor differences limited to Colombia's antidrug trafficking progress, and its refusal to rebuke Cuba for its poor human rights record.[23] Relations in the 1980s were characterized by anti-drug efforts in both nations, in fact between November 1984 and June 1987, Colombia extradited "thirteen nationals, including cartel kingpin Carlos Lehder Rivas" to the US.[24] The largest bump in an otherwise smooth relationship came in the late 1980s when Colombia refused to recognize the bilateral extradition treaty as binding or in force in Colombia, much to the US's chagrin (which had many extradition cases pending).[25] The 1990s were yet another era of engagement with the US and Colombia signing important agreements on environmental protection, civil aviation, asset sharing, chemical control, and maritime cooperation, and discussing plans for future US Aid.[26] In 2000 Plan Colombia was created, resulting in Colombia receiving massive amounts of aid from the US, mainly for military operations to fight drug-trafficking and rebels (including the FARC).[27]

Mutual support between the two nations continues today.[28] Since 2000, Colombia has received more than five billion dollars in aid from the US.[29] And both the Bush and Obama administrations had positive and consistent engagement with Colombia. In 2003, Colombia was the only South American nation to support the US invasion of Iraq.[30] And in 2012, the US-Colombia Trade Promotion Agreement, a long anticipated free trade agreement, entered into force.[31] This Agreement is concerned with "improv[ing] the investment environment, eliminat[ing] tariffs and other barriers to US exports, expand[ing] trade, and promot[ing] economic growth in both countries."[32] Economically, the US is Colombia's largest trade partner.[33]

Under the Trump and Santos administrations, the United States and Colombia continue to collaborate on a number of issues; however, tensions between the two countries have mounted following the alarming uptick in coca production in Colombia. In September 2017, President

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[20] *Fact Sheet: U.S. Relations with Colombia*, U.S. DEPT. OF STATE, Aug. 31, 2016, *available at* http://www.state.gov/r/pa/ei/bgn/35754.htm.
[21] COLOMBIA: A COUNTRY STUDY (Dennis M. Hanratty & Sandra W. Meditz, eds., 1988)
[22] *Id.*
[23] *Id.*
[24] *Id.*; *U.S.-Colombia Security Partnership*, EMBASSY OF COLOMBIA, http://www.colombiaemb.org/security.
[25] COLOMBIA: A COUNTRY STUDY, *supra* note 21.
[26] *A History of Partnership*, EMBASSY OF COLOMBIA, http://www.colombiaemb.org/partnership.
[27] *Colombia Profile: Timeline*, *supra* note 6.
[28] *Fact Sheet: The United States and Colombia*, THE WHITE HOUSE, Apr. 15, 2012, *available at* https://www.whitehouse.gov/the-press-office/2012/04/15/fact-sheet-united-states-and-colombia.
[29] *U.S. Policy in Colombia*, AMNESTY INT'L, *available at* http://www.amnestyusa.org/our-work/countries/americas/colombia/us-policy-in-colombia.
[30] Steve Schifferes, *US Names 'Coalition of the Willing'*, BBC, Mar. 18, 2003, *available at* http://news.bbc.co.uk/2/hi/americas/2862343.stm.
[31] *Fact Sheet: U.S. Relations with Colombia*, *supra* note 20; *Fact Sheet: The United States and Colombia*, *supra* note 28.
[32] *Fact Sheet: U.S. Relations with Colombia*, *supra* note 20.
[33] *Id.*

Trump threatened to decertify Colombia as a partner in the war on drugs, potentially putting it in the same category as countries such as Venezuela and Bolivia, should the Colombian government not do more to curb its coca production. US President Trump has stated that as of now Colombia has not been decertified because of the country's close military partnership with the United States, but he contends that the option is still on the table.[34]

c. Current Political Situation

The current political climate in Colombia has been profoundly shaped by the change of power and subsequent feud between President Santos and former President Uribe. The feud, originating in opposing policy approaches to the FARC and drug trafficking, has led to President Uribe's return to politics as leader of the opposition.[35] In response, President Santos – once a loyal follower of Uribe – has neutralized members of the opposition through persecutory legal action and a biased judiciary.[36]

During President Uribe's administration, Santos served in Uribe's administration as his Minister of Defense, and their relationship was one of close mentorship.[37] However, upon his election to the presidency, President Santos began implementing a markedly distinct agenda. Specifically, President Santos broke from the strict crackdown on the FARC championed by his predecessor and, instead, began implementing a policy of engagement, which ultimately transformed into the peace deal.[38] Santos' policy pivot has been characterized as a "tacit critique of his predecessor."[39] The Santos administration also took a more liberal approach to drug trafficking, labeling it a "political offense" and thus making it eligible for executive amnesty, seemingly for the purpose of appeasing the FARC and facilitating the peace talks. Uribe's position on the issue had been conspicuously different: his administration had taken an uncompromising stand on prosecuting crimes of drug trafficking and related crimes of money laundering.

As part of that effort, Uribe's administration extradited over 1,200 drug traffickers to the US and confronted members of the judiciary who had suspiciously close ties to the cartels.[40]

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[34] Adriaan Alsema, *Trump Threatens to Decertify Colombia as Partner in War on Drugs,* COLOMBIA REPORTS, Sept. 14, 2017, *available at* https://colombiareports.com/trump-threatens-decertify-colombia-partner-war-drugs.

[35] Juan Forero & Kejal Vyas, *Colombian Rivals Uribe and Santos Vow to Work Together for Peace with Rebels,* THE WALL STREET JOURNAL, Oct. 5, 2016, *available at* http://www.wsj.com/articles/colombian-rivals-uribe-and-santos-confer-after-peace-pacts-rejection-1475700108.

[36] Juan Esteban Lewin, *El Circulo de Uribe, Cada Vez Mas Condenado,* LA SILLA VACIA, Apr. 16, 2015, *available at* http://lasillavacia.com/historia/el-circulo-de-uribe-cada-vez-mas-condenado-49957; *Ya Son 8 Funcionarios del Gobierno Uribe Condenados por la Justicia Colombiana,* BLU RADIO, Apr. 16, 2015, *available at* http://www.bluradio.com/96418/ya-son-8-funcionarios-del-gobierno-uribe-condenados-por-la-justicia-colombiana; and *Las Batallas Perdidas del Uribisnmo en la Justicia,* EL TIEMPO, Apr. 19, 2015, *available at* http://www.eltiempo.com/archivo/documento/CMS-15593157.

[37] *Santos v Uribe*, THE ECONOMIST, Apr. 7, 2012, *available at* http://www.economist.com/node/21552204; *Colombia Profile: Leaders*, BBC, *last updated* Jan. 19, 2015, *available at* http://www.bbc.com/news/world-latin-america-19390072.

[38] *Santos v Uribe*, *supra* note 37; *Colombia Profile: Leaders*, supra note 37.

[39] *Santos v Uribe*, *supra* note 37.

[40] Juan Forero, *Surge in Extradition of Colombia Drug Suspects to U.S.*, THE NEW YORK TIMES, Dec. 6, 2004, *available at* http://www.nytimes.com/2004/12/06/world/americas/surge-in-extradition-of-colombia-drug-suspects-to-us.html?_r=1.

Uribe publicly questioned the relationship between several Supreme Court Justices and individuals charged with drug trafficking and money laundering – even then-President of the Supreme Court, Justice Yesid Ramirez.[41] Further provoking the ire of the Supreme Court, Uribe refused to back a Supreme Court-led initiative to prohibit the Constitutional Court from exercising judicial review over Supreme Court decisions.[42] In response to Uribe's combative approach, the Court unconstitutionally refused to appoint any of Uribe's nominees for Attorney General in the final two years of his presidency.[43] After Santos was sworn in as President, he reneged on campaign promises and controversially revoked Uribe's nominations.[44] The Court then approved Viviane Morales, a Santos nominee who was openly critical of Uribe's administration, to serve as Attorney General. Of particular concern, Morales was married to Carlos Alonso Lucio, a militant and a close ally of the very guerrilla groups, drug cartels, and paramilitary groups that Uribe's administration had fought against. In 1998, Mr. Lucio was sentenced to two-and-a-half years in prison for fraud following an investigation led by then-Supreme Court Justice Jorge Aníbal Gómez Gallego, who would later become Arias' trial attorney.[45]

After the Council of State, the country's highest administrative court, declared Attorney General Morales' appointment null and void on constitutional grounds in February 2012, the Supreme Court selected Santos nominee Eduardo Montealegre Lynett as the new Attorney General.[46] Montealegre, as Attorney General, had a constitutional requirement to remain neutral, but he was widely perceived to have aligned himself with the new administration's agenda.[47] As a result of perceived politicization and numerous corruption scandals, public confidence in the Attorney General's office, as well as other parts of the judiciary, dropped to less than 20 percent, according to various national polls.[48]

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[41] *Dos Magistrados, A Explicar Relación con Giorgio Sale,* EL TIEMPO, Sept. 18, 2008, *available at* http://www.eltiempo.com/archivo/documento/MAM-3098195.

[42] *La Corte Suprema de Justicia Tiene La Palabra,* EL TIEMPO, Apr. 30, 2008, *available at* http://www.eltiempo.com/archivo/documento/CMS-4135104.

[43] *Colombia in the Political Doldrums,* WikiLeaks, Nov. 17, 2009, *available at* https://wikileaks.org/plusd/cables/09BOGOTA3405_a.html.

[44] *Presidente Santos No Cambiará La Terna para Fiscal,* EL ESPECTADOR, Sept. 22, 2010, *available at* http://www.elespectador.com/noticias/judicial/presidente-santos-no-cambiara-terna-fiscal-articulo-225603.

[45] *Fiscalía Capturó a Carlos Alonso Lucio,* CARACOL RADIO, July 19, 2000, *available at* http://caracol.com.co/radio/2000/07/19/nacional/0963986400_094098.html; *Carlos Alonso Lucio Fue Contratado por las AUC, Asegura 'Don Berna',* EL TIEMPO, Feb. 17, 2012, *available at* http://www.eltiempo.com/archivo/documento/CMS-11157485; and *Diario de 'Chupeta' Salpica a Políticos y Militares Retirados,* SEMANA, Apr. 7, 2012, *available at* http://www.semana.com/nacion/articulo/diario-chupeta-salpica-politicos-militares-retirados/260579-3.

[46] *Colombia's Council of State Unseats Viviane Morales as Chief Prosecutor,* COUNCIL ON HEMISPHERIC AFFAIRS, Mar. 2, 2012, *available at* http://www.coha.org/colombia%E2%80%99s-council-of-state-unseats-vivian-morales-as-chief-prosecutor/.

[47] *"El Fiscal Es un Cuervo Criado Por Santos": Morelli desde Roma,* Noticias, *Sept. 16, 2014, available at* http://www.noticiasrcn.com/nacional-justicia/el-fiscal-un-cuervo-criado-santos-morelli-desde-roma; Otoniel Parra Trujillo, *Montealegre Se Destapa,* La Nación, June 13, 2016, *available at* http://www.lanacion.com.co/index.php/opinion/item/271913-montealegre-se-destapa.

[48] *Sin Credibilidad y Sin Confianza,* EL COLOMBIANO, Jan. 18, 2017, *available at* http://m.elcolombiano.com/sin-credibilidad-y-sin-confianza-FJ4092007; *La Justicia, En Su Nivel Más Bajo de Imagen Favorable,* EL TIEMPO, Sept. 13, 2014, *available at* http://www.eltiempo.com/archivo/documento/CMS-14530075.

Although required to be neutral, the Attorney General and the Supreme Court have continuously exhibited bias and complicity in the Santos administration's efforts to target the opposition. These concerns were confirmed when a private conversation amongst the Supreme Court Justices was leaked to the public. In it, the Justices openly acknowledged that they must make decisions based on political expedience without dissenting votes.[49] Both the Supreme Court and the Attorney General's Office have and continue to illegally prosecute, convict, and imprison Colombians who have ties to Uribe and the previous administration on the basis of pre-textual charges and false witnesses – and despite those bodies' blatant lack of impartiality to prosecute and judge any cabinet member, high-ranking official or family member of Uribe. As a means to target members of the Uribe administration, current and former Justices of the Supreme Court formally accused Uribe and his cabinet members of wiretapping their offices. In the court cases addressing these alleged wiretaps, many Supreme Court Justices were declared formal victims of the alleged actions of Uribe and his ministers but subsequently did not recuse themselves from most of the trials involving Uribe's cabinet members—despite this clear conflict of interest.[50]

Among those that have been subjected to politically motivated investigations, detentions and/or prosecutions are:

- Uribe's family members Santiago Uribe, Tomás Uribe, and Jerónimo Uribe;
- the former High Commissioner for Peace of Colombia under President Uribe, Luis Carlos Restrepo;
- the former Chief of Colombia's Administrative Department of Security under President Uribe, Maria del Pilar Hurtado;
- the former Colombian Ambassador to the Organization of American States under President Uribe, Luis Alfonso Hoyos;
- the former Vice President of Colombia under President Uribe, Francisco Santos;
- the former Chiefs of Staff under President Uribe, Alberto Velasquez and Bernardo Moreno;
- the former Minister of Health under President Uribe, Diego Palacio;
- the former Minister of the Treasury under President Uribe and 2014 Presidential Candidate, Oscar Ivan Zuluaga, as well as his son and campaign manager, David Zuluaga;
- and the former Minister of Agriculture under President Uribe and 2010 Presidential Candidate, Andrés Felipe Arias Leiva.[51]

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[49] *Los Audios de la 'Mata Hari' que Diego Palacio Reveló en la Corte,* EL TIEMPO, Oct. 21, 2015, *available at* http://www.eltiempo.com/politica/justicia/yidispolitica-grabaciones-de-mata-hari-revelados-por-diego-palacio/16409016.

[50] *Corte Aceptó Impedimentos de Dos Magistrados en Juicio Contra Exdirector del DAS,* EL ESPECTADOR, Nov. 4, 2014, *available at* http://www.elespectador.com/noticias/judicial/corte-acepto-impedimentos-de-dos-magistrados-juicio-con-articulo-525810; *Leonidas Bustos, El Magistrado que Santos Necesita para la Paz,* SEMANA, Aug. 14, 2015, *available at* http://www.semana.com/nacion/articulo/leonidas-bustos-el-magistrado-que-santos-necesita-para-la-paz/438588-3.

[51] *El Círculo de Uribe, supra* note 36; *Ya Son 8 Funcionarios del Gobierno Uribe Condenados, supra* note 36; and *Las Batallas Perdidas, supra* note 36.

In addition to ignoring the clear conflicts of interests that have led to these politically-motivated investigations, recent events in Colombia have brought to light serious allegations of systemic corruption among the Colombian Supreme Court Justices that further call into question their integrity, independence, and impartiality. In August 2017, the US Drug Enforcement Administration (DEA) released recordings that appeared to implicate three former Supreme Court presidents, including Leonidas Bustos (who presided over Arias' trial), in a far-reaching corruption scandal that has shaken the credibility of the Supreme Court.[52] The recordings allegedly caught Bustos claiming that the Supreme Court "managed a fee between US $350,000 and $1 million to rule in favor of whoever had the money to bribe them."[53] Moreover, Musa Besaile, a Colombian Senator who was accused of paramilitarism, subsequently admitted to having paid 2 billion Colombian pesos (US $689,000), supposedly destined for Bustos, in order to prevent his own arrest.[54] Gustavo Malo, another Supreme Court Justice who presided over Arias' case, was recently also implicated in this scandal and asked to step down for allegedly having been persuaded to shelve Besaile's investigation.[55] In fact, of the eight Supreme Court Justices that presided over Andrés Arias' case, two – Leonidas Bustos and Gustavo Malo – are under formal investigation and three more – Patricia Salazar, Fernando Castro, and Luis Guillermo Salazar – are specifically mentioned in the DEA recordings as having been involved in corrupt practices.[56] Additionally, according to the recordings, the involvement of two others – María del Rosario González and José Luis Barceló – cannot be ruled out.[57] It is worth nothing that the only Justice not mentioned in the DEA wiretap – Eugenio Fernández – was the only Justice to have issued a dissent against Arias' conviction.[58]

Seven years into his presidency, President Santos has an approval rating of 17%.[59] Criticisms of his tenure stem from allegations of corruption as well as his decision to bypass the people when seeking approval of his peace deal with the FARC; pushing the deal through with just a vote in Congress after a nationwide referendum rejected the proposed accord.[60]

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[52] Adriaan Alsema, *Three of Colombia's Former Supreme Court Presidents Took Bribes: DEA*, COLOMBIA REPORTS, Aug. 16, 2017, *available at* https://colombiareports.com/three-colombias-former-supreme-court-presidents-took-bribes-dea/.

[53] *Id.*

[54] *Leonidas Bustos y Gustavo Malo: ¿irán a la cárcel?*, SEMANA, Sep. 14, 2017, *available at* http://www.semana.com/nacion/articulo/comision-de-acusacion-investiga-a-exmagistrados-por-corrupcion-bustos-ricaurte-y-malo/540095 ("El senador Musa Besaile asegura que el ex fiscal anticorruption le pidió 2.000 millones de pesos y que en una servilleta le escribió que el dinero iría para Leonidas Bustos" or "*Senator Musa Besaile affirms that the ex anti corruption attorney asked him for 2 billion pesos and in a napkin he wrote that the money was for Bustos.*").

[55] Adriaan Alsema, *Colombia's Supreme Court Asks Justice to Step Down as Corruption Probe Starts*, COLOMBIA REPORTS, Sep. 13, 2017, *available at* https://colombiareports.com/colombias-supreme-court-asks-justice-step-corruption-probe-starts/.

[56] *Corrupción en la justicia*, CARACOL RADIO, Aug. 31, 2017, *available at* http://caracol.com.co/m/radio/2017/08/31/judicial/1504137993_008558.html?autoplay=1.

[57] *Id.* (Maria del Rosario González and José Luis Barceló are specifically mentioned in this recording; however, the extent of their involvement, if any, remains unclear).

[58] *Id.*

[59] *Aprobación de Santos Apenas Llega al 17%*, OIGA, Apr. 3, 2017, *available at* https://oiganoticias.com/2017/04/03/aprobacion-de-santos-apenas-llega-al-17/.

[60] Nicholas Casey, *Colombia's Congress Approves Peace Accord with FARC*, THE NEW YORK TIMES, Nov. 30, 2016, *available at* https://www.nytimes.com/2016/11/30/world/americas/colombia-farc-accord-juan-manuel-santos.html.

President Santos has also been linked to the Odebrecht SA scandal when it was revealed that his 2010 election campaign received illegal payments from the Brazilian conglomerate.[61]

II. Biographical Information on Andrés Felipe Arias Leiva

a. Personal Background

Andrés Felipe Arias Leiva is a prominent Colombian politician, who was a former government minister and a 2010 Candidate to the Presidency of the Republic of Colombia.[62] Arias has been the victim of targeted political persecution by the Colombian Government as a result of his popularity and his opposition to current President Santos' political actions, especially the peace deal with the FARC.[63] He is married to Catalina Serrano and they have two children together: Eloisa, age 8, and Juan Pedro, age 5. Arias and his family live in the US, where they are currently seeking asylum.

Arias was born in Medellín, Colombia on May 4, 1973. He attended the Columbus School, an American high school in Medellín, Colombia, graduating in 1992 with the rank of valedictorian. After high school, Arias served one year in the Colombian military. He was honorably discharged from the military in June 1993.[64] He then matriculated at the *Universidad de Los Andes* in Bogotá, Colombia and graduated *magna cum laude* with a BA in Economics in 1998.

While still a student at the *Universidad de Los Andes*, in June of 1996, Arias was recruited by the Central Bank of Colombia as an intern. There, he worked in the Monetary and International Reserve Division as well as working as a Technical Assistant to the Deputy Governor of the Bank. In August of 1998, Arias began his PhD studies at the University of California at Los Angeles (UCLA), which were sponsored by the Central Bank. While at UCLA, in December of 1999, he finished his MA thesis in economics for the *Universidad de Los Andes*, thus earning his first MA degree. In December of 2000, he obtained another MA degree in Economics, this one from UCLA, while working towards the completion of his PhD. In the summer of 2001, he interned at the International Monetary Fund (IMF) in the Policy Supervision and Development Division. In December 2002, Arias obtained his PhD in Economics from UCLA.[65]

b. Beginnings in Politics & *Agro Ingreso Seguro*

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[61] *Colombia's Santos Apologizes for Illegal Fund Paid Into Campaign,* REUTERS, Mar. 14, 2017, *available at* http://www.reuters.com/article/us-colombia-odebrecht-santos-idUSKBN16L2BP.
[62] Mary A. O'Grady, *Takedown of a Candidate, Bogotá Style,* WALL STREET JOURNAL, Sept. 11, 2016, *available at* http://www.wsj.com/articles/takedown-of-a-candidate-bogota-style-1473630721.
[63] *Id.*
[64] *Andrés Felipe Arias, Un Hombre de Armas Tomar,* SEMANA, May 17, 2007, *available at* http://www.semana.com/on-line/articulo/andres-felipe-Arias-hombre-armas-tomar/85943-3.
[65] *Exministro Andrés Felipe Arias Fue Condenado por Caso Agro Ingreso Seguro,* LA REPÚBLICA, July 3, 2014, *available at* http://www.larepublica.co/exministro-andrés-felipe-Arias-fue-condenado-por-caso-agro-ingreso-seguro_140971.

Arias first became involved in politics when he joined the presidential campaign of then-candidate Álvaro Uribe Vélez as an economic advisor in the summer of 2000. Uribe went on to win the presidency, and Arias was appointed as Director of Macroeconomic Policy in the Ministry of the Treasury in August 2002.[66] On February 16, 2004, Arias was appointed Vice Minister of Agriculture of the Republic of Colombia.[67] As Vice Minister, Arias headed the Colombian Agricultural Negotiating Team during the Free Trade Agreement (FTA) negotiations with the US.[68] One year later, on February 4, 2005, Arias was appointed as Minister of Agriculture and Rural Development of the Republic of Colombia.[69]

Upon the completion of the FTA negotiations in February 2006, President Uribe recognized the need to make the Colombian agricultural sector more competitive in the international market and put Arias in charge of designing, developing and implementing a program to do just that. The program that was ultimately developed was *Agro Ingreso Seguro* (AIS). The AIS program was formally established by Law 1133 of 2007, which was approved by both chambers of the Colombian Congress and signed by President Uribe.[70]

The implementation of the AIS Program began in 2007 and offered a wide variety of subsidy options to agricultural producers in Colombia. One of these options was a competitive subsidy conditioned on the installation of an irrigation project, replicating a successful Chilean subsidy model.[71] To implement this competitive irrigation subsidy and to guarantee its transparency, the Ministry of Agriculture sought the technical support and collaboration of the Organization of American States' Inter-American Institute for Cooperation on Agriculture (OAS-IICA). Between 1993 and 2005, Colombia had entered into scientific and technical agreements with the OAS-IICA some 132 times.[72] This precedent of collaboration led Juan Camilo Salazar, then Director of the AIS Program, to suggest the OAS-IICA as a natural partner for operating and managing the competitive irrigation subsidy component of the AIS Program. The OAS-IICA provided the corresponding technical support in 2007, 2008 and 2009.[73] In particular, the OAS-IICA was the entity in charge of evaluating and qualifying those applying for the irrigation subsidy.[74] The OAS-IICA acted independently in administering the irrigation

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[66] *Id.*

[67] *Andrés Arias, Nuevo Viceministro de Agricultura*, PRESIDENCIA DE LA REPÚBLICA COLOMBIA, Feb. 16, 2004, *available at* http://historico.presidencia.gov.co/prensa_new/sne/2004/febrero/16/11162004.htm.

[68] *Listo Equipo del Agro para TLC*, EL TIEMPO, Mar. 31, 2004, *available at* http://www.eltiempo.com/archivo/documento/MAM-1574831; *Arrancó la Ofensiva de Negociación Grícola*, EL TIEMPO, June 18, 2004, *available at* http://www.eltiempo.com/archivo/documento/MAM-1570925.

[69] *Cambios en Agricultura y el Banco de la República*, EL PAÍS, Jan. 22, 2005, *available at* http://historico.elpais.com.co/paisonline/notas/Enero222005/A622N1.html.

[70] *Congreso Aprueba Ley Agro Ingreso Seguro*, DINERO, Mar. 14, 2007, *available at* http://www.dinero.com/actualidad/noticias/articulo/congreso-aprueba-ley-agro-ingreso-seguro/42543; Ley 1133 de 2007 (Por medio de la cual se crea e implementa el programa 'Agro, Ingreso Seguro – AIS), No. 46.595, Apr. 9, 2007, *available at* http://www.ica.gov.co/getattachment/235a5c55-4109-4612-9145-ff54fa9bfe5d/2007L1133.aspx.

[71] Ley 18450 (Aprueba normas para el fomento de la inversion privada en obras de riego y drenaje), Nov. 21, 2013, *available at* https://www.leychile.cl/Navegar?idNorma=29855.

[72] Document on file with author.

[73] Jaime Andrés Ospina, *IICA Ejecutó Agro Ingreso Seguro de Forma Correcta, Asegura Su Representante*, W RADIO, Nov. 8, 2010, *available at* http://www.wradio.com.co/noticias/actualidad/iica-ejecuto-agro-ingreso-seguro-de-forma-correcta-asegura-su-representante/20100811/nota/1339911.aspx.

[74] *Ex Señorita Colombia Valerie Domínguez Renuncia a Subsidios de Agro Ingreso Seguro*, EL TIEMPO, Sept. 29, 2009, *available at* http://www.eltiempo.com/archivo/documento/CMS-6234767.

subsidy of the AIS Program. As part of the application process, the OAS-IICA established a panel of experts that reviewed applications that were denied and subsequently appealed. This panel had the power to reverse the earlier denial and was also completely autonomous of the Ministry of Agriculture.

During Arias' tenure as Minister of Agriculture, the overall AIS Program operated successfully, providing financial support (in the form of subsidies) to over 380,000 agricultural producers in Colombia.[75] The AIS Program was widely considered one of the most important and successful policies that President Uribe oversaw during his second term as President of Colombia, and resulted in the recovery of 2.5 million acres of productive land from the hands of the guerrillas and drug traffickers.[76] While Arias was Minister of Agriculture, the Government was never accused of any wrongdoing with regard to the AIS Program by any domestic or international institution, (including the OAS-IICA), and neither was Arias. In fact, polling during Arias' time in office demonstrated that Arias was considered one of President Uribe's most popular cabinet ministers.[77]

c. Campaign for President & Accusations of Misappropriations of Funds

In February of 2009, motivated by his success as a public servant and the success of the AIS Program, Arias resigned as Minister of Agriculture in order to run for the presidency of Colombia. Arias ran on the platform of continuing President Uribe's policies, who could not seek re-election due to term limits.[78] As Uribe's chosen successor, Arias was extremely popular and became an early favorite in the polls for the Conservative Party primaries.[79] However, by September 2009, this popularity had made him the target of political adversaries, who felt threatened by his successful campaign. His adversaries falsely accused him of deviating funds from the AIS Program to his campaign and they also falsely accused him of favoring wealthy families to receive the subsidy.[80] Their accusations came on the heels of a scandal within the

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[75] Rafael González, *Agro Ingreso Seguro Cumplió las Metas en Antioquia*, EL COLOMBIANO, June 12, 2010, *available at* https://www.pressreader.com/colombia/el-colombiano/20100612/283506497223943; Andrés Fernández Acosta, MEMORIAS AL CONGRESO DE LA REPÚBLICA 2006-2010, *available at* http://bibliotecadigital.agronet.gov.co/bitstream/11348/6143/1/110050--Memorias%2009-10%20Nuevo.pdf.

[76] *Álvaro Uribe Defiende Agro Ingreso Seguro*, EL ESPECTADOR, Sept. 1, 2013, *available at* http://www.elespectador.com/noticias/politica/alvaro-uribe-defiende-agro-ingreso-seguro-articulo-443741.

[77] *El Ranking de los Ministros*, EL TIEMPO, Aug. 12, 2007, *available at* http://www.eltiempo.com/archivo/documento/MAM-2615411.

[78] *¡ 'Uribito' Se Lanzó al Agua!*, EL ESPECTADOR, Feb. 7, 2009, *available at* http://www.elespectador.com/impreso/politica/articuloimpreso115900-uribito-se-lanzo-al-agua; *Para Aspirar a la Presidencia Renunció el Ainistro de Agricultura, Andrés Felipe Arias*, EL TIEMPO, Feb. 7, 2009, *available at* http://www.eltiempo.com/archivo/documento/CMS-4800060; and *Ministro Colombiano de Agricultura Renuncia para Lanzar Su Campaña Presidencial*, LA TERCERA, Feb. 7, 2009, *available at* http://www.latercera.com/noticia/ministro-colombiano-de-agricultura-renuncia-para-lanzar-su-campana-presidencial/.

[79] *Una Encuesta de Yanhaas Da Como Favorito a la Presidencia a Andrés Felipe Arias*, EL ESPECTADOR, Feb. 11, 2009, *available at* http://www.elespectador.com/noticias/politica/articulo117000-una-encuesta-de-yanhaas-da-favorito-presidencia-andres-felipe-arias; and *El Ex Ministro Andrés Felipe Arias Vuelve a Encabezar la Encuesta de Datexco*, EL TIEMPO, July 12, 2009, *available at* http://www.eltiempo.com/archivo/documento/CMS-5622027.

[80] *Noemí Sanín No Se Retracta de Acusaciones Contra Andrés F. Arias*, EL ESPECTADOR, Apr. 7, 2010, *available at* http://www.elespectador.com/noticias/politica/articulo197067-noemi-sanin-no-se-retracta-de-acusaciones-contra-andres-f-arias; and *Irregularidades en Campaña: Arias se Defiende, Coronell Se Reafirma*, SEMANA, Feb. 8, 2010,

AIS Program, as it was discovered that a handful of farmers were irregularly splitting their lands in order to increase the irrigation subsidies that they were entitled to.[81] The false accusations of embezzlement and the irrigation subsidy scandal adversely impacted Arias' campaign, causing him to lose the primaries and his prospect of becoming President.[82]

Unfortunately, Arias was not informed that five days prior to the March 2010 primaries, the Attorney General's Office of Colombia had indeed thoroughly investigated Arias' role in the Ministry's contracting with OAS-IICA, in response to these false accusations of embezzlement, and had completed a then internal report absolving him of any improper conduct. The Attorney General's Office did not find any illegality whatsoever in the agreements through which the AIS irrigation program was implemented with the OAS-IICA.[83] While it is unknown why the Attorney General's Office did not publish the report, or at the minimum make Arias aware of the result, it is important to note that an interim Attorney General, chosen by the Supreme Court, was leading the office at the time, as the Supreme Court had refused to consider any of Uribe's nominations for Attorney General. The existence of the report was not publicly revealed until a Colombian newspaper broke the story in October 2011, at which point Arias was already wrongfully imprisoned.[84]

Had Arias been informed of this report in a timely manner, polls at the time indicated that he would have most likely won the primaries and could well have become President of Colombia from 2010 to 2014.[85] Although Arias did not win the primaries, he still garnered over one million votes, an accomplishment given the extensive effort to discredit him.[86]

The demise of Arias' candidacy for the Colombian presidency most benefitted Juan Manuel Santos. Santos, who had served as President Uribe's Defense Minister, had competed with Arias to be Uribe's chosen successor. Tensions between the two politicians had existed ever since polls during their time in office showed Arias to be a more popular minister than Santos.[87] While Arias was the one to win Uribe's backing, Santos received substantial support from Colombia's biggest newspaper, *El Tiempo,* which ran biased articles depicting Santos as the inevitable victor over Arias in the wake of the AIS scandal – even before Santos had

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available at http://www.semana.com/nacion/articulo/irregularidades-campana-arias-defiende-coronell-reafirma/112898-3.

[81] *Ex Señorita Colombia Valerie Domínguez Renuncia, supra* note 74; *Andrés Felipe Arias Sale Debilitado y Juan Manuel Santos Logra Ventaja en Medio del Escándalo de AIS,* EL TIEMPO, Oct. 10, 2009, *available at* http://www.eltiempo.com/archivo/documento/CMS-6325547; *Andrés Felipe Arias Denunció Penalmente a Noemí Sanín,* EL UNIVERSAL, Apr. 2, 2010, *available at* http://www.eluniversal.com.co/cartagena/politica/andres-felipe-arias-denuncio-penalmente-noemi-sanin; and *Noemí Sanín No Se Retracta de Acusaciones, supra* note 80.

[82] *La Goda Noemí,* SEMANA, Mar. 20, 2010, *available at* http://www.semana.com/nacion/articulo/la-goda-noemi/114668-3; and *Noemí Sanín, Candidata Presidencial por el Partido Conservador,* EL ESPECTADOR, Mar. 19, 2010, *available at* http://www.elespectador.com/noticias/politica/articulo193996-noemi-sanin-candidata-presidencial-el-partido-conservador.

[83] *Documento del CTI Da Más Luces en Caso AIS,* EL COLOMBIANO, Oct. 10, 2011, *available at* http://www.elcolombiano.com/historico/documento_del_cti_da_mas_luces_en_caso_ais-CYEC_153562.

[84] *Id.*

[85] *Tabla de Datos: Cuestionarios 5756,* OPINÓMETRO, July 1, 2009, *available at* http://www.cne.gov.co/cne/media/file/encuestas/ft1145.pdf.

[86] *Noemí Sanín Ganó la Consulta Conservadora,* CARACOL RADIO, Mar. 19, 2010, *available at* http://caracol.com.co/radio/2010/03/19/nacional/1269012420_972506.html.

[87] *El Ranking de los Ministros, supra* note 77.

announced his candidacy.[88] An *El Tiempo* columnist was dismissed by the paper for critiquing the paper's bias in this regard.[89] In her column, she had argued that the paper's reporting on the AIS scandal was not grounded in evidence and could only be understood as an attempt to spur public support for Santos. She also pointed out that the Santos family had owned *El Tiempo* for almost a century, still retaining a large stake in the paper, and that the Spanish media group currently in control of *El Tiempo* also had a clear vested interest in a Santos victory.[90] In June of 2010, *El Tiempo*'s self-fulfilling prophecy was borne out, and Juan Manuel Santos was elected President of Colombia.[91]

On August 19, 2010, the General Comptroller's Office issued a report dismissing public servants of any wrongdoing in relation to the AIS irrigation program scandal and, thus, discharged Arias from any responsibility for abuses of the program. The report concluded that private individuals, not public servants, were responsible for perpetrating fraud and deceiving the Ministry of Agriculture in order to obtain benefits under the AIS irrigation program.[92]

On December 10, 2010, the Administrative Court of Cundinamarca conducted hearings and reiterated the findings of the General Comptroller's Office by concluding that private individuals committed fraud against the Colombian government by misleading the Ministry of Agriculture in order to obtain benefits under the AIS irrigation program.[93] And on January 18, 2011, the National Electoral Council of Colombia, upon completing its investigation, cleared Arias of any wrongdoing regarding his campaign funding, thus dismissing the false accusations that led to his defeat in the 2010 primaries.[94] In July 2011, Colombia's Inspector General (to be distinguished from the Attorney General) conducted an investigation and civilly sanctioned Arias for carelessly not completing the required pre-contractual studies before entering into the agreements with the OAS-IICA, but dismissed any allegations of criminal intent on the part of Arias. The civil sanction includes a 16-year ban from public office.[95] Arias has appealed this decision to the Council of State and is awaiting a decision. One of Arias' legal advisors, Oskar Schroeder Muller, was also sanctioned by the Inspector General for the same reasons as Arias and has successfully appealed the sanction before the Administrative Court of Cundinamarca. In its decision, the Administrative Court of Cundinamarca broke with the Inspector General and

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[88] *Andrés Felipe Airas Sale Debilitado, supra* note 81.
[89] Hernando Salazar, *Colombia: Polémica Por Despido de Columnista de El Tiempo*, BBC, Oct. 14, 2009, *available at* http://www.bbc.com/mundo/america_latina/2009/10/091014_colombia_columnista_rg.shtml.
[90] Claudia López, *Refleciones Sobre un Escándolo*, EL TIEMPO, Oct. 13, 2009, *available at* http://www.eltiempo.com/archivo/documento/MAM-3666495.
[91] Sibylla Brodzinksy, *Juan Manuel Santos Wins Colombia Presidential Election*, THE GUARDIAN, June 21, 2010, *available at* https://www.theguardian.com/world/2010/jun/21/juan-manuel-santos-colombia-president.
[92] Document on file with author.
[93] Document on File with Author.
[94] *Archivada Investigación Contra Andrés Felipe Arias en el CNE*, EL TIEMPO, Jan. 27, 2011, *available at* http://www.eltiempo.com/archivo/documento/CMS-8802035.
[95] *Boletín 1259: Procuraduría General Confirma Destitución e Inhabilidad por 16 Años a Exministro de Agricultura Andrés Felipe Arias*, PROCURADURÍA GENERAL DE LA NACIÓN, Dec. 13, 2011, *available at* https://www.procuraduria.gov.co/portal/Procuraduria-General_confirma_destitucion_e_inhabilidad_por_16_anos_a_exministro_de_Agricultura_Andres_Felipe_Arias.news.

agreed with Schroeder and Arias in concluding that the specific agreement between the Ministry and OAS-IICA actually did not require pre-contractual studies.[96]

Despite these previous investigations by various Colombian governmental entities, which collectively absolved Arias of any role in the scandal, the new Attorney General Viviane Morales announced charges against Arias on June 13, 2011, based on the same set of facts, thus beginning the Santos administration's persecution of Arias.[97]

III. Political Persecution and Trial of Andrés Felipe Arias Leiva

a. Political Persecution of Andrés Felipe Arias Leiva During the Investigation and Preventive Detention Hearings

During the first half of 2011, there were two major developments in the Colombian political arena. First, there was a political rupture between outgoing President Uribe and incoming President Santos. This rupture led to Uribe breaking away from *Partido Social de Unidad Nacional* and eventually forming the *Centro Democrático* party.[98] Arias co-founded *Centro Democrático* with Uribe and this party became one of the main critics of Santos' administration – with Arias himself playing a vocal role in critiquing Santos' agenda.[99] Second, President Santos nominated Viviane Morales Hoyos for the post of Attorney General. Her nomination, and subsequent confirmation by the Supreme Court, was highly controversial given the fact that she and her husband Carlos Alonso Lucio had known links to paramilitaries, guerillas, and narcotraffickers.[100] The Uribe administration, in which Arias served as a cabinet member, had been adamant in disarming, prosecuting and extraditing members of paramilitary and guerilla groups, as well as criminal gangs and drug trafficking cartels.[101]

Thus, as a result of Arias' unyielding support of President Uribe and his policies, which contrasted with the policies of Santos, newly appointed Attorney General Morales unleashed a brutal and vicious campaign of persecution against Arias, despite the fact that he had been cleared of any role in the scandal by several Colombian governmental entities—including the Attorney General's Office itself.[102] Attorney General Morales also directed her campaign of

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[96] *Tumban Suspensión de Procuraduría Contra Oskar Schroeder por Caso AIS*, BLU RADIO, May 23, 2014, *available at* http://www.bluradio.com/65524/tumban-suspension-de-procuraduria-contra-oskar-schroeder-por-caso-ais.

[97] *Imputan Cargos a Ex Ministro Andrés F. Árias por Caso AIS*, PORTAFOLIO, June 13, 2011, *available at* http://www.portafolio.co/economia/finanzas/imputan-cargos-ex-ministro-andres-f-arias-caso-ais-125062.

[98] Daniel Lansberg-Rodríguez, *The End of Colombian Exceptionalism*, ATLANTIC, Aug. 31, 2016, *available at* https://www.theatlantic.com/international/archive/2016/08/farc-colombia-uribe-santos-venezuela/498167/.

[99] *El Churchill Criollo*, SEMANA, Feb. 19, 2011, *available at* http://www.semana.com/nacion/articulo/el-churchill-criollo/235749-3.

[100] *Fiscalía Capturó a Carlos Alonso Lucio*, *supra* note 45; *Carlos Alonso Lucio Fue Contratado por las AUC*, *supra* note 45; and *Diario de 'Chupeta'*, *supra* note 45.

[101] *Masiva Extradición de Jefes Paramilitares*, EL ESPECTADOR, May 13, 2008, *available at* http://www.elespectador.com/noticias/judicial/articulo-masiva-extradicion-de-jefes-paramilitares.

[102] *"Existe una Grabación de Viviane Morales (...) en la cual Prejuzga y Destila Loca Animadversión Hacia Mí": Andrés Felipe Arias*, LA SEMANA, Feb. 22, 2012, *available at* http://www.semana.com/nacion/articulo/existe-grabacion-viviane-morales--cual-prejuzga-destila-loca-animadversion-hacia-mi-andres-felipe/253826-3; *'Cárcel o Exilio', El Libro sobre el Destino de Andrés Felipe Arias*, EL TIEMPO, Aug. 29, 2016, *available at*

persecution against other former cabinet members and high-ranking officials who served in President Uribe's administration, some of whom have since obtained political asylum in other countries. Since Santos took office, numerous *Uribistas* have been subjected to politically-motivated investigations, detentions and/or prosecutions.

On June 13, 2011, Attorney General Morales publicly charged Arias with the following crimes:

- **Entering into a contract without meeting the legal requirements.** Specifically, Attorney General Morales claimed that Arias awarded three noncompetitive "scientific and technical" contracts to the OAS-IICA without meeting the "scientific and technical" threshold required to allow a noncompetitive contract. These three agreements had served to implement the *Agro Ingreso Seguro* (AIS) irrigation program in 2007, 2008, and 2009, and the Attorney General's Office had previously found no wrongdoing with regard to these agreements. Attorney General Morales argued, however, that Arias wrongly sought these noncompetitive contracts in order to curry favor with OAS-IICA and thus maintain control over OAS-IICA's implementation of the AIS irrigation program so that he could allow the fraudulent land-split for his political benefit.

- **Two counts of embezzlement by appropriation.** Specifically, Attorney General Morales claimed that Arias embezzled funds from the AIS irrigation program for third parties' benefit with the purpose of supporting Arias' political future, a charge previously dismissed by the National Electoral Council.[103] The Attorney General also claimed that Arias embezzled funds in favor of the OAS-IICA.[104]

On July 21-22, 2011, Arias appeared at his initial hearing at the Superior Tribunal of Bogotá before Judge Orlando Fierro Perdomo, a magistrate judge (*juez de control de garantías*),[105] represented by former Supreme Court Justice Jorge Aníbal Gómez Gallego.[106] Instead of holding the hearing in a standard hearing room of the Superior Tribunal of Bogotá, it

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http://www.eltiempo.com/politica/justicia/andres-felipe-arias-y-su-tragico-destino/16685828; *Gobierno Santos Persigue y Acosa a Andrés Felipe Arias: Uribismo*, EL ESPECTADOR, Dec. 29, 2016, *available at* http://www.elespectador.com/noticias/politica/gobierno-santos-persigue-y-acosa-andres-felipe-arias-ur-articulo-672472; and *"Arias Es Víctima de una Persecución Política"*, SEMANA, July 17, 2014, *available at* http://www.semana.com/nacion/articulo/para-uribe-zuluaga-condena-arias-es-persecusion-politica/395966-3.

[103] *Archivada Investigación Contra Andrés Felipe Arias*, *supra* note 94.

[104] *Fiscal Viviane Morales Radicó Acusación contra Andrés Arias*, VANGUARDIA, Sept. 16, 2011, *available at* http://www.vanguardia.com/judicial/122259-fiscal-viviane-morales-radico-acusacion-contra-andres-arias.

[105] Under Colombian law, the "juez de control de garantías" is a criminal law judge. In Arias' case, because he was a minister, the "juez de control de garantías" was a Magistrate from the Criminal Court of the Superior Tribunal of Bogotá and his role was to conduct the imputation hearing, rule on security measures requested by the Attorney General, and monitor the investigation.

[106] *Ordenan Encarcelar Aliado Ex Presidente Colombiano Uribe*, REUTERS, July 26, 2011, *available at* http://lta.reuters.com/article/idLTASIE76Q01E20110727; and *Colombia: Jueces Deciden Suerte de 2 Ex Colaboradores de Uribe*, TELEMETRO, July 26, 2011, *available at* http://www.telemetro.com/internacionales/Colombia-deciden-suerte-colaboradores-Uribe_0_390560941.html.

took place in the Tribunal's theater room, filled with media representatives who broadcasted the hearing live with a crowd of spectators rooting for Attorney General Morales.[107]

Magistrate Judge Fierro had a proven conflict of interest to hear the indictment as his mentor and best man at his wedding was Mr. Yesid Ramirez, a former Justice and President of the Supreme Court who had openly headed a clash of the Supreme Court with President Uribe. Their disagreements stemmed from political differences surrounding the relationship between the Supreme Court and the Constitutional Court, as well as accusations that Justice Ramirez had ties to narcotraffickers.[108] As a result of these disagreements, the Supreme Court led by Justice Ramirez began a persecutory campaign against President Uribe and his allies. The tie between Magistrate Judge Fierro and former Justice Ramirez was not disclosed until several weeks after the hearing.[109]

During the hearing, Attorney General Morales revealed on national television all of Arias' personal information including his home address, his telephone number, and the identities of his immediate family members.[110] Revealing personal information during a publicized hearing is highly irregular, but particularly dangerous in Arias' case as he and his family were formally recognized by the Colombian government as being at extraordinary risk of physical harm. During his time as Minister of Agriculture under President Uribe, and as a presidential candidate, Arias received many threats against his life from guerilla and paramilitary groups.[111] As a result, he and his family were under the protection of ten National Police Officers equipped with three vehicles, one of which was bulletproof.

At this hearing, Attorney General Morales also requested that the judge order Arias to be held in preventive detention because, she alleged, he was likely to obstruct justice.[112] Under Colombian law, preventive detention may only be ordered if the judge determines the evidence presented allows a reasonable inference of authorship or participation in the investigated crime and there is a determination that the detention is necessary because either 1) the accused may obstruct justice; 2) the accused is a danger to society or the victim; or 3) it is probable that the accused will not appear in court or serve his sentence.[113] Additionally, Colombian law stipulates that preventive detention is "exceptional in nature" and that statutes authorizing its use "can only

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[107] *Fiscalía Solicitó la Detención Preventiva de Andrés Felipe Arias,* NOTICIAS CARACOL, July 21, 2011, *available at* https://www.youtube.com/watch?v=eZNnbfVfaOc.

[108] *La Corte Suprema de Justicia Tiene La Palabra, supra* note 42; *Dos Magistrados, A Explicar Relación con Giorgio Sale, supra* note 41.

[109] *Padrino de Matrimonio,* SEMANA, Oct. 15, 2011, *available at* http://www.semana.com/confidenciales/articulo/padrino-matrimonio/247982-3.

[110] *'Cárcel o Exilio', supra* note 102.

[111] *Frustran Planes para Asesinar al President Uribe y al Ex Ministro Arias,* EL UNIVERSAL, Aug. 28, 2009, *available at* http://www.eluniversal.com.co/cartagena/nacional/frustran-planes-para-asesinar-al-presidente-uribe-y-al-ex-ministro-arias; and *Desbaratan Plan para Derribar Avión del Presidente Uribe,* ABC, Aug. 27, 2009, *available at* http://www.abc.com.py/internacionales/desbaratan-plan-para-derribar-avion-del-presidente-uribe-14982.html.

[112] *Jueces Deciden, supra* note 106.

[113] Ley 906 de 2004 (Por la cual se expide el Código de Procedimiento Penal), Aug. 31, 2004, Art. 308, *available at* http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=14787.

be restrictively interpreted and its [preventive detention's] application should be necessary, appropriate, proportional and reasonable" given the rights guaranteed by the Constitution.[114]

Attorney General Morales argued that Arias would obstruct the investigation if he were allowed to remain free because he had visited former colleagues in prison, which she claimed was done with the goal of influencing their testimony against him.[115] In reality, Arias had visited colleagues that, like him, were being accused of meritless charges to bring them blankets and food during their incarceration. Witnesses at the hearing testified that they had accompanied Arias on such visits and that he had never discussed his case with these former colleagues.

On July 26, 2011, Magistrate Judge Fierro granted the request and Arias was ordered to be held in preventive detention.[116] As part of its continued effort to publicly humiliate Arias in front of the media, and in a clear exhibition of political persecution, the spectators in the Tribunal's theater, who had been rooting for the Attorney General throughout the hearings, burst into applause.[117] Arias' defense did not seek a reconsideration of the preventive detention order because the same judge that issued the order would have been the one to consider any such petition.[118]

After the hearing, Arias was transferred to an isolated cell in a bunker inside the Attorney General's Office building. He remained there for over 24 hours refusing to eat any food out of fear of being poisoned. After that, he was transferred to a high security military prison in Bogotá.

The day after Arias was imprisoned, the Government significantly reduced the security detail assigned to his family. At the same time, his family began receiving threatening telephone calls at their residence.[119] Two days after Arias was imprisoned, several individuals who identified themselves as members of the Judicial Police of the Attorney General's Office appeared at his home. His wife was out at the time, and his newborn child was being watched by his nanny. Without presenting any warrant, the officers then ordered the nanny to bring them documents and personal items (including money and jewelry) that were inside Arias' home.[120] These items were never returned to Arias and his family.

Arias' initial hearing concluded on July 26, 2011, but formal charges were not filed against him until September 16, 2011, 52 days later. Thus, Arias was held in preventive detention without being formally charged with any crime for 52 days. Furthermore, the first pretrial hearing on December 14, 2011 was not held until 89 days after Arias was charged, and

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[114] *Id.*, at Art. 295.
[115] *Dictan Medida de Aseguramiento contra el Ex Ministro Arias por AIS*, EL TIEMPO, July 26, 2011, *available at* http://www.eltiempo.com/archivo/documento/CMS-10011546.
[116] *Ordenan Detención Preventiva en Centro de Reclusión contra Andrés Felipe Arias*, LAS NOTICIAS, July 26, 2011, *available at* https://www.youtube.com/watch?v=eothqL3Mj-E.
[117] *Andrés Felipe Arias Será Trasladado a la Cárcel de la Picota*, NOTICIAS CARACOL, July 26, 2011, *available at* https://www.youtube.com/watch?v=ZmQeofDYxXQ.
[118] *Dictan Medida de Aseguramiento, supra* note 115.
[119] *Falsos Miembros de la Fiscalía Entraron a Casa de Andrés Felipe Arias*, NOTICIAS CARACOL, July 29, 2011, *available at* https://www.youtube.com/watch?v=nCDDiF2jwA4.
[120] *Id.*

Arias' trial would not formally begin in the Supreme Court until June 14, 2012 – almost a year after his imprisonment had begun.

In total, Arias spent 23 months in preventive detention in a high-security military prison in Bogotá; he was held without bond, without having been found guilty of committing any crime, deprived of his liberty and dignity, demoralized and psychologically affected, and without any possibility of working to support his family.[121] During his preventive detention, Arias unsuccessfully requested his release three times.[122] On each of these occasions, the independent Inspector General of Colombia supported Arias' request for release, yet the Attorney General successfully opposed the requests, presenting absurd arguments such as that, were he to be released, Arias would use his Twitter account to interfere in the investigation and attempt to influence the testimony of the State's witnesses.[123]

After nearly two years in prison, Arias was ordered released on June 13, 2013, when Judge Patricia Rodríguez, a judge with no known biases, found no probable cause justifying his detention.[124] Judge Rodríguez found no evidence to support the allegation that Arias would obstruct justice, as the Attorney General had been alleging.[125] Two weeks after Arias' release, the Attorney General's Office issued a notification announcing that it would not further investigate the event involving alleged members of the Judicial Police of the Attorney General's Office taking property out of his home.[126]

b. Political Persecution of Andrés Felipe Arias Leiva During Trial Through Due Process Violations

Arias' criminal trial commenced on June 14, 2012 and would last until February 25, 2014. Under Colombian law, the Colombian Supreme Court's Criminal Division had jurisdiction over Arias' case, as Arias was being tried for crimes allegedly committed while he was a Minister of Government. The panel of Supreme Court Justices that heard Arias' case was extremely and openly biased against him as a result of a political clash between the Supreme Court and President Uribe.[127] This bias was later confirmed when a private discussion of the

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[121] *Caso Arias: "Solo Falta que me Maten,"* SEMANA, May 11, 2013, *available at* http://www.semana.com/nacion/articulo/caso-arias-solo-falta-maten/342948-3; *Andrés Felipe Arias Pide que lo Dejen Defender en Libertad,* EL UNIVERSAL, June 14, 2013, *available at* http://www.eluniversal.com.co/cartagena/nacional/andres-felipe-arias-pide-que-lo-dejen-defender-en-libertad-123078; and *"La Fiscalía Está Dilatando el Proceso en Mi Contra": Andrés Felipe Arias,* EL EESPECTADOR, Feb. 25, 2013, *available at* http://www.elespectador.com/noticias/judicial/fiscalia-esta-dilatando-el-proceso-mi-contra-andres-fel-articulo-406769.

[122] *Niegan, Por Tercera Vez, Libertad al Exministro Andrés Felipe Arias*, NOTICIAS CARACOL, May 6, 2013, *available at* http://noticias.caracoltv.com/nacion/niegan-por-tercera-vez-libertad-al-exministro-andres-felipe-arias; and *Ratifican Detención de Andrés Felipe Arias,* EL NUEVO SIGLO, Mar. 20, 2013, *available at* http://www.elnuevosiglo.com.co/articulos/3-2013-ratifican-detencion-de-andres-felipe-arias.

[123] *Niegan, Por Tercera Vez, supra* note 122; and *¿Y entonces Cuál es la Cuenta de Twitter de Andrés Felipe Arias?*, LA SILLA VACIA, Mar. 12, 2013, *available at* http://lasillavacia.com/queridodiario/41951/y-entonces-cual-es-la-cuenta-de-twitter-de-andres-felipe-arias.

[124] *Andrés Felipe Arias Recobra su Libertad,* LA SEMANA, June 14, 2013, *available at* http://www.semana.com/nacion/articulo/andres-felipe-arias-recobra-su-libertad/346368-3.

[125] *Id.*

[126] Document on file with author.

[127] See §I.c. for further discussion of this.

Supreme Court Justices leaked demonstrating consensus that the Supreme Court Justices must make decisions based on political expedience and without dissenting votes.[128]

Some of the tension between President Uribe and the Supreme Court resulted from Uribe's refusal to back a Supreme Court-led initiative to prohibit the Constitutional Court from exercising judicial review over Supreme Court decisions.[129]

Another source of tension between President Uribe and the Supreme Court was that President Uribe had accused several of these Justices of having connections to narcotraffickers and illicit activities and, in response, many of the Justices publicly aligned themselves against President Uribe and his administration.[130]

As a means to retaliate against President Uribe, current and former Justices of the Supreme Court formally accused Uribe and his cabinet members of wiretapping their offices. One of the Justices that led Arias' case, Justice Maria del Rosario González Muñoz, was identified as one of the victims of the wiretapping in a separate case against other members of Uribe's government,[131] thereby creating a conflict of interest and making her unable to be an impartial and independent adjudicator. Justice González requested to recuse herself from the case because of this conflict of interest, as she had successfully done in a separate case regarding an Uribe administration official, but her request for recusal in Arias' case was refused by the bench. Thus, she remained on the case, voted to convict Arias, and even wrote the majority opinion. The then-President of the Supreme Court, Justice José Leonidas Bustos Martínez, also was publicly identified as a victim of the Uribe administration in a separate legal case, but he refused to recuse himself and also voted to convict Arias.[132] Only one Justice was ultimately recused and it was because he had worked with the Attorney General, as a delegate of the Inspector General's office, during Arias' indictment hearing.

The effects of Justice González's bias became clear in her poor and uneven administering of Arias' case. Justice González attempted to arbitrarily accelerate the timeline for the trial, which would have left insufficient time to properly evaluate the evidence. Arias' trial attorney successfully argued for the trial to proceed according to Colombian law, allowing time for Arias to prepare a defense. However, the Court was uneven in its treatment of both sides of the case, most concerning in its limiting the evidence that Arias was able to present at trial. For instance, the Court refused to consider the previous Attorney General's report finding that Arias had committed no criminal acts with regard to the OAS-IICA agreements. Nor did the Court allow

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[128] *Los Audios de la 'Mata Hari'*, *supra* note 49.
[129] *La Corte Suprema de Justicia Tiene La Palabra, supra* note 42.
[130] *La Corte Suprema de Justicia Tiene La Palabra, supra* note 42; *Dos Magistrados, A Explicar Relación con Giorgio Sale, supra* note 41.
[131] *Aplazan Versión Libre de Álvaro Uribe ante la Corte Suprema,* CARACOL RADIO, Mar. 3, 2015, *available at* http://www.caracol.com.co/noticias/actualidad/aplazan-version-libre-de-alvaro-uribe-ante-la-corte-suprema/20150302/nota/2655793.aspx; *Aplazan Versión Libre de Álvaro Uribe ante Corte Suprema por 'Caso Hacker,'* EL PAÍS, Mar. 2, 2015, *available at* http://www.elpais.com.co/elpais/colombia/noticias/aplazan-version-libre-alvaro-uribe-por-caso-hacker; *Los Audios de la 'Mata Hari'*, *supra* note 49; and Maurcio Vargas, *La Corte que Se Torció,* EL TIEMPO, Nov. 1, 2015, *available at* http://www.eltiempo.com/opinion/columnistas/la-corte-que-se-torcio-mauricio-vargas-columnista-el-tiempo/16418165.
[132] *Corte Aceptó Impedimentos de Dos Magistrados, supra* note 50; *Leonidas Bustos, supra* note 50.

Arias' defense to call a contracts expert on public bidding to testify that the OAS-IICA cooperation agreement did not require a public bid.

Additionally, Justice González allowed Attorney General Morales to present demonstrably inaccurate "evidence." During the trial, Arias explained that Attorney General Morales incorrectly identified government officials and the location of offices within the Ministry in order to support her theory of the case.[133] But the Court did nothing to stop or sanction Attorney General Morales for these actions, and even relied on Attorney General Morales' inaccurate information in its opinion convicting Arias.[134] Similarly, the Office of President Santos refused to release a copy of the *Actas de los Consejos de Ministros* (Records of the Council of Ministers), which discussed the AIS Program and would have bolstered Arias' case. Indeed, Arias' defense was seriously hindered by the fact that the only way to get material from the Government was through a written request that could be granted or denied, and took between three to six months to complete. Although the Justices could theoretically order the Government to release the requested documents, the process was slow and, with a politicized judiciary, Arias' chances of prevailing on such requests were slim.

In February 2012, Attorney General Morales was removed from office due to irregularities in her appointment, but the prosecutor who replaced her on Arias' case simply maintained her baseless line of attack.[135]

Throughout the case, Arias' lawyers struggled to combat the claims of the prosecution, as the prosecutor's theory of the case constantly changed. For example, the prosecution varied on whether they were alleging that Arias acted alone in his alleged embezzlement or whether he had accomplices. Despite the prosecution's inconsistency on this point, no proof of either theory was provided.

On February 25, 2014, the Supreme Court concluded Arias' trial. At the close of the trial, the Inspector General's Office (independent from the Attorney General's Office) requested the Court to dismiss the charges pending against him.[136] The Inspector General argued in his brief that during the trial the Attorney General had exceeded the limits of the charging document. He argued that the Attorney General had failed to prove beyond a reasonable doubt that Arias had acted intentionally, or with *mens rea*, as is required to establish the crimes with which Arias

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[133] *Fiscalía Sabe Quién Es Responsable de AIS: Andrés F. Arias,* TERRA, Oct. 24, 2012, *available at* https://noticias.terra.com.co/colombia/fiscalia-sabe-quien-es-responsable-de-ais-andres-f-arias,356e9a7bdf49a310VgnVCM5000009ccceb0aRCRD.html; and *Fiscalía Adulteró Pruebas, Sostiene Andrés Felipe Arias,* NOTICIAS CARACOL, June 18, 2013, *available at* http://noticias.caracoltv.com/bogota/nacion/fiscalia-adultero-pruebas-sostiene-andres-felipe-arias.

[134] *Fiscalía Dice que no Alteró Pruebas en Caso de Andrés Felipe Arias,* EL COLOMBIANO, Feb. 25, 2014, *available at* http://www.elcolombiano.com/historico/fiscalia_dice_que_no_altero_pruebas_en_caso_de_andres_felipe_arias-GWEC_283757.

[135] *Colombia's Council of State Unseats Vivian Morales, supra* note 46.

[136] *Procuraduría Pide Absolver a Andrés Felipe Arias,* EL ESPECTADOR, Feb. 11, 2014, *available at* http://www.elespectador.com/noticias/judicial/procuraduria-pide-absolver-andres-felipe-arias-articulo-474320; *Procuraduría Pide Absolver a Andrés Felipe Arias,* EL UNIVERSAL, Feb. 11, 2014, *available at* http://www.eluniversal.com.co/colombia/procuraduria-pide-absolver-andres-felipe-arias-151316; and *Procuraduría, que Había Sancionado a Arias por AIS, Pidió Absolverlo,* EL TIEMPO, Feb. 11, 2014, *available at* http://www.eltiempo.com/archivo/documento/CMS-13485695.

was charged. The Inspector General further stated that the Attorney General had conflated Arias with the Ministry of Agriculture, assigning him individual criminal liability for decisions and actions of other officials from the Ministry, and that the Attorney General had not proven that Arias had retained direct control over the AIS Program. Nevertheless, the Supreme Court of Colombia refused to dismiss the charges.[137]

On June 13, 2014, the Inspector General concluded a thorough, over two-year investigation into Arias' personal and family finances, and issued a separate report that concluded Arias had not unjustifiably appropriated any money from the State, again dismissing the accusations against Arias.[138] However, that same day, the Supreme Court leaked the news that it had convicted Arias. The Director of the National Protection Agency, responsible for providing protection to Arias and his family, took to social media to circulate the news reports that Arias had been found guilty of the charges that were pending against him.[139] This was highly irregular not only because it portrayed the interference of a public servant in a judicial process, but also because it came precisely from the public official in charge of the security of Arias and his family. Additionally, of concern, when word spread that the Court had decided Arias' case, a large notice was placed on the front page of *El Tiempo* newspaper advertising the date and time of the hearing where the decision would be announced.

On Thursday, July 17, 2014, the Supreme Court convicted Arias, *in absentia*, of embezzlement by appropriation for the benefit of third parties and contracting without meeting the legal requirements and sentenced him to 17 years and five months in prison and a fine of 50,000 Colombian legal monthly minimum wages, or $15,398,134.[140] Arias was acquitted of the charge of embezzlement by appropriation for the benefit of the OAS-IICA. In an unprecedented act, the Supreme Court openly recognized in its ruling against Arias that there were no witnesses or documentary evidence with which to prove the supposed "criminal plan" for which he was being convicted.[141] Moreover, the Supreme Court's ruling against him also established that there was no diversion of public funds in favor of Arias or his campaign. In sum, the Supreme Court convicted Arias without evidence, blaming him for an embezzlement that lacked any *quid pro quo* whatsoever, and for adhering to the Ministry's longstanding custom of seeking the technical cooperation of the OAS-IICA.

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[137] *Id.*

[138] *Procuraduría Absolvió a Andrés Felipe Arias en Proceso por Enriquecimiento Ilícito*, EL ESPECTADOR, June 18, 2014, *available at* http://www.elespectador.com/noticias/judicial/procuraduria-absolvio-andres-felipe-arias-proceso-enriq-articulo-499106; and *Absuelven a Andrés Felipe Arias por Enriquecimiento Ilícito*, TERRA, June 18, 2014, *available at* https://noticias.terra.com.co/colombia/absuelven-a-andres-felipe-arias-por-enriquecimiento-ilicito,bb9d68bd670b6410VgnVCM20000099cceb0aRCRD.html.

[139] Andrés Villamizar (@villamizar), Tweet from June 13, 2014, https://twitter.com/villamizar/status/477504531040071680. When Andrés Villamizar tweeted this on June 13, 2014, he was the Director of the National Protection Agency and his twitter account reflected that position. He no longer holds the position.

[140] In Colombia, in 2014 the legal monthly minimum wage in Colombian Pesos (COP) was $COP 616,027. Thus, the penalty imposed on Arias is of $COP 30,801,350,000. In 2014, the Colombian Peso – Dollar (COP – USD) exchange rate was, on average, $COP 2,000.33 (see https://dolar.wilkinsonpc.com.co/dolar-historico/dolar-historico-2014.html). Thus, in Dollar terms, the penalty imposed on Arias in 2014 represented $USD 15,398,134.

[141] Document on File with Author.

Supreme Court Justice Eugenio Fernández Carlier dissented from the decision and wrote an opinion criticizing the Court's ruling.[142] Justice Fernández Carlier partially concurred in the conviction for embezzlement, but believed the Attorney General had not met the burden of proof regarding the illegal contracting charge. He stated in his dissent that the indictment against Arias was "subject to interpretation, ambiguous, generic, tacit, equivocal, contradictory, exclusionary, imprecise, undefined, doubtful, [and] incomprehensible."[143] He argued that what was contained in the indictment was different from what was proven at trial and that, because of the Attorney General's inconsistent assertions, Arias' due process rights were violated.[144] He also criticized his colleagues, arguing that the Attorney General charged Arias based on one set of facts, but that the Court convicted him based on another set of facts, thereby infringing on his due process rights.[145]

The bias of the Court is evident in Arias' conviction and in the actual opinion itself. In addition to the Court's admission that there was not substantial evidence to convict Arias, not all of the Justices that voted to convict Arias were even present for the duration of his trial. Of the eight Justices who voted in Arias' case, only five were Justices on the Supreme Court for the duration of Arias' trial. In fact, one of the Justices wasn't even on the bench until days after Arias' trial ended, yet she was able to vote to convict Arias.

The Court also did nothing to investigate the faulty evidence provided by the Attorney General, and ultimately relied on it to convict Arias. For example, the Court cited to the fact that Arias attended some of the Administrative Committee's meetings as proof of Arias' control over the AIS Program and therefore guilt; however, these meetings were in relation to a different cooperation agreement, and not related to the three agreements established with OAS-IICA to administer the AIS irrigation program. It was very surprising for the Court to use these meetings, which were wholly unrelated to the charges against Arias, as proof of his guilt. Equally bizarre, the Court repeatedly took note of the witness testimony that described Arias as a "micromanager" and cited this testimony as proof that Arias must have noticed discrepancies in a form that allegedly identified the contracts with the OAS-IICA as not being scientific or technical in one section, while simultaneously identifying them as scientific or technical in another section. On this basis, the Court then claimed that Arias must have known the contracted activities were not scientific or technical and used the designation as a pretense to illegally offer a noncompetitive contract to the OAS to further his embezzlement scheme. In reality, Arias had never even seen the form, which was filled out, per standard procedure, by a lower-level employee within the Ministry.

The Court also completely disregarded or ignored testimony and specific evidence that challenged the prosecution's questionable assertions. For example, the Court ignored that these contracts were drafted by the Ministry of Agriculture's Coordinating Unit (*Unidad Coordinadora*) and were reviewed by various offices in the Ministry before Arias ever saw them.

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[142] *Fuerte Reproche a la Fiscalia de Magistrado que Salvó el Voto en Caso Arias,* VANGUARDIA, July 22, 2014, *available at* http://www.vanguardia.com/actualidad/colombia/270309-fuerte-reproche-a-la-fiscalia-de-magistrado-que-salvo-el-voto-en-caso-ari.
[143] *Id.*
[144] *Id.*
[145] *Id.*

The Court also ignored the argument that any mistakes in the documents were clerical errors, and did not indicate criminal activity on the part of the Minister. Additionally, relevant and probative evidence indicating that the then-Director of the AIS Program, who later became Vice Minister of Agriculture, Juan Camilo Salazar, was the one who initially proposed that the Ministry contract with the OAS-IICA to administer AIS, and that Arias did not attempt to persuade the Ministry to contract with the OAS-IICA, was ignored by the Court.

Likewise, the Court ignored testimony from an irrigation expert and an OAS-IICA official, as well as three written statements, that irrigation is properly classified as scientific and technical. Furthermore, testimony from recipients of the irrigation subsidy that they did not know Arias, had never met him, had never donated to his political campaign, and had never been contacted by anyone else in the Ministry regarding the program was ignored. The Court also ignored a published e-mail exchange with one of the witnesses, who was implicated in the AIS scandal, that admitted that a goal of the scandal was to "F---- ANDRES FELIPE ARIAS."[146] Additionally, members of the panel of experts that reviewed denials of irrigation subsidies under the AIS Program testified that the panel was independently formed by the OAS-IICA without Arias' involvement. Finally, the Court erroneously emphasized that some of the recipients of the irrigation subsidies were large agricultural producers as proof of wrongdoing and ignored evidence that the goal of the AIS Program was to make all producers, big or small, more competitive in the international market.

At the time of Arias' conviction, the Supreme Court's decision was considered final, as Colombian law did not allow for an appeal for public corruption cases of individuals holding cabinet-level positions.

With his domestic remedies exhausted, Arias brought his case before the UN Human Rights Committee in Geneva in August 2014, which oversees Colombia's compliance with the International Covenant on Civil and Political Rights, a treaty to which it is a state party. His complaint was premised on the violation of his rights to due process of law asserting:

- That he was deprived of his right to appeal a decision rendered in a penal process, as required by international law, so that any error committed by a judge in a criminal proceeding or trial may be reviewed and corrected by a higher court.

- That he was found guilty based on facts that were not contained in the original indictment, thus further violating his right to notice of the allegations against him and his right to confront the evidence.

- That he was found guilty based on ambiguous and contradictory evidence, violating his right to a presumption of innocence and to a trial where the State has to prove its case only beyond reasonable doubt.

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[146] *Escándolo de Agros Ingreso Seguro Tenía Como Finalidad "Joder a Andrés Felipe Arias"*, EL ESPECTADOR, Apr. 23, 2013, *available at* http://www.elespectador.com/noticias/judicial/escandalo-de-agro-ingreso-seguro-tenia-finalidad-joder-articulo-417799.

- That he was found guilty by a Court led by a clearly biased Justice who, in the initial stages of the criminal proceedings, stated on the record indicating that she considered herself a "victim of President Álvaro Uribe's administration,"[147] and continued leading the trial against him despite having a clear conflict of interest, thus violating his right to a trial led by an impartial judge.

Facing international pressure to ensure the right to appeal a criminal conviction in all situations, in April 2016, the Constitutional Court ordered the Colombian Congress to provide the right to appeal a criminal conviction. This is particularly important for cabinet-level Ministers who, like Arias, are tried through a special procedure at the Supreme Court. The Constitutional Court's order thereby established the precedent that every Colombian citizen is entitled to the right to appeal, whether or not the Colombian Congress develops the procedure. The Colombian Congress never complied, but given the Constitutional Court's ruling, the right to appeal could now be invoked by any Colombian citizen.

Thus, on April 22, 2016, Arias formally applied for an appeal. Soon thereafter, the Constitutional Court clarified its order by stating that the right to appeal would only be guaranteed beginning in 2016.[148] A month later, on May 31, 2016, the Supreme Court ruled that their change in procedure was not retroactive and, thus, Arias did not have a right to appeal.

c. Political Persecution of Andrés Felipe Arias Leiva and Petition for Asylum in the US

After Arias was released from preventive detention in the summer of 2013, he applied to renew his US B-1/B-2 visa at the US Embassy in Bogotá. Initially, Arias' application was rejected on the basis of the legal proceeding that he was facing. However, after connecting with officials at the Embassy through President Uribe, he was able to have his application reconsidered. Embassy officials requested a document from Arias explaining the charges of his case. In October 2013, after reviewing the document that Arias had prepared, the US Embassy approved the renewal of his visa.

On November 7, 2013, the US Embassy in Colombia issued Arias a Temporary Visitor (B-1/B-2) visa, valid until October 29, 2023.

After receiving his visa, Arias was called by the Political Office of the Embassy for a meeting, which took place on the Embassy's premises a few days later. Another meeting at the Embassy followed a few months later in early 2014. During these conversations, the Embassy acknowledged that the United States was aware that former Uribe officials were being targeted through politically-motivated judicial proceedings – often at the level of the Supreme Court. The general awareness of the US Embassy of these issues has been further confirmed by

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[147] *Aplazan Versión Libre de Álvaro Uribe* - CARACOL RADIO, *supra* note 131; *Aplazan Versión Libre de Álvaro Uribe* - EL PAÍS, *supra* note 131; *Los Audios de la 'Mata Hari'*, *supra* note 49; and *La Corte que Se Torcio*, *supra* note 131.

[148] *Comunicado No. 18*, CORTE CONSTITUCIONAL DE COLOMBIA, Apr. 28, 2016, *available at* http://www.corteconstitucional.gov.co/comunicados/No.%2018%20comunicado%2028%20de%20abril%20de%202016.pdf.

WikiLeaks cables.[149]

On December 2, 2013, Arias' wife was followed by an unidentified suspicious vehicle, as reported by the two remaining security officers assigned to provide protection to the Arias family.[150] The National Protection Agency never investigated the incident.

On December 11, 2013, Arias requested additional protection from the Colombian government given that he was planning to travel with his family to Antioquia State, and that he and his family were facing an increased risk of harm. The Colombian government denied his request for additional protection.[151]

By April 2014, the political environment in Colombia had become extremely polarized as a result of the upcoming election and the well-publicized political confrontation between incumbent President Santos and former President Uribe involving mutual accusations of corruption. Of particular concern, the Court kept changing the date for when it would announce the verdict of Arias' trial – suspiciously in line with the dates relating to the upcoming election and thus raising concerns that the Supreme Court was intending to time Arias' verdict for the greatest political benefit of the Santos government. Though the trial ended on February 25, 2014, the Court originally postponed the final hearing until April 8, 2014.[152] On April 7, 2014, the Court postponed the final hearing until May 15, 2014 — over three months after the trial had ended and just ten days before the first round of the presidential election.[153] Days before the scheduled May 15 date, with media reports showing the high likelihood of a run-off election, the Court again delayed Arias' court date – this time, indefinitely. The election was held on May 25, 2014, but none of the candidates, including incumbent President Santos, received over 50 percent of the votes. The leading candidate after that initial election was from *Centro Democrático* – the party of Uribe and Arias.

A run-off was scheduled for June 15, 2014 between the two candidates with the most votes – incumbent Santos and *Centro Democrático* candidate, Óscar Iván Zuluaga Escobar.[154] Two days before the presidential run-off election, on June 13, 2014, the Supreme Court leaked reports that it had convicted Arias.[155] Simultaneously, the Director of the National Protection

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[149] *Colombia in the Political Doldrums, supra* note 43.
[150] Document on file with author.
[151] Document on file with author.
[152] *Fallo Contra Andrés F. Arias Sera el 8 de Abril,* EL NUEVO SIGLO, Feb. 25, 2014, *available at* http://www.elnuevosiglo.com.co/node/68908.
[153] *Apalazan para el 15 de Mayo Sentido de Fallo a Andrés Felipe Arias,* EL COLOMBIANO, Apr. 7, 2014, *available at* http://www.elcolombiano.com/historico/aplazan_para_el_15_de_mayo_sentido_del_fallo_a_andres_felipe_arias-BWEC_289697.
[154] *Las Alianzas Serán Clave para la Segunda Vuelta el 15 de Junio,* EL TIEMPO, May 26, 2014, *available at* http://www.eltiempo.com/politica/partidos-politicos/segunda-vuelta-en-elecciones-presidenciales-en-colombia-2014/14036536.
[155] *Se Viene Condena contra Andrés Felipe Arias,* LAS 2 ORILLAS, June 13, 2014, *available at* http://www.las2orillas.co/se-viene-condena-contra-andres-felipe-arias/; *Aún No Hay Decisión sobre el Caso Andrés Felipe Arias: Corte Suprema,* EL PAÍS, June 13, 2014, *available at* http://www.elpais.com.co/elpais/colombia/noticias/aun-hay-decision-sobre-caso-andres-felipe-arias-corte-suprema; and *Versiones Contradictorias sobre Fallo de Andrés Felipe Arias por el Caso AIS en la Corte,* PULZO, June 13,

Agency, responsible for providing protection to Arias and his family, also made a statement on social media falsely announcing that Arias had been found guilty of the charges that were pending against him.[156] The timing of these reports was intended to discredit *Centro Democrático* and influence the election results. Prior to these reports, polling showed *Centro Democrático* winning the election; however, President Santos ended up winning with 50.95 percent of the vote.[157]

On the same day these false reports were circulated, fearful for the safety of his family as well as his own safety, Arias contacted the US Embassy twice and spoke to the political attaché and an officer in the Political Section to reconfirm that he would be able to enter the United States. The political attaché reiterated that they were well aware of his case and told him that there was no State Department restriction precluding him and his family from traveling to the US. Two hours later, the political attaché called Arias to confirm that he was clear to enter the United States.

Arias arrived in the US on June 14, 2014. At that time, he was inspected and admitted by an immigration officer. His wife and children arrived in this country on June 19, 2014, and were also inspected and admitted by an immigration officer.

In the days following Arias' arrival in the US, but before his wife and children had also fled Colombia, the National Protection Agency deployed personnel that, instead of protecting his family (as was their mission), chose to report to the Government and to the media on all of his family's movements prior to exiting the country. These actions – at a time when there was no restriction whatsoever on Arias and his family's ability to move and travel freely – further demonstrated the political nature of the Colombian government's pursuit of Arias.[158]

The Government continued to monitor Arias' whereabouts even in the country where he was seeking protection and asylum. On July 15, 2014, President Santos, prior to the official ruling of the Colombian Supreme Court in Arias' case, traveled to Miami on official business and publicly singled out Arias in front of a group of journalists during a business forum, saying that Arias was obliged to return to Colombia.[159] On that same date, Colombian Ambassador to the US Luis Carlos Villegas publicly commented on Arias' confidential asylum request and expressed his belief that it would likely be rejected.[160] And on July 17, 2014, Minister of Foreign Affairs María Ángela Holguín, speaking in a multilateral summit in Brazil, cited

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2014, *available at* http://www.pulzo.com/nacion/versiones-contradictorias-sobre-fallo-de-andres-felipe-arias-por-el-caso-ais-en-la-corte/156201.

[156] Villamizar Tweet, *supra* note 139.

[157] *Empate Técnico Entre Santos y Zuluafa de Cara a Segunda Vuelta, Según Encuesta,* EL PAÍS, June 6, 2014, *available at* http://www.elpais.com.co/colombia/empate-tecnico-entre-santos-y-zuluaga-de-cara-a-segunda-vuelta-segun-encuesta.html.

[158] *¿Para Dónde se Fue Andrés Felipe Arias?,* LA SEMANA, July 11, 2014, *available at* http://www.semana.com/nacion/articulo/andres-felipe-arias-se-habria-ido-de-su-residencia/395145-3.

[159] *Santos Pidió a Andrés Felipe Arias que Regrese al País y Enfrente la Justicia,* A PUERTA CERRADA, July 15, 2014, *available at* http://apuertacerrada.com/gobierno/item/19359-santos-pidio-a-andres-felipe-arias-que-regrese-al-pais-y-enfrente-la-justicia.html.

[160] *Gobierno Ve Difícil Posible Asilo de Andrés Felipe Arias en EE.UU.,* EL Espectador, July 15, 2014, *available at* http://www.elespectador.com/noticias/politica/gobierno-ve-dificil-posible-asilo-de-andres-felipe-aria-articulo-504434.

intelligence from the Colombian Consulate in Miami to reveal to the media that Arias and his family had left the country and were residing in Florida.[161]

Arias also still fears reprisal from paramilitary and guerilla groups in Colombia for his support of President Uribe's hardline stance against these groups. On July 8, 2014, former High Commissioner for Peace and fellow *Uribista* victim of political persecution, Luis Carlos Restrepo, in an affidavit, revealed that the terrorist group FARC had been planning an attack against Arias in 2009. This planned attack was clearly a result of his close association with President Uribe.[162] Proving the imminent danger that Arias and his family members would face in Colombia, the week after the Supreme Court of Colombia issued its ruling, the FARC began distributing pamphlets depicting Arias and President Uribe as criminals.[163] More recently, Arias' Colombian attorney Victor Mosquera received death threats because of his role in bringing Arias' case to international bodies. Because of the seriousness of these threats, the Office of the UN High Commissioner for Human Rights wrote a letter to the Colombian government requesting protection measures for Mosquera.

On September 5, 2014, Arias and his family officially received legal protection in the US as asylum seekers. Less than three weeks later, on September 24, 2014, United States Citizenship and Immigration Services (USCIS) scheduled an interview with the family for October 16, 2014. However, on October 8, 2014—just eight days before the interview—USCIS abruptly canceled the family's interview indefinitely with no explanation provided. Interestingly, concurrent to Arias' asylum application process, the Colombian government has been pursuing his extradition. On September 22, 2014, the Colombian Supreme Court formally began the process to extradite Arias back to Colombia to serve out his illegitimate 17-year-and-5-month prison sentence. Despite the fact that the United States only extradites pursuant to a treaty, and that President Juan Manuel Santos has publicly stated there is no extradition treaty between Colombia and the United States, the US government is actively pursuing Arias' extradition on behalf of Colombia.[164]

On August 23, 2016, the US government, without allowing Arias to present his asylum case and evidence to a USCIS asylum officer, complied with the extradition request of Colombia and officially began the extradition proceedings. Arias was arrested on that date and detained in a Federal Detention Center in Miami until he was released on bond on November 17, 2016.

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[161] *Cancillería Confirma que Andrés Felipe Arias Está en Miami*, EL ESPECTADOR, July 17, 2014, *available at* http://www.elespectador.com/noticias/judicial/cancilleria-confirma-andres-felipe-arias-esta-miami-articulo-504904; and *Andrés Felipe Arias Hizo Trámites Consulares en Miami: Cancillería,* EL TIEMPO, July 17, 2014, *available at* http://www.eltiempo.com/politica/justicia/andres-felipe-arias-hizo-tramites-consulares-en-miami-cancilleria/14261415.

[162] Document on file with author.

[163] Document on file with author.

[164] *Santos Promote Extraditar a Makled a Venezuela,* UNIVISION, Apr. 6, 2011, *available at* https://www.youtube.com/watch?v=zjSxyv34Vvk&feature=youtu.be; *Santos Promote Extraditar a Makled a Venezuela,* UNIVISION, Apr. 6, 2011, *available at* https://www.youtube.com/watch?v=zjSxyv34Vvk&feature=youtu.be; and Tim Padgett, *Extraditing Drug Lord Walid Makled: Why Bogotá Snubbed Washington,* TIME, Apr. 13, 2011, *available at http://world.time.com/2011/04/13/extraditing-drug-lord-walid-makled-why-bogota-snubbed-washington/.*

While the extradition case has proceeded, Arias' asylum proceedings have remained halted. On May 15, 2017, eight US members of Congress wrote to USCIS inquiring on the status of Arias' asylum application.[165]

On September 28, 2017, US Federal Judge John O'Sullivan cleared the way for Arias' extradition to Colombia at Arias' extradition hearing, held before the US District Court for the Southern District of Florida, located in Miami.[166] He also ordered Arias to be arrested on the consideration that there was a flight risk.[167] Since September 28, 2017, Arias has thus been detained at the Federal Detention Center in Miami, operated by the Federal Bureau of Prisons.

Arias' defense vowed to fight this decision, claiming that "the [US] government made a mistake [and] they do not know how corrupt and politicized this case has been."[168] Former Colombian President Uribe, who attended the hearing, added that there were "very grave" issues with this case, including the fact that "the [Colombian] government has lied about there being an extradition treaty," as well as there being "cases of corruption in the Supreme Court."[169] The defense has since filed an appeal to contest Judge John O'Sullivan's decision and has been granted 30 days to form their argument.[170]

IV. Legal Analysis of the Case in Colombia

Andrés Felipe Arias Leiva, a leader of the political opposition and a former presidential candidate, is being persecuted by the Colombian government in violation of international and Colombian law. The Colombian authorities have targeted Arias through a criminal indictment, trial, conviction, and sentencing. During this entire judicial process Colombia violated Arias' rights guaranteed him under international and Colombian law; specifically, the Government violated Arias' fundamental rights to freedom of association, freedom of expression and opinion, and right to take part in public affairs and be elected without unreasonable restrictions. Arias' right to due process was also flagrantly violated because his trial did not comport with international norms related to the rights to due process of law and a fair trial.

Colombia is a party[171] to the International Covenant on Civil and Political Rights[172]

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[165] The members of Congress include Ileana Ros-Lehtinen (R-FL), Debbie Wasserman Schultz (D-FL), Mario Diaz-Balart (R-FL), Ted Deutch (D-FL), Carlos Curbelo (R-FL), Ted Yoho (R-FL), Christopher Smith (R-NJ), and Gus M. Bilirakis (R-FL).

[166] *Andrés Felipe Arias será extraditado,* EL ESPECTADOR, Sep. 28,2017, *available at* https://www.elespectador.com/noticias/judicial/andres-felipe-arias-sera-extraditado-articulo-715469

[167] *Id.*

[168] *Id.*

[169] *Andrés Felipe Arias será extraditado a Colombia,* EL COLOMBIANO, Sep. 28, 2017, *available at* http://www.elcolombiano.com/colombia/andres-felipe-arias-orden-de-extradicion-a-colombia-XK7396275

[170] Sergio Gómez Maseri, *Defensa de Arias evalúa acudir a Trump para evitar extradición,* EL TIEMPO, Sep. 29, 2017, *available at* http://www.eltiempo.com/mundo/eeuu-y-canada/abogados-de-andres-felipe-arias-buscarian-indulto-de-trump-para-evitar-extradicion-135990

[171] International Covenant on Civil and Political Rights, G.A. Res 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976, [hereinafter *ICCPR*]. Colombia signed the treaty on December 21, 1966, and ratified it on October 29, 1969. *United Nations Treaty*

(ICCPR), and must therefore abide by all of its provisions. In addition, the rights guaranteed in the ICCPR are binding on the Government not only as a matter of international law, but also because the Colombian Constitution explicitly states that international treaties to which Colombia is a party and that have been ratified internally have priority domestically. Article 93 of the Constitution reads:

> International treaties and agreements ratified by Congress that recognize human rights and prohibit their limitation in states of emergency have domestic priority. The rights and duties mentioned in this Charter will be interpreted in accordance with international treaties on human rights ratified by Colombia.[173]

The Colombian Constitution also guarantees these same rights. Articles 13, 15, 18, 20, 21, 24, 25, 28, 38, 40 protect Colombian citizens' rights to equality before the law, privacy, opinion, freedom of expression, dignity, movement, work, freedom of association, and political freedom.

In addition, Colombia is also a party to the American Convention on Human Rights. This petition, however, does not focus on violations of the American Convention because a separate claim has been filed based on these treaty rights before the Inter-American Commission on Human Rights.

a. Andrés Felipe Arias Leiva's Persecution Is a Result of His Exercising Fundamental Rights and Freedoms

The Colombian government targeted and persecuted Arias because he exercised fundamental rights protected by international and domestic law, including the right to freedom of expression and opinion, freedom of association, and freedom to take part in public affairs and be elected without unreasonable restrictions.[174]

1. The Colombian Government Is Persecuting Andrés Felipe Arias Leiva Because He Exercised His Right to Freedom of Expression and Opinion

The Government's persecution of Arias is, in part, punishment for exercising his right to freedom of expression and opinion protected by the ICCPR and the Universal Declaration of Human Rights (UDHR).[175] Freedom of expression includes the "freedom to hold opinions

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Status: ICCPR, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREA TY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec.

[172] *ICCPR, supra* note 171, at Art. 9(1).

[173] Constitution of Colombia, 1991, Art. 93, *English translation available at* http://confinder.richmond.edu/admin/docs/colombia_const2.pdf [hereinafter *Colombian Constitution*].

[174] *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, at Arts. 19-21 (1948) [hereinafter *UDHR*]. *See, also, ICCPR, supra* note 171, at Arts. 19, 21, and 25.

[175] While the UDHR, as a General Assembly resolution, is not technically considered binding in its entirety on all states, the UN Working Group on Arbitrary Detention has decided to "rely heavily on 'soft' international legal principles to adjudicate individual cases." Jared M. Genser & Margaret Winterkorn-Meikle, *The Intersection of Politics and International Law: The United Nations Working Group on Arbitrary Detention in Theory and Practice*, 39 COLUM. HUM. RTS. L. REV. 101, 114 (2008).

without interference" and "to seek, receive and impart information and ideas of all kinds regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."[176] Freedom of expression also includes the right to political discourse.[177] As the Human Rights Committee observed:

> [T]he freedoms of information and of expression are cornerstones in any free and democratic society. It is in the essence of such societies that its citizens must be allowed to inform themselves about alternatives to the political system/parties in power, and that they may criticize or openly and publicly evaluate their Governments without fear of interference or punishment . . . .[178]

In addition to the requirements of international law, Colombian law protects the right to freedom of expression and opinion. Article 20 of the Colombian Constitution guarantees "[e]very individual . . . the freedom to express and diffuse his/her thoughts and opinions, to transmit and receive information that is true and impartial, and to establish mass communications media."[179] Article 18 enshrines the right to "[f]reedom of conscience . . . No one will be importuned on account of his/her convictions or belief . . . ."[180]

The Colombian government is persecuting Arias because he has exercised his right to freedom of expression and opinion. Arias has been targeted specifically for the political opinions he has expressed over many years, which the current administration perceives to be a threat to its power.

As a member of Uribe's administration, in which he served, at various points, as Director of Macroeconomic Policy, Vice Minister of Agriculture, and Minister of Agriculture, Arias was a vocal supporter of Uribe's policies, including his strong position against the FARC.

Therefore, when Uribe began critiquing the dramatically different policies of President Santos, Arias joined Uribe in also criticizing Santos' proposed policies. This division led to Uribe and Arias' decision to co-found the political opposition party *Centro Democrático*. Today, Arias remains an outspoken critic of Santos and his administration's policies, both in his personal capacity and as a leader of *Centro Democrático*. For example, Arias gave public speeches denouncing Santos' agenda at his party's convention in February 2011.[181] These acts,

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[176] *ICCPR*, *supra* note 171, at Art. 19(1), (2) ("Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideals of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice"); *see also UDHR*, *supra* note 174, at Art. 19 ("Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers").

[177] *Human Rights Committee General Comment No. 34 (2011) on Article 19: Freedom of Expression*, Sept. 12, 2011 (adopted at 102nd session July 11-29, 2011), CCPR /C/GC/34 at ¶ 11.

[178] *Aduayom et al. v. Togo*, Communications Nos. 422/1990, 423/1990 and 424/1990, U.N. Doc. CCPR/C/51/D/422/1990/423/1990 and 424/1990 (1996) at ¶ 7.4 (emphasis added). *See also de Morais v. Angola*, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005) at ¶ 6.7.

[179] *Colombian Constitution*, *supra* note 173, at Art. 20.

[180] *Id.*, at Art. 18.

[181] *El Churchill Criollo*, *supra* note 99.

and numerous others, of political expression and opinion have incited the Colombian government to persecute Arias for his oppositional beliefs.

As a result, Colombia's persecution of Arias based on his political opinion and expression is a violation of Colombia's obligations under both international and Colombian law.

2. *The Colombian Government Is Persecuting Andrés Felipe Arias Leiva Because He Exercised His Right to Freedom of Association*

The Colombian government is persecuting Andrés Felipe Arias Leiva in part as punishment for his exercising his right to freedom of association as protected by the ICCPR[182] and the UDHR.[183] Additionally, Article 38 of the Colombian Constitution guarantees citizens "[t]he right of free association for the promotion of various activities that individuals pursue in society . . . ."[184]

Arias is a prominent member of the political opposition. Furthermore, he has a close relationship to former President Uribe. Arias' connection to Uribe began when he joined Uribe's presidential campaign in 2000 as an economic advisor. When Uribe won, Arias was appointed Director of Macroeconomic Policy, then Vice Minister of Agriculture, and ultimately to the cabinet position of Minister of Agriculture. During this time, Arias was a vital member of Uribe's administration and a vocal supporter of Uribe's policies.

The chosen successor to Uribe, and widely considered to be his protégé, Arias ran for the presidency of Colombia in 2009 on a platform of continuing Uribe's policies. Arias was a popular candidate and an early favorite in the primary polls, garnering over one million votes. Though the AIS scandal ultimately ruined his chances of winning the presidency, Arias continued advocating for his political beliefs. In 2013, he co-founded the opposition political party *Centro Democrático* with Uribe. Together, Uribe and Arias lead the political opposition that threatens the power of the current Santos administration.

Therefore, the Colombian government is targeting Arias in an attempt to silence him because of his association with former President Uribe and the political opposition party *Centro Democrático*. Through these actions, Colombia is in violation of international and Colombian law.

3. *The Colombian Government Is Persecuting Andrés Felipe Arias Leiva Because He Exercised His Right to Take Part in Public Affairs*

The Colombian government's persecution of Arias is also punishment for exercising his right to take part in public affairs and be elected without unreasonable restrictions as protected

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[182] *ICCPR*, *supra* note 171, at Art. 22(1) ("Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests").
[183] *UDHR*, *supra* note 174, at Art. 20 ("(1) Everyone has the right to freedom of peaceful assembly and association. (2) No one may be compelled to belong to an association").
[184] *Colombian Constitution*, *supra* note 173, at Art. 38.

by the ICCPR[185] and the UDHR.[186] This right is also protected in Article 40 of the Colombian Constitution: "the right to participate in the establishment, exercise, and control of political power[,]" which includes, among others, the right to vote and be elected to office, participate in elections, form political parties and movements, and disseminate political opinions, ideas, and programs.[187]

According to the Human Rights Committee, "[c]itizens . . . [may] take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring the freedoms of expression, assembly and association."[188] Moreover, this right depends on the ability of individuals to run for office. As the Human Rights Committee has noted:

> The effective implementation of the right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates . . . Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation. No person should suffer discrimination or disadvantage of any kind because of that person's candidacy.[189]

In addition, the UN Working Group on Arbitrary Detention's jurisprudence supports this right; a violation of ICCPR Article 25 occurs where individuals are detained solely for exercising their right to freedom of association and the right to take part in the conduct of public affairs.[190]

As the facts discussed above illustrate, the Colombian government has targeted Arias because he has actively taken part in public affairs.

Arias has served in multiple positions of public service, including all the roles he played as a member of Uribe's administration. When Uribe could not run for a subsequent term (because of term limits), it was Arias who came forward as a leader willing to further Uribe's policies. Arias mounted his presidential campaign in 2009, exercising his right to take part in elections.

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[185] *ICCPR, supra* note 171, at Art. 25 ("Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country").

[186] *UDHR, supra* note 174, at Art. 21 ("(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. (2) Everyone has the right of equal access to public service in his country. (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures").

[187] *Colombian Constitution, supra* note 173, at Art. 40.

[188] *Human Rights Committee General Comment No. 25 (1996)*, CCPR/C/21/Rev.1/Add.7, at ¶ 8 (emphasis added).

[189] *Id.*, at ¶ 15 (emphasis added).

[190] *See Tran Thi Thuy et al. v. Government of Viet Nam*, Opinion No. 46/2011, adopted Sept. 2, 2011, ¶¶ 21, 22, 26.

Ultimately, because Arias was a popular candidate, his campaign was steamrolled by the politically motivated accusations that were leveled against him. Those accusations were essentially a smear campaign to silence Arias and remove him from the presidential election and politics. The smear campaign was successful, as Arias lost the primaries and was therefore unable to continue as a candidate for the 2010 presidential election.

However, despite Arias' subsequent two-year preventive detention stemming from these politically-motivated, arbitrary charges, Arias refused to remain silent. In 2013, he co-founded the opposition political party *Centro Democrático*, again exercising his right to take part in the political process.

As a result of his public and political career, the Colombian government perceives Arias to be a threat to its hold on power, and as such, the Government has continuously targeted Arias. The politically motivated conviction against Arias, which is nothing more than a continuation of the smear campaign that brought down his 2009 presidential campaign, is purely punishment for Arias' willingness to step forward and participate in the political process in Colombia.

Furthermore, it is important to emphasize that this politically motivated conviction also directly resulted in formal measures to silence Arias: as part of Arias' conviction, he has been barred from holding public office for life. Nevertheless, Arias continues to seek ways to participate in public life and the political process.

Therefore, it is clear that the Colombian government is specifically targeting and persecuting Arias because he is seeking to be an active political player in Colombia, which is a blatant violation of international and Colombian law.

b. The Trial and Detention of Andrés Felipe Arias Leiva Failed to Respect International Norms Relating to the Right to a Fair Trial.

Andrés Felipe Arias Leiva was subjected to a politically-motivated detention, trial, conviction, and sentencing that violated rights guaranteed by international law, including those rights guaranteed in the ICCPR, UDHR, and Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Body of Principles). In the process of denying Arias the right to a fair trial, the Colombian government also violated its Constitution and domestic laws that provide for due process protections.

1. The Colombian Government Failed to Notify Andrés Felipe Arias Leiva of the Charges Against Him in a Reasonable Time

Under the ICCPR, every individual is entitled to "be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."[191] Further, the ICCPR protects the rights of arrested individuals "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him."[192] The Body of Principles also safeguards the right of an individual to "be informed at the time of his arrest of

[191] *ICCPR, supra* note 171, at Art. 9(2).
[192] *Id.*, at Art. 14(3)(a).

the reason for his arrest and . . . be promptly informed of any charges against him."[193]

The Government of Colombia failed to meet these requirements that Arias be informed of the charges against him in a timely manner. Arias' initial hearing ended on July 26, 2011 and his pretrial detention began on that same day. Attorney General Morales did not formally file charges against Arias until September 16, 2011. Therefore, Arias was held in preventive detention for 52 days after his arrest without being charged with a crime – a *prima facie* violation of the requirement under international law to be promptly informed of charges.

Additionally, the first pretrial hearing was not held until December 14, 2011, 89 days after Arias was charged, and Arias' trial did not formally begin in the Supreme Court until June 14, 2012, almost a year into his imprisonment.

In addition, it became apparent during the trial proceedings that the Government intended to make arguments beyond the charges initially levied against Arias. Attorney General Morales oscillated between arguing that Arias had committed the alleged crimes independently and that he had accomplices. Under the theory that Arias worked alone, Attorney General Morales had to prove that Arias either personally completed each element of the crime, or that he used those around him as instruments without their knowledge.[194] In comparison, the theory of accomplices required that Attorney General Morales prove that there was a common plan, the actions of each participant, and that each participant had a role that helped further the plan.[195] As Attorney General Morales was not consistent in her theory of guilt, it was impossible for Arias to be properly informed of the charges against him, even during his trial.

2. *The Colombian Government Unjustifiably Held Andrés Felipe Arias Leiva in Preventive Detention and Denied Opportunities for Bail*

Under international law, every person has the right to be free from arbitrary detention, which is defined in the ICCPR as any "depriv[ation] of liberty except on such grounds and in accordance with such procedures as are established by law."[196] The ICCPR goes on to say "It shall not be the general rule that persons awaiting trial shall be detained in custody,"[197] which the UN Human Rights Committee, the body of state parties that definitively interprets the ICCPR, has consistently interpreted to mean that "pre-trial detention should be the exception and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party."[198] The Human Rights Committee has concluded that ICCPR is violated when a state

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[193] *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, GA Res. 47/173, 43 U.N. GAOR Supp. (No. 49) 298, A/43/49, Dec. 9, 1998, at Principle 10 [hereinafter *Body of Principles*].
[194] Ley 599 de 2000 (por la cual se expide el Código Penal), No. 44097, July 24, 2000, Art. 29, *available at* https://www.oas.org/juridico/mla/sp/col/sp_col-int-text-cp.pdf.
[195] *Id.*, at Art. 29.
[196] *ICCPR*, *supra* note 171, at Art. 9. *See, also, UDHR*, *supra* note 174, at Art. 9 (1948) ("No one shall be subjected to arbitrary arrest, detention or exile"), and *Body of Principles*, *supra* note 193, at Principle 2 ("Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law").
[197] *ICCPR*, *supra* note 171, at Art. 9(3).
[198] Communication No. 526/1993, *M. and B. Hill v. Spain* (Views adopted on 2 April 1997), UN doc. *GAOR*, A/52/40 (vol. II), p. 17, ¶ 12.3.

cannot sufficiently explain why "setting an appropriate sum of bail and other conditions of release" does not satisfy any concern about the accused.[199]

Under Colombian law, preventive detention may only be ordered if the magistrate determines the evidence presented allows a reasonable inference of authorship or participation in the investigated crime, and there is a determination that a pre-conviction detention is necessary because 1) the accused may obstruct justice; 2) the accused is a danger to society or the victim; or 3) it is probable that the accused will not appear in court or serve his sentence.[200] Additionally, Colombian law stipulates that preventive detention is "exceptional in nature" and the statutes authorizing its use "can only be restrictively interpreted and [preventive detention's] application should be necessary, appropriate, proportional and reasonable" given the rights guaranteed by the Colombian Constitution.[201]

Arias was wrongly imprisoned in preventive detention for nearly two years, from July 26, 2011 to June 14, 2013. In doing so, Colombia violated Arias' right to be free from unnecessary preventive detention and his right to bail.

At the start of Arias' initial hearing on July 21, 2011 before a magistrate,[202] Attorney General Morales identified Arias as the likely author of the crimes of embezzlement and of entering into a contract without meeting the legal requirements, and requested that Arias be preventively detained as a "security measure."

Attorney General Morales tried to claim that Arias would obstruct the investigation if he were allowed to remain free, pointing to the fact that Arias had visited former colleagues in prison and claiming that he must have done this with the goal of influencing their testimony against him.[203] In reality, Arias had visited colleagues that, like him, were being accused of meritless charges to bring them blankets and food during their incarceration. Witnesses at the hearing testified that they had accompanied Arias on such visits and that he had never discussed his case with these former colleagues. Despite these testimonies, on July 26, 2011, the magistrate granted Attorney General Morales' request.

This decision by the magistrate was an improper application of Colombian law. At the initial hearing, Attorney General Morales did not present legitimate evidence to impute responsibility for the alleged crimes to Arias. There was no evidence that sufficiently established that Arias had orchestrated either the alleged embezzlement scheme or the alleged illegal contracting.

Additionally, even assuming that Attorney General Morales had presented sufficient evidence to impute responsibility to Arias for the crimes alleged, there was no basis to believe that Arias would obstruct justice, be a danger to society, or fail to attend his court dates. Arias had made no previous attempts to interfere with the investigation and he was not in a position in

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[199] *Id.*
[200] Ley 906 de 2004, *supra* note 113, at Art. 308.
[201] *Id.*, at Art. 295.
[202] *See, supra* note 105.
[203] *Dictan Medida de Aseguramiento, supra* note 115.

government that would allow him to direct the investigation. Furthermore, Arias had not interfered in the previous investigations, so there was no basis to believe he would interfere in this investigation. Similarly, there were no facts to support any assertions that Arias would be a danger to the community or the victims of the alleged crimes. Moreover, Arias was being investigated for non-violent crimes and, therefore, there was no reason to believe he was a physical danger to anyone around him. Finally, the magistrate had no basis to believe that Arias would not appear in court or serve out his sentence. At the time of the hearing, Arias was living in Colombia with his wife and two children. He was deeply involved in Colombian politics and clearly committed to Colombia, as evidenced by his service as Minister and his presidential aspirations. Since there was no reason to believe that Arias would obstruct justice, constitute a threat to others, or fail to appear for court or his sentence, the magistrate should have denied Attorney General Morales' request for preventive detention as a matter of law.

Even if the judge had found that Attorney General Morales presented enough evidence to impute responsibility to Arias and found that the facts substantiated one of the three situations enumerated above, Colombian law still clearly dictates that preventive detention should be used sparingly and only when "necessary, appropriate, proportional and reasonable." This high standard was not met in Arias' case. Yet even if there was some compelling reason to override this high standard, there was still an alternative available: Colombian criminal procedure law states that house arrest is an alternative to preventive detention if it would neutralize the threat the accused poses.[204] In the case of Arias, house arrest would have accomplished the same goals as preventive detention.

Over the next two years, Arias unsuccessfully petitioned for his release on three separate occasions. At these hearings, the Attorney General presented absurd arguments against his release, such as suggesting that Arias would, if released, use his Twitter account to interfere in the trial or attempt to convince the Government's witnesses to recant. These were meritless, unfounded allegations based on the Attorney General's own conjectures and biases. Colombian law did not afford Arias the opportunity to appeal the Court's decision granting preventive detention; therefore Arias' only option was to repeatedly submit a new petition for his release. Additionally, there is no provision in the law permitting bail in cases of preventive detention, therefore Arias was effectively detained indefinitely.

It should be noted that there is reason to believe, given the politically-motivated nature of the allegations against Arias, that preventive detention was intended to be a tool to repress Arias and punish him for his exercise of his fundamental rights. Therefore, it was in the Government's interest to keep Arias detained despite the fact that his detention was illegal and arbitrary under Colombian and international law.

Arias' preventive detention was in violation of international and Colombian law barring preventive detention except in exceptional circumstances, as none of the arguments in favor of preventive detention were applicable.

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[204] Ley 906 de 2004, *supra* note 113, at Art. 314.

3. *The Colombian Government Failed to Afford Andrés Felipe Arias Leiva Equality Before the Law.*

The ICCPR states "[a]ll persons shall be equal before the courts and tribunals."[205] According to the Human Rights Committee, this "ensures that the parties to the proceedings in question are treated without any discrimination" and everyone is afforded the principle of the "equality of arms."[206]

In persecuting Arias for his political opinion and affiliations, the Colombian government blatantly violated Arias' right to equality before the law. Before and during the trial, Attorney General Morales accused Arias of having accomplices that helped him execute his plan to embezzle AIS funds. Despite this allegation, no one was ever charged or even named as his accomplice. If Arias had accomplices, they should have been prosecuted as well, or at the very least investigated.

Additionally, Attorney General Morales doubly penalized Arias for allegedly committing crimes in his position as Minister of Agriculture. Under the Colombian statutes for embezzlement and contracting without meeting the legal requirements, an element of both crimes is that the accused is a public official.[207] Attorney General Morales also charged Arias under a law that increases the penalty for any crimes committed by an individual while serving as a public official.[208] However, the statute specifically states that the penalty can only be increased if "while acting as a public official" was not an element of the crime.[209] Although the Court eventually determined that Arias was eligible for an increased sentence on a different ground, the Court should not have even permitted Attorney General Morales to also argue that his culpability was higher because of his status as Minister of Agriculture since the underlying crime already accounted for his rank.

Arias' preventive detention, discussed above, was another violation of his right to equality before the law. Under Colombian law, preventive detention should only be ordered in exceptional circumstances, which were not present in this case. By comparison, others who were charged with similar crimes were not held in preventive detention, even though some of those individuals benefited economically from illegal actions in relation to the AIS irrigation subsidy program or were also government officials.

Moreover, Arias' final sentence was disproportionately harsh when compared to the sentences of others who were implicated in the AIS scandal or who committed comparable crimes.

For all of these reasons, it was clear that the Colombian government intentionally violated Arias' right to equality before the law.

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[205] *ICCPR*, *supra* note 171, at Art. 14(1).
[206] *General Comment No. 32 (2007) on Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial*, UN Human Rights Committee, CCPR/C/GC/32, Aug. 23, 2011, at ¶ 8.
[207] Ley 599 de 2000, *supra* note 194, at Art. 397.
[208] *Id.*, at Art. 58.
[209] *Id.*

4. *The Colombian Government Failed to Provide Andrés Felipe Arias Leiva an Independent and Impartial Judiciary.*

Arias has been subjected to a judicial process that has not met standards of impartiality and independence required under international and Colombian law. The ICCPR affords individuals "a fair and public hearing by a competent, independent and impartial tribunal established by law."[210] The UDHR similarly establishes that every individual "is entitled...to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."[211] The UN Working Group on Arbitrary Detention has consistently held that the rights to a fair and impartial trial form an integral aspect of due process.[212] This right is further guaranteed by Colombia's Constitution: "[The courts'] decisions are independent . . . The functioning of the judiciary will be decentralized and autonomous."[213] Despite these legal guarantees, as described previously, several of the Justices in Arias' case were publicly aligned against former President Uribe and his ministers and never recused themselves from serving as judges in Arias' case.

Moreover, Arias' right to be tried before an independent and impartial jury was grossly violated given that the Colombian judicial system failed to provide Arias with nine independent and impartial Justices from the Criminal Chamber of the Supreme Court. First, one of the nine Justices – Eider Patiño – recused himself but was not replaced by a substitute Justice, as should have been the case. Then, from August to September 2017, five of the remaining eight Justices – Leonidas Bustos, Gustavo Malo, Patricia Salazar, Fernando Castro, and Luis Guillermo Salazar – have appeared to have been implicated in a far-reaching corruption scandal made public in a wiretap released by the US Drug Enforcement Agency (DEA).[214] As a result, Bustos and Malo are currently under investigation after Colombian Senator Musa Besaile admitted to having paid 2 billion Colombian pesos (US $689,000) allegedly destined for Bustos in order to prevent his arrest, and Malo has been asked to step down after coming under investigation for allegedly shelving Besaile's investigation.[215] Given the information in the DEA wiretap, it appears that these Justices in an unknown number of circumstances did not act according to the rule of law but rather may have been subject to rule based on financial payments made to them, thereby demonstrating their rulings were not necessarily independent nor impartial.

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[210] *ICCPR*, *supra* note 171, at Art. 14(1) ("All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law... ").
[211] *UDHR*, *supra* note 174, at Art. 10 ("Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him").
[212] *See, e.g.*, *Abdallah Hamoud Al-Twijri et al. v. Iraq*, WGAD Opinion No. 43/2012, Feb. 20, 2013, at ¶ 46, and *Mohamed Al Jazairy et al. v. Saudi Arabia*, WGAD Opinion No. 52/2012, Aug. 7, 2013, at ¶ 28.
[213] *Colombian Constitution*, *supra* note 173, at Arts. 29 ("Due process will be applied in all cases...") & 228.
[214] *Corrupción en la justicia,* CARACOL RADIO, Aug. 31, 2017, *available at* http://caracol.com.co/m/radio/2017/08/31/judicial/1504137993_008558.html?autoplay=1.
[215] *Leonidas Bustos y Gustavo Malo: ¿irán a la cárcel?,* SEMANA, Sep. 14, 2017, *available at* http://www.semana.com/nacion/articulo/comision-de-acusacion-investiga-a-exmagistrados-por-corrupcion-bustos-ricaurte-y-malo/540095.

Of the three remaining Supreme Court Justices not yet discussed, there are two more – María del Rosario González and José Luis Barceló – who are specifically mentioned on the tapes though the extent of their involvement, if any, in the scandal is unclear.[216] Only one Supreme Court Justice – Eugenio Fernández – was not mentioned in the recordings, and as it happens, he issued the dissent against Arias' conviction.

a. The Supreme Court Was Biased Against Andrés Felipe Arias Leiva and Ignored Relevant Evidence

The panel of Supreme Court Justices that heard Arias' case was extremely biased against Arias because of his connection to former President Uribe, with whom the Supreme Court had a contentious relationship. These tensions stemmed from political differences surrounding the relationship between the Supreme Court and the Constitutional Court, as well as President Uribe's accusations that certain Justices had ties to narcotraffickers. As a result of these disagreements, many of the Justices of the Supreme Court publicly aligned themselves against President Uribe and his administration and began a persecutory campaign against President Uribe and his allies.

In their campaign to undermine President Uribe during the last two years of his term, the Supreme Court blocked President Uribe's nominees for Attorney General in order to alter the system of checks and balances in Colombia. By refusing to appoint one of Uribe's nominees, the Supreme Court ensured that a Deputy Attorney General, partial to the Court's views, was able fill the role for two years. This affected Arias and other cabinet members, as they were soon all targeted by an Attorney General's Office loyal to the Supreme Court's agenda.

In the midst of this clash, the Supreme Court claimed that some of its Justices were being wiretapped by the Uribe administration. Two of the Supreme Court Justices for Arias' trial were publicly identified and legally declared as "victims" of Uribe's supposed wiretappings: Maria del Rosario González Muñoz, the head Justice overseeing Arias' case, and José Leonidas Bustos Martínez, the then-President of the Supreme Court. Clearly, the Court understood this conflict of interest, as Justice González successfully recused herself from a separate case against other members of Uribe's administration.[217] However, Justice González was not able to successfully recuse herself from Arias' case and Justice Bustos did not try to do so. Concerns of biases among the Supreme Court Justices were later confirmed when a private discussion of the Supreme Court Justices leaked demonstrating consensus that they must make decisions based on political expedience without dissenting votes.[218]

Early in Arias' trial, Justice González disclosed this bias, yet she was allowed to remain on the case as head Justice.[219] Evidence of her bias presented itself throughout the trial, for example when she attempted to arbitrarily reduce the time for Arias to prepare his defense.

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[216] *Id.*
[217] *Aplazan Versión Libre de Álvaro Uribe* - CARACOL RADIO, *supra* note 131.
[218] *Los Audios de la 'Mata Hari'*, *supra* note 49.
[219] *Aplazan Versión Libre de Álvaro Uribe* - CARACOL RADIO, *supra* note 131.

Additionally, the biased Court led by Justice González allowed Attorney General Morales to present demonstrably inaccurate evidence.[220] For example, Attorney General Morales incorrectly identified government officials and the location of offices within the Ministry in order to support her theory of the case. But the Court did nothing to stop or sanction Attorney General Morales for these actions, and even relied on Attorney General Morales' inaccurate information in its opinion convicting Arias.[221]

Furthermore, the Court relied on irrelevant evidence presented by Attorney General Morales and discounted pertinent evidence presented by the defense. For example, the Court heavily relied on Attorney General Morales' characterization of Arias as having complete control over the Ministry of Agriculture and the AIS irrigation program. As evidence of this control and Arias' alleged guilt, the Court cited to the fact that Arias attended some AIS Administrative Committee meetings. However, these meetings concerned a totally different cooperation agreement; they were not related to the AIS irrigation program. Furthermore, it was unclear how his mere attendance at an administrative meeting specifically could have furthered the execution of the alleged crimes. Therefore, it was absurd for the Court to use these meetings, which were unrelated to the charges against Arias, as proof of his guilt.

Equally bizarre, the Court repeatedly took note of witness testimony that described Arias as a "micromanager," finding that Arias must have noticed alleged discrepancies in AIS irrigation program documents that mistakenly identified the program as both technical and scientific as well as "nontechnical" and "nonscientific." In doing so, the Court completely ignored the defense's argument that any mistakes in the documents were clerical errors that did not indicate criminal activity or intent. The Court also disregarded testimony that Arias had not drafted the contracts. To the contrary, testimony indicated that the contracts were drafted by the Coordinating Unit (*Unidad Coordinadora*) and were reviewed by various offices in the Ministry of Agriculture before Arias saw them.

The Court also ignored other multiple relevant and probative pieces of evidence presented by the defense, including:

- It was the then Director of the Program, Juan Camilo Salazar, who later became Vice Minister of Agriculture, who proposed contracting with OAS-IICA to administer the AIS irrigation program; it was not Arias who requested, let alone persuaded, the Ministry to contract with OAS-IICA;

- Irrigation programs are scientific and technical, as confirmed in testimony from an irrigation expert and testimony from an OAS-IICA official who had directed the implementation of the 2007 agreement, as well as in three written statements;

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[220] *Fiscalía Sabe Quién Es Responsable de AIS: Andrés F. Arias, supra* note 133; and *Fiscalia Adulteró Pruebas, supra* note 133.
[221] *Fiscalía Dice que No Alteró Pruebas en Caso de Andrés Felipe Arias, supra* note 134.

- Recipients of the irrigation subsidy did not know Arias, had never met him, had never donated to his political campaign, and had never been contacted by anyone else in the Ministry regarding the program, as confirmed by testimony from the recipients; and

- The OAS-IICA panel of experts that reviewed denial of subsidy payments was independently formed by OAS-IICA without Arias' involvement, as confirmed in testimony from panel members.

In addition, the Court erroneously limited the evidence that Arias was able to present at trial. For example, the Court refused to consider or admit into evidence the previous Attorney General's report finding Arias had committed no criminal acts.

At the end of Arias' trial, the Inspector General[222] requested that the charges against Arias be dismissed for lack of evidence. In his report, the Inspector General accused Attorney General Morales of exceeding the limits of the original indictment during the trial. Despite the Inspector General's expertise in the area of government corruption, the Court disregarded his petition to dismiss the charges against Arias.

Lastly, in an astonishing example of the judiciary's bias against Arias, not all of the Justices that voted to convict Arias were members of the Supreme Court for the entirety of his trial. Of the eight Justices on the panel, only five were Justices on the Supreme Court for the duration of Arias' trial. In fact, one of the Justices wasn't even on the bench until days after Arias' trial ended, yet she voted to convict Arias. The fact that Justices that did not even attend all of Arias' trial were still permitted to vote on the case, and blindly determined he was guilty, is a gross violation of Arias' rights and shows that the judiciary was biased and politicized.

b. All Official Actions of Attorney General Morales Were Ultra Vires Because Her Election Was Void. She Also Had a Conflict of Interest and Was Biased Against Andrés Felipe Arias Leiva

Colombia's Constitution gives responsibility for electing the Attorney General to the Supreme Court of Colombia, stating that a candidate should be elected from among a group of candidates proposed by the President by a two-thirds vote. The Constitution also requires the Supreme Court to have 24 Justices in place, except in extraordinary circumstances such as a position being empty due to ordinary succession processes. When Morales was elected Attorney General in early 2011, she secured 14 votes from the 18 Supreme Court Justices present at the time; however, she failed to secure the two-thirds vote from the full Court, which would have been 16 votes. In February 2012, the Council of State confirmed that Colombia's Constitution requires an Attorney General be elected with a two-thirds vote from the full Court, not merely those appearing. Thus, the Council of State deemed her election to be void in March 2012.[223]

Before Attorney General Morales was forced to leave her post, she accused Arias of crimes, fought to detain him pending trial, and conducted various aspects of his trial. The

[222] The Inspector General is charged with investigating government corruption and criminal activity. The Inspector General investigated Arias and determined he had not committed a crime.
[223] *Colombia's Council of State Unseats Vivian Morales, supra* note 46.

decision by the Council of State to find her election void rendered all actions she took between her election and removal as *ultra vires*, or without actual legal authority. At a bare minimum, it was incumbent upon the new acting Attorney General and subsequently the newly-elected Attorney General to conduct an objective review of all active cases in which she had served as the prosecutor. Instead, the Attorney General's Office continued to prosecute Arias' case as it had previously, completing no such review nor providing any remedy for the Government's acknowledgment that Arias' prosecutor had been acting *ultra vires*.

Beyond having been illegally elected as Attorney General and then later removed from office, Morales was an improper choice of a prosecutor for this case for several reasons. Before she was even Attorney General, Morales had predetermined Arias' guilt. When she worked as a journalist, she publicly condemned the AIS irrigation program and made clear she believed Arias was guilty.[224]

In addition, she was perceived to have a personal stake in the outcome of the trial and she made no attempt to afford Arias due process protections guaranteed under international and Colombian law. Attorney General Morales had a conflict of interest that made it impossible for her to fairly prosecute the case. Attorney General Morales is married to Carlos Alonso Lucio, a former militant and close ally of the very guerrilla groups, drug cartels, and paramilitary groups that Uribe's administration had fought against. In 1998, Mr. Lucio was sentenced to two-and-a-half years in prison for fraud following an investigation led by Arias' trial attorney, former Supreme Court Justice Jorge Aníbal Gómez Gallego. As a presidential candidate, Arias had publicly stated his support for Uribe's strong stance against these groups and promised to continue this policy as president. Therefore, Attorney General Morales and her husband felt threatened by the possibility of Arias becoming president, which meant she was personally invested in ensuring that Arias was unable to become president. In fact, Morales' prosecution resulted in Arias being barred from holding any public office for the rest of his life, thereby neutralizing Arias as a threat to Attorney General Morales and her husband.

Upon her confirmation, Attorney General Morales immediately initiated a new investigation into Arias and the AIS irrigation subsidy program, even though the previous Attorney General had already conducted an investigation and cleared Arias of any wrongdoing.

During the initial hearing on July 21, 2011, Attorney General Morales endangered the lives of Arias and his family and violated their right to privacy when she divulged on national television Arias' home address, private telephone number, and the names of his immediate family members. At this same hearing she requested that Arias be held in preventive detention, even though there was no legal basis for such a request.[225]

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[224] *Audio de una Grabación de la Fiscal General, Viviane Morales, en El que Se Refiere al Caso Agro Ingreso Seguro*, W RADIO, Jan. 13, 2012, available at http://www.wradio.com.co/escucha/archivo_de_audio/audio-de-una-grabacion-de-la-fiscal-general-viviane-morales-en-el-que-se-refiere-al-caso-agro-ingreso-seguro/20120113/oir/1606087.aspx (In this interview, which took place one week before she was nominated for Attorney General, Morales stated: "it is difficult to understand that victory smile when what we have here is a list of charges of possible grave offenses in the fulfillment of the duties of the Minister of Agriculture." ("Es dificil entender esa sonrisa de Victoria cuando lo que hay aqui es un pliego de carhgos por posibles faltas gravisimas en el cunplimiento de las funciones del ministro de agricultura.").

[225] *Fiscalía Solicitó la Detención Preventiva de Andrés Felipe Arias, supra* note 107.

Therefore, Arias' right to an impartial and fair tribunal was grossly and repeatedly violated through the investigation, trial, and conviction by both the Attorney General's Office and the Supreme Court, in violation of international and domestic law.

5. *The Colombian Government Interfered with Andres Felipe Arias Leiva's Right to Prepare and Present a Defense*

The ICCPR guarantees individuals the rights "[t]o have adequate time and facilities for the preparation of his defence . . . [t]o be tried in his presence, and to defend himself in person . . [t]o examine . . . the witnesses against him and to obtain the attendance and examination of witnesses on his behalf . . . ."[226] The UDHR similarly provides that individuals be afforded "all the guarantees necessary for [a] defence."[227] The Colombian Constitution also states that "[w]hoever is accused is entitled to defense . . . [and] to present evidence and to refute evidence."[228]

As previously stated, Justice González, the head Justice on Arias' case, attempted to accelerate the trial, in such as way as would have diminished the Court's time to assess the admissibility of proposed evidence and denied Arias adequate time to prepare a defense. This would have violated Arias' right to put on a defense and confront the evidence against him. While Arias' trial attorneys successfully blocked this attempt to interfere with Arias' right to prepare a defense, the mere attempt foreshadowed other successful restrictions and interferences later in the proceedings.

Still, however, the Court was uneven in its treatment of both sides of the case, most concerning through its limiting of the evidence that Arias was able to present at trial. For instance, the Court refused to consider the previous Attorney General's report finding that Arias had committed no criminal acts. Nor did the Court permit Arias' defense to call to the stand expert witnesses on public bidding that would have argued that the OAS-IICA cooperation agreements did not require a public bid.

As discussed above, Arias' ability to present a defense and confront evidence was hindered by the vague nature of Attorney General Morales' accusations against him. At different times during the trial, the prosecution accused Arias of both singlehandedly embezzling public funds and entering into illegal contracts, and of having accomplices that aided him in these crimes. These different theories of the case require that vastly different elements be proven, which made it practically impossible for Arias to know what theory of guilt he needed to defend against.

Arias' defense and ability to confront the evidence against him was also seriously hindered by the Government withholding evidence. Particularly important, the Office of President Santos would not provide a copy of *Actas de los Consejos de Ministros* (Records of the Council of Ministers). The only way to get material from the Government was through a written

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[226] *ICCPR*, *supra* note 171, at Art. 14(3)(a), (b), (d) & (e).
[227] *UDHR*, *supra* note 174, at Art. 11(1).
[228] *Colombian Constitution*, *supra* note 173, at Art. 29.

request that could be granted or denied, and took between three to six months to complete. Although the Court could order the Government to release the requested documents, the process was slow and, with a politicized Court, Arias' chances of prevailing on such requests were slim.

Furthermore, the Judiciary infringed on Arias' right to present a defense when three of the eight Justices on the panel that heard the case were not present for the entirety of his trial. One of the Justices was not even on the bench until days after Arias' trial had ended, yet she was still able to vote to convict him. Since these Justices reviewed parts of his case for the first time in their chambers and did not attend all of the trial, Arias' rights to present a defense, to be present at his trial, and to defend himself in person were violated.

By allowing the prosecution to inconsistently argue two mutually exclusive theories of guilt and by withholding key evidence from Arias and from the Court, the Colombian government substantially interfered with Arias' right to put on a defense and confront the evidence against him in violation of international and Colombian law.

6. *The Colombian Government Failed to Afford Andrés Felipe Arias Leiva the Presumption of Innocence*

The ICCPR affords individuals "the right to be presumed innocent until proved guilty according to law."[229] The UDHR also establishes that "[e]veryone charged with a penal offence has the right to be presumed innocent until proved guilty."[230] The Human Rights Committee has noted that the presumption of innocence is expressed in unambiguous terms, and "the burden of proof of the charge is on the prosecution and the accused has the benefit of doubt. No guilt can be presumed until the charge has been proved beyond reasonable doubt. Further, the presumption of innocence implies a right to be treated in accordance with this principle. It is, therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial."[231] In *Raúl Linares Amundaray v. Bolivarian Republic of Venezuela*, the UN Working Group on Arbitrary Detention applied this principle in finding that any hindrance of the ability to exercise the right be presumed innocent until proven guilty according to law in a public trial constitutes a violation of the right to a fair trial, as enshrined in the ICCPR and UDHR.[232] Additionally, Principle 36 of The Body of Principles requires that "[a] detained person suspected of or charged with a criminal offence...be presumed innocent and...be treated as such until proved guilty.... . ."[233] The Colombian Constitution also states that "[e]very individual is presumed innocent until he/she is proved to be legally guilty."[234]

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[229] *ICCPR*, *supra* note 171, at Art. 14(2).

[230] *UDHR*, *supra* note 174, at Art. 11 (1) ("Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence").

[231] Office of the High Comm'r for Human Rights, United Nations, *General Comment No. 13: Equality Before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law (Art. 14)*, Apr. 13, 1984 at ¶7 (emphasis added).

[232] *Raúl Linares Amundaray v. Bolivarian Republic of Venezuela*, WGAD Opinion No. 28/2012, Nov. 22, 2012, at ¶ 29.

[233] *Body of Principles*, *supra* note 193, at Principle 236.

[234] *Colombian Constitution*, *supra* note 173, at Art. 29.

Arias was clearly not afforded the presumption of innocence from the outset. Prior to being appointed Attorney General and initiating an investigation, Morales publicly announced on national radio her belief that Arias was guilty.[235] Once she became Attorney General, she immediately initiated an investigation, even though the previous Attorney General had already conducted an investigation into the contracting and concluded that Arias had done nothing illegal. Attorney General Morales also ignored the other previous investigations that, directly or indirectly, absolved Arias of any responsibility in the scandal. This shows her preconceived belief of Arias' guilt such that she was determined to conduct her own investigation to prove him guilty despite the bountiful evidence to the contrary.

At Arias' initial hearing, Attorney General Morales and the Justice violated Arias' right to the presumption of innocence. Attorney General Morales' presumption of Arias' guilt led her to request a hearing before she had even had evidence to charge Arias with a crime. After Arias' initial hearing, it took Attorney General Morales 52 days to formally charge him with a crime, demonstrating that, although she did not have enough evidence at the time of the hearing to charge him with a crime, she was convinced of his guilt.

At the initial hearing, Attorney General Morales successfully petitioned the Court to order preventive detention, despite the lack of evidence against Arias and the lack of evidence indicating Arias would attempt to obstruct justice, be a threat, or fail to attend a hearing or serve out his sentence. The Court instead relied on Attorney General Morales' unfounded allegations that Arias would intimidate witnesses and use his Twitter account to hamper the investigation, demonstrating their inclination to deprive Arias of the presumption of innocence even at this preliminary stage.

As previously discussed, the Court's inclination towards Arias' guilt was further demonstrated throughout the trial, as the Court convicted Arias based on evidence that had little probative value or relevance. For example, the Court was persuaded by Attorney General Morales' argument that Arias controlled the committee in charge of administering the AIS irrigation program, even though evidence was never presented to substantiate this claim. The Court also cited to illegitimate character evidence that Arias had a reputation for micromanaging the Ministry as proof that Arias had orchestrated the AIS scandal. The fact that the Court assigned so much probative value and weight to such conclusory and irrelevant evidence shows that the judiciary did not afford Arias the presumption of innocence.

The Court also disregarded the fact that the Attorney General never met the burden of proof and inconsistently argued two mutually-exclusive theories of guilt. The Court also disregarded discrepancies and flaws in the Attorney General's theories of the case. Despite these inconsistencies, the Court was persuaded by the prosecution's faulty arguments, indicating that Arias was not afforded the presumption of innocence.

7. *Andrés Felipe Arias Leiva's Punishment Is Grossly Disproportionate to the Alleged Crime*

[235] *Audio de una Grabación de la Fiscal General, supra* note 224.

A grossly disproportionate sentence amounts to cruel, inhuman or degrading treatment or punishment contrary to the ICCPR.[236] The UN Working Group on Arbitrary Detention has previously held that detention was arbitrary when it was based on a prison sentence of "excessive length"[237] or not proportionate to the offense or appropriate given the summary nature of the trial.[238] Similarly, the Human Rights Committee has found a violation of Article 9(1) where the author had been sentenced to two years' imprisonment for contempt of court, and the State party had provided no explanation as to why a particularly severe penalty was warranted.[239] The Colombian Constitution similarly protects individuals from "forced sequestration, torture, cruel, inhuman, or degrading treatment or punishment."[240] The Colombian Penal Code further establishes that "the imposition of a sentence or security measure will follow principles of necessity, proportionality and reasonableness."[241]

Arias was subject to a grossly disproportionate punishment because his sentence (17 years and 5 months in prison and a fine of $15,398,134) is disproportionately severe in relation to his alleged crimes. Additionally, under Article 122 of the Colombian Constitution, the Court barred Arias from running in an election or holding public office for life.[242] The severity of Arias' sentence is highlighted when compared to the sentences of others involved in the alleged AIS embezzlement scheme, particularly those who actually received the public funds allegedly embezzled.

For example, members of the Dávila family illegally received subsidies from the AIS irrigation program by lying to the Government, received between 20 and 22 months in prison, all of which could be suspended. In an independent scandal, Hipólito Moreno, a former city councilman, received six-and-a-half years for his involvement in an embezzlement scheme of 3.2 million dollars.[243] Arias' disproportionate sentence reflects the political motivation underlying his case and is another instance of the Colombian government persecuting Arias because of his political beliefs and affiliations. By disgracing the *Centro Democrático* party through Arias' case, the Colombian government effectively silenced the political opposition and inhibited multiparty democracy in Colombia during critical elections in 2010 and 2014.

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[236] *ICCPR*, *supra* note 171, at Art. 7. *See, also, Vinter et al. v. United Kingdom,* Applications Nos. 66069/09, 130/10 and 3896/10, EUROPEAN COURT OF HUMAN RIGHTS, Grand Chamber, Jul. 9, 2013, at ¶ 102; *Soering v. United Kingdom,* Application No. 14038/88, EUROPEAN COURT OF HUMAN RIGHTS, Jul. 7, 1989, at ¶ 104.
[237] *Muhammad Kaboudvand v. Iran,* WGAD Opinion No. 48/2012, Nov. 16, 2012, at ¶ 19 (where the author had been convicted to 10 years imprisonment for various offences linked to his activity as a human rights advocate and defender).
[238] *Nelson Aguiar Ramírez et. al. v. Cuba,* WGAD Opinion No. 9/2003, May 9, 2003, at ¶ 24.
[239] *Dissanayake v. Sri Lanka,* WGAD Opinion No. 1373/2005, July 22, 2008, at ¶ 8.3.
[240] *Colombian Constitution, supra* note 173, at Art. 12.
[241] Ley 599 de 2000, *supra* note 194, at Art. 3.
[242] *Colombian Constitution, supra* note 173, at Art. 122.
[243] Juan Esteban Lewin, *La Desproporcionada Pena de Andrés Felipe Arias,* LA SILLA VACIA, July 17, 2014, *available at* http://lasillavacia.com/historia/la-desproporcionada-pena-de-andres-felipe-arias-48105.

8. *The Colombian Government Deprived Andrés Felipe Arias Leiva of the Right to Appeal*

Under Article 14(5) of the ICCPR, "[e]veryone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law."[244] Article 31 of the Colombian Constitution similarly guarantees that "[a]ny judicial sentence may be appealed or adjudicated."[245]

However, pursuant to the Colombian Constitution, the Supreme Court has exclusive jurisdiction "[t]o try . . . ministers of the Cabinet . . . for punishable deeds with which they are charged."[246] This means that the Supreme Court is the first court to review any criminal case against cabinet members and therefore, there is no opportunity to appeal a conviction.

Because Arias was tried in his capacity as Minister of Agriculture, the Supreme Court of Colombia heard his case at the first instance. On July 17, 2014, after a trial fraught with due process abuses, the Court issued its decision convicting Arias of embezzlement and entering into a contract without meeting the legal requirements. Since Arias was tried by the Supreme Court, there was no opportunity to appeal. Indeed, at the bottom of the decision the Court states, "No recourse is admissible against this verdict."[247]

However, after Arias' conviction in 2014 and in the wake of international pressure to ensure the right to appeal a criminal conviction in all situations, in April 2016, the Constitutional Court ordered the Colombian Congress to provide the right to appeal a criminal conviction. This is particularly important for cabinet-level Ministers who, like Arias, are tried through a special procedure at the Supreme Court. The Constitutional Court's order thereby established the precedent that every Colombian citizen is entitled to the right to appeal, whether or not the Colombian Congress develops the procedure. The Colombian Congress never complied, but given the Constitutional Court's ruling, the right to appeal could now be invoked by any Colombian citizen. Thus, on April 22, 2016, Arias formally applied for an appeal.

Shortly thereafter, the Constitutional Court clarified its order by stating that the right to appeal would only be guaranteed beginning in 2016.[248] A few weeks later, on May 31, 2016, the Supreme Court ruled that their change in procedure was not retroactive and, thus, rejected Arias' appeal.[249]

Practically, the right to appeal is still denied to Arias and those similarly situated. Arias' preclusion from filing an appeal violates the ICCPR and the Colombian Constitution, both of which guarantee the right to appeal as an integral part of due process.

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[244] *ICCPR*, *supra* note 171, at Art. 14(5).
[245] *Colombian Constitution*, *supra* note 173, at Art. 31.
[246] *Id.*, at 235(4).
[247] Document on File with Author.
[248] *Comunicado No. 18*, *supra* note 148.
[249] *See*, *Corte Constitucional Aclaró que Segunda Instancia para Aforados Será a Partir de Abril de 2016*, CARACOL RADIO, Apr. 28, 2016, *available at* http://caracol.com.co/radio/2016/04/28/judicial/1461879008_973178.html.

V. International Support

Public Personalities:

"The most egregious case of political persecution is directed at my former Minister of Agriculture Andrés Felipe Arias, who is currently seeking asylum in the U.S... The moment he decided to run for president in 2010 in defense of my administration's policy against narcoterrorism, he became the target of politicized judicial persecution that continues to this day. Arias was unfairly accused of a fraud scheme in an irrigation subsidy program that was operated with technical cooperation from the Organization of American States... Those individuals who benefited from the alleged fraud testified that they never met Arias, that he was never involved in their wrongdoing, and that they never gave him anything, nor contributed to his presidential campaign... To make matters worse – and in defiance of Colombia's obligations under international law – Arias has been systematically denied the right of any appeal of his conviction." – Álvaro Uribe, former President of Colombia and current Senator, Central Democratic Party of Colombia [250]

"Our party, Centro Democrático, was founded by former President of Colombia Alvaro Uribe Velez; Mr. Arias contributed significantly to the creation of our party and served in its leadership until he and his family were forced into exile... Undoubtedly, the persecution against Mr. Arias is part of the efforts by the Santos Administration and its political allies in the judiciary to decimate our party on account of our opposition to the impunity agreements reached with FARC in Havana... The political motivation of the persecution against Mr. Arias is apparent in the fact that the exact same contract he authorized at the time had been signed over 130 times by many of his predecessors overt he years. Not one of them has ever been under criminal investigation on that account. As for the second charge, Mr. Arias was cleared of any allegation of personally benefiting from the private individuals who defrauded the subsidy program. Said individuals testified before the Supreme Court that they neither knew nor in any way supported Mr. Arias, politically or otherwise... For those reasons, the Inspector General's Office emphatically requested Mr. Arias' acquittal. His conviction by the Supreme Court was so unfair that one of the Justices broke the institution's informal protocol writing a dissenting opinion in which he explicitly deplored the repeated violations of Mr. Arias' rights to due process of law, a proper legal defense, and a fair trial by an impartial judge." – Álvaro Uribe, former President of Colombia and current Senator and the other 34 Senators of the Central Democratic Party of Colombia[251]

"I can testify that Andrés Felipe Arias, his wife Catalina and their two little kids, Eloisa and Juan Pedro, have been systematically threatened due to his political and ideological stance. Indeed, today Mr. Arias is one of the most threatened and persecuted persons in Colombia right now. Those threats can be attributed not only to the terrorist group FARC but also to the Executive and Judicial branch of Colombia in retaliation for his political views and his well-known loyalty to our political party now in opposition... With deep pain and great sadness for he is one of the

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[250] *Ongoing Political Persecution Will Turn Colombia into Venezuela*, Álvaro Uribe, THE HILL, May 17, 2017, available at http://thehill.com/blogs/pundits-blog/foreign-policy/333837-ongoing-political-persecution-will-turn-colombia-into.

[251] Letter from Centro Democrático to Senator Bob Corker, May 9, 2017.

brightest Colombians with a great future, I was informed that Andrés Felipe Arias and his family are seeking asylum in the United States as a way to protect his life and freedom. I plead with the American authorities that his petition is granted." – Francisco Santos Calderón, former Vice President of Colombia[252]

"...In no way can the criminal sanction imposed on Dr. Andrés Felipe Arias be considered proportional or comparative to the disciplinary sanction imposed by the Inspector General... For this reason, in the criminal proceedings, the Representative of the Public Ministry requested that the defendant be absolved of charges since it was not proven that the ex-minister had committed fraud but had acted in negligence... [With] profound respect for the independence with which the Judicial Branch of the United States of America is entrusted, [and] with confidence in its wisdom, I request this honorable authority, as is its custom, to confer the full procedural guarantees to the former minister, Mr. Andrés [F]elipe Arias Leiva and his family, in processing his asylum before the authorities of this brotherly country." – Alejandro Ordoñez Maldonado, then Inspector General of Colombia[253]

"The legal proceedings facing Mr. Arias in Colombia are politically motivated and profoundly unfair. The current government of Colombia is utilizing the judicial process to destroy respected political opponents... Mr. Andres Felipe Arias is a deeply honorable man, and a patriot." – Lincoln Diaz-Balart, former U.S. Representative (R-FL)[254]

"Due to the resignation of the Comptroller Turbay, I was in charge of [the office of] the General Comptroller of the Republic. In that position, I order[ed] an audit [of] the Ministry of Agriculture, especially [of] the Program denominated Agro Ingreso Seguro, by the press reports that denounced abuses in the use of Development credits. From the Auditors' report, there was no responsibility or irregularity in the performance of Minister Andrés Felipe Arias. For that reason, our determination was not to present any charges... The Supreme Court of Justice, composed mostly of magistrates opposed to President Uribe, sentenced him to 17 years, a sentence higher than [those] condemned [for committing] the worst genocides in Colombian history... I have no doubt in affirming that it is a clear and unjust persecution of former Minister Andrés Felipe Arias and his extradition to Colombia would be to scorn the opponents of President Santos and the agreement signed with the world's largest drug cartel." – Roberto Hoyos Botero, former Deputy Comptroller General of the Republic[255]

"When I met for the first-time Andrés Felipe Arias in 2003, he was acting as advisor to my [colleague] the Minister of Finance Alberto Carrasquilla. As I was deeply impressed [by] his devotion to his job, his brilliance and his commitment to the public service, I asked President Álvaro Uribe [for] his authorization to appoint Mr. Arias as Vice-minister of Agriculture... I understand that during his tenure as Minister, he continued receiving the technical assistance of the Inter-American Institute for Cooperation on Agriculture (IICA), a leading think tank in the hemisphere that belongs to the Inter-American System run by the Organization of American States (OAS)...IICA formally became the specialized organism in Agriculture of the Inter-

[252] Letter from Francisco Santos Calderón to US Department of Homeland Security, Jun. 18, 2014.
[253] Letter from Alejandro Ordoñez Maldonado to US Deputy Attorney General Kenneth Blanco, Aug. 30, 2016.
[254] Letter from Lincoln Diaz-Balart to US Judge John O'Sullivan, Sept. 19, 2016.
[255] Letter from Roberto Pablo Hoyos to US Judge John O'Sullivan, Nov. 10, 2016.

American System... Mr. Arias did not take himself the initiative to contract IICA for performing specific discretionary roles for the Ministry. Quite on the contrary, he followed the tradition of contracting IICA for cooperation activities in those fields where this entity has provided its competence and strength." – Carlos Gustavo Cano, former Colombian Minister of Agriculture[256]

"I became acquainted with Andrés Felipe Arias about 14 to 15 years ago, in his capacity as first Vice minister and later Minister of Agriculture... We disagreed regarding some of the policies he advanced, including the program known as Agro Ingreso Seguro, which involved a variety of loans and subsidies... The disagreements notwithstanding, and having been a Minister of Agriculture myself in later years (2013-2014), I cannot say that former Minister Arias is a person who poses any danger to anyone else, let alone say that I deem him to be or have been corrupt... To think that Andrés Felipe Arias is a criminal seems to me to be an act or a decision possibly motivated by political considerations." – Rubén Adrío Lizarralde, former Colombian Minister of Agriculture[257]

"I was never a personal friend of former Minister Arias', but I knew of his excellent academic record, his leadership, and his outstanding commitment to public service... given his personal closeness with the President, he became the target of many of the attacks directed against then President Uribe. It was then that criminal charges were brought against former Minister Arias both for the subsidies granted by the Ministry to a few agricultural businessmen and for subscribing to a contract without fulfilling legal requirements in relation to the technical cooperation agreement signed between the IICA... The agreement was not unlike over 120 agreements signed by different administrations in previous years..." - Marta Lucía Ramírez De Rincón, former Minister of Foreign Trade and former Minister of Defense[258]

"This political persecution fell upon and was directed at Dr. Andrés Felipe Arias with false accusations about the Agro Ingreso Seguro program, when he was Minister of Agriculture and when he was expected to run as the youngest presidential candidate for the Presidency of the Republic and as the most serious contender against the current President of Colombia Dr. Juan Manuel Santos Calderon... It is clear that the strategy was always to target the presidential candidates aligned with Uribe as well as his closest collaborators." – Carlos Ignacio Cuervo Valencia, former Colombian Vice Minister of Health[259]

"Dr. Arias' current situation is a consequence of political persecution by some sectors that have taken advantage of the institutional weaknesses of the justice system that has allowed itself to be used as a mechanism to advance political causes. Dr. Arias' problems began when his leadership made him the political heir of then President Álvaro Uribe... I attest that Dr. Andrés Felipe Arias built his political leadership on merit based on his impeccable academic record, and a public record without flaws. His work in the public sector was always based on a commitment and honest effort to his responsibilities and the search for the best results for the benefit of

[256] Letter from Carlos Gustavo Cano to US Judge John O'Sullivan, Sept. 13, 2016.
[257] Letter from Ruben Dario Lizarralde to US Judge John O'Sullivan, Sept. 27, 2016.
[258] Letter from Marta Lucia Ramirez to US Judge John O'Sullivan, Sept. 21, 2016.
[259] Letter from Carlos Ignacio Cuervo Valencia to US Judge John O'Sullivan, Sept. 2016.

Colombian society." – Paloma Valencia Laserna, Senator, Central Democratic Party of Colombia[260]

"I wouldn't ever doubt the intellectual and moral qualities of [Andrés Felipe Arias]. It seems to me unreasonable that he be charged with the accusation of having committed crimes in which he had no part, I'm sure, where no profit for himself could ever be proven, and where the law was not broken by him." – Tatiana Cabello Flórez, Senator, Central Democratic Party of Colombia[261]

"As agriculture minister, Arias also was characterized as one of the most visible shields of Ex-president Uribe, and became a strong contestant for the presidency of Colombia, this fact [is] the main reason [for] the political persecution of the actual government, persecution that all the contradictors of the policies of President Juan Manuel Santos have lived... I invite you to analyse the actual political scene of Colombia in front of the opposition, asking [you] to allow him [to] have a fair defense in the United States, avoiding his extradition to Colombia keeping in mind the imminent risk of his human rights." – Susana Correa Borrero, Senator, Central Democratic Party of Colombia[262]

"According to prestigious Colombian jurists, [the] criminal proceeding against Ph.D. Andrés Felipe Arias Leiva is just an example of the persecution against those who belonged to the government of former President Álvaro Uribe and some members of the opposition party Centro Democrático... The sentence of 17 years of imprisonment imposed by the Supreme [Court] has been considered in [the] judicial and political bodies of our country disproportionate and unjust. There are certain circumstances and facts that reveal and show a lack of fairness and impartiality in the criminal investigation by the former Attorney General of the Nation... and reveal a series of systematic actions to discredit Centro Democrático, its members and the opponents of the Attorney General's Office." – Ernesto Macías Tovar, Senator, Central Democratic Party of Colombia[263]

"Andrés Felipe was a prominent public servant, his intellectual and personal performance and his work in favor of rural areas, made him a well-known Minister. I kindly request [that]... his outstanding professional development [be assessed]. This, to avoid the unfortunate history of many Colombians who worked for the [Uribe] government, and are being judged for opposing... President Santos' government and the so-called "Peace process"; and not for any legal reasons." – María Del Rosario Guerra De La Espriella, Senator, Central Democratic Party of Colombia[264]

"The factual reasons of any willful misconduct attributed to the capture of Andrés Felipe Arias in Colombia are supported only on political reasons since there is no irregular business of the appropriation of any public money... This [is] our duty to denounce this injustice since protected rights are involved in a rigged political and judiciary inclination... This is a respectful and humble cry of lovers of freedom and democracy that pledge[s] that Mr. Arias [and] his family receive fair justice that is free from any political interest aroused." – Nohora Tovar Rey, Senator,

[260] Letter from Paloma Valencia Laserna to US Judge John O'Sullivan, Aug. 29, 2016.
[261] Letter from Tatiana Cabello Flórez to US Judge John O'Sullivan, Aug. 30, 2016.
[262] Letter from Susana Correa Borrero to US Judge John O'Sullivan, Aug. 30, 2016.
[263] Letter from Ernesto Macías Tovar to US Judge John O'Sullivan, Aug. 30, 2016.
[264] Letter from María Del Rosario Guerra De La Espriella to US Judge John O'Sullivan, Aug. 31, 2016.

Central Democratic Party of Colombia[265]

"This case of political persecution, reveals the inclination of Juan Manuel Santos to reward and encourage the terrorists of the FARC, whom He is going to grant impunity for heinous crimes and crimes against humanity, while innocent people like Dr. Andres Felipe Arias must face the crimes they have not committed... We continue to denounce the injustices and irregularities in the process that is underway against Dr. Arias." – Miguel Henríquez Pinedo, Senator, Central Democratic Party of Colombia[266]

"Former Minister Arias is victim of a political persecution of Colombian justice which can be easily ascertained by studying his case... He was sentenced for supposedly signing a contract erratically with an entity called IICA which is part of the OAS. The same type of contract has been signed by almost all ministers of agriculture, including his predecessors and his successors... It is important to note that the Inspector General's [Attorney's] Office asked the Supreme Court [for] the acquittal of [the] former Minister, considering that the prosecution has overstepped the limits of the indictment... Arias is not the only former Uribe government official who has been persecuted by the Colombian justice and government, we have been victims of infiltration in the presidential campaign, false witnesses, pressure to testify against former President Uribe, and a lot more." – Paola Holguín, Senator, Central Democratic Party of Colombia[267]

"With the installation of the new government in 2010, a polarization of political forces in the country was generated which, in turn, led the current administration to use undue influence in the application of justice for those who had been part of the previous government, one of these cases is precisely related to Andres Felipe Arias. In addition to this, while the negotiations with the narco-terrorist group FARC are taking place in the country, the government is creating a special court for them in order to grant amnesty to their crimes, including tremendous crimes against humanity... Because of all these...we kindly ask... to consider the application for political asylum that has been [filed]." – Everth Bustamente Garcia, Senator, Central Democratic Party of Colombia[268]

"[Andrés Felipe Arias] was sentenced to 17 years in prison, an unprecedented sentence that was not even proportional to the supposed crime. A clear attempt to stop any political aspiration of Andrés Felipe was evidenced by the Inspector [Advocate] General, who claims the conviction should be overturned, and his political rights restored... It is clear that ... his legal process has been deprived of fundamental legal guarantees that must be observed in any fair trial." – Samuel Hoyos Mejía, Representative, Central Democratic Party of Colombia[269]

"Andrés Felipe Arias is a good person that by having been Minister of Agriculture in President Álvaro Uribe's government, who is now part of the opposition, is unjustly pursued for this fact, as are several other officials who served the government... Andrés Felipe Arias should receive

[265] Letter from Nohora Tovar Rey to US Judge John O'Sullivan, Aug. 31, 2016.
[266] Letter from Miguel Henríquez Pinedo to US Judge John O'Sullivan, Aug. 31, 2016.
[267] Letter from Paola Holguín to US Judge John O'Sullivan, Aug. 31, 2016.
[268] Letter from Everth Bustamente Garcia to US Judge John O'Sullivan, Aug. 31, 2016.
[269] Letter from Samuel Hoyos Mejía to US Judge John O'Sullivan, Aug. 31, 2016.

the political asylum that he deserves, after having suffered slander and persecution in Colombia." – Jaime Jaramillio Panesso, Professor of Law, Universidad Autónoma Latinoamericana[270]

"It is my professional opinion that if Mr. Andres Felipe Arias were returned to Colombia he would be jailed unjustly to serve out the 17+ years to which the Supreme Court has sentenced him... The entire process that ended with his indictment, his arbitrary pretrial "preventive detention," and his cruel sentence are all part of a well-defined political strategy. This strategy targets mainly former President Alvaro Uribe and his closets collaborators in an attempt to curtail any activities deemed to challenge the government's policies... Sending Andres Felipe Arias to Colombia would be the equivalent of the US government formally endorsing a gross miscarriage of justice and simultaneously endorsing an ill-conceived peace process that is unlikely to bring peace to Colombia." – Eduardo A. Gamarra, Professor of Political Science at Florida International University, Former Director of the Latin American and Caribbean Center, and prominent political commentator on Latin American Affairs[271]

Media:

"The story of Andrés Felipe Arias is a grim reminder of the political kneecapping that often passes for justice in Colombia... Mr. Arias was a Colombian minister of agriculture until February 2009 when he resigned to run for the Conservative Party nomination for president in 2010... Mr. Arias was taken out of the running by trumped-up corruption charges, first in the media and later pressed by two notoriously hard-left attorneys generals... In June 2014 Colombia's inspector, general, in a separate investigation, found Mr. Arias innocent of all charges. In the Supreme Court trial, the state produced no evidence of Arias fraud, kickbacks or personal enrichment. Rather, the real fraudsters were exposed for having cooked up a plot in order to destroy Mr. Arias." – Mary Anastasia O'Grady, Editor of the Wall Street Journal[272]

"After an objective and thorough investigation I can assure you, Andres Felipe Arias has been the victim of an unfair trial with dark political interests. He was accused of having favored agricultural entrepreneurs with economic subsidies when in fact these depended on an affiliate of the Organization of American States, OAS, which provided technical advice and assistance on irrigation projects. Former ministers of Agriculture confirmed that this task came directly from OAS technicians. Throughout the trial against Arias, there was no evidence demonstrating fraud, bribery and illicit enrichment in [his] favor... I hope that these reasons are taken into account...when resolving the situation of Andres Felipe Arias." – Plinio Apuleyo Mendoza, Author of *Prison or Exile*[273]

"An unsuspecting analysis of the facts makes possible to infer that the realization of the criminal offense of improper execution of contracts is extremely debatable, and, at least, given the existing legal debate on the matter, the doubt should had been imposed in favor of the defendant

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[270] Letter from Jaime Jaramillio Panesso to US Judge John O'Sullivan, Sept. 13, 2016.
[271] Affidavit from Pierto Eduardo Gamarra, Oct. 9, 2014.
[272] *Takedown of a Candidate, Bogotá Style*, Mary Anastasia O'Grady, THE WALL STREET JOURNAL, Sept. 11, 2016, available at https://www.wsj.com/articles/takedown-of-a-candidate-bogota-style-1473630721?mg=prod/accounts-wsj.
[273] Letter from Plinio Apuleyo Mendoza to US Judge John O'Sullivan, Sept, 2016.

with the subsequent acquittal on that charge... Despite claims to the contrary, willful act of the agent has not been shown and everything indicates that this subjective component of offenses – after doing exercises contrary to all logic and rhetoric – is presumed... It is worrying, especially if in both cases the exercise of the punitive power of the State is subject to both formal and material controls (principles that guide the so-called criminal program of the Constitution), that the same facts to be assessed by the disciplinary and criminal authorities have a so different subjective content, negligent or reckless in one case and willful, intentional and in bad faith, on the other... It is noted that the investigation of the facts has not harbored all those who participated in them... and all efforts have been directed toward the person of the former Minister. Furthermore, it is surprising that only now said activity is criminalized when it is clear that, before Arias Leiva served in the Ministry, records dating back to 1993 indicate that 132 similar agreements were never questioned by any of the control entities." – Hernán Gonzalo Jimenez Barrero and Fernando Velásquez Velásquez, authors of *Agro Ingreso Seguro: An Unjust Judgement*[274]

"...Many members of the government of former President and current Senator, Álvaro Uribe-Vélez, are suffering under a system of political persecution... Mr. Arias was imprisoned due only to one case..." – Ana-Mercedes Gomez-Martinez, former Director of *El Colombiano*[275]

"It is not easy to explain why someone would risk their life to provide favors for a third party without a final benefit of some form for himself also... However, the evidence does not seem strong to me. The contributions [to Andrés Felipe Arias Leiva's campaign] were negligible in proportion to the subsidies, and the campaign manager returned them when they were received. The campaign's account was audited by the Attorney General's Office, which did not present any further evidence from this review... Also [Andrés Felipe Arias] said he wanted to reach a political compromise with a sector (isn't this what politicians do?) ... The AIS report says something different, but if it were true, while it is debatable as a policy, it is not a crime." – Moisés Wasserman, Columnist at *El Tiempo*[276]

Conclusion

Despite the complexities of the case, the conclusion to be drawn from Andrés Felipe Arias Leiva's story is quite simple: Arias has been and continues to be persecuted by the Government of Colombia because of his association with President Uribe and his vocal opposition to the policies of President Santos' government.

As his extradition case in US Federal Court proceeds, while his asylum application has stalled, it is incumbent on the international community to raise its voice in support of Arias by challenging the persecutory acts of the Colombian government, promoting the application of due process of law in Arias' case, and defending his fundamental rights.

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[274] Letter from Hernán Gonzalo Jimenez Barrero and Fernando Velásquez Velásquez to US Judge John O'Sullivan, Sept. 15, 2016.
[275] Letter from Ana-Mercedes Gómez-Martinez to US Judge John O'Sullivan, Sept. 12, 2016.
[276] Hurgando en la Sentencia Contra Arias, Moisés Wasserman, EL TIEMPO, Sept. 15, 2016, available at http://www.eltiempo.com/opinion/columnistas/moises-wasserman/hurgando-en-la-sentencia-contra-arias-moises-wasserman-columna-el-tiempo-53745.

We urge the United Nations and Organization of American States to each take appropriate action in the context of their mandates to express concern to the Government of Colombia about its treatment of Andrés Felipe Arias Leiva.

I.

AFFIDAVIT

My name is Eduardo A. Gamarra, and I am currently a tenured full professor of political science in the department of politics and international relations at Florida International University. I have been at FIU since 1986 where I also directed the Latin American and Caribbean Center (LACC) from 1994 to 2007. As director of LACC, I was involved in research and public policy issues, academic exchanges, fund raising, and other multiple activities in numerous countries of Latin America, including Colombia. Since 1986, as a professor I have taught courses on South America, with a particular focus on the Andean region. I am currently teaching a graduate seminar on the region, which focuses largely on the current political situation in the Central Andean countries of Colombia, Venezuela, Ecuador, Peru, and Bolivia. In addition, much of my research has been on the relationship between illicit industries and the Andean region's young democracies. I have conducted research in Colombia on a number of different projects over the years, have lectured extensively at several universities throughout that country, and have also spent additional personal and family time there.

Throughout my professional career I have consulted for different branches of the US government including the US Agency for International Development, the US Department of Defense, the US Department of State, and the US Department of Energy on a variety of different projects, the majority with a focus on the Andes including Colombia. In addition, I have testified before the US Congress on US policy toward the region, most recently in December 2011 before the US Senate Foreign Affairs Committee.

I have also served as a consultant to other multilateral agencies such as the World Bank, the United Nations Development Program, the Inter American Development Bank, the Organization of American States, the European Union among others on Andean related projects that included Colombia. And, I have served as principal adviser on a range of policy issues to heads of state in countries such as Bolivia, Dominican Republic, and most recently Haiti.

I am also regularly asked to comment on the media about Latin American affairs –including developments in Colombia—in outlets worldwide including among many others the following: ABC News, CBS News, Fox News, CNN, CNN es espanol, BBC News, Reuters, Canadian Broadcasting Company, Radio France International, NTN 24 Horas, Caracol, RCN, National Public Radio, W Radio (Colombia), New York Times, Wall Street Journal, Miami Herald, Washington Post, Los Angeles Times, El Tiempo de Bogota, El Espectador, El Colombiano, Clarin de Buenos Aires, Folha de Sao Paolo, El Mercurio de Chile, La Razon (Bolivia), The Village Voice, Al Jazeera, and Sky News.

Finally, I am a founding partner of Newlink Research, Newlink Political, and Integrated Communications and Research (ICR) consulting firms with a very active portfolio of public and private sector clients throughout Latin America. Through these companies my consulting work

has centered primarily on market research and public opinion polling. Much of our polling has been used to develop political campaign strategy and messaging as well as public policy decision making, especially in the security area. Our work in Colombia has included a large annual country survey that gauges citizen attitudes about democratic values.

I have served as an expert witness on a number of cases. Some have been asylum requests and others have had to do with narcotics trafficking, extradition requests, and a money laundering case. I have generally served asylum cases on a pro bono basis. I am offering my expertise in this particular case on a pro bono basis as well.

I have been asked to assess the current political situation in Colombia and to address the particular set of circumstances surrounding Mr. Andres Felipe Arias' sudden departure from that country. To address this request I must first provide some background to explain the peculiar set of circumstances that Colombia is currently experiencing.

Necessary Background on Colombian Politics

Colombia is going through a particularly complex political period stemming mainly from a significant political confrontation between the current President of Colombia Juan Manuel Santos and the former President of Colombia, Alvaro Uribe. Until the 2010 presidential elections, when Juan Manuel Santos was the anointed successor candidate, the relationship with Alvaro Uribe was nothing short of remarkable. Uribe had presided over eight years of extraordinary success in restoring economic growth, political stability, and most important, significantly reducing the power, strength and presence of one of Latin America's largest Marxist guerrilla groups known as the ***Fuerzas Armadas Revolucionarias de Colombia*** (FARC). Under Uribe's rule, Colombia went from being classified by most political observers as a failed state to one of the most attractive places for investment and tourism. The success came mainly from the implementation of an impressive public security plan called the Democratic Security Plan. This comprehensive plan aimed mainly at restoring the presence of the state throughout Colombia, especially in those places that had essentially been under the control of the guerrilla.

The important part of this story is that Juan Manuel Santos served as Minister of Defense during this government and his record at that Ministry was parlayed into his successful presidential candidacy in 2010. His success in those elections was attributed by all credible observers to Alvaro Uribe's endorsement and the candidate's promise that he would continue forward with the policies initiated by his predecessor.

It is important at this stage to introduce Mr. Andres Felipe Arias, who also served in Uribe's cabinet as Minister of Agriculture. As was the case with Mr. Santos, Arias was generally given very high marks for his performance as Minister and was originally seen as President Uribe's logical successor. Indeed, many believed that Mr. Arias was the person that Uribe really wanted as his trusted successor. Hence, Mr. Arias resigned as Minister of Agriculture in February 2009 and launched his campaign to compete in the primaries of the Conservative Party. In the middle of a very successful primary campaign – he was in fact leading all polls – he

was accused, initially by the media and then by his political rivals in the middle of this campaign fray, of having committed fraud while administering one of the most successful programs that he had designed for the Ministry of Agriculture.

The case can be summarized briefly as follows.

In 2006 Minister Arias designed a program called Agro Ingreso Seguro whose sole aim was to provide financial assistance to small and medium sized farmers. Approved by the Colombian Congress, the project aimed at preparing small and medium sized farmers for the free trade agreement (FTA) that was signed with the United States. Its objective, in other words, was to prepare the agricultural sector for the competition that was likely to affect agribusiness with the opening of the market with the United States.

The program was certified by the Inter American Institute for Cooperation on Agriculture (IICA), an entity affiliated to the Organizations of American States. The IICA's role was to certify the eligibility of each and every one of the farmers who was set to receive this financial assistance. The role of Minister Arias and his ministry was simply to disburse these fully certified funds. However, one examines the program Agro Ingreso Seguro, it was a resounding success.

It is generally agreed that over 99% of the funds in that program were delivered to qualified small and medium sized farmers. Approximately 386,000 low-income peasant families benefitted from the program and independent analysts agree that it generated crops in over one million hectares across Colombia. Not surprisingly, Arias became one of the star ministers of the Uribe administration with a legitimate claim on becoming the president's successor.

It is also generally agreed that the remaining amount went to unqualified farmers –who were, nonetheless certified by the IICA-OAS. In point of fact that wealthy farmers received the remaining funds was not illegal. The illegality occurred when six these wealthy farmers turned around and subdivided their land to become eligible for even more funding. Again, however, these subsidies were certified by the IICA-OAS and without the knowledge or connivance of the Ministry of Agriculture or its Minister.

That the accusations surfaced during 2009, in the middle of the Conservative Party primaries and just before de 2010 presidential elections diminished the possibilities of Mr. Arias becoming a viable candidate for the 2010 – 2014 period. Nevertheless, he did very well in the primaries obtaining more than one million votes (or about 30% of the total vote in those primaries). He lost the primaries by a mere one percent. Although he did not win the primary, Arias showed that he was a significant contender even after the insertion by his rivals of the Agro Ingreso Seguro issue into the campaign. In fact, the primary results positioned Mr. Arias as one of the strongest presidential candidates the 2014 – 2018 period. This was so much the case that many of candidates (including candidate Santos) sought for his political support during the then upcoming elections. The fact that formal investigations of the Agro Ingreso Seguro scandal by different Colombian State agencies cleared Mr. Arias positioned him as an even stronger contender in Colombia's complex political arena.

Once President Santos assumed office, and once he drastically shifted his political position (see below) turning against former President Uribe,] his newly and irregularly elected Attorney General dusted off the case and in a public session that included a pro government cheering section, accused Mr. Arias of two crimes: embezzlement and signing contracts that did not meet legal requirements. For these alleged crimes Mr. Arias faced 7 to 33 years in prison. In a dramatic turn of events, the attorney general ordered his "preventive detention;" Mr. Arias was arrested and jailed on July 26, 2011 and held without bond until his release on June 14, 2013. That Mr. Arias was held in preventive detention for two years was a travesty of justice and a clear violation of due process norms enshrined in the Colombian Constitution. It also represented a flagrant violation of basic human rights standards. As shall be seen his detention was arbitrary because it was politically motivated.

Nonetheless Mr. Arias faced the accusations with stoicism and sat in jail without bond until he was miraculously released to face an even greater degree of political persecution during the year in which he waited for the Supreme Court to issue a final ruling on the case. His arbitrary imprisonment and the accompanying harassment and persecution he endured prevented him from becoming Mr. Uribe's candidate in the 2014 presidential election. It is noteworthy that none of the wealthy unqualified farmers who received the subsidies by subdividing their land, nor the IICA that certified them, has ever been accused of any wrongdoing. Only Arias was arbitrarily held in prison without bail; he was released to prepare for a mock trial; and then was arbitrarily sentenced to nearly two decades in prison by a heavily politicized Supreme Court.

It is important to note that the Public Ministry, which launched the case in 2009, had already called for Mr. Arias' acquittal. There is no greater demonstration of the Court's politicization than the illegal leaking of the news of Mr. Arias' conviction a mere two days before the second round of the 2014 presidential elections. The intentionality of the leak was to derail the candidacy of Mr. Uribe's candidate (Mr. Oscar Ivan Zuluaga) who had defeated President Santos during the first round of the electoral process. However, one examines this case, it represents one of the most extreme miscarriages of justice anywhere in the Americas.

In retrospect, in my professional opinion, the Agro Ingreso Seguro case served four very important political functions: it undermined the budding political career of Andres Felipe Arias; it directly contributed to the eventual ascension to political power of Juan Manuel Santos; it served as way to prevent Mr. Arias from ever again contemplating a public sector career in Colombia; and, it became one of the most visible and expedient ways to attack former President Uribe. In short, as shall be seen below, a campaign has been underway since 2010 that has pitted President Juan Manuel Santos against former President Alvaro Uribe. The most visible victim of this battle has been none other than Andres Felipe Arias.

The Transformation of Juan Manuel Santos.

When Juan Manuel Santos was sworn in as president in August of 2010 few expected to see any major shifts in public policy. Moreover, most expected Santos to rely on Uribe for advice and

counsel on the range of difficult issues that he was to face upon assuming office. Almost from the outset Santos distanced himself from Uribe, specifically on two related issues: how to deal with President Hugo Chavez and Venezuela; and, how to deal with the FARC.

Those of us familiar with Santos –I have know President Santos since the mid 1990s—were most surprised to see him pursue a line of rapprochement with Chavez and to essentially follow the political line of what was already a Havana-Caracas axis. Santos, who is a member of one of Colombia's wealthiest families, was one of the most extremist anti-Chavez spokespersons. In 2004, for example, he wrote an article in which he detailed the connections between Chavez, the FARC, Cuba, and narcotics trafficking networks. What a great surprise it was indeed to see Juan Manuel Santos cozying up to his erstwhile sworn enemies.

There are many reasons and issues that explain the sudden enmity between Santos and Uribe. None is more compelling, however, than Santos's newfound friendship with Chavez and his successor Nicolas Maduro mainly because their support is crucial for the success of the Colombian government's slow paced peace process with the FARC guerrillas. The peace process has involved meetings in Havana, Cuba since 2012; however, the road to Havana involved securing the very early support from Venezuela. The agreement with Venezuela was reached shortly after Santos assumed office.

Former President Uribe who had dedicated eight years to stopping the FARC and who had openly engaged President Chavez several times for supporting this guerrilla force considered the peace process an absolute betrayal. Be that as it may, Santos's abrupt shift, led to a deterioration of the relations between Uribe and Santos to the extreme that a full-fledged campaign against the former president and any one of his collaborators was initiated and has been in full force since 2010. Unfortunately, Mr. Andres Felipe Arias was the most visible and easiest target of this campaign given his continued and very close relationship to Alvaro Uribe and the pending accusations against him for the Agro Ingreso Seguro case.

The most critical dimension of this case is that unfortunately the politicization of this case reflects very clearly the loss of independence of the judiciary in Colombia. Long recognized as having had an independent and professional judiciary, in the past four years the judiciary has become a part of the government's attempt to curb the influence and strength of what is generally described as Uribismo. And, it appears that the government is achieving its objective. The government appears to not only control the office of prosecuting attorney but it also holds an enormous influence over the voting majority in the Supreme Court. The influence over this branch has been a crucial part of what appears to be a broader strategy.

The campaign against Uribe and his collaborators has taken a page from the government of Venezuela ----and is similar to tactics used in other countries such as Ecuador and Bolivia—to deal with opposition groups. I have described this tactic as the "judicialization of politics." It essentially consists of the following: finding any old case or uncovering new cases (generally allegations of corruption in office) against members of previous governments or any politician who dares to challenge the government in an election or in a policy discussion. Officials in the

Judicial branch who are either elected on the government's list or are directly appointed by the president take on them and embark on crusades to make them exemplary cases that demonstrate the government's resolve to fight corruption. In reality they are nothing more than an efficient way to prevent often-talented individuals from engaging in politics for fear of being unjustly prosecuted and even jailed. The examples in the aforementioned countries are numerous. That Colombia followed their lead is clear as evidenced by the Andres Felipe Arias Case.

Conclusion

Given this general scenario, it is my professional opinion that if Mr. Andres Felipe Arias were returned to Colombia he would be jailed unjustly to serve out the 17+ years to which the Supreme Court has sentenced him. As I have argued in this Affidavit, the entire process that ended with his indictment, his arbitrary pretrial "preventive detention," and his cruel sentence are all part of a well-defined political strategy. This strategy targets mainly former President Alvaro Uribe and his closest collaborators in an attempt to curtail any activities deemed to challenge the government's policies, especially the peace process with the FARC that is supported by both Cuba and Venezuela. As I have shown in this affidavit this strategy was also successful in annihilating Andres Felipe Arias promising political career. Sending Andres Felipe Arias to Colombia would be the equivalent of the US government formally endorsing a gross miscarriage of justice and simultaneously endorsing an ill-conceived peace process that is unlikely to bring peace to Colombia.

Notary Public State of Florida
Adrian Ruiz
My Commission FF 123469
Expires 05/14/2018

Adrian Ruiz

The foregoing document was acknowledged before me this 9 day of October, 2014 by Eduardo Aurelio Gamarra
ID produced Florida Drive License
G560-201-57-210-0
Exp - 6/10/2019

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THE WALL STREET JOURNAL.

REVIEW & OUTLOOK

A Senseless Extradition

The Justice Department does the left's bidding in Colombia.

By The Editorial Board

Political persecution drove former Colombian agriculture minister Andrés Felipe Arias to flee to the U.S. in 2014. The U.S. Embassy in Bogotá helped him escape, and when he arrived in Florida he immediately applied for asylum.But if Mr. Arias thought he was safe, he wasn't taking into account the U.S. Justice Department. For reasons that are hard to figure out, much less understand, Justice officials are working hard to send Mr. Arias back to Colombia.

Mr. Arias was once on track to succeed Álvaro Uribe, his political mentor, as president of Colombia. That's when trumped up corruption charges emerged in the media. The Colombian Supreme Court, which is notoriously political, convicted the UCLA-trained economist of corruption after he had fled the country. He received a 17-year sentence in exile—from a country where the narco-terrorists known as the FARC enjoy amnesty these days. Mr. Arias was given no opportunity to appeal.

The Supreme Court—a longtime opponent of Mr. Uribe and his political allies—has continued to pursue Mr. Arias in the U.S. and under Colombian law it has the power to do so. In 2016 it asked the U.S. to

extradite Mr. Arias, using a treaty that Colombia has never ratified. The Colombian Supreme Court has said it was never ratified; Mr. Uribe and former President Juan Manuel Santos have said there is no valid extradition treaty.That should be enough for the U.S. to deny extradition and grant Mr. Arias's asylum claim, which is making its way slowly through U.S. court. Meanwhile, Mr. Arias sits in a Florida jail. On Dec. 10 Colombia's ambassador to the U.S., Francisco Santos, wrote the Justice Department Criminal Division requesting bail for Mr. Arias. The ambassador said Mr. Arias is not a flight risk and asked for the "rapid implementation of the steps necessary to ensure Mr. Arias may be released on bond, so that he can spend time with his wife and young children, especially during the holiday season."Colombia is the Justice Department's client in this case, yet Justice is fighting the bail request. That makes no sense, but then neither does its determination to help the partisan Colombian judiciary fulfill what on the evidence is an unjust political prosecution.

THE WALL STREET JOURNAL.

September 11, 2016

Takedown of a Candidate, Bogotá Style

Politics as usual in Colombia spills into the U.S. in the case of Andrés Felipe Arias.

By Mary Anastasia O'Grady

The story of Andrés Felipe Arias is a grim reminder of the political kneecapping that often passes for justice in Colombia, and his detention last month in the U.S. is an attempt to finish the job.

Mr. Arias was Colombian minister of agriculture until February 2009, when he resigned to run for the Conservative Party nomination for president in 2010. The UCLA-trained economist was widely viewed as outgoing President Álvaro Uribe's favorite to succeed him. That made his odds in the general election very good.

It wasn't to be. Mr. Arias was taken out of the running by trumped-up corruption charges, first in the media and later pressed by two notoriously hard-left attorneys general. He spent three years in the Kafkaesque Colombian judicial system fighting those charges, which were heard by the Supreme Court. In 2014 he fled to the U.S. to request asylum. Colombia's high court subsequently pronounced him guilty in absentia, fined him the equivalent of more than $8 million and sentenced him to 17 years in prison.

Mr. Arias's asylum application is still pending but on Aug. 24, U.S. marshals in Miami detained him on a Colombian extradition request, despite the dubious process that led to his conviction. The Colombian Supreme Court vote was 8-1 against Mr. Arias, and the dissenter cited lack of due process.

The Revolutionary Armed Forces of Colombia (FARC) hates Mr. Uribe, and in 2009 a potential President Arias was not a welcome prospect for the terrorist group, the largest cocaine cartel in the hemisphere. The FARC was already influential behind the scenes in legal and political matters as I have outlined in earlier columns. But if he had been elected as Colombia's commander in chief, Mr. Arias likely would have continued the Uribe program of democratic security that had severely weakened the terrorists on the battlefield.

Juan Manuel Santos offered the FARC a better future. Though he had served as defense minister under Mr. Uribe, he was not committed to defeating the guerrillas. His leftist brother Enrique spells this out in a 2014 book ("This Is How It All Began") about the Santos-FARC "peace" negotiations in Havana.

Enrique, who helped launch the talks, writes that from the day of his inauguration Juan Manuel sought a history-making deal with the FARC. If so, the new president had the kind of psychological profile that Cuban-trained agents dream of manipulating. But first Mr. Arias had to be taken down.

The trouble for Mr. Arias began in September 2009, when the Colombian magazine Cambio published allegations that a handful of wealthy families had committed fraud using an agricultural-subsidy program designed to help low-income farmers. According to press reports, Mr. Arias sought to clear his name by asking that he be investigated first in any criminal probe.

That didn't happen. Instead, the drip, drip, drip of unsubstantiated allegations in the press continued and Mr. Arias's campaign collapsed. Mr. Santos then launched his candidacy and—riding on Mr. Uribe's legacy—won the 2010 presidential election.

In August 2011, Colombian Attorney General Viviane Morales—who was living with a former guerrilla—filed criminal charges against Mr. Arias. She alleged that he committed a crime when he signed a no-bid contract with a unit of the Organization of American States (OAS) that provided technical consultation and assistance to member countries on irrigation projects. Never mind that contracting with the OAS unit for this work had been standard practice in Colombia for decades.

She also pressed charges related to the fraud scheme that Cambio raised. She alleged that Mr. Arias received donations to his campaign from those who had defrauded the government. She further argued that he should be imprisoned so he could not bribe witnesses. He went to jail for two years until his lawyers won his release while the trial continued for another year.

In May 2014, an administrative tribunal ruled that the OAS contract was legal. In June 2014 Colombia's inspector general, in a separate investigation, found Mr. Arias innocent of all charges. In the Supreme Court trial, the state produced no evidence of Arias fraud, kickbacks or personal enrichment. Rather, the real fraudsters were exposed for having cooked up a plot in order to destroy Mr. Arias.

In his recently released book "Prison or Exile," Colombian journalist Plinio Apuleyo Mendoza reports that Juan Manuel Dávila, who had engaged in the fraud, admitted under oath in the trial

that he did not even know Mr. Arias or any other ministry official. Mr. Dávila did so after the revelation of a 2010 email he had written to his girlfriend in which he had stated that from the start, the scheme was "something purely political." The "scandal" had "only one purpose," he explained, "to F--- ANDRES (sic) FELIPE ARIAS."

That much has been done, and the extradition effort furthers the same aim. Meanwhile, Mr. Santos is getting ready to hand unprecedented political power to the FARC.

The Washington Times

February 2, 2017

The Ignoble Act of a Nobel Laureate

Colombia's Santos favors amnesty for guerrillas but not a political opponent.

By Jared Genser

This week in Bogota, Colombian President Juan Manuel Santos is hosting the World Summit of Nobel Peace Prize Laureates. Mr. Santos was awarded the 2016 Prize for negotiating an end to the 50-year conflict with the left-wing rebel movement Revolutionary Armed Forces of Colombia (FARC), which claimed an estimated 200,000 lives and displaced roughly 5 million people.

Yet while Mr. Santos was celebrated in Norway and by President Obama, his own people rejected the deal in a popular referendum, requiring him instead to push an amended deal through its Congress. A major sticking point was the requirement that some 2,000 rebels held in jail for the commission of atrocities be granted amnesty. It remains to be seen how President Trump will view Mr. Santos, particularly in light of his steadfast refusal to extradite FARC guerrillas to the United States for their role in major drug trafficking.

But it is indisputable that the U.S.-Colombia relationship is critically important. The United States has invested more than $10 billion in building Colombia's security in the last 15 years. And Colombia is Latin America's third-largest economy and has more than $24 billion in bilateral trade with the United States.

As a human rights lawyer who has represented four Nobel Peace Prize Laureates, I find it especially remarkable that the international community has totally ignored Mr. Santos' domestic record, which has included persecuting opposition politicians who opposed an amnesty deal with the FARC.

Numerous members of the Centro Democratico party, founded by former President Alvaro Uribe, have been imprisoned and in other ways persecuted for their political beliefs. As Mr. Santos hosts a summit focused on achieving global peace, his efforts to promote peace abroad must be matched in equal measure by his efforts to achieve peace domestically. If Mr. Santos does not end the persecution of the opposition, his otherwise inspiring actions for peace

will be tinged with hypocrisy and intolerance.

One of the most well-known and persecuted members of the opposition is my client, Andres Felipe Arias. Mr. Arias is a former Colombian minister of agriculture who is now seeking asylum in the United States based on the political persecution he suffered at the hands of Mr. Santos' administration. Mr. Arias was the minister of agriculture for President Uribe from 2005 to 2009 and a 2010 presidential candidate. Because he was outpolling all other candidates in early polling, Mr. Arias' political opponents falsely accused him of embezzlement and entering into a contract without meeting the legal requirements.

In 2014, a biased and politicized Supreme Court convicted him of both charges and sentenced him to 17 years in prison, despite the fact that four prior independent governmental investigations had previously cleared him of all charges. Mr. Arias' case, like many of the cases against members of the opposition, was replete with due process violations. During his trial, his right to the presumption of innocence, to present a defense and to confront the charges against him were repeatedly violated.

Since under the Colombian Constitution Mr. Arias' case was heard by the Supreme Court, he was also denied the right to appeal his conviction. In addition to not having an impartial tribunal, Mr. Arias spent nearly two years in preventive detention and was consistently denied bail without cause. Mr. Santos' administration kept the pressure on Mr. Arias because of his prominence in the opposition party and his popularity in Colombia. Through Mr. Arias' trial, Mr. Santos discredited the opposition and removed one of its most prominent and well-liked members from the political arena.

Since Mr. Arias' arrival in the United States, Mr. Santos has requested his extradition to Colombia, despite his ongoing refusal to extradite FARC members and having publicly said that there is no extradition treaty between Colombia and the United States. Mr. Santos' persecution of members of the political opposition, but willingness to grant clemency to the FARC, contradicts the goals of the summit he is hosting.

However, Mr. Santos has the opportunity to nurture democracy and an even more profound peace by calling a halt to the persecution of his political opposition. Now that Mr. Santos has concluded a peace deal with the FARC, he must build a vibrant democracy in his own country so that political opinions can be freely exchanged. As the World Summit of Nobel Peace Prize Laureates commences, Mr. Santos can either build on his legacy or undermine it.

Jared Genser has served as counsel to Nobel Peace Prize Laureates Aung San Suu Kyi, Liu Xiaobo, Desmond Tutu and Elie Wiesel.

LÍA FOWLER

WHY THE U.S. SHOULD CARE ABOUT ANDRES FELIPE ARIAS

MARCH 9TH, 2017 LIA FOWLER LÍA FOWLER, PEACE PROCESS 0 COMMENTS 998

Why the U.S. Should Care About Andres Felipe Arias

If Mr. Arias is sent home without having had the benefit of a fair asylum procedure, the U.S. will set a dangerous precedent while endorsing a repressive regime

Lía Fowler

By Lia Fowler*
March 9/ 2017
@lia_fowler

Andres Felipe Arias, a former Minister of Agriculture from Colombia currently seeking asylum in the U.S. and facing a simultaneous extradition proceeding, is probably not on the Trump Administration's radar. He should be.

Obama holdovers in the State Department and the Department of Justice, at the bidding of the Colombian government of Juan Manuel Santos, have gone to great lengths to send Mr. Arias home before he can be heard by an asylum court. Mr. Arias' case of political persecution by the Santos government is solid, and a truly independent review would confirm his claim. But evidence of Colombia's corrupt government would be disastrous for Obama's legacy of support for Santos' so-called peace deal with the narcoterrorist group FARC – a deal sponsored by Cuba and Venezuela, designed to launder the image and wealth of the drug cartel and its cronies.

Bernard Aronson, Humberto de La Calle and Sergio Jaramillo

The Obama Administration was all-in on the Havana-sponsored peace talks. U.S. envoy to the negotiations Bernard Aronson endorsed impunity for heinous crimes, unelected seats in Congress for terrorists, rule-by-decree powers for Santos, and the illegal imposition of the supra-constitutional Havana pact on the Colombian people.

USAID money poured into shady "peace-promoting" non-governmental organizations in Colombia. Secretary of State John Kerry met with the terrorists in Havana, legitimizing them as "political actors." And Obama pledged $450 million in U.S. tax dollars to implement "the peace."

Obama's ideological partners in U.S. "think tanks" and the media worked overtime to sell Santos' "man of peace" image. The Clinton Foundation gave Santos its Global Citizen Award in 2016, and the Atlantic Council (whose Colombia fellow just happens to be Santos' communications strategist) gave him its own Global Citizen Award in 2015, among others. And Norway, another heavily-invested sponsor of the Havana agreements, awarded Santos the 2016 Nobel Peace Prize – just days after his deal was rejected by Colombians in a plebiscite.

The Obama Administration was all-in on the Havana-sponsored peace talks

But as the Administration spun the tale of bringing peace to Colombia it turned a blind eye to skyrocketing coca cultivation, growing repression against any dissent, the illegal overturning of the plebiscite results, and the gradual end of democracy and the rule of law in Colombia.

The "peace" propaganda was successful. But Mr. Arias' case would shatter that falsely-constructed image, showing the reality of corruption and persecution in what is quickly becoming a narco-failed dictatorship.

So who is Mr. Arias and what does he have to say?

Mr. Arias served as Minister of Agriculture under ex-President Alvaro Uribe from 2005 -2009. As such, he instituted an OAS agricultural subsidy program that benefited more than 380,000 rural families. Consistent with the U.S.'s Plan Colombia, the program created jobs for thousands, siphoning workers away from the drug trade and putting Mr. Arias squarely in the sights of the FARC. So severe were FARC threats against Mr. Arias, that he was declared by authorities a "person at extraordinary security risk."

Andrés Felipe Arias and Álvaro Uribe

In 2009, while Mr. Arias was a presidential candidate for the 2010 elections, it was discovered that 10 individuals had defrauded a component of the OAS program. A well-orchestrated media campaign to link Mr. Arias to the fraud eventually proved false. But despite being acquitted of criminal wrong-doing by the Attorney General's Office, the Inspector General, an Administrative

Court, and the Electoral Council, the damage to his campaign was done. With Mr. Arias out of contention, Uribe threw his support behind Santos, who promised to continue Uribe's policies for combating narco-terrorists. But as soon as Santos won, he allied himself with Cuba and Venezuela and began the negotiations with the FARC.

In 2011, the Colombian Supreme Court appointed a new attorney general: Vivian Morales, whose husband had held a leadership role in the now amnestied M-19 terrorist group, an urban spin-off of the FARC. Morales charged Mr. Arias with signing an illegal contract with the OAS and "embezzlement in favor of third parties" – a crime that does not exist in the U.S., as embezzlement logically requires a quid-pro-quo that the Colombian version of the "crime" doesn't contemplate. Mr. Arias was tried in a single judicial proceeding, before the Colombian Supreme Court, where he was convicted to 17 years in jail. He was denied an appeal – one of many violations of humanitarian international law in his case.

Vivian Morales, an her husband Carlos A. Lucio who was a leadership role in the now amnestied M-19 terrorist group

But the cooperation agreement signed by Mr. Arias and the OAS was identical to those signed by his predecessors and by those who followed him – none of whom have ever been accused of wrongdoing. Nor was anyone at the OAS accused of any illegality. As for the "embezzlement," not only was it proven at trial that Mr. Arias neither knew the perpetrators of the fraud nor benefitted from it, emails between the co-conspirators confirmed they orchestrated the scam with the specific purpose of creating a scandal that would derail Mr. Arias' presidential run.

Nevermind, said the Court, which stated in its ruling — a document riddled with absurdities – "it has not been proven that he is a co-author [of the embezzlement], but it has to be true."

U.S. officials, fully aware of Colombia's corrupt Supreme Court and its ongoing battle against President Uribe, had seen this coming since 2009 – even before Morales was named Attorney General by the Court. In a November 17, 2009, cable from then Ambassador to Colombia William Brownfield to the State Department, published by wikileaks, Brownfield wrote:

"Arrayed against Uribe's formidable popular support are … the media and intelligentsia, and the politicized Supreme Court." Brownfield continued, "The most immediate scandal concerns rich Colombians receiving subsidies from a Ministry of Agriculture program, though former agriculture minister and current presidential candidate Andres Felipe Arias seems fated to bare the brunt."

William Brownfield

Describing the Supreme Court, Ambassador Brownfield added, "the magistrates have effectively co-opted the supposedly independent Prosecutor General's Office by refusing to select an Uribe candidate from a three-name list. Keeping the Prosecutor General in an interim state, and filling his organization with officials from the court system, has allowed the Court to focus the Prosecutor General on key investigations against Uribe and the government."

Perhaps that is why, when news of Mr. Arias' conviction was illegally leaked, days before the 2014 presidential elections, and weeks before an official verdict, the U.S. Embassy assisted Mr. Arias and his family in obtaining visas for travel to the U.S., where they immediately applied for political asylum. Since June of 2014, they have been living lawfully in the U.S., waiting for their interview with U.S. Citizen and Immigration Services (USCIS).

So it was surprising when, on August 24, 2016 — the very same day that Colombian President Santos signed his agreement with the FARC — U.S. federal officers suddenly detained Mr. Arias and the DOJ initiated extradition proceedings against him.

Proceeding with the extradition request by Colombia prior to allowing USCIS to determine whether he is a victim of political persecution is clearly contrary to the spirit of International Refugee Law. An extradition proceeding is not typically the venue to prove political persecution, nor can an extradition judge grant asylum. It would be reasonable, then, to allow the asylum petition to be adjudicated before determining whether an extradition hearing was even warranted.

Obama and Chávez

But Santos and Obama's holdovers at the State Department can't afford to do that: They have no influence over the asylum process. Any asylum proceeding would have to be free of political considerations, based solely on the factual determination that Mr. Arias had a well-founded fear of political persecution in Colombia. Pressure from the Colombian government — or the State Department acting on its behalf – would help confirm the persecution.

On the matter of extradition, however, the State Department and DOJ can and have weighed in heavily. Assistant U.S. Attorney Robert Emery, representing the Government of Colombia, has

repeatedly sought detention of Mr. Arias, though he has complied fully with U.S. laws and poses no danger to the community.

Thomas Heinemann, an Assistant Legal Adviser with the State Department, maintained in an October 2016 affidavit to the Court that there is an extradition treaty in force between the U.S. and Colombia, despite the fact that in 1986 and 1987, the Colombian Supreme Court overturned Colombia's ratification of the treaty. Mr. Heinemann's illogical argument goes against even Santos' statements on the matter. In an April 2011 interview with EFE News regarding a separate matter, Santos stated: "We have an extradition agreement with Venezuela, not with the United States."

The question of whether the extradition agreement with Colombia is in effect is currently before the 11th Circuit Court of Appeals. But if it were up to Obama holdovers at State and DOJ, the U.S. would be satisfied with a bilateral extradition treaty that bound the U.S. to comply with it, but did not bind Colombia in any way – a win-win for the Santos-FARC alliance, who have maintained that none of the dozens of FARC narco-terrorists under indictment in the US will ever be extradited.

If Mr. Arias is sent home without having had the benefit of a fair asylum procedure, the U.S. will set a dangerous precedent while endorsing a repressive regime. Nevermind that Mr. Arias is innocent, or that he's in this predicament because he combated FARC narcoterrorism. Nevermind that, if extradited, he wouldn't survive the retaliation of the FARC, or that he is just one of many victims of Santos-FARC persecution.

The U.S. cannot allow Santos-FARC interests to subvert its asylum procedures or its proud tradition of offering a safe haven to those unjustly persecuted. It cannot becomes complicit in the Colombian government's persecution of Mr. Arias, legitimizing its corrupt practices.

In his address to Congress, President Donald Trump reiterated his commitment to combating trans-national drug organizations. This means combating the FARC and its partners-in-crime, Cuba and Venezuela. The first step in changing Obama's disastrous Latin American policy is unmasking the Santos government and exposing the peace deal for what it is: the legitimization of the world's biggest cocaine Cartel.

Secretary of State Rex Tillerson and Attorney General Jeff Sessions: You can call off the dogs. Let Mr. Arias make his case.

Lia Fowler is an American journalist and former FBI Agent.

May 17, 2017

Ongoing Political Persecution Will Turn Colombia Into Venezuela

By Álvaro Uribe

When Colombian President Juan Manuel Santos meets with President Trump at the White House on Thursday, May 18, there will be much to discuss — from the financing of the impunity deal with the Revolutionary Armed Forces of Colombia (FARC) to the recent skyrocketing of the cocaine influx into the United States. Yet, Santos will undoubtedly dodge addressing his complicity in the persecution of his own and other political oppositions in our region.

In Latin America, the persecution of political dissenters is not just a Venezuelan anomaly, where there are some 180 political prisoners. For instance, in Ecuador, media owners and journalists have had to flee into exile after criticizing President Rafael Correa. In Bolivia, Evo Morales' predecessor and many of his cabinet members are also in exile, seeking protection from a political vendetta. Santos has been silent about all these situations.

This is, in a large part, because he doesn't want anyone focused on his own domestic record. Santos, in alliance with a politicized faction of the judiciary, has undertaken a systematic persecution of political leaders critical of his deal with FARC, the largest cocaine cartel in the world, whose war over a half century claimed more than 250,000 lives and displaced more than five million. The agreement exonerates from jail and prohibits extradition of FARC members responsible for atrocious crimes — massacres, kidnappings, and narcotrafficking — and also grants them the right to run for political office.

The most egregious case of political persecution is directed at my former Minister of Agriculture Andrés Felipe Arias, who currently seeking asylumin the U.S. As Minister, Arias spearheaded the reduction in coca crops to historic lows by 2010, was a leading negotiator of the U.S.–Colombia FTA, and was always one of the most vocal critics of the FARC. The moment he decided to run for president in 2010 in defense of my administration's policy against narcoterrorism, he became the target of politicized judicial persecution that continues to this day.

Arias was unfairly accused of a fraud scheme in an irrigation subsidy program that was operated with technical cooperation from the Organization of American States. He was imprisoned for two years while on trial. Those individuals who benefited from the alleged fraud testified that they never met Arias, that he was never involved in their wrongdoing, and that they never gave him anything, nor contributed to his presidential campaign.
The independent inspector general of Colombia requested his acquittal on all counts and cleared Arias of any wrongdoing in his personal and campaign finances. Despite all this, Arias was found guilty and sentenced to more than 17 years in prison. To make matters worse — and in defiance of Colombia's obligations under international law — Arias has been systematically denied the right of any appeal of his conviction.

To secure Arias' extradition to Colombia, Santos has tried to resurrect a defunct extradition treaty between our countries. Colombia extradites people to the U.S. based exclusively on Colombian domestic law, not based on a treaty. Indeed, Santos himself previously refused to extradite notorious narcotrafficker Walid Makled to the U.S. and instead sent him to Venezuela justifying his decision by saying the extradition treaty with the U.S. was not in force.

But since the U.S. can only extradite under a treaty, now Santos has now claimed the treaty is valid so he can get ahold of Arias and impede his application for asylum in the U.S. We'll see what Santos has to say about the treaty when President Trump requests the extradition of a FARC kingpin.

Unfortunately, Arias is not the only victim of political persecution in Colombia. Over a dozen leaders of the opposition have fallen prey to the same tactics of the Santos administration. Several members of my cabinet have also been persecuted and convicted by former Supreme Court justices that explicitly decided their cases politically and not in accordance with the law, as revealed by audio recordings of their sessions made public by Colombian media.

Political persecution in Colombia endangers the prospect of long-term peace in our country. The Colombian people can't understand why opposition leaders are silenced and persecuted while FARC kingpins are granted full amnesty and a privileged political platform allowing them to run for office.

I hope that the political persecution in Colombia doesn't go unnoticed for too much longer. If anything, this is the most important lesson to be learned from the global community's neglect of the early signs of Venezuela's return to authoritarian rule.

Álvaro Uribe served as President of Colombia from 2002-2010. He is a Senator in the Colombian Senate and leader of the Democratic Center Party.

Appendix – Pieces in *National Review*, *The Hill*, *Washington Times*, and *Wall Steeet Journal*

NATIONAL REVIEW

October 24, 2017

Asylum Now: The Awful Case of a Splendid Man

By Jay Nordlinger

People can't talk about this case without referring to Kafka. It is, indeed, Kafkaesque: a nightmare of injustice. "Laughable," they also say. The case would be *laughable* if it weren't so serious — especially for Andrés Felipe Arias and his family.

He is a Colombian political prisoner, in effect. He currently sits in the federal detention center here in Miami. He has asked the United States for asylum but has not been granted a hearing. Instead, a U.S. federal magistrate judge has ordered that he be sent back to Colombia.

Hang on a second: a *Colombian political prisoner*? That's a contradiction in terms, isn't it? Colombia is a democratic country. It's not like one of its eastern neighbors, Venezuela. Colombia's current president, Juan Manuel Santos, won the Nobel Peace Prize last year (for negotiating a peace deal with the FARC, Colombia's longstanding guerrilla army and drug cartel). His predecessor, Álvaro Uribe, was a close ally of George W. Bush — who hung the Presidential Medal of Freedom around his neck. A *Colombian political prisoner*?

These are strange times in Colombia. Jared Genser, a well-known human-rights lawyer, is representing Arias. He has represented four Nobel peace laureates, among many other such figures. He says that he finds it incredible that "the international community has totally ignored" what President Santos has done — apart from his Nobel work, so to speak.

The story of Andrés Felipe Arias is long and multifaceted, and I will sketch it out.

He was born in 1973, and was a whiz kid. In 2002, he earned a Ph.D. in economics from UCLA. He sums up his economic thinking in an email he sent me from prison: "I believe in free markets, free trade, and private investment as the engine of economic growth and poverty-reduction."

His friends say that he could have made millions on Wall Street. Instead, he took a job with the Uribe government — in the ministry of finance. Soon, Uribe made him vice minister of agriculture. In this capacity, Arias helped negotiate the free-trade agreement with the United States. In short order, Uribe made him minister of agriculture.

Let's pause for a moment for the personal. In 2007, Arias married Catalina Serrano, who has been his rock through this whole ordeal. (Their shared ordeal.) She has degrees from two Colombian universities: a bachelor's in business administration and a master's in international business. She has worked at a number of financial institutions.

Catalina and Andrés Felipe met in an extraordinary way. Something out of a romantic comedy, possibly. She had a long-term boyfriend, who did not want to marry her. One day, he left her for another woman. This other woman, in turn, left her boyfriend: Andrés Felipe. Catalina and Andrés Felipe had never met. But they did, and were married eight months later.

The other couple? They lasted the blink of an eye. The original boyfriend wanted back with Catalina, and the original girlfriend wanted back with Andrés Felipe. Too late. "We are twin souls," says Catalina, of herself and her husband.

They have two children — Eloísa (age nine) and Juan Pedro (age six). This family is out of Central Casting, frankly: attractive, conscientious, religious, and utterly devoted to one another. It makes you burn all the more about what has happened to them.

Back to politics. A presidential election was coming in 2010, and Uribe wanted Arias to succeed him. To critics, Arias was "Uribito," or "little Uribe." They regarded this young man as an upstart — arrogant, too big for his britches. And all too smart. In any case, Arias indeed ran for president. Others wanted the job too, of course. They included Juan Manuel Santos, Uribe's defense minister. He is from a powerful old family, prominent in politics and the media (which intertwine).

Suddenly, the name of Andrés Felipe Arias was all over the media, and not in a positive way: It was engulfed in scandal. *Uribistas* claim that Santos, through his connections, blackened his young rival's name. In any event, what was the ruckus about?

The ministry of agriculture had a program that included subsidies for farmers: farmers large and small (especially small). The subsidies were for irrigation technologies, developed mainly in the United States and Israel. The program was administered, not by the agriculture ministry itself, but by an arm of the Organization of American States. This had been standard practice in Colombia.

More than 385,000 families benefited from the program. A handful of wealthy families tried to scam it. They did so by dividing up their farms and then applying for separate subsidies. Caught, they pleaded guilty. According to their testimony — and according to that of Arias — they had nothing to do with the agriculture minister, nor he with them.
Yet his name was besmirched as corrupt. His enemies said that he was in cahoots with the rich farmers, to fund his political career and advance their interests. Catalina remembers that the

family was at lunch in a restaurant one day. The people at the next table got up and left, saying they would not eat in the presence of such corrupt people. Another time, the family was in a shopping mall, and a man started screaming at them: "Look at that family! They stole from the poor farmers to give to the rich ones, and now they are spending the money!"

The scandal tanked the Arias campaign; Santos was elected president.
Upon inauguration, something remarkable happened: Santos turned against the policies of the president he had served — Uribe — and embraced his neighbor, the Venezuelan strongman Hugo Chávez ("my new best friend," Santos called him). He sought a deal with the FARC, a deal that Uribe, Arias, and everyone else in that camp strongly opposed. As *uribistas* tell it, Santos made a kind of war against them, using the justice system to do it.

They joke, darkly, "We could hold our party convention in prison." Alternatively, Florida.

Arias was arrested in July 2011. His indictment hearing was a farce and a spectacle. It was held in a theater, rather than the regular, more sober venue. The theater was packed with supporters of the attorney general, Viviane Morales. They cheered as at a soccer game. The hearing was broadcast live on television. And Morales did something very unusual — also cruel and dangerous: She divulged the personal information of the Arias family, including their address and phone number. This despite the fact that they were under the protection of state security, given the threats to Arias from narco-terrorists and the like.

Soon, Arias would be imprisoned. His family's security detail would be significantly reduced. The family began receiving threatening phone calls and were robbed.

Viviane Morales is a story unto herself. (She is no longer attorney general, as her appointment was determined to have been illegitimate. She is in the senate.) Her husband, Carlos Alonso Lucio, is an ex-guerrilla who once found asylum in the Castros' Cuba.

Arias was indeed imprisoned — held in "preventive detention," and for almost a full two years. (Twenty-three months.) Three times, he was denied bail. Finally, it was granted, a year into his trial.
That trial was before the supreme court — which gave the justices a juicy opportunity. While president, Uribe had accused some of them of ties to the drug world. And now they had Uribito, his fair-haired boy, in their clutches. The trial dragged on and on, finally concluding in February 2014.

And yet the court kept delaying a verdict. Why? It's useful to know that 2014 was an election year. The first round of voting was held on May 25. The *uribista* candidate, Oscar Ivan Zuluaga, led the incumbent, President Santos, by about four percentage points. But neither man won 50 percent, so the election went to a second round — scheduled for June 15. Two days before that election, the Supreme Court leaked some news: Arias would be convicted. This was, of course, a blow to Zuluaga and the *uribistas*, who were presented as corrupt. For whatever reason — and however cleanly — Santos won, by about six percentage points, on the 15th.

But back to the 13th. Arias decided that he would have to flee his country. He would go to

Miami. And he did so with the blessing of the U.S. embassy, or at least a green light from them. He had been in touch with them all the while. They had renewed his visa. They knew that he, among others, was a victim of political persecution. On the 13th, after the leak from the supreme court, they confirmed to Arias that he and his family were free to enter the United States and seek asylum.

That very night, he left, by himself. He went to the airport in the company of Catalina's father, not his bodyguards. They were, frankly, untrustworthy. His own parents flew from Medellín to the Bogotá airport, to see him and say goodbye. Arias traveled light: T-shirt, jeans, and a book. (For the record, the book was a historical novel: Volume II of Santiago Posteguillo's Trajan trilogy. Arias reads a lot about ancient Rome. Right now, in prison — in the Miami detention center — he is researching a historical novel of his own, or one that he will co-write: about Germanicus, the Roman general who lived as B.C. was becoming A.D.)

Mind you, Arias did not want to leave his homeland. A Colombian patriot, he would never have dreamed of doing so. He felt he had to, however, because he perceived that he was a political pawn: used by the supreme court to exact revenge on Uribe, and to influence the 2014 presidential election.

Upon arriving in America, he told Catalina that she and the kids would have to come too, and quickly. Catalina had five days. She quit her job. (Her boss was very understanding, saying that they should have left a long time before.) She withdrew the kids from school. She sold the house, and all its belongings — for a song. Then, with the children, she arrived in Miami, carrying two suitcases.

True to its leak, the supreme court convicted Arias — convicted him in absentia. The charges were astounding: embezzlement in favor of third parties (i.e., the scamming farmers) and unlawful contract with the OAS (the kind of contract that had been standard practice). The court admitted that it had no witnesses or documentary evidence — an amazing admission — and that Arias had never profited by as much as a cent.

One of the justices voting against Arias had never even heard the case. She became a member of the court after the trial was over.
Another amazing fact: Five agencies of the Colombian government had looked into the Arias case — *five* — and determined that there was no wrongdoing.

Most amazing of all was the sentence. The justices sentenced Arias to 17 years and five months in prison, plus a fine of more than $15 million. There are people in Colombia who believe that Arias was guilty of something (however vague). Almost no one believes the sentence is anything but crazy.

In America, the Arias family applied for asylum. The U.S. government — in the form of USCIS (United States Citizenship and Immigration Services) — scheduled a hearing for them. Eight days before the scheduled hearing, USCIS canceled it. The government has never explained why, and the Arias family has never been granted a hearing.

Meanwhile, the family made a life for themselves. Andrés found work; Catalina would too. The kids entered elementary school not knowing a word of English. Eloísa is now in a gifted program. Both kids are so English-oriented, they balk at speaking Spanish. It has been three years.
August 24, 2016, was an interesting day — a very bad day for the Arias family. At 7 in the morning, federal marshals banged on the door, ferociously. Catalina opened. They asked for Andrés Felipe.

They would take him away for extradition, though he had not been able to make his case for asylum. There were about seven marshals, says Catalina, with guns slung across their chests. While she took the kids to another room, they handcuffed Andrés Felipe and led him off. Ten minutes later, Catalina took the kids out to meet the schoolbus. There were still many police cars on the street. It was all very odd and upsetting.

Also on the 24th, President Santos announced that he had reached a peace deal with the FARC (strongly opposed by Arias and the rest of the Uribe camp). The Santos government had requested the extradition of Arias more than a year and a half before. Yet it was launched only on this day. Was this a coincidence? Was it some kind of present from the Obama administration to the Santos government for the FARC deal? *Uribistas* suspect so.

Arias was in prison, or federal detention, for three months. He was then released on bail (and fitted with an ankle monitor). On September 28, 2017, he was back in prison — for the federal magistrate judge had cleared the way for his extradition. Curiously, the Colombian government recognizes no extradition treaty between itself and the United States. Bogotá has made this perfectly clear. The U.S., apparently, does recognize such a treaty. In the past, the Colombians have extradited criminals to the U.S., but not under a treaty.

Today, they are *refusing* to extradite criminals, including the murderers and kidnappers of Americans. The U.S. ambassador in Bogotá wrote the Colombian supreme court to protest; the justices slapped him down, sharply. Not only do the Colombians refuse to extradite, they let the murderers and kidnappers go free. At the same time, the United States is on track to send Andrés Felipe Arias back to Colombia — where he has been sentenced to 17 and a half years in prison.

This is one reason people say "Kafkaesque."

It gets more so. In recent weeks, Colombia has been treated to a major scandal known as *el cartel de la toga*, or the gown cartel, or the cartel of the judicial robes: The U.S. Drug Enforcement Agency has caught Colombian judges taking bribes in exchange for favorable rulings. And these judges — wouldn't you know? — include some of the very supreme-court justices who convicted Arias.

In an email, I ask Arias whether he takes any satisfaction in this. (It would be natural to do so, don't you agree?) He answers, "No satisfaction at all. The corruption scandal in the Supreme Court of Colombia, uncovered by the DEA, is shameful for our country. It does, however, give me some sense of relief because it ratifies my claim that the Court that convicted me was dishonest and politicized, and that it ruled unlawfully in my case."

The justices want to save a little face, says Arias, through his extradition. They want to save some face by having his head as a trophy.

In America, his defense team has filed an appeal. They are appealing his extradition. And this is happening at what may be a turning point in U.S.–Colombian relations. In Colombia, the drug business — beaten back by Presidents Uribe and Bush — is flourishing again. Drugs from Colombia are pouring over U.S. borders. Washington may well decertify the Colombian government as an ally in the drug war.

Trying all options, Arias has appealed his case to the U.N. Human Rights Committee (always a dodgy body). But his immediate fate is in American hands. It is in the power of the U.S. government — of USCIS and the Department of Homeland Security, specifically — to grant him political asylum. This ought to be done as a simple matter of justice and the rule of law. It would also send a message to Bogotá about what the United States expects from an ally.

The truth is, Santos & Co. probably don't care about Arias, personally. They care about discrediting, and defeating, all things Uribe. Arias, in the eyes of many of his admirers, and in the eyes of many of his detractors, is the cream of the Uribe crop. If you wanted to render him *hors de combat* — if you wanted to take him out of politics — you would do exactly what the current government in Colombia has done.
This does not mean that the United States should cooperate (to put it mildly).

I ask Arias, "How are your spirits?" He says, "I feel strong and at peace. Of course, every second I long for my home, my wife, and my kids. But I've learned to accept God's will no matter how mysterious are His ways."

Between Colombia and Miami, he has spent almost two and a half years in prison. I ask how he has kept his sanity. He says, in short, that God has seen to it. Moreover, Arias has a marvelous family, and many marvelous friends and supporters.
Another question: "How could a democratic country do this to a person?" The answer: "A real democratic country wouldn't do this to a person. ... No matter how much 'peace' propaganda the Colombian government unleashes in the international arena, the plain truth is that democracy in Colombia is being undermined by corruption and political persecution stemming from its courts and executive branch."

Still another question: "Has this nightmare affected your patriotism? Your sense of country?" Arias answers, "I can't stop loving Colombia. At the end of the day, it's the place where I was born, where I grew up, and where I lived so many joyous moments of my life. It's where most of my family lives. It's a beautiful country and its people are amazing. I truly believe that those who have inflicted this torture upon me are not the reflection of the real Colombia nor of the soul of its people. I will always love Colombia."

More than a few men have emerged from prison to be the leader of their country — Václav Havel in Czechoslovakia, for example. I say, "Wouldn't it be something if, after all this, you were president of Colombia one day?" He answers, "It would be something — but Catalina

would kill me!"

Yes, she would. She shudders at the thought of further involvement in politics. Even at the thought of Colombia itself. Her faith in her homeland has faltered — but her faith in God has strengthened. "Justice is coming soon" she says. The sooner the better.

A plea unheard

A Colombian former official says the U.S. promised help getting political asylum.

Instead, he faces extradition without an asylum hearing.

Jeanne Kuang
April 4, 2018

MIAMI—Facing the threat of prison, Andrés Arias Leiva fled his native Colombia for the United States in 2014, contending that the criminal case against him was baseless, a political case brought by political enemies and enforced by a corrupt court.

Once a rising star in his home country, a former agriculture secretary and presidential candidate, Arias said in a recent interview that he came here with the support of U.S. State Department officials who assured him they would support his effort to win asylum.

Arias and his family applied for asylum, and a hearing was scheduled. But in October 2014, that hearing was abruptly cancelled and never rescheduled.

Almost two years later, U.S. officials took him into custody and locked him in the federal detention center in Miami as they initiated extradition proceedings to send him back home.

Next week, a U.S. district court judge will hear Arias's attorneys argue that he has been wrongly imprisoned, as government attorneys try to send him back to Colombia.

Complicating Arias's case are a variety of issues that have little to do with asylum and much to do with diplomatic affairs. Though Arias's attorneys dispute the legitimacy of the extradition treaty between the two countries, American officials rely on Colombia's cooperation in extraditing suspected drug dealers to the United States to stand trial on drug trafficking charges.

Furthermore, the current Colombian president is not just any opponent: Juan Manuel Santos has won the Nobel Peace Prize, and his efforts to end the country's long-running war with guerrillas have been lauded by the pope and other figures worldwide.

Most frustratingly for Arias, the Americans are pursuing his extradition even though, he contends, they had helped him to come to the U.S. in the first place — renewing his visa, explaining to him the asylum process, and even offering to recommend him for protection. Arias was not permitted last year to call those State Department officials to testify about their role.

"I became a hot potato for the State Department," Arias said. The State Department declined to answer questions for this article.

White House

Colombian President Juan Manuel Santos and U.S. President Donald Trump speak at a joint press conference at the White House in May, 2017

An ascending politician

Sitting in a visiting room one December afternoon in the Miami Federal Detention Center, Arias said he believed the Colombian agricultural subsidy program that got him embroiled in scandal and corruption charges had been "one of the most beautiful pieces of policy-making in the country."

Growing up in Medellín during a bloody time in Colombia's drug wars and educated in American schools, Arias built a soaring career at a young age. As an economics Ph.D. candidate at UCLA inspired by the policies of Ronald Reagan, he worked on the policy team for the conservative Álvaro Uribe's first campaign for president of Colombia.

Uribe had entered the presidential race as a little-known former governor. But he quickly gained popularity for his hard-line stance against the far-left rebel group FARC, which had waged a decades-long civil war in the country heavily funded through the sale of cocaine. After his win, Uribe brought Arias on to a series of policy-making roles.

By the time Arias was 32 in 2005, he had been appointed the Minister of Agriculture, held a U.S. diplomatic visa, and frequently traveled to the U.S. as one of the key Colombian negotiators in a free trade agreement between the two countries.

Colombia was transitioning its economy away from cocaine production to legal crop growing, as the Uribe administration fought drug traffickers and the FARC in attacks the U.S. government supported through the aid program Plan Colombia.

Courtesy of Catalina Serrano

Andrés Arias's diplomatic visa, which he used to travel to the United States for trade negotiations

"The hardest issues on the Colombian side were the agricultural issues," recalled former U.S. Deputy Trade Representative Susan Schwab, with whom Arias hammered out details of the trade deal. "He was a tough negotiator for their side."

The deal, reached in 2006, was touted by both Uribe and President George W. Bush, Schwab said, as an agreement that would benefit both nations' economies and "help cement Colombia-U.S. relations."

In between late-night negotiation sessions in Washington, D.C., Arias was crafting a subsidy program back home, intended to help ease the blow of globalization on Colombian farmers.

Uribe called the program Agro Ingreso Seguro (or AIS), and Arias spent the next few years implementing it.

The program provided farmers with agricultural grants to improve their technology, from machinery to irrigation, so they could increase output and compete with American farmers. The program "enabled our people in the agricultural sector to become competitive with agriculturalists in Europe and the United States," Uribe said in a telephone interview.

The AIS program was supposed to favor small farmers and landowners, while accepting applications from farmers of lands of any size.

It was a program that pleased Uribe, who called it in the recent interview "very successful." After Colombia's Constitutional Court ruled that he could not seek to run for a third term, Uribe turned to Arias, who had never run for office, to succeed him.

Arias found himself mocked as "Uribito," or "little Uribe."

"I became the enemy of Uribe's enemies," Arias said. "My loyalty was to Uribe."

Uribe had plenty of enemies. He was accused of wiretapping his political opponents. And he was involved in a public clash with the nation's politicized Supreme Court, whose members believed he was diminishing their power.

Colombia presidential archives

George W. Bush presents the Presidential Medal of Freedom to then-Colombian president Álvaro Uribe, a close American ally, in January, 2009

As Arias campaigned, news reports exposed corruption in the subsidy program, with wealthy landowners improperly becoming beneficiaries of the grants. Among them was the boyfriend of a former Miss Colombia, who was accused of disguising the size of his land holdings. Arias was also accused of taking campaign donations from those who benefited from the program.

His campaign was undercut; Arias lost the primary election.

Arias, in the interview in jail, insisted that he had no knowledge of the way the program was being abused, and that his ministry had been defrauded. "There was a loophole," he said. "When you're [in office] you don't think people will be able to deceive you in that way."

Not everyone shares Arias's claim that he was a victim. Adam Isacson, a Colombia expert at the Washington Office on Latin America, a human rights think tank, said the alleged corruption was in line with the Uribe administration's conservative policies in a country with highly unequal land ownership.

"Under Uribe, large landowners got a lot of benefits," Isacson said. Arias, he said, "does not at all fit the profile of a victim, a human rights defender, or a subject of persecution."

First absolved, then indicted

After Juan Manuel Santos, who had been Minister of Defense under Uribe, won the general election in June 2010, a series of investigations concluded that Arias had not engaged in wrongdoing over the agriculture program. The General Comptroller's Office and the National Electoral Council both absolved him of wrongdoing in the ministry and in his campaign finances.

An administrative court in December 2010 found the landowners who improperly won subsidies were responsible for the fraud; those beneficiaries were forced to repay the grant money to the government. The Inspector General's office sanctioned Arias for signing careless contracts with an outside entity to implement the AIS program, but made no mention of any criminal conduct involving Arias.

But Arias said that he sensed things changing under his former ally in the Uribe administration. The new president had begun undoing the policies that Uribe had backed, setting up a public clash between allies of the president and his predecessor. Santos befriended Venezuelan president Hugo Chávez, a move Uribe's allies abhorred. There were talks brokered by Cuban leaders, aimed at achieving a peace deal with FARC, the group the Uribe administration had spent years trying to extinguish.

The Santos administration brought charges against Arias's former subordinates over the AIS scandal.

Months later, in June 2011, Santos's Attorney General appointee Viviane Morales announced charges for Arias himself: embezzlement on behalf of private parties, and contracting without meeting legal requirements. The indictment hearing was highly publicized and held in an auditorium, where the audience broke into applause upon hearing Arias would be detained. Not publicly known at the time: the attorney general's office itself had already completed a report concluding the agriculture program had built appropriate safeguards into the program. That report would only be revealed months later.

Arias was jailed for the next two years as the trial proceeded, with hearings occurring each month. He called the proceedings a "kangaroo court," noting that Attorney General Morales, who brought the charges, was herself removed from office based on a finding she had been improperly appointed.

The case against Arias, a cabinet member, was heard not by a normal trial court but by the Colombian Supreme Court, which Arias said was filled with members who had conflicts of interest. Several justices had publicly accused the Uribe administration of wiretapping them, and had been listed as victims in a court case related to the allegation.

Some justices stepped down during the course of the proceedings, to be replaced by others who had not been on the court when the trial began. One justice whose name appears on the verdict was only sworn in after all the hearings had officially ended.

The Court has also been caught up in its own corruption scandal. Last August, Colombian newspapers reported that a U.S. Drug Enforcement Administration investigation captured on tape a discussion of how Justice José Leonidas Bustos and other court officials would fix cases for money. Bustos was among the justices who presided over Arias's case.

Colombian newspaper *El Tiempo* in August 2017 called the American tapes "the worst scandal in the history of the Supreme Court."

Northwestern University Kellogg School of Management lecturer Daniel Lansberg-Rodriguez, a Latin America expert, said accusations of corruption are commonplace among feuding political parties in Colombia, especially in the particularly divisive clash between Santos and Uribe. While "everyone's getting mud thrown at them," Lansberg-Rodriguez said, the Santos administration has the power of being in control of government.

"By and large people being tried for corruption are Uribistas," he said, using the common term for Uribe supporters. "Each side has to watch their back when they leave the government."

The situation deteriorates

Arias was released from custody in the middle of the trial; by then, he recalled, his political situation had deteriorated. At the indictment hearing, his address and personal information were announced in public. Arias, in the interview in jail, said robbers targeted his home, claiming to be members of the Attorney General's judicial police force.

Preparing for the worst-case scenario, Arias turned to an ally for help — the Americans.

The U.S. embassy had been keeping watch over the politics. Before the primary, State Department official Brian Nichols had sent a classified embassy cable in November 2009 observing that "former agriculture minister and current presidential candidate Andres Felipe Arias seems fated to bare the brunt" of the unfolding AIS allegations — a cable released by Wikileaks.

The Americans certainly knew Arias. They had issued him a diplomatic visa during the trade negotiations, and he dealt with the U.S. embassy frequently during his travels from Bogotá to Washington. So after his release in June 2013, he visited the embassy, asking to renew his visitor's visa to the U.S. He wanted to apply for asylum.

The embassy was hesitant at first, Arias said, citing his ongoing criminal case. The administration of President George W. Bush had issued a 2004 directive barring foreign officials accused of corruption from entering the country. But Arias submitted information about his case to the embassy's political director Drew Blakeney, he said, claiming he was being politically persecuted for being a Santos critic and feared for

his and his family's safety.

Within two weeks of submitting the information, he said, he was called to the embassy and handed a 10-year visa. As the visa was issued, Arias recalled, Blakeney told him that the U.S. government knew of the flawed trial, as well as persecution against other Uribe allies.

During the next year, Arias visited the embassy two more times, during which he said Blakeney explained how to apply for asylum through the U.S. Department of Homeland Security and offered to write Arias a letter of support should he apply.

U.S. Department of State

An undated official photo of the U.S. embassy in Bogotá, Colombia

Blakeney did not respond to a request for comment through the State Department, which also declined to answer questions.

In the federal court in Miami, Assistant U.S. Attorney Robert Emery, who is pushing for Arias's extradition, disputed Arias's contention that government officials supported Arias's seeking asylum. Blakeney, according to Emery, "informed Arias Leiva that nothing prevented him from applying for asylum, just like any visitor to the United States could do" without expressing an opinion on the merits of the case. (Arias had sought, during the extradition hearing, to call Blakeney and other state department officials to the stand to testify about what happened; Emery, however, successfully argued that the subpoena should be quashed.)

On his newly renewed visa, Arias flew to the U.S. twice, retaining an immigration lawyer in case he was convicted. After the trial officially ended in February 2014, he waited for the verdict, working at a university research job. "He was trying to make his life again," said his wife, Catalina Serrano, in an interview.

A hearing to announce the verdict was postponed three times.

Then, on June 13, 2014, on the same day the national Inspector General's office released a report finding no evidence that Arias was illicitly enriched by the AIS program, word leaked to reporters that Arias would be convicted, even before the Supreme Court had voted on a verdict. The director of the National Protection Agency, assigned with providing Arias and his family security during the trial, took to Twitter to share the announcement.

Arias called his wife, Serrano, immediately, and they met at her parent's house. There, he called the embassy, to ask if he was allowed to go to the United States. Embassy official Silvana Del Valle Rodriguez called him later that day, clearing him to go, Arias recalled.

As Serrano's father whisked Arias to the airport, Arias bought a plane ticket in the car. Serrano did not know where he would be landing.

He told her over the phone the next day. He had traveled from Bogotá to Atlanta and then to Miami, he told her, and if he was going to apply for asylum in the U.S., they should do it together. Within days, Serrano had sold their belongings, said goodbye to her family, and brought their two young children to Miami.

After settling in the U.S., Arias contacted the embassy again to notify them he was applying for asylum, he said.

"Thank you for this information," Rodriguez wrote Arias in an email on July 9, 2014. "We'll be in touch."

Rodriguez did not return multiple requests for comment.

A tangled case

The Colombian Supreme Court formally convicted Arias in July 2014 and sentenced him to 17 years and 4 months in prison. Because the case was heard by the Supreme Court, there was no place to appeal.

In August of 2014, the family filed a petition for political asylum, asking for protection from the U.S. government based on their fear of harm if Arias, Serrano, and their children were returned to Colombia. U.S. Citizenship and Immigration Services acknowledged the application in September 2014.

The agency canceled the family's scheduled interview in October 2014, with no explanation and no new interview date.

Arias waited. He and Serrano received temporary work permits as asylum seekers. They lived in the Miami suburbs without incident, and sent their children, now ages 6 and 9, to the local public school.

Citizenship and Immigration Services rules state that applicants whose interviews are canceled are to receive first priority in rescheduling. But no new date was set.

In November 2014, the Colombian government formally requested Arias's extradition so he could serve his sentence for his conviction.

Nothing happened for months. Then, in August 2016, U.S. Marshals came to Arias's home to arrest him, after Assistant U.S. Attorney Emery opened an extradition case in the federal district court in Miami.

That week, Santos and FARC leaders announced they had reached an agreement to end one of the world's longest-running wars, an agreement that would bring Santos the Nobel Peace Prize.

"That his arrest came just as the current administration reached a peace accord in principal with the FARC is not a coincidence and reinforces the political character of the case," Arias's attorney David Markus wrote in September 2016, in a motion for Arias to be released on bail.

Courtesy of Catalina Serrano

Andrés Arias Leiva, with his wife Catalina Serrano and their children, in 2017

Arias's attorneys contend that the peace agreement, as well as controversy over whether the United States and Colombia have a valid extradition treaty, has left their client a pawn in international diplomacy.

They note that the Colombian Supreme Court in 1986 ruled that the bilateral extradition treaty between the two nations, negotiated in 1979, was not properly ratified under Colombian domestic law.

Arias's attorneys also point out that Colombia's decisions on whether to extradite suspects are based not on the treaty but on Colombian criminal law. And while some extraditions to the United States occur, at times they do not.

This February, Washington Edison Prado was extradited by Colombia to face trial on charges he had sent 200 tons of cocaine to the United States. But when Colombia sent alleged drug kingpin Walid Makled to Venezuela, rather than to the United States, in 2011, the Colombian press quoted President Santos as explaining: "We have an extradition treaty with Venezuela, not with the United States."

In a hearing in November 2016, Assistant U.S. Attorney Emery acknowledged Colombia had asked for Arias's extradition based on Colombian criminal law, not the treaty. But he submitted a statement from State Department legal adviser Tom Heinemann that the United States is obligated to extradite based on the treaty.

Emery also cited the United States's obligations to extradite fugitives in the interest of international diplomacy. "It is important that the United States be regarded in the international community as a country that honors its agreements in order to be in a position to demand that other nations meet their reciprocal obligations to the United States," he wrote in October 2016.

Emery also argued it was not appropriate for U.S. District Judge John J. O'Sullivan to consider whether Arias's claim that efforts to extradite him are based on politics and not the law. "To the extent Arias Leiva may argue that the request for his extradition should be denied because it is allegedly 'politically motivated,' that is an issue to be decided by the Secretary of State alone — and not the Court," Emery wrote in one court filing in March 2017.

O'Sullivan agreed. He declined an effort by Arias to require Blakeney and Rodriguez to testify about their role in Arias's departure from Colombia, ruling that the State Department employees' opinions of Arias's guilt were irrelevant.

He then ruled last September in favor of Arias's extradition, writing, "In applying an extradition treaty, the Court is to construe it liberally in favor of the requesting nation."

Arias has since filed a separate federal court petition, contending that he is being illegally held, since there is no valid extradition treaty and since his conviction was rendered by a biased and politicized court. By denying Arias the right to call State Department witnesses, the petition alleges, O'Sullivan denied him due process. "The U.S. Embassy officials who helped Dr. Arias come to the United States would have testified that the court that tried him was politicized and corrupt," Arias's attorneys wrote.

A hearing on that petition is scheduled for next week.

Emery and the U.S. Attorney's office in Miami declined to comment.

Asylum case remains unheard

For a federal judge to certify extradition, the state must prove:

1. the court has authority over the proceedings
2. the court has jurisdiction over the fugitive
3. the extradition treaty is in force
4. the crimes alleged are covered in the treaty
5. there is probable cause the crimes were committed

The asylum case has been put on hold. If Arias leaves the country, the case could be forfeited for him and his family.

In a June 2017 email to eight members of Congress who inquired about the case, Citizenship and Immigration Services's congressional liaison Luis Fuentes-Rivera wrote that the asylum case will not be revisited until the extradition case is decided. Left unexplained was why the asylum case had not moved forward over the two-year period that Arias and his family waited before federal officials launched the extradition effort.

Arias's attorney Inna Shapovalov said there is little precedent for how courts and state agencies should prioritize between parallel asylum and extradition proceedings: "There's no rules here on how to deal with this."

After O'Sullivan approved the extradition, Arias was taken back into custody last September, and has been held at the Miami Federal Detention Center ever since.

He uses his allotted phone time to call his wife and children for 10 minutes each day. Serrano, whose own legal status in the country could be forfeited if Arias is extradited, works part-time, takes care of the children, and spends her days gathering documents in support of her husband's case.

"We need help," she said. "And we knew the only country that can help is the U.S."

News

Lawyers tell court: Former Colombian official Andrés Arias is wrongly locked up

By **Jeanne Kuang** | April 9, 2018

MIAMI — A federal magistrate judge on Monday heard attorneys argue for the release of a Colombian former cabinet member who is facing extradition to serve a prison term, his claim that he is being politically persecuted still unheard.

The hearing was based on the claim by Andrés Arias Leiva that Colombia officials built a false case of corruption against him for political reasons, and that he and his family came here in 2014 to seek political asylum. Arias, who had been agriculture minister and a presidential candidate in Colombia, contends that U.S. State Department officials assured him before he fled to the United States that they knew the corruption charges were politically motivated, and encouraged him to seek asylum.

But instead, he has been locked in the federal detention center in Miami as officials take steps to return him back home.

Jeanne Kuang / Injustice Watch

Andrés Arias Leiva is jailed at the federal detention center in Miami, left, next to a federal court building where his hearing was held Monday

In the latest in what attorneys anticipate will be a lengthy legal battle, Arias's attorneys argued to Magistrate Judge Andrea M. Simonton of the U.S. District Court for the Southern District of Florida that because Colombian courts have held since 1986 that the treaty was not properly ratified, federal courts lack authority to order Arias's extradition to Colombia.

His attorney, David Markus, told Simonton that Colombia has at times honored extradition requests from the United States, but other times did not. "If only the U.S. is bound by the treaty, how can it be in effect?" Markus asked.

Assistant U.S. Attorney Robert Emery, who is pushing for Arias's extradition, said that the United States considers the treaty to be in force. Despite the 1986 court ruling, Emery said, "The United States believes emphatically that Colombia is complying with the spirit of the extradition treaty."

Injustice Watch reported last week on the case of Arias (https://www.injusticewatch.org/features/colombian-former-official-seeking-political-asylum-faces-extradition/), once a rising political star in Colombia who was closely tied to former President Álvaro Uribe. A hearing with the U.S. Citizenship and Immigration Services on the asylum claim for Arias and his family was abruptly cancelled in 2014; the U.S. has taken steps to return Arias in the nearly four years since, without ever rescheduling the hearing.

Arias was not brought to court for the hearing Monday because of a court administrative error. In attendance were about 30 supporters of Arias from the Colombian community in Miami.

Emery said Simonton should not disturb the September 2017 ruling of Magistrate Judge John J. O'Sullivan in the extradition case, that Arias could be extradited by the United States. O'Sullivan wrote then, "In applying an extradition treaty, the Court is to construe it liberally in favor of the requesting nation." He also declined to allow Arias to subpoena State Department employees from the American embassy in Colombia to testify about their alleged role in helping Arias come to the U.S.

Following that hearing, federal officials took Arias into custody. His attorneys on Monday also asked for him to be released on bail as proceedings continue, as he had been before O'Sullivan's decision, contending he is unlikely to flee a country where he has applied for asylum.

Markus and Emery sparred over whether Arias would be a flight risk if he were released on bail now, with a certification of extradition over his head. Emery said Arias's flight from the corruption conviction in Colombia, an event he argued that the State Department employees did not assist with, was proof he could flee again. He also cited the U.S. extradition statute which states a judge, on finding a fugitive extraditable, "shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made."

Emery also noted the international harm that could be done to American diplomacy if Arias fled. "There is no amount of money that would repair" that harm, he said.

Simonton, who said she was initially intending to deny bail, said she would "carefully consider" all arguments before deciding both on whether to grant bail, and on her recommendation to a district judge over the question of whether the extradition case is valid.

"I do think there is a serious risk of flight in this case," she said.

After the hearing, Arias's wife Catalina Serrano and his supporters expressed hope he could be released. Serrano, who has offered to surrender her and her children's passports as a condition of Arias's release on bail, said her husband has no desire to flee anywhere.

"We came here to stay," she said.

OPINION | THE AMERICAS

Will the U.S. Extradite an Innocent Man?

The State Department sides with Colombia's political prosecution of Andrés Arias.

By Mary Anastasia O'Grady
Nov. 4, 2018 3:02 p.m. ET

0 Comments

Former Colombian Minister of Agriculture Andres Felipe Arias in Bogota, August 2016. PHOTO: LEONARDO MUNOZ/EUROPEAN PRESSPHOTO AGENCY

The Obama administration was notorious for coddling Latin American leftists. So it came as no surprise in 2016 when the Obama State and Justice Departments sided with Colombian President Juan Manuel Santos's bid to extradite former agriculture minister Andrés Felipe Arias. He had fled to Florida to escape charges trumped up by his political enemies.

The center-right Mr. Arias's only "crime" was his candidacy for president in 2009, when Mr. Santos wanted the job and the Revolutionary Armed Forces of Colombia terrorists wanted someone like him to have it. Mr. Arias is still fighting extradition and Justice and State, flush with Obama holdovers, are still on the wrong side of the case.

If Secretary of State Mike Pompeo doesn't get involved, an innocent man with young children could end up serving a 17-year sentence in a Colombian prison for a crime he didn't commit.

Forget that murderers in Colombia don't get 17 years. Forget too that the Arias criminal case was heard only by a politicized Colombian Supreme Court with no chance for appeal—a violation of international human-rights law.

The crux of this matter rests on whether Washington has an extradition treaty with Bogotá. The countries signed one in 1979 but, as the Colombian Supreme Court has said, Colombia never ratified it.

President Santos refused to extradite multiple suspects wanted by the U.S., citing the lack of a treaty. One was Venezuelan drug kingpin Walid Makled, who Colombia captured in 2011 but sent to Venezuela where his secrets would be kept. Mr. Santos said he had no choice but "to comply with the Constitution and with the laws," adding "we have an extradition agreement with Venezuela, *not* with the United States."

Former Colombian President Álvaro Uribe also has stated, in a sworn affidavit presented in court, that there's no treaty. Colombia uses domestic law to send suspects to the U.S.

In a motion for a stay of extradition pending appeal filed Tuesday in the 11th Circuit Court of Appeals in Atlanta, Mr. Arias's lawyers argued the point again. "The legality of the order sought to be stayed depends on whether a Treaty that Colombia insists it never ratified and never observes is in force. The Treaty itself states" in article 21(1) "that it is 'subject to ratification.' "

In 2017 and 2018 Colombia refused U.S. extradition requests for suspects wanted for kidnapping, drug trafficking and possession of a rocket-propelled grenade launcher.

Mr. Arias, by contrast, was accused of signing an illegal contract with a unit of the Organization of American States and of helping unscrupulous people carry out fraud against the state. An administrative tribunal in Colombia ruled the OAS contract was legal while a Colombia inspector general's investigation found Mr. Arias innocent of "deviat[ing] public funds." There was no evidence presented at his Supreme Court trial of fraud, kickbacks or personal enrichment.

The case was so absurd and obviously political that the U.S. embassy in Bogotá expedited Mr. Arias's visa request, allowing him to flee to Miami in 2014. Mr. Arias's testimony was given before Judge John O'Sullivan in June 2017 in Miami federal court.

Nevertheless the Justice Department nabbed Mr. Arias and is leveraging State Department claims of a treaty. His stay petition asserts, "the Extradition Court and the Habeas Court both held that they had to defer to the State Department's view, despite all the facts in the record." Those courts "ruled solely on the basis of the State Department lawyer's unsupported declaration. He argued that the Treaty is in force—but refused to appear to explain his reasoning in person."

A bilateral treaty where one side denies that it exists and refuses to comply is unheard of. Yet Justice is using State's preposterous assertion to get the court to knuckle under. The court has so far obliged.

Mr. Santos did the underworld a huge favor by sending Mr. Makled to Venezuela, offering a clue to why the treaty was never ratified: Drug barons, who wield political power in Colombia, oppose it. Is it suddenly valid when used against one of their enemies?

Colombian President Iván Duque is no profile in courage either. He has stated that Mr. Arias "never stole even one peso," was "excessively persecuted," and that his conviction was a "great injustice." No Colombian has signed the extradition request because no Colombian can swear to the existence of a treaty. Yet Mr. Duque hasn't the spine to say there is no treaty.

Mr. Arias now goes before a federal appeals court in Atlanta. "If the three-judge panel decides the case on the merits, rather than simply deferring to the State Department and the Justice Department, Mr. Arias will win," one of his lawyers, David Oscar Markus, told me last week.

Even if that happens, State's malicious role in this travesty deserves Mr. Pompeo's attention.

Write to O'Grady@wsj.com.

WSJ | OPINION

U.S. Edition ▾ November 18, 2018 Today's Paper | Video

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OPINION | THE AMERICAS

A Cynical Trade With Colombia

The U.S. offers up an innocent man in the hope drug kingpins will be turned over.

By Mary Anastasia O'Grady
Nov. 18, 2018 5:04 p.m. ET

Colombian President Ivan Duque speaks in Bogota, Colombia, Oct. 10. PHOTO: LEONARDO MUNOZ/EPA-EFE/REX/SHUTTERSTOCK

The Justice and State Departments' zealous attempts since 2016 to extradite former Colombian agriculture minister Andrés Felipe Arias—despite overwhelming evidence that he committed no crime—seem mysterious. Add that the U.S. has no extradition treaty with the South American cocaine producer, which has a history of refusing to send drug kingpins north to face justice, and the riddle becomes an enigma.

Even the left-leaning United Nations Human Rights Committee ruled last week that the 45-year old center-right Colombian politician has been denied fundamental liberties recognized in international law. So what gives?

To clear things up, let's first stop pretending this is about the rule of law. This is politics.

In demanding the extradition, the weak center-right Colombian President Iván Duque is following the orders of the notoriously politicized Colombian Supreme Court. It convicted Mr. Arias on trumped up charges in 2014 to knock off a popular politician it viewed as an adversary. Now it's determined to see him locked up.

Since the high court authorizes extraditions to the U.S., it is blackmailing the Trump administration: If Justice, State and the Drug Enforcement Administration expect Colombian narcos to be extradited in the future, the price is Mr. Arias on a platter. That's the trade.

This disgraceful bargain could be a new low even for U.S. government cynics. It's also an embarrassment for President Trump, who likes to say that no one pushes him around.

In 2009 Mr. Arias, a UCLA-trained economist and ally of former president Álvaro Uribe, was the favorite to win the 2010 presidential election. That's when unsubstantiated allegations arose in the Colombian media that he had misappropriated funds in the agriculture ministry.

In sworn testimony in U.S. court in 2017, Mr. Arias said he was "scared" when the government of Juan Manuel Santos came after him. With the help of the U.S. embassy in Bogotá, which shared his concerns, Mr. Arias fled to Miami in 2014 and then applied for asylum. Two days after he left the country, the Colombian Supreme Court pronounced him guilty of embezzlement, though with no evidence that he benefited from any crime.

Colombia has signed and ratified the U.N.'s International Covenant on Civil and Political Rights. Last week the 18-member Human Rights Committee in Geneva ruled unanimously that, in the case of Mr. Arias, Colombia has failed to uphold its obligations under the covenant.

The committee said the Colombian high court's refusal to grant Mr. Arias an appeal violates international law. It also said Colombia violated Mr. Arias's rights by permanently prohibiting him from holding public office. The committee noted that Colombia has made a commitment to comply with committee findings and it called on Bogotá to rectify the injustice within 180 days.

Numerous reviews of the case, aired here and in other places, including in a paper published in August by Mr. Arias's international lawyer Jared Genser, find glaring irregularities in the conviction.

A long, dark shadow of suspicion hangs over the Supreme Court that convicted Mr. Arias in 2014 by a vote of 7-1. One justice recused himself. Five of the seven assenting justices carry baggage that strains their credibility.

The president of the court at the time of the trial, Leonidas Bustos, along with Justice Gustavo Malo, are currently under investigation by Colombia's congress for allegations of bribery. The probe is looking into a huge judicial corruption scandal known as the "cartel of the robe," which originated with a DEA wire investigation in Miami. Both maintain their innocence. Mr. Malo was suspended from the court; Mr. Bustos's term has ended.

Justice María Del Rosario Gonzáles claimed she had been a political target of Mr. Uribe and therefore couldn't be impartial. She asked to recuse herself but her request was denied. Justice José Luis Barceló, also a political adversary of Mr. Uribe, is known for his partisanship from the bench. Justice Patricia Salazar Cuéllar wasn't even on the court when the Arias trial ended in February 2014. Nevertheless, she signed the court's sentence against him.

Justice Department lawyer Robert Emeryargued in federal court in Miami in September 2017 that "based on the principles of international comity" Mr. Arias needs to be sent back to Colombia out of "respect" for the Colombian Supreme Court. Knowing even a little of what the DEA must know about the court that convicted Mr. Arias, that's laughable. It's doubtful even Mr. Emery believes it.

The case is now before a federal appeals court in Atlanta. Mr. Duque could send instructions to the court clarifying there is no extradition treaty. But on Friday he cowardly offered that it is up to the U.S. to deny the extradition his own government is requesting. With Justice morally rudderless in the case, that leaves Mr. Arias relying on the wisdom of the court.

Write to O'Grady@wsj.com

K.

Phoenix , November 19, 2018

Case # 18-14328

Dear Judge:

My name is Sandra Morton, I represent an NGO "Dignidad Colombia" : We are a non-profit organization that defends human rights victims from the FARC (Terrorist organization),

Our NGO's mission statement is to defend the victims of the Colombian armed conflict and those who are politically persecuted by the Narco-terrorist group Farc.

We would respectfully like to appeal to your wisdom, so that justice can prevail in your judgment and in your decision to grant political Asylum to Mr. Andres Felipe Arias over an unlawful extradition request. Such request was made by the Administration of Former President of Colombia Juan Manuel Santos; a politician who abused through his power and political prestige of an innocent individual to reach his political interests. The Colombian Government cannot guarantee even the most basic and fundamental rights of Andres Felipe Arias. The presumption of Mr. Andres Felipe Arias's innocence was annulled, and Andres Felipe Arias was tried and prosecuted for crimes committed by a third party. There's no guaranteed fairness in a country like Colombia since its Judicial Branch as well as its entire political machine is corrupted by Farc Politics.

In order to explain why Andres Felipe Arias must be protected through political asylum, and the absurdity of Colombia's Judicial Branch, as well as the Colombian Political Machine, I shall put everything into context:

A good example of absurd verdicts issued by the abysmal Court System of Colombia was the decision by the State Council (Consejo de Estado) who sentenced its own government for the terrorist attack at Club el Nogal, which was committed and perpetrated by the terrorist group Farc in 2003. This attack left 39 dead and 198 wounded. This is the equivalent of blaming t the 9-11 terrorist attacks on the twin towers and the pentagon on the U.S. Government, and thus sentencing the U.S. Government and not Bin Laden.

https://www.eltiempo.com/justicia/cortes/consejo-de-estado-condena-a-la-nacion-por-atentado-al-club-el-nogal-258830

Another proof that the corruption machine in Colombia exists is this: Former President Juan Manuel Santos devoted himself to prosecute all former ministers who had worked under the Administration of his predecessor Alvaro Uribe Velez, as well as the Former President himself and even his own family. Former President Uribe's own brother is now incarcerated due to false accusations against him. It was all a ploy concocted by the farcpoliticos.

These Farcpoliticos are:

Ivan Cepeda Castro DOB oct 24/1962

Piedad Cordoba DOB Jan/25/1955

Rodrigo Lara Restrepo DOB May 12/1975

The individuals previously listed came to this very country to conspire and attempted obtain a false statement under oath from Mr. Carlos Sierra Ramirez. These three individuals (senators and guerrilla fighters) paid Mr. Carlos Sierra Ramirez a visit in Washington at the federal correctional treatment facility where he was being detained. They asked Mr. Carlos Sierra Ramirez to make a false sworn statement against Former President Alvaro Uribe Velez and his family in exchange of political asylum for Mr. Sierra in Switzerland. (see attach).

This just goes to show how far the persecutions and political stunts of the Farcpoliticos can go. One might think there are things these Farcpoliticos would never dare to do; there's not. They will go as far as committing perjury crimes in this very country.

Today Colombia is on Farc control, and it lives in anarchy as a result of the dismantling of the FFMM. Today Colombia is on narcoterrorism control. There are no safety guarantees for its on citizenry, let alone foreign nationals. This is because the Unit of National Protection is conformed mainly by former demobilized guerrilla fighters. This arrangement was made in exchange of political pardons. By serving in the Unit of National Protection these former Guerrilla fighters would be absolved of war crimes. In essence, they merely exchanged their rifles and fire weapons for legal weapons, and that's the reality.

The Colombian Government disserted its campaign against narcotrafficking. The proof of this in on the 220,000 or so hectares (10,000 square meters) used to grow the coca plant. This acquiesces to the demands made by The Farc, after agreements with this terrorist group. This disastrous consequences are in keeping with Former President Juan Manuel Santos's decision to change Colombia's long standing coca eradication policies. Today we can see a Farc empowered political party and a standing armed force called "Farc's Dissent" that is jointly governed by Colombia and is enforced by an agreement full of political loopholes against our democracy and for the benefit of the FarcPoliticos. Political corruption is deeply embedded in all government branches; namely: Legislative, Executive and Judicial. FarcPolitics is a cancer that is devouring democracy in Colombia

Just like Venezuela, Colombia got on the socialism train, tightening democracy. The Farpolitics tentacles now embrace the ministry of state, public prosecution's office, congress, the education system, Media Outlets as well as the entertainment industry and left-wing NGO's, attorney's association, amongst others. The Socialist governments of Cuba and Venezuela is working in favor

of Farcpolitics to establish and make the most powerful and dangerous Drug Cartel in the world a legal entity.

There is a political mafia in Colombia that works in favor of the Farc and its guerilla leaders who were demobilized from other terrorist organizations line the ELN and the M-19. These organizations have perverted the Colombian Justice as well as other Colombian institutions by strategically deploying funds obtained through the making and dealing of Cocaine.

Colombia is a far cry from the picture of the peaceful country that has been painted to the international community. If you doubt the truth of this, just take a look at the social media sites, and you will see the visceral reality of Colombia. Latin America as a whole has become an imminent danger to the National Security of the United States. Our NGO 'Dignidad Colombia' has been decrying this fact, and we have contributed proof which confirms these concerns.

The Political Mafia in favor of the Colombian Peace Talks has two dictatorships as guarantors; namely Cuba and Venezuela. They ignored the will of the people on October 2nd, 2016, when we vehemently turned down The Peace Talks between The Santos Administration and the Farc. This goes to show you that the Colombian Law isn't followed. It is merely a suggestion printed on Judicial Paper.

We are writing on behave of Andre Felipe Arias. A man persecuted for his political views, by a regime aided and funded by The Colombian Political Machine.

It is our belief that Andre Felipe Arias is man who is being politically persecuted by the very government he once served. Mr. Arias as a very credible and reasonable fear, that of being incarcerated and tortured by a regime that has demonstrated its willingness to inflict pain and suffering to him and his family.

Argument # 1: The main reason we are asking that Mr. Andres Felipe Arias not be extradited to Colombia is in doing so an innocent person's life whose due process rights have been completely violated, and such violation was motivated by a political desired to get even.

Argument # 2: Andres Felipe Arias is being persecuted for having served as a minister in the Alvaro Uribe administration.

Argument # 3: The Colombian Supreme Court implicated him of unlawful alliances and profligacy of public funds; Andres Felipe Arias signed three (3) contract as The Agriculture Minister with the OEA (Organization of American States). Colombia has signed 130 Treaties in twenty-five years and no minister has been prosecuted for it. This is proof of political persecution.

Argument # 4: Andres Felipe Arias trusted the Colombian Justice System when he willingly submitted himself to an inquisition tribunal that violated all his due process rights and hinders the second appeal hearing and right thereof. This is the reason why we consider this a political persecution. He is the only person who has been denied the right of a second appeal.

Argument # 5: The Farcpolitics influence is so great that those who are really guilty of crimes against humanity are exonerated, and in fact are even rewarded with free seat in the senate without going through popular vote, while the innocent individuals like Andres Felipe Arias are being persecuted, incarcerated, legally prosecuted without a right to a second appeal or hearing, which is a right that every citizen has. Furthermore, he is barred from serving in public office for life.

https://www.centrodemocratico.com/?p=3572

Argument # 6: The actual reason why Andres Felipe Arias is being persecuted is because he once dared to aspired to the highest seat in public office; namely: The Colombian Presidency. He was a favorite candidate in political surveys.

Yanhaas Survey of Feb 11 2009:

Andres Felipe Arias 19,2% (went from favorite, to politically persecuted)

Sergio Fajardo 11.2%

Nohemi Sanin 7.9%

Piedad Cordoba 6.8% (Farc Guerilla Leader)

German Vargas Lleras 6.2% (became VicePresident during The Second term of the Santos Administration)

Juan Manuel Santos 6.1% (President 2010-2018)

https://www.elespectador.com/noticias/politica/articulo117000-una-encuesta-de-yanhaas-da-favorito-presidencia-andres-felipe-arias

Argument # 7: In order to proof that Colombia's is a blind and corrupted Supreme Court, I would like to share these testimonies from Alejandro Lyons, former governor of the Department of Cordoba, who is a protected witness of the DEA. On August 31st 2017 the DEA reveal audios that depicted the of the Colombian Supreme Court.

https://www.elespectador.com/noticias/judicial/alejandro-lyons-exgobernador-de-cordoba-pagara-cinco-anos-de-carcel-articulo-740265

Argument # 8: Gustavo Moreno, former anticorruption attorney general stated "The Toga Cartel" comprised by the same magistrates now appointed to the Colombian Supreme Justice Court, are the same ones who oversee the the judgement and prosecution of Andres Felipe Arias.

https://www.diariolasamericas.com/america-latina/revelan-audios-la-dea-corrupcion-corte-suprema-colombiana-n4130862

Argument # 9: The UN Human Rights committee that Mr. Arias's most primordial human rights were violated.

http://www.radiosantafe.com/2018/11/14/comite-de-dd-hh-de-la-onu-emite-fallo-a-favor-del-exministro-andres-felipe-arias/

Based on the aforementioned arguments I hereby certify the political persecution of Andres Felipe Arias is purely motivated by his aspiration to the Presidency of Colombia, and by the fact that he served in public office under former President Alvaro Uribe Velez's administration, one that one tough on the making and trafficking of drugs. We stand before an international mafia whose plan is the complete, unchallenged and unchallengeable coup of all the governments in the world, and to this end they will persecute everyone and anyone who dares to stand before their plans. Former Colombian President Juan Manuel Santos requested the immediate extradition of Andres Felipe Arias without a ratifying law issued by the Colombian Congress. Due to such reason, such extradition request is without merit insofar as Andres Felipe Arias case is concerned. In any case, Mr. Andres Felipe Arias's political asylum application was submitted before the unlawful extradition request. This should be construed as a priority in defending the human rights of one who is being politically persecuted. Andres Felipe Arias is innocent, and he has been a victim of a political inquisition. It is our duty to look out for his safety.

We humbly ask you to keep in mind our reports and our findings when you make a decision concerning Mr. Andres Felipe Arias case. We ask that Andres Felipe Arias's political asylum application which was submitted in 2014 be granted, for the reasonable fear of suffering inquisition by a particular social group and due to his own political opinion.

Sandra Morton
Dignidad Colombia

480-227-4577

L.

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

3 CASE NO. 16-cv-23468-JJO

4

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 -v-

8 ANDRES FELIPE ARIAS LEIVA,

9 Defendant. MIAMI, FLORIDA
SEPTEMBER 28, 2017

10 PAGES 1 - {}

11

12 TRANSCRIPT OF EXTRADITION HEARING
BEFORE THE HONORABLE JOHN J. O'SULLIVAN
13 UNITED STATES MAGISTRATE JUDGE

14 Appearances:

15 FOR THE GOVERNMENT: ROBERT EMERY, A.U.S.A.
CHRISTOPHER SMITH, A.U.S.A.
16 *United States Attorney's Office*
99 N.E. 4th Street
17 Miami, FL 33128

18 FOR THE DEFENDANT: DAVID MARKUS, ESQ.
Markus/Moss PLLC
19 40 N.W Third Street
Penthouse 1
20 Miami, FL 33128

21 COURT REPORTER: ROBIN MARIE DISPENZIERI, RPR, CFR
Official Federal Court Reporter
22 *United States District Court*
400 North Miami Ave., Ste. 08S67
23 Miami, FL 33132 305.523.5659
rdispenzieri@gmail.com
24

25

1 P-R-O-C-E-E-D-I-N-G-S

2 **THE COURT:** We are here today in the matter of final

3 extradition for Mr. Andres Leiva.

4 Can I have appearances for the government first.

5 **MR. EMERY:** Rob Emery, Christopher Smith for the

6 United States.

7 **THE COURT:** Who is here for Doctor Arias Leiva?

8 **MR. MARKUS:** David Markus, here to my left also

9 present is Ricardo Vazquez.

10 **THE COURT:** You can be seated unless you're addressing

11 the Court.

12 Are you calling any witnesses or are you just

13 presenting the documents?

14 **MR. EMERY:** Just the documents, Your Honor.

15 **THE COURT:** Do you have any argument or do you have

16 anything that you want to say to the Court?

17 **MR. EMERY:** Yes.

18 **THE COURT:** I have read the papers, so we don't need

19 to.

20 **MR. EMERY:** Thank you, Your Honor.

21 I will expedite then what I was going to say to the

22 Court today.

23 Your Honor, this is a straightforward case because

24 after two year trial. Whether there is 57 witnesses.

25 Thirty-seven for the prosecution, 26 for the defense, a trial

1 in which the fugitive himself, Arias Leiva, testified before
2 the Supreme Court in countless documents were entered into that
3 record. After all of that, the Colombian Supreme Court, the
4 highest court in that land, convicted Arias Leiva of
5 embezzlement for third parties and contracting irregularities.
6 Convicted him to 209 months imprisonment in eight days. Your
7 Honor, it's based on that judgment conviction is why this Court
8 can find Arias Leiva for the again those offenses are
9 embezzlement by third parties has submitted the request based
10 and I'm not going to revisit at that issue unless the Court
11 wants to hear more with the treaty. As far as the government
12 is concerned that issue has been litigated several times and
13 this Court already indicted this matter most recently in
14 addition to quash the subpoenas this Court decided and that the
15 treaty is valid. Unless the Court wants to hear additional
16 argument on that, I'm going to move on with my argument. Thank
17 you.
18 Before I begin, Your Honor, I would like to move into
19 the record officially the extradition documents submitted by
20 the government in Colombia located as docket entry one and the
21 government would mark as Government's Exhibit one.
22 **THE COURT:** You're not going to resubmit them, are
23 you?
24 **MR. EMERY:** No, you shall, just by reference. Those
25 are the only documents that the government is relying on today.

1 Those documents were properly certified pursuant to 18 United
2 States Code 3190, they were certified by an Embassy official --
3 **THE COURT:** I don't need to hear all of this stuff. I
4 don't think the defendant has addressed that nothing was
5 properly certified. They do have the props with the papers.
6 I'm.
7 **MR. EMERY:** I'm just trying to anticipate some of the
8 issues that they have raised. Going to the five elements that
9 this Court, in docket entry 21, asked the parties to address.
10 Really, the only three elements that really should be discussed
11 today is the first one, whether this Honor is authorized to
12 conduct the extradition proceedings; four, whether or not the
13 crimes for the extradition requested is covered by the treaty;
14 and fifth, whether or not there is sufficient evidence to
15 support a finding that Arias Leiva is extraditable based on the
16 crimes before this Court today.
17 Your Honor, just briefly, with respect to the first
18 element this Court has found in 18 U.S.C. 3194 gives this Court
19 jurisdiction to hear this proceeding. Really that just leads
20 us to the fourth and the fifth element --
21 **THE COURT:** They have an argument. I mean, one of
22 them is that the complaint doesn't rely on the treaty. One is
23 that the treaty is not in effect. The other is that the case
24 has no Article 3 standing.
25 **MR. EMERY:** Your Honor, this is not an Article 3

1 proceeding. As Judge Torres recently found in the matter of
2 Martinelli --
3 **THE COURT:** I'm familiar with the case.
4 **MR. EMERY:** Judge Torres characterized the extradition
5 proceeding as an administration proceeding to determine whether
6 or not they are subject to the treaty and that person should be
7 subject to extradition. If anything, Your Honor, really, the
8 authority of this Court stems from Article 2 which is the
9 authority of the United States to enter into treaties with
10 foreign governments. 18 U.S.C. 3184 is where that authority
11 has been delegated, in part, to District Court Judges and the
12 Magistrate Judges in order to hear extradition requests.
13 The second part of that process is when the Secretary
14 of State gets involved for any issues that the fugitive may
15 have concerning any claims of political persecution, anything
16 outside of the context of the treaty.
17 **THE COURT:** So you want to get to what, dual
18 criminality?
19 **MR. EMERY:** Your Honor. Briefly, 3184, the government
20 couldn't find any case where either a District Court or a
21 Magistrate Judge has not found that it has jurisdiction
22 under --
23 **THE COURT:** I would be interested to hear from counsel
24 for the Doctor about that because there's been a lot of
25 extraditions that have occurred in the United States which

1 there was no standing, I suppose.

2 **MR. EMERY:** That's what they want this Court to go

3 with. No other Court has found --

4 **THE COURT:** We will see what their argument is.

5 **MR. EMERY:** Just the last thing, Your Honor, on that

6 point. Regardless, the United States does have standing. We

7 are a member to this treaty. So we definitely have an interest

8 in the outcome of this case.

9 **THE COURT:** Regardless of whether it's the Republic of

10 Colombia or you?

11 **MR. EMERY:** Yes, Your Honor.

12 **THE COURT:** Okay.

13 **MR. EMERY:** Now, Your Honor, turning to the issue of

14 dual criminality. First, I'm going to address the embezzlement

15 by the thirty-party offense, conviction from Colombia.

16 In Article 3 of the treaty, it states explicitly that

17 if an offense is covered in the Appendix that is an

18 extraditable offense. That type of crime is a crime not only

19 in the United States but also a crime in Colombia.

20 In the Appendix number 11 it says "embezzlement".

21 Your Honor doesn't need to get to a dual criminality analysis

22 because it's right there. As long as the offense is something

23 that the fugitive can be convicted of for more than a year, it

24 is extraditable. In this case, Your Honor, the embezzlement by

25 the third party, the statutory maximum is 15 years.

1 But even under a dual criminality analysis, the
2 fugitive, Arias Leiva, is extraditable for the offense of
3 embezzlement by third parties.
4 As the government laid out in its briefing, the
5 equivalent federal statutes are cited in 18 U.S.C. 641 and 18
6 U.S.C. 666.
7 With respect to 641, it has a ten-year statutory
8 maximum as well as 666 also has the same ten-year statutory
9 maximum.
10 With respect to the Colombian offense, the title of
11 the offense is embezzlement --
12 **THE COURT:** There are cases that say, really, the
13 title doesn't mean anything, right?
14 **MR. EMERY:** Correct, Your Honor. It definitely gives
15 insight as far as what is the purpose of the statute.
16 There, it's laid out in the filings, "a public servant
17 who appropriates for his own vantage, or that of a third party,
18 goods of the state." That's a relevant party.
19 If you put that side-by-side and analyze it with 641,
20 there should be any doubt that there is dual criminality under
21 641. Under 641, and under the pattern jury instructions for
22 the Eleventh Circuit, you look at offense instruction number
23 21. It's four elements:
24 The money described in the indictment belonged in the
25 United States.

1 The defendant embezzled, stole, or knowingly converted
2 the money for his own use or someone else's use.
3 The defendant knowingly, willfully intended to deprive
4 the United States of the use of the money.
5 The money had a greater value than $1,000.
6 Your Honor, here, turning to the facts of this case,
7 the conviction record from Colombia is that the fugitive, Arias
8 Leiva, embezzled approximately $8.5 million to the benefit of
9 wealthy landowners in Colombia.
10 So it definitely fits the minimum threshold. More
11 than it fits the minimum threshold of $1,000 and also is
12 equivalent in the intent, and the purpose of 641 squares
13 directly with the Colombian Article 397, which is the
14 embezzlement statute.
15 Likewise, Your Honor, Federal Statute 666 --
16 **THE COURT:** 666 it's not as clear I don't think.
17 **MR. EMERY:** I would agree with Your Honor on that.
18 **THE COURT:** I couldn't see a federal cabinet member of
19 the United States being charged with 666.
20 You would agree with that, right?
21 **MR. EMERY:** Your Honor, I think that's fair to say.
22 Without a doubt, the government's strongest position is number
23 one, it's clear because it's in the Appendix, but under a dual
24 criminality analysis, 641 forms the basis. The government does
25 believe that 666 could also be an alternative basis, Your

1 Honor.

2 **THE COURT:** Why is that?

3 On the issue since he's not, since this fellow is an

4 equivalent of a federal official in Colombia, why should I find

5 666 is what constitutes dual criminality?

6 **MR. EMERY:** Your Honor, I think you can look at the

7 Supreme Court in the *Collins* decision. You don't look at each

8 and every word of the statute. If there are any doubts as far

9 as concerns, or if it's ambiguous at all, then any doubts are

10 -- if you look at the general intent of 666, that is, the

11 conduct that Arias Leiva did, looking at the intent of 666, it

12 does square with that, Your Honor.

13 **THE COURT:** All right. I'm not sure I understand why

14 you make that argument. I mean, do you think you could

15 convince some Judge it was 666 but not the embezzlement

16 statute?

17 Is there some benefit to the government having it

18 under two statutes rather than one?

19 **MR. EMERY:** No, Your Honor.

20 **THE COURT:** If you have 641 why would you use 666?

21 **MR. EMERY:** Your Honor, like anything the lawyers do,

22 if we think we have a good faith argument, we are going to put

23 it before the Court. I will admit it's not even as close to

24 being as strong as 641.

25 **THE COURT:** Let's go to the next one, the contracting.

1 **MR. EMERY:** The contracting, there, Your Honor, again,
2 I think it's important to keep in mind when analyzing the
3 contracting offense to keep in mind the *Collins* decision that I
4 just referenced. If I could, just quote it for Your Honor.
5 "*Dual criminality does not require the name by which the crime*
6 *is described by the two countries shall be the same nor the*
7 *scope of the liability shall be coextensive or other aspects of*
8 *criminal [unintelligible] is enough if the particular act*
9 *charged is similar to both countries.*"
10 That last language, Your Honor, is very relevant to
11 the analysis to why this is an extraditable offense. Focusing
12 on the acts that were described by the Clemens Supreme Court,
13 it was the fugitive, Arias Leiva, who committed fraud when he
14 signed -- he signed every one of those contracts at issue. He
15 had labeled this particular organization IICA as scientific and
16 technical, when he knew it wasn't. That lie then allowed him
17 to then facilitate the ultimate embezzlement scheme to the
18 benefit of $8.5 million that was stolen from the government in
19 Colombia.
20 Just a couple things, Your Honor. You know, in the
21 decision which the government cites and gives pinpoint cites in
22 its reply, the *Clemens Supreme Court* stated that "*Arias Leiva*
23 *falsely designated the ministries between the ministry of*
24 *agricultural and IICA as scientific and technical cooperation*
25 *agreements.*"

1 *"The Supreme Court found that the representation and*
2 *agreements that their object was technical and scientific*
3 *cooperation between the ministry and ICA was false. Agreements*
4 *did not have specific or technological activities of any parts*
5 *of their object".*
6 Your Honor, that's cited at the bottom of the page of
7 the Colombian decision at 8286.8896, 121.
8 If you look at the particular acts of what Arias Leiva
9 did here, he lied when he designated the ICA and the contracts
10 as scientific and technical.
11 **THE COURT:** All right.
12 **MR. EMERY:** In sum, Your Honor, the embezzlement
13 offense of conviction is in the Appendix. Even under a dual
14 criminality examination, the Colombia conviction for
15 embezzlement is also a crime of the United States under 18
16 United States Code 641.
17 With respect to the contracting, Your Honor, it's also
18 a violation, it's equivalent to 18 U.S.C. 1001.
19 So given that the offenses of extradition are also
20 crimes of the United States, Your Honor, I want to turn to the
21 next, that being that there's probable cause.
22 Your Honor, of all the elements, this is one of the
23 more straightforward because, unlike most of the extradition
24 cases that come before this Court, we actually have a
25 conviction. Before I go there --

1 **THE COURT:** The case law is fairly clear that if you
2 have a conviction that establishes probable cause, they said
3 there should be an exception because it was a politicized
4 Court.
5 Why should I not adopt their argument?
6 **MR. EMERY:** First of all, Your Honor, there is no
7 precedent for that at all. If I recall, I don't think the
8 defense cited any case law. All they tried to do was attack
9 what the U.S. Government had written.
10 The reason for respecting that judgment and
11 conviction, Your Honor, are based on international principals
12 of comity. This matter has already been tried in Colombia. It
13 shouldn't have to be -- although the defense is hoping
14 otherwise, with some of their witnesses today, this is not an
15 opportunity for them to relitigate. As Your Honor cited in the
16 last order, this is not a dress rehearsal for the trial. We
17 are not here to determine his guilt or innocence. That's
18 exactly what the defense is asking this Court to do.
19 So just like we would expect the same from the
20 Colombian government, when we are asking them to extradite
21 somebody that has been convicted, we would expect they would
22 look behind the judgment conviction of any Court in the United
23 States. That's a matter that has been resolved.
24 Especially here, Your Honor, Arias Leiva was present
25 for a two-year trial, fifty-seven witnesses. He testified in

1 his own defense. He was represented by counsel. Countless
2 documents were admitted. After all of that, Your Honor, the
3 Colombian Supreme Court, after hearing all of that evidence,
4 found him guilty of the two offenses that we discussed today.
5 **THE COURT:** They say basically the Colombian Supreme
6 Court is corrupt. They did it because of his political
7 beliefs. The Judge now, at least according to the Doctor, is
8 under investigation for taking bribes.
9 **MR. EMERY:** Your Honor, if you use your common sense,
10 common sense view of what happened in Colombia, looking at the
11 evidence before this Court, if the so-called fix was on that
12 this was a politicized court, why would they put him on trial
13 for two years?
14 Why would they allow all of these witnesses and
15 evidence to go forward?
16 They also acquitted him of at least one charge, Your
17 Honor. Remember, it wasn't just one Judge who signed the
18 judgment and conviction. It was a total of eight Judges. So.
19 There is no allegation that any of the -- that there's
20 any evidence of corruption.
21 Again, Your Honor, it's just analogies. This is just
22 what is reported in newspapers.
23 **THE COURT:** Supposing he was correct. Suppose he's
24 found guilty of that being correct would that change your
25 argument or the ruling that I should issue?

1 **MR. EMERY:** Not at all, Your Honor. That's an issue
2 for the Secretary of State. These are arguments that the case
3 law is clear that the Executive Branch is better equipped to
4 determine whether or not he should be extradited given the
5 allegations they are making.
6 The matters before this Court are whether or not the
7 five requirements have been met, Your Honor.
8 If there are any issues -- if it turns out, when he
9 goes back to Colombia, Your Honor, he can take advantage of any
10 legal recourse there if for some reason he feels that the
11 judgment and conviction is not valid. He will have an
12 opportunity to fight that when he goes back to Colombia. To do
13 so here, before this Court, would be a dangerous precedent
14 because it would allow any fugitive to come before this Court
15 and second guess a judgment and conviction record from another
16 Court which is, obviously, a slippery slope, and the government
17 would suggest this is not something where the Court should go
18 and his only recourse, Your Honor, is to go to the Secretary of
19 State.
20 With respect to, again, Your Honor, the probable
21 cause. The plain language of the statute noticeably absent
22 when someone is being convicted, there is no probable cause
23 requirement there. The reason is again, Your Honor, based on
24 principles of international comity that this Court should
25 respect the decision of the highest Court in Colombia which is

1 the Supreme Court.
2 Even assuming that the Court wants to look at the
3 probable cause which is the standard that this Court uses in a
4 preliminary hearing, the judgment conviction record which this
5 Court should take as true and the facts underlying talk about
6 exactly what the fugitive, Arias Leiva, did with respect to the
7 embezzlement that he obtained sub December by the fictitious
8 subdivision of properties which stole from valuable government
9 resources.
10 The Supreme Court highlighted that on page 162 of its
11 decision that Arias Leiva knew the illegality of his conduct
12 and voluntarily carried it out, that Arias Leiva was involved
13 in a fraudulent allocation of subsidies the detriment of the
14 national public treasury; and lastly Your Honor, that Doctor
15 Arias Leiva was aware of the illegality of his conduct.
16 Even under probable cause analysis, Your Honor, the
17 evidence that has been submitted and the case law is clear
18 through the expiration that the facts ascertaining encounter by
19 the government of Colombia should be taken as true and again,
20 Your Honor, just looking at the analysis, that is true year
21 trial there is a lot of litigation. He had an opportunity to
22 defend himself and this is ultimately what the Supreme Court
23 decided.
24 Lastly, Your Honor, with respect to probable cause for
25 the contract, the Supreme Court through the opinion and on page

1 113 highlighted that Arias Leiva knew that he was acting
2 illegally from a legal process to process and execute the
3 agreements that were questioned. On page 121, that his
4 performance was eminently fraudulent conduct, that the
5 fraudulent a result is a result of consequence actions of Arias
6 Leiva.
7 Your Honor, throughout the judgment and conviction,
8 the 193-page decision, the Supreme Court carefully laid out the
9 reasons why Arias Leiva was convicted of the crime and that
10 should be more than enough probable cause, Your Honor, for you
11 to find him extraditable on the two offenses.
12 In sum, Your Honor, the United States would ask that
13 this Court certify to the Secretary of the State for the
14 reasons discussed herein based on the Treaty between the United
15 States and Colombia.
16 Lastly, Your Honor, the United States would ask that,
17 since Arias Leiva should be found extraditable, that in order
18 to certify and forward the matter to the Secretary of the State
19 that he has to be surrendered and held there pending his
20 extradition.
21 **THE COURT:** I don't understand.
22 **MR. EMERY:** I'm asking that he be taken back into
23 custody, Your Honor. That is what the Statute says if you
24 found him to be extraditable.
25 Thank you, Your Honor.

1 **THE COURT:** What does Doctor Arias Leiva say?
2 **MR. MARKUS:** Good afternoon, Your Honor.
3 Judge, we would like to call Doctor Arias as our first
4 witness.
5 **THE COURT:** How many witnesses are you calling?
6 **MR. MARKUS:** Just one.
7 **THE COURT:** So it will be your only witness?
8 **MR. MARKUS:** Just one.
9 **THE COURT:** All right, have him come up.
10 **COURTROOM DEPUTY:** Do you solemnly swear that the
11 testimony you're about to give is the whole truth and nothing
12 but the truth, so help you God?
13 **THE WITNESS:** I swear.
14 **COURTROOM DEPUTY:** Please state your name and spell it
15 for the record.
16 **THE WITNESS:** Good afternoon. My name is Andres
17 Felipe Arias.
18 DIRECT EXAMINATION
19 BY MR. MARKUS:
20 Q. Doctor Arias, can you give the Court a little bit
21 background, where you went to school and so on.
22 A. Yes, I went to school in Colombia and then to an American
23 high school. I went to college in Bogota for an Economics
24 degree, I got a masters in that university. When I was awarded
25 a scholarship from the Central Bank of Colombia. I came to the

1 states to have my pH studies in the University of California in
2 Los Angeles. When I was finishing my PhD, the Former President
3 Uribe called me to be part of his economic team when he was
4 add --
5 Q. Let me stop you.
6 What year was that when you went to work for President
7 Uribe?
8 A. 2002.
9 Q. What was your first job with the Uribe Administration?
10 A. I was appointed Director of --
11 Q. Back up a little bit from the microphone please.
12 A. I'm sorry.
13 Q. What year did you take that position again?
14 A. In the year 2002, August 7th of the year 2002, which is the
15 date of inauguration of the President.
16 Q. Did you work your way up in that Administration?
17 A. Yes, I began in that position. Then I was sometimes
18 appointed as in charge of the Vice Ministry of Finance. Then I
19 was appointed Vice Minister of Agriculture basically for the
20 negotiation of the Treaty agreement between the United States
21 and Colombia. Then I was appointed Minister of Agriculture in
22 the year 2005.
23 Q. Did you serve as Minister of Agriculture from 2005 to the
24 end of the term?
25 A. Until February of 2009.

1 Q. All acts that you took as the Minister of Agriculture were
2 those on behalf of you personally or acting as the Government
3 of Colombia?
4 A. Always acting on behalf of the Government of Colombia.
5 Q. Okay. By the way, did you ever take one penny other than
6 your salary in terms of a kickback or anything like this?
7 A. No, never and, in fact, I was acquitted of investigations
8 in that sense all the finances of me and my family were
9 thoroughly investigated by the Inspector General's Office that
10 we were cleared of any anomaly.
11 Q. Let's talk about towards the end of that second term.
12 Were you planning a presidential run?
13 A. Yes, I was. In the year 2009, when I resigned to the
14 Ministry I resigned to seek the presidency on the 2010 election
15 to defend the ideas and the ideological platform of President
16 Uribe.
17 Q. Was part of that platform to fight against the FARC and
18 other terrorists?
19 A. Yes, basically our ideals is to end criminality with a
20 platform called Democratic security which dealt very well in
21 Colombia FARC and all types of terrorism at the same time
22 pushing for economic growth and a good distribution of wealth.
23 Q. What party were you running for President as?
24 A. At that point I was running for the President of the
25 Conservative Party.

1 Q. Was there another cabinet member running for the other
2 party?
3 A. Yes, there was another cabinet member. He's the current
4 person of Colombia. He was running for the party called Lauh
5 [phonetic]. Both of us were the ones that were going to try to
6 get to the presidency to defend that platform under which we
7 had worked during almost eight years.
8 Q. As you're running, how were you doing in the polls?
9 A. I was leading the polls by a very big margin in the
10 primaries of my party. On the overall, I was there to help
11 with the current person Santos.
12 Q. Was there, I'm going to put in quotes, the word "scandal",
13 reported in the newspaper run by the Santos family?
14 A. Yeah, not in the newspaper but initially in the magazine
15 that is under the Editorial House which is in part, at that
16 moment, was owned in part by the Santos family. Of course,
17 that scandal was taken on the newspaper that was run by the
18 Editorial House, which the San Santos family, at that point,
19 owned partially.
20 Q. How did that affect the polls?
21 A. Very, very difficult because there were scandals. At
22 first, they were saying they were giving money to wealthy land
23 owners. When I managed to show, through the public opinion,
24 that this was not true, that this program however equal this
25 distribution in terms of going to a larger percentage to small

1 farmers, and also to medium farmers, and also to small farmers
2 because that was demanded. They changed the accusations and
3 started to say that the wealthy landowners that received the
4 funds had contributed to my campaign. When I proved that
5 wasn't true, then they said that I had committed a fraud and I
6 helped him to commit a fraud.
7 **MR. EMERY:** Judge, I'm going to object to the
8 relevance to this.
9 **THE COURT:** What is the relevance?
10 **MR. MARKUS:** I just wanted to set the stage as to how
11 that happened he came to the states.
12 **THE COURT:** I will give you a little bit of leeway.
13 **MR. EMERY:** Your Honor, it sounds like they are trying
14 to relitigate the two-year trial.
15 **THE COURT:** All right.
16 BY MR. MARKUS:
17 Q. We are not going to get into the two-year trial, although
18 I'm sure that you have a lot to say about it.
19 When was the first time charges were brought against
20 you?
21 A. When the campaign finished and I lost by a very little
22 margin and President Santos won the election. I was cleared in
23 all stages, not only by the controller but also there is a
24 document from the prosecutor saying that I didn't commit
25 anything. This is the year 2010 for that. That's an important

1 year.
2 Then in the year 2011, with new Prosecutor General
3 that was appointed by Santos, she started accusing much of the
4 former cabinet members of President Uribe because, in the years
5 2010 and 2011, we broke with him because he treasoned our whole
6 political platform. He started doing different things for
7 those for which he had campaigned so he started accusing many
8 of us in 2011 when they brought the charges.
9 Q. Were you initially put into jail when those charges were
10 brought?
11 A. Yes. I was called to a hearing, an indictment hearing, and
12 the Prosecutor General requested that I be preventively
13 detained. I was preventively detained.
14 Q. For how long?
15 A. For two years.
16 Q. Were you ultimately released?
17 A. Yes, after two years. We requested a Magistrate from the
18 Superior Tribunal of Bogota, which is not the Supreme Court but
19 a different judge, that there was no reason to keep me there.
20 After requesting that freedom, like, four times, because the
21 terms had expired. In Colombia, you cannot be indefinitely
22 tried and accused. The terms had expired, and they will deny
23 it, and deny it, but at the end, this Judge said I cannot hold
24 him any longer, so she released me after two years.
25 Q. After you were released, did you apply for a Visa to come

1 innocent man in the world, what does that have do with probable
2 cause?
3 When I determine probable cause, I don't say what do
4 you think over there and look over there. I look at the facts
5 and determine probable cause.
6 **MR. MARKUS:** This goes to the facts, Your Honor. If
7 you were to present evidence to one side about a person taking
8 drugs and you were determining whether there was probable cause
9 to arrest that person, and then there was evidence in the way
10 the lab tested those drugs, you may want to inquire as to
11 whether that lab tested these drugs and other things. It goes
12 to PC when we can challenge the weight of the decision. The
13 weight of the decision of the Colombia Supreme Court can't just
14 be taken as a given if the United States, itself, found that
15 the Court, A, was corrupt and, B, was politicized. We have
16 evidence to present on those facts with the Court. I think
17 that can go to the weight of the Supreme Court's decision.
18 **MR. EMERY:** Your Honor, a couple of things on that.
19 Number one, the Embassy was not involved in any manner
20 whatsoever in this trial. The United States government had
21 nothing to do with the prosecution and ultimate conviction of
22 Arias Leiva.
23 Also, Your Honor, this is an issue that they tried to
24 address when they tried to subpoena the very same Embassy
25 officials, and the government moved to quash those finding it

1 to the United States?
2 A. Yes, I was released on June the 14th I think of the year
3 2013. My American Visa, which I have always had, was going to
4 expire, I believe, in September of the year 2013. So I went to
5 the Embassy to the Consulate to request, as a normal citizen,
6 an extension of my Visa.
7 Q. Was that granted or denied?
8 A. It was initially denied.
9 **MR. EMERY:** Your Honor, I'm going to object to the
10 relevance again.
11 **THE COURT:** What's the relevance of this?
12 **MR. MARKUS:** Your Honor, this is extremely relevant
13 because we are going to get into his discussions with United
14 States officials who initially denied his entering into the
15 United States and then, when they were presented with evidence
16 of corruption of the Court and corruption of the process, not
17 only granted his Visa but assisted in entering into the United
18 States.
19 **THE COURT:** What does that have to do with whether or
20 not he's extraditable?
21 **MR. MARKUS:** For a number of reasons, Your Honor. It
22 goes to whether there is probable cause to extradite him based
23 on that Supreme Court decision that we heard so much about.
24 **THE COURT:** How is that?
25 If somebody in the Embassy thinks that he's the most

1 wasn't relevant.

2 The State Department has already decided the matter.

3 They found this it is an extraditable case, and that's why

4 we're here today.

5 **THE COURT:** I don't know what about the relevance. If

6 he told me that and the Embassy said he's innocent and the best

7 guy in the world, how does that affect how he was convicted by

8 a Columbian Court?

9 **MR. MARKUS:** The conviction goes to whether there was

10 probable cause but also whether the conviction was valid or

11 does not goes to probable cause.

12 We have evidence from Doctor Arias that we would like

13 to present that shows that the United States itself found that

14 the process was politicized and corrupt. They told him that.

15 We would like to present evidence of that. They initially

16 denied his visa because of the process going on in Colombia.

17 When they did an investigation down there they came back to him

18 and said not only are we going to grant the visa, but we are

19 granting the visa because this process that you're going

20 through is not valid and it's politicized and corrupt, and you

21 should come to the United States and apply for asylum based on

22 those facts.

23 I think that this does go to the decision that the

24 prosecutor argued. The prosecutor argued to this Court that

25 this was a two-year process with 57 witnesses. Those are

1 factors that you can take into account just like you can take
2 into account the other side of the equation as to why that
3 process was invalid.
4 **MR. EMERY:** Your Honor, those facts are in the
5 judgment and commitment. These arguments that he's making now
6 are, at best, for the Secretary of State as to any allegations
7 that they may have as to what their employees thought, they are
8 free to make those arguments.
9 **THE COURT:** Yeah, I don't see why it has any
10 relevance. When I quashed your subpoena, I didn't think it was
11 relevant. If I thought it was relevant, I would have let you
12 call these folks from Colombia or Washington.
13 **MR. MARKUS:** Your Honor, just so that we are clear, I
14 know the government likes to say this is best for the Secretary
15 of State, best for the Secretary of State. The issue for this
16 Courts, this Court has to find that there is probable cause.
17 That is the issue before the Court.
18 **THE COURT:** A lot of the cases say I find probable
19 cause because there was a conviction in the Court there.
20 **MR. MARKUS:** Yes, Your Honor, but let's take the most
21 extreme example. Let's say that there was record evidence that
22 the Supreme Court, all nine of them, were bribed by the Santos
23 administration to find Doctor Arias guilty, and then they
24 convicted afterward. I think you used that example when you
25 were questioning Mr. Emery. That would show there is not

1 probable cause based on that decision.
2 Now, we don't have the most extreme example like that
3 but we do have evidence that goes to that very issue, whether
4 the Supreme Court's decision is valid. That's the evidence we
5 would like to present. Because if it's invalid, if it was
6 politicized and not based on real evidence but based on
7 political motivations, then there is not probable cause to
8 extradited Doctor Arias and that is the decision of the Court
9 and not for the Secretary of the State.
10 **THE COURT:** I will let you make a record, but we are
11 not going to be here for an hour while he goes through this
12 thing. You have got five or ten minutes to inquire as to that
13 regard.
14 BY MR. MARKUS:
15 Q. So I think where we were at, Doctor Arias, is your visa was
16 initially denied.
17 Did you go back to the Embassy and explain what the
18 circumstances that had occurred?
19 A. Yes, I did, to former President Uribe, to call the office
20 of the Embassy. They requested a document explaining the case
21 and why it was being railroaded or why the charges were bogus.
22 I sent a document in English.
23 Some days later, they called me and said they were
24 going to grant me the visa.
25 Q. Who called you?

1 A. Someone from the Embassy. I guess it was a clerk.
2 Q. Who did you present those documents to?
3 A. Oh, the first contact I made with was Mr. Drew Blakeney. He
4 was the Director of the Embassy.
5 Q. I think you said you got a call from somebody to come get
6 your visa?
7 A. Yes.
8 Q. What happened there?
9 A. I went to pick it up. It was in the afternoon. I went to
10 a window. They told me they were going to give it to me in the
11 back of the patio.
12 I went in the back of the patio. Some counsel came.
13 Handed me the passport and said "they have got nothing on you.
14 You can go to the states with your family. Here's a ten-year
15 visa."
16 Q. Did you have a chance to meet with them again?
17 A. Not with the person that gave me the visa. Afterwards, I
18 met with Drew Blakeney.
19 Q. Tell me about that meeting.
20 **THE COURT:** Tell us who that is.
21 **THE WITNESS:** Drew Blakeney was the Director of the
22 Colombia Embassy.
23 I said, first, thank you for the visa. He said that
24 he knew about my case, that they had done the investigation and
25 they knew that the Supreme Court of Colombia was acting

1 politically against the collaborators of the former President
2 Uribe. I asked him about the process. He explained how the
3 process was at the end Homeland Security will ask the State
4 Department for the opinion. The State Department would usually
5 ask the Embassy for the opinion. He mentioned three cases
6 where he knew that the Supreme Court or the judicial branch in
7 Colombia was acting corruptly against the former President
8 Uribe family and corroborators. The three cases were my case,
9 the case of Estrepo, the former police Commissioner. He was
10 granted asylum in Canada.
11 Q. He was granted asylum in Canada?
12 A. Yes, and against his brother, who is currently in jail in
13 Colombia accused of a crime that allegedly happened 25 years
14 ago.
15 Q. Doctor Arias, did you also express concerns of your safety?
16 A. Yes, yes, I did. I have had some, not some, many threats
17 against my life and against my security by FARC and people in
18 that are in "narco trafficking". The government was reducing
19 and undermining our security detail during those days. So at
20 that point, this was November 2013, I was very scared. I told
21 him that.
22 Q. I know there was some travel to the United States and then
23 back again. Based on the Courts ruling, I'm going to move
24 quickly through that.
25 I want to ask you as your trial comes to an end, did

1 you start to raise concerns about the timing of the verdict?
2 A. Yes, I was very concerned because the length of the
3 trial -- when you look at the length of the trial, that's not
4 something that proves a guarantee fairness. It's the contract,
5 because they would let so much time pass between one hearing
6 and the next. It would be months, months that they extended
7 the process to synchronize it with the new political president
8 election. So the trial ended and they didn't rule. They said
9 that they would call us when they were ready for a verdict, and
10 they didn't give us an initial date.
11 Q. Did that ruling date continue to move as the election
12 proceeded?
13 A. Yeah. So they set a date and it was synchronized with the
14 first milestone of the electoral process. When that came up,
15 they extended, I guess, the date their ruling to coincide with
16 the first round of the presidential election and then they
17 extended it indefinitely.
18 Q. Did there come a time when you were tipped off with what
19 the Supreme Court was going to do?
20 A. That, to me, was a signal. I spoke again with Mr. Drew
21 Blakeney, and I told him I want to seek asylum. How would your
22 opinion be on me if you were to say, look, I can't guarantee a
23 positive opinion, that would certainly help me make the
24 decision to come here or not, but he said we will grant you a
25 favorable opinion because we are aware of this stuff.

1 So towards June, and it's so much synchronized with
2 the milestones of the electoral process, they extended again
3 the hearing. They wouldn't give a verdict on my case.
4 Q. So, eventually did you get notice before the Court ruled
5 that they were going to rule against you?
6 A. Yeah. So a couple of days before, the second rounds where
7 it was encumbered on my candidate. My fear has escalated. We
8 had some incidents with security where the government had
9 reduced the security detail. I called Mr. Blakeney telling him
10 that I was going to definitely come to seek asylum.
11 At first, I couldn't get him on the phone. I had his
12 personal cell phone. He gave it to me. I called Mr. Salcedo,
13 who worked in that political office, and he said he would
14 contact me with Drew Blakeney. Friday, June 13, 2014, two days
15 before the election.
16 Q. What happened when you got that notice?
17 A. So at midday, they broke the news that they were going to
18 convict me in the media. Of course, ended up hurting the
19 election and our candidate, and two hours later I got a call
20 from Mr. Blakeney.
21 Q. You got a call?
22 A. Yes.
23 Q. What did he tell you?
24 A. He said "are you looking for me".
25 I said "yes, I am very scared and I want to go to the

1 United States." I asked Mr. Blakeney, am I allowed to enter
2 the United States. Look at what just happened. They leaked
3 the news that I am going to be convicted. They have not had a
4 hearing for the verdict. So it's very clear to us they are
5 using this politically to hurt our candidate and to hurt Uribe
6 and to hurt all of us.
7 He said "I am sure you can go in, but let me check."
8 Q. Did you get off the phone?
9 A. Yes.
10 Q. Did somebody call you back.
11 A. Yes, I got called back and she said you are cleared to go
12 to the United States.
13 Q. Did you go to the United States?
14 A. Yes, I purchased a ticket with the persons with me and I
15 came here.
16 Q. Did your wife and two children also come here?
17 A. Yes, they also came here two weeks later.
18 Q. Is your wife in court?
19 A. Yes, she is here.
20 Q. She can stand up.
21 Do you have children?
22 A. Yes, two children.
23 Q. Without telling us your address, where do you live in the
24 United States?
25 A. In Weston, Florida.

1 Q. Have you been living there since you came?
2 A. Yes, when I arrived I filed for asylum. I informed the
3 embassy. I have the email responding to me that they are aware
4 that I am seeking asylum. I did the biometrics and I informed
5 from the first day my address.
6 Q. Were you ever trying to hide from the United States?
7 A. No, to the contrary. I was trying to get the help of the
8 United States. I was told that I was going to receive the help
9 of the United States.
10 Q. Just a couple more questions for you, Doctor Arias.
11 The prosecutor mentioned that this was a decision of
12 eight judges of the Supreme Court and even if we had evidence
13 of one judge being corrupt -- by the way, was that the judge
14 who presided over your trial?
15 A. Yes, he was the former President of the Supreme Court.
16 Q. Where is he right now?
17 A. He's under a formal investigation. Another President of
18 the Court is in jail right now. That happened last week.
19 Q. Of the eight judges who presided over your hearing, can you
20 go through for us what their current status is?
21 A. Yeah. So first, the fact that it's only eight and nine is
22 a first anomaly. An administrator like me has to be by nine
23 justices of the Court. One was excused, but they didn't
24 appoint a Magistrate Judge. We call them Magistrate in
25 Colombia, but they are justices of the Supreme Court.

1 **MR. MARKUS:** You're about to get an elevation, Judge.
2 **THE COURT:** I have been overseas, and when I go, I
3 tell them that I'm a Magistrate Court Judge. They think I'm
4 somebody big.
5 **THE WITNESS:** Two of the justices have been formerly
6 investigated because of a corruption network that was revealed
7 by the DEA some weeks ago, two of them. So now we have six.
8 Of those six, three of them additionally have been mentioned in
9 the audio of the wiretaps of the DEA, so now we have three.
10 In fact, of the former three that I just mentioned one
11 of them, Justice Patricia Salazar, she signed the ruling
12 against me and didn't attend the hearing. She was appointed
13 justice after my trial. Two of them -- okay, for the sake of
14 argument let me say that they are not mentioned, but one of
15 them has a conflict of interest because she has been declared a
16 victim of our administration because she alleges that we
17 wiretapped them. As a victim, she was judging for the person
18 who worked for the victimizer. Of those two, one of them
19 issued a dissent in my favor.
20 **MR. EMERY:** Your Honor, I'm going to object to the
21 relevance of this. Whether or not the Supreme Court was
22 political, yes, it's a relevant issue but it's an issue
23 relevant to the Secretary of the State based on the rule of non
24 inquiry.
25 **THE COURT:** All right. Wrap up with him on that.

1 **MR. MARKUS:** There was a response to what Mr. Emery
2 said during his presentation.
3 BY MR. MARKUS:
4 Q. Mr. Emery says you can go back to Colombia and take
5 advantage of legal recourse like appeals.
6 Can you appeal their decision?
7 A. No, they denied my appeal.
8 I have to say it's atrocious because the
9 constitutional -- Your Honor. Colombia constitution has a
10 Supreme Court and a Constitutional Court. The Constitutional
11 Court said to meet with the "human being of human rights
12 treatises", every human being has a right to appeal any
13 conviction. That happened last year. I immediately sent a
14 communication saying to the Supreme Court that I intended to
15 appeal. Because there are a lot of anomalies in my trial.
16 They answered they wouldn't grant me a right to appeal was you
17 have two things.
18 First, they don't have a way to accommodate an appeal
19 stage.
20 Second, because they have decided that the appeal rate
21 is going to be towards the future.
22 So if I go back there, I don't have any legal
23 recourse.
24 **THE COURT:** I don't understand what that means,
25 "towards the future".

1 **THE WITNESS:** They want to grant the right of appeal
2 to everybody but only for sentences from last year to the
3 future.
4 **THE COURT:** I understand.
5 **THE WITNESS:** In Geneva, in the United Nations, we
6 filed an appeal.
7 BY MR. MARKUS:
8 Q. You have one other recourse, is that here in Court?
9 A. The other recourse is the United States.
10 Q. Mr. Emery also mentioned that you were the person who
11 certified that this program was scientific and technical.
12 Do you remember him saying that?
13 A. Yes, I do.
14 Q. Is that accurate?
15 A. No, it isn't.
16 Q. How is it determined that it was scientific and technical?
17 A. So the Ministry has a big staff of economists, scientists,
18 engineers so they, at that stage, they are the directors. They
19 certified that this program that was being developed was
20 scientific and technological in nature. Once they do that, it
21 goes up to the Legal Department. The Legal Department checks
22 that everything is legal and valid.
23 Only at the end does the Minister sign the corporation
24 agreements but; moreover, that institution, IICS, is part of
25 the American states and they have signed identical with the

1 Ministry for many, many years. We show there are at least 132
2 legally identical agreements scientific and technical with that
3 institution. That institution is so scientific and
4 technological that the United States government has agreements
5 with them for helping take technology to the rural areas.
6 That's what we were doing with this irrigation subsidy problem.
7 **MR. MARKUS:** Your Honor, may I have a moment?
8 **THE COURT:** Okay.
9 **MR. MARKUS:** That's all I have.
10 **THE COURT:** Any questions?
11 REDIRECT EXAMINATION
12 BY MR. EMERY:
13 Q. Doctor Arias, you would agree with me that you were the
14 person convicted by the Clemens Supreme Court, correct?
15 A. Yes.
16 Q. You were sentenced to 209 months imprisonment?
17 A. Yes, I was.
18 Q. That was for embezzlement of third parties, isn't that
19 correct?
20 A. Yes.
21 Q. Also for contracting without legal median requirements, is
22 that correct?
23 A. Yes, correct.
24 **MR. EMERY:** No further questions.
25 **THE COURT:** Thank you, sir. You can step down.

1 (Witness was excused.)
2 Does Doctor Arias have any further witnesses or
3 evidence?
4 **MR. MARKUS:** Your Honor, we would like to renew our
5 request to call the three witnesses related to the issues that
6 we just raised and also call Tom Heinemann related to the
7 treaty issue. I could make a long proffer but I think to
8 preserve the Court's time, maybe I could type up a proffer and
9 file it to preserve everybody's time.
10 **THE COURT:** I think you already have done that in your
11 response, didn't you?
12 Didn't you proffer what these folks would say?
13 **MR. MARKUS:** We put what we would like to question
14 them about. I don't think we proffered what they would testify
15 to.
16 For example, just to give you an example, Tom
17 Heinemann --
18 **THE COURT:** Let's put Heinemann aside because he's
19 different.
20 What would the other witnesses say different than your
21 witness?
22 **MR. MARKUS:** If we were able to hear from those
23 witnesses they could explain why the visa went from granted and
24 that's because they did an investigation into the politicizing
25 and corruption of the Supreme Court of Colombia.

1 **THE COURT:** The only knowledge that you have is the
2 knowledge that your client imparted to the Court. Based on
3 that, you would be able to explain to the Court why they did
4 that investigation and what it disclosed, correct?
5 **MR. MARKUS:** Correct.
6 **THE COURT:** Now you can tell us about the other fellow
7 with regards to the treaty itself.
8 **MR. MARKUS:** Thank you. Your Honor.
9 This goes to our argument about the treaty being
10 enforced. I understand that the Court denied our motion to
11 dismiss, I get it, but this is a final hearing.
12 So the Court, at a motion to dismiss, is based on the
13 pleadings and Your Honor made a rule based on the pleadings.
14 At a final hearing, I think the Court is not bound by
15 its decision at the motion to dismiss stage because there's
16 further evidence that can be provided. We have been providing
17 further evidence to the Court. We wanted to call Heinemann to
18 explain the position of the United States and Colombia. Those
19 affidavits, Your Honor, are very ambiguous and worded in a very
20 careful way. I think if we were permitted to call Heinemann
21 and seek explanation of those items, the Court could then make
22 a final decision about whether there's treaty to enforce.
23 You ruled on the motion to dismiss based on the four
24 corners of the motions. That's what happens at a motion to
25 dismiss. Later on, the Court can make a ruling on the

1 evidence. I think Heinemann would have been able to explain a
2 lot of provisions that were at issue. So that was why we
3 wanted to call him.
4 One of the things that the government cited is that we
5 went and sought mandamus from the Eleventh Circuit which was
6 denied and; therefore, it's law of the case.
7 One of the things that the government argued in a
8 mandamus petition is that there was still no final extradition
9 hearing. Even though the motion to deny was dismissed, this
10 issue could be decided by the Court. That was one of the
11 reasons that was presented to deny our mandamus issue with the
12 Eleventh Circuit that this issue was still alive and premature
13 to raise at the Eleventh Circuit raise. Now they want to argue
14 that the Court can rule at the final hearing and; by the way,
15 it's law of the case so the Court can't rule anything
16 different.
17 **THE COURT:** Let me hear from the government.
18 **MR. EMERY:** What the government said in the filing to
19 the Eleventh Circuit is that is a matter that would be decided
20 in the habeas petition. We didn't say that we were waiting for
21 a ruling from the Court on this matter because this Court has
22 already decided.
23 The matter would get to the Eleventh Circuit via
24 habeas petition. That was the government's petition that the
25 Eleventh Circuit should wait to see if and when the fugitive

1 Arias Leiva files a petition.

2 **THE COURT:** What do you say about the rest, Heinemann?

3 **MR. EMERY:** Your Honor, historically, extraditions are

4 done on paper. I, myself, and my colleagues spend a lot of

5 time filing to their motions for reconsideration, Mr. Heinemann

6 was clear that this treaty was in effect. As this Court

7 correctly found that the interpretation by the Executive Branch

8 are due great deference because it involves --

9 **THE COURT:** I'm going to prior ruling in regards to

10 the additional testimony from either the State Department folks

11 from Colombia or, in other words, to me there are two

12 witnesses. One is Heinemann testifying about the treaty and

13 the other is testifying about the correctness of the Court.

14 **MR. MARKUS:** Your Honor, can I respond briefly to that

15 point?

16 If the Court remembers, we had a hearing on the motion

17 to dismiss where there was legal argument made. The Court was

18 leading the way.

19 **THE COURT:** That's why I let your client out on bond.

20 **MR. MARKUS:** There was a lot that we presented and I

21 think it was pretty persuasive to the Court at the time. The

22 way the hearing ended was with the Court basically telling Mr.

23 Emery saying, look, you need to come forward with the evidence

24 to show that the treaty is in force. And, Mr. Emery then went

25 and got the affidavit of Heinemann and the diplomatic note from

1 Colombia, then the Court ruled. We have never been permitted
2 to explore and explain those affidavits.
3 In other words, I understand at the motion to dismiss
4 stage to deny the motion to dismiss you relied on those
5 affidavits, but at a final hearing, the Court can certainly
6 take evidence and listen to evidence and hear explanation on
7 those affidavits because right now, despite all the
8 overwhelming evidence we provided on the papers and the
9 affidavits, the Court never heard live witnesses about the
10 treaty. So that's what we were requesting from this final
11 hearing is to have to be able to explore those affidavits. I
12 do think it's important.
13 The reason, Your Honor, and some of the additional
14 evidence, if I just could for a moment, just in June of this
15 year, the U.S. Ambassador expressed his frustration that
16 Colombia was not extraditing narco traffickers and terrorists
17 to the United States.
18 Kevin Whitaker wrote a lengthy letter explaining the
19 U.s. government was going to do everything in its power,
20 leaving the treaty out, because there is no treaty.
21 Mr. Emery said when you asked, does Colombia think
22 there is a treaty in place? He said no. There is no treaty in
23 Colombia, but we still expect the United States to do it. The
24 whole point, Your Honor, if we had witnesses, we would show
25 that treaties are bilateral. They can't just be enforced by

1 one side. Their own witnesses, if called, would admit this and
2 I think would show, although the United States really wants
3 there to be a treaty, there is not.
4 Of course, the evidence that we provided in the past
5 that the current President has said publically there is no
6 treaty. President Uribe, who is here, of course, says there is
7 no treaty. We have presented his affidavit which is not
8 contested by the government. Your Honor mentioned that in its
9 opinion and said, but it's just dicta, there is no dicta going
10 the other way from the Eleventh Circuit. Every single Court
11 opinion from this Court to the District Court to the Eleventh
12 Circuit has said there is no treaty in effect. That's why,
13 Your Honor, it is so important when we talk about who is filing
14 this extradition complaint because it is unsworn to. No
15 Colombia official has sworn to it. The reason that is
16 important is because they cannot swear that they are making
17 this request pursuant to any treaty. No Colombia official
18 would sign an extradition request that said so because there is
19 no treaty in effect. I think that's critical.
20 This is not a straight forward case that Mr. Emery
21 would ask this Court to find. That is very complicated and
22 serious case in which we don't even have a Colombia official
23 signing off on the fact that they are making this request to a
24 valid treaty. All that is left is with Mr. Emery himself
25 signing the complaint and saying there is a treaty in effect.

1 That is not enough, Your Honor. He's not a Colombia official
2 and cannot speak of Colombia in that regard and both 3181 and
3 our constitution demand that, under a treaty, the Colombian
4 official swear to it. The reason that is important is because
5 there is no treaty in effect.
6 **THE COURT:** I'm going to continue to not be allowed to
7 call Mr. Heinemann, and I found previously there is great
8 deference given to the Administrator, and I'm going to persist
9 in my ruling.
10 What you proffered, what was said, wouldn't change it.
11 Essentially, those facts are already before the Court so it's
12 not going to change my decision. I'm going to persist in that.
13 **MR. MARKUS:** Understood, Your Honor. I have other
14 arguments, but I do know that issue is an important one. I
15 think there is lots of evidence on both sides. I actually
16 think there is no evidence on their side. In any event, I do
17 this think this goes to the decision of remand that the
18 prosecutor asked for at the end, and asking for Doctor Arias to
19 be remanded for some reason. We can get to that in a moment
20 but I think this is a substantial issue.
21 If the Court ends up --
22 **THE COURT:** We will discuss that at the end.
23 **MR. MARKUS:** Thank you, Your Honor.
24 Issue number two is the probable cause determination.
25 I think what the issue is here, and Your Honor framed it

1 correctly, is if the Supreme Court rules in a certain way, is
2 that enough for probable cause, should that be an exemption,
3 there is a corrupt and politicized court.
4 Mr. Emery rightfully said, and the Court asked, there
5 is no case that comes out, of course, there is no case to the
6 contrary either, that's why this is a very unique case of first
7 impression.
8 I point the Court to a couple of pieces. Of course,
9 you heard from Doctor Arias in this respect and how the United
10 States Government, itself, told Doctor Arias that it had
11 conducted an investigation and had found these things. That's
12 why it was changing its decision to denial of the visa to
13 granting of the visa, and encouraged Doctor Arias to come here
14 and apply for asylum.
15 This is not some guy off the street. This is a
16 presidential candidate who was being politically prosecuted by
17 his rival.
18 **THE COURT:** If the State Department persisted in that
19 thought, he won't have a problem when they say he says --
20 **MR. MARKUS:** Your Honor, that's the classic argument
21 of "trust me, we are going to do the right thing." Well, we
22 have Courts that say we are going to oversee the "trust us"
23 argument.
24 **THE COURT:** I assume that the State Department wants
25 to extradite him or they wouldn't have had to start the whole

1 process.

2 **MR. MARKUS:** Yeah, that's right.

3 **THE COURT:** Somewhere down the line the people who are
4 going to decide they are going to go along with the extradition
5 are the people in the political office in the Colombian
6 Embassy.

7 **MR. MARKUS:** It's not about a person speaking. It's
8 the government. It's not some dude off the street was saying I
9 personally find the Supreme Court to be politicized. The
10 United States was speaking to Doctor Arias granting him a visa
11 and saying come, knowing what was going on. That view may have
12 changed, but that goes to the determination of whether there is
13 probable cause that the opinion of the Supreme Court is valid.
14 That's the evidence that I would like to discuss briefly.

15 The reason that this case is unique, and remember you
16 heard a little bit about it and we heard evidence that members
17 of the Supreme Court are not only under DEA investigation but
18 have been jailed.

19 The Deputy Chief Brian Nichols, in a leaked memo, has
20 said that the Supreme Court is politicized and didn't just say
21 it in general terms, Your Honor, but said it in reference to
22 Doctor Arias, that quote he was fated to bear the brunt of this
23 corrupt and politicized Court.

24 So we have evidence that not just, in general, was
25 there corruption and politicizing of the Court, but it was

1 being used as a sword against Doctor Arias. That is why I
2 think it helps explain why, the United States granted him the
3 visa.
4 Judge, Mr. Emery mentioned 57 witnesses. The witness
5 who testified the longest, the star witness against Doctor
6 Arias recanted his testimony and said "this was a purely
7 political prosecution that had only one purpose to, and I'm
8 sorry to use this language, to F Doctor Arias". That was thee
9 main witness of the government.
10 **THE COURT:** Who did he say that to?
11 **MR. MARKUS:** It was a leaked email that he had sent to
12 his girlfriend where after the trial they had found the e-mail.
13 The witnesses' girlfriend was also used of the fraud and this
14 was an email from that witness to the girlfriend sort of
15 explaining what happened. Doctor Arias, unfortunately, was the
16 person who had to bear the brunt of this fault testimony.
17 Numerous other bodies, it's not us making it up,
18 numerous other bodies have come forward and said this is a
19 political and corrupt prosecution.
20 I think part of the concern here is that there is no
21 recourse. There is no appeal. There is no recourse. If the
22 Court rules against us, that's it. We can take a habeas and
23 appeal, but there is a lot of deference given to, of course,
24 this Court sitting as a fact finder.
25 Your Honor, the final argument I have for the Court,

1 the duality argument is also an important one.
2 **THE COURT:** Do you think embezzlement is not dual
3 criminality charges?
4 **MR. MARKUS:** Absolutely not. That is embezzlement by
5 the third party. That is not in the appendix.
6 Let's be very clear of what Doctor Arias was accused
7 of. He was not accused of stealing money or pocketing even a
8 penny. This is embezzlement by a third party, so what does
9 that mean? There is no equivalent to U.S. crime for allowing a
10 third party to do something.
11 If you read the government papers over, and over,
12 again they say Arias allowed for this to happen. I can quote
13 the government. This is at page 36 of their brief, quote, "he
14 allowed large farms to subdivide the lands. He allowed
15 purported group of experts to classify this as scientific and
16 technical". Allowing other people to do something is not a
17 willful crime or willful embezzlement in the United States.
18 At most, Your Honor, it would be what we call a "miss
19 prison" of a felony, sort of knowing or acknowledging that
20 somebody else is committing a crime.
21 **THE COURT:** The substance of the crime is that the
22 defendant fraudulently purported the money or property to his
23 own use or the use of others. The government contends that he
24 fraudulently purported the money to the use of others besides
25 that it has to be government money and that it was done

1 knowingly.

2 **MR. MARKUS:** So that we are clear, the Court did not

3 find that money was fraudulently used in a certain way. What

4 they found was that a classification is somehow fraudulent.

5 **THE COURT:** It says it was fraudulently purported.

6 You're saying it was fraudulently classified.

7 **MR. MARKUS:** No, Your Honor, so the government of

8 Colombia determined how the money was going to be used.

9 Professor Baschwitz (phonetic) came up with argument.

10 **THE COURT:** He came up with some good arguments.

11 **MR. MARKUS:** That's why we have him. For better or

12 for worse. This is the government of Colombia determining it's

13 not that the farmers pocketed the money or used it in a way it

14 shouldn't have been used. It was used in the right way. What

15 it comes down to is a classification that was made by a cabinet

16 member which, by the way, he didn't even make. He signed off.

17 This goes to the irregular contracting which is the extreme

18 example of no duality. There is no equivalent crime for a

19 contractual irregularity. We don't criminalize that in the

20 United States.

21 So they try to come up with gobbledygook that this is

22 a violation under 1001. What a classic 1001 prosecution if the

23 federal agent comes to interview me and I make a

24 misrepresentation to the federal agent, and they use that to do

25 something that's a waste of resource or whatever it is. It was

1 material.

2 Here, there was no misrepresentation made to another

3 person. He was the decision maker. The government of Colombia

4 decided here this was preliminary and scientific.

5 **THE COURT:** This is like making a false traveling

6 voucher. If he said he flew to the United States and wanted to

7 get reimbursed by Colombia, he has the authority to, he fills

8 out a voucher that says make me a voucher that I traveled to

9 the United States and he stays home. That would be a false

10 statement that is material.

11 **MR. MARKUS:** Absolutely, Your Honor. This is so

12 different than that. This is why this is important. That is

13 different for a number of reasons.

14 First, that would be lying to pocket money. Lying to

15 get money you're not entitled to.

16 **THE COURT:** We can change it a little bit.

17 You signed your buddies' voucher that you knew was

18 going to the United States, but you wanted to assist him in

19 some reason.

20 **MR. MARKUS:** Let's talk about that. That wouldn't be

21 an act of State decision. So that would be not something that

22 the government was deciding.that's an individual reimbursement

23 expense.

24 The reason the act of State doctrine is so important

25 here because this was a decision made by the government of

1 Colombia about whether these funds were political or scientific
2 in nature. It's not about trying to get reimbursed or some
3 other way to pocket money that you're not entitled to. This is
4 why embezzlement for third parties is not the same as
5 embezzlement.
6 **THE COURT:** What this was about, according to the
7 Colombian Supreme Court, this was about him getting money to
8 eleven families that wouldn't have perhaps qualified perhaps.
9 **MR. MARKUS:** Let's talk about that. It's not about
10 getting money to eleven families. It's about using the money
11 for the agricultural reasons. By the way, those families did
12 use the money in that way. What the Colombian Supreme Court
13 tried to say, which is not a crime here, is that the reason
14 that he did that was to get favor, politically.
15 In other words, to be able to be able to say to these
16 people, Hey, I was able to help you. Now you should help me in
17 the election.
18 **THE COURT:** That may not be a crime anymore in the
19 United States.
20 **MR. MARKUS:** We know it's not a crime under *McDonald*
21 and a lot of other cases. President Trump yesterday was
22 talking about tax cuts. A lot of people are going to be happy
23 about those tax cuts if President Trump's real motivation for
24 the tax cuts is to get him elected, that's not. If it was
25 through Doctor Arias was doing this to get the support of rich

1 families, which is absurd, this was less than one percent of
2 the appropriations. 99.6 of the appropriations went to low
3 income tax and middle income families. The whole allegation is
4 absurd. Even if it's correct, we don't have that crime here in
5 the U.S.
6 **THE COURT:** But we do have the embezzlement crime.
7 **MR. MARKUS:** If there was evidence that he pocketed
8 the money or somehow came up with the false statements to
9 enrich himself, or enrich somebody so that it could be kicked
10 back to him that's a different story, but that's not what this
11 case was about.
12 So that's the argument on duality.
13 This is not the run of the mill case that I'm usually
14 before you on, Judge.
15 **THE COURT:** Yeah, I get it.
16 **MR. MARKUS:** That is a unique individual that I have
17 the pleasure of representing. I don't have the pleasure of
18 representing someone like Doctor Arias every day.
19 I am asking the Court that you not send him back to
20 serve an unjust corrupt and politicized sentence. If Your
21 Honor denies the extradition he will go through the asylum
22 process.
23 The government will have the chance to oppose the
24 asylum. If it is opposed, he will be deported back to
25 Colombia. That's the process that should be taking place. In

1 two years I applied in good faith for asylum. That process was
2 going forth for two years when President Santos started this
3 process two years later after denying everything with the FARC.
4 That's why this Court should take the opportunity to let the
5 asylum people go through.
6 Professor Vazquez makes one more point that I can
7 raise regarding the duality in the underlying facts. Of
8 course, the families who received it were entitled to some of
9 those subsidies. The question is did they get more or less.
10 Those rich families were able to get more by themselves
11 subdividing properties into smaller farms. Allegations are
12 that Doctor Arias allowed the rich families to do that so they
13 could get more of the subsidies.
14 Just to underscore, allowing someone else to do
15 something is not a crime in the United States. So I think
16 that's important. The families themselves were exploring the
17 loophole of subdividing, not Doctor Arias.
18 I know there are a lot of cases out there where
19 expiration are granted over and over. We saw Judge Torres
20 issue a long opinion recently. That does not bind this Court.
21 This is a special and unique case in which Doctor Arias has
22 been unjustly and corruptly convicted. There is no treaty.
23 I know the Court, when you first heard us, heard that
24 evidence. I understand the Court's ruling on the motion to
25 dismiss and today, but this is an issue that's going to go all

1 the way up. I just ask the Court to take our argument into
2 account and consider who is before the Court.
3 **THE COURT:** Okay.
4 Do you have anything briefly?
5 **MR. EMERY:** Yes, Your Honor, just briefly.
6 First of all, I want the record to be clear. The
7 United States Government and especially the Secretary of State
8 would never extradite someone who has been convicted by a
9 corrupt court. All of those matters will be taken under
10 consideration, hopefully, after this Court finds Doctor Arias
11 extraditable. Those are political questions that the Secretary
12 of State will take seriously, taking into account everything
13 that the future --
14 **THE COURT:** Just procedurally, doesn't the Department
15 of State weigh in on extradition requests before the Department
16 of Justice accepts them?
17 **MR. EMERY:** Yes, Your Honor.
18 **THE COURT:** So, based on at least what I heard from
19 Doctor Arias, they were already aware, on this State Department
20 at the time that they got the request to extradite him, were
21 aware that there were corruption problems within the Colombian
22 Court.
23 **MR. EMERY:** Well, they were aware, Your Honor, of the
24 -- I think it's fair to say, of the allegations. In any event,
25 Your Honor, in light of all of that information, everything

1 that Mr. Markus is claiming the State Department said, in light
2 of all that, they decided to go forward with this extradition
3 request.
4 **THE COURT:** You just sounded like you assured me that
5 the State Department would never extradite somebody by a Court
6 that may be corrupt.
7 **MR. EMERY:** Your Honor, the way it works, after this
8 hearing that the Court finds the government's way, he can
9 submit all the materials to the Secretary of State.
10 **THE COURT:** You sound like you assured me that the
11 State Department would never send someone back who is convicted
12 by a corrupt Court. Is that a policy of this State Department
13 or you just think that or what?
14 **MR. EMERY:** Well, Your Honor, our position, first of
15 all, is that the Clemens Supreme Court was not corrupt when
16 they convicted Mr. Arias Leiva here. It was a Court that he
17 was convicted by eight justices. The only thing that's being
18 reported right now is that there is this allegation in the
19 press. Nothing more to indicate that --
20 **THE COURT:** He talked about seven other justices
21 having problems.
22 **MR. EMERY:** Well, Your Honor --
23 **THE COURT:** Two investigated by DEA. Three mentioned
24 in DEA wiretaps. One was a victim of his administration, one
25 dissented and that left one more justice.

1 **MR. EMERY:** Your Honor, that's obviously his
2 self-serving testimony with respect to that, Your Honor. The
3 matter before this Court, Your Honor, is that eight justices of
4 the Clemens Supreme Court had a very long trial. It had a lot
5 of evidence, heard from Arias Leiva himself, and found him
6 guilty.
7 My point, Your Honor, what I was getting to is there
8 is a specific process in place after the extradition hearing,
9 and assuming the Court goes the government's way, all these
10 arguments that Mr. Markus has made regarding whether or not the
11 Clemens Supreme Court was political are questions and evidence
12 information they can put for before the Secretary of the State.
13 **THE COURT:** Yeah, I understand. I understand. I'm
14 going to order the extradition of Doctor Arias Leiva and I find
15 that the government has met each of the five elements of a
16 proper extradition.
17 I'm not going to go over them in detail but the Court
18 has authority over these proceedings pursuant to Section 3184.
19 The defendant made several arguments in regard to Colombian
20 Officials first not having sworn to it. I find that the United
21 States swearing under information and belief is sufficient that
22 the United States doesn't have to have actual knowledge, and I
23 also find that the Court, that there is standing in this Court
24 and that that's allowed by the statute. This is not an Article
25 3 proceeding. I find I have jurisdiction over Doctor Leiva

1 pursuant to the warrant that was previously issued.
2 I find, as I did previously, that the treaty is in
3 full force and effect. I find that there is dual criminality
4 as to the 641.
5 I think Mr. Markus made some good arguments, but I
6 believe that based on the elements of 641, which are that the
7 money and property belonged to the government, I think
8 everybody is agreement with that. If not, I find it is clear
9 that it is.
10 The defendant largely purported the money for the use
11 of others. That would be the eleven families that owned the
12 land, and the Court clearly found that it was done knowingly
13 and with the intent to deprive the government of that property
14 and the amount was more than $1,000.
15 I also find that 1001 is similar to the conclusion of
16 contract without fulfilling legal requirements in that the
17 defendant made a false statement when he falsely designated a
18 scientific and technical corporation, the corporation with the
19 idea of bypassing a public updating system, and they were
20 material because they allowed Doctor Leiva to by-pass the
21 public process.
22 I also find that there is probable cause. First, I
23 find there is probable cause based on the conviction by the
24 Supreme Court. I understand the arguments made by the
25 defendant of a politicized court. I find that those are

1 arguments that are better made to the State Department in
2 asking that they not continue with the extradition of Doctor
3 Arias. There is no legal authority cited by Doctor Arias in
4 regards to the Court applying a different measurement regarding
5 the Court being politicized. Extradition Courts generally do
6 not look into the motives of the requesting statement. For
7 that reason, I find that there is probable cause.
8 I also find there is substantial probable cause within
9 the record by itself without, if there had not been a
10 conviction.
11 For all of those reasons, I find that Doctor Arias
12 Leiva should be committed to the custody of the United States
13 Marshal to be confined.
14 Do you want to talk to me about resentence? I tell
15 you that I'm inclined to remand him. Originally, I found
16 because of extradition everybody knows you have to have
17 exceptional circumstances in order to allow a bond in this type
18 of case. My original ruling was that a bond was not
19 appropriate because of the long string of cases that support
20 that.
21 When we had a hearing in regards to a treaty, because
22 I felt that that made it an exceptional circumstance, because
23 as Mr. Markus said, in the first hearing, I think I made it
24 clear that I was inclined to find there was no treaty. The
25 government substituted the evidence where the evidence was

1 sufficient for me to find that there was a treaty in effect of
2 extradition.
3 We are in a different position now because I have now
4 found that Doctor Arias is to be extradited. He's now
5 certainly a higher risk of flight than he was previously.
6 Because generally, there is no bond in an extradition
7 proceeding, I don't see how he could get out on bond. I'm
8 assuming you're going to be proceeding with a habeas in order
9 for him not to be indicted.
10 **MR. MARKUS:** The way it goes now, we have time to file
11 a habeas before the State Department will act on this Court's
12 order.
13 **THE COURT:** So the State Court won't act on it until.
14 **MR. SMITH:** Your Honor, Christopher Smith of the
15 Office of International Affairs. Your Honor, the wait
16 procedure works under the Foreign Affairs manual, while habeas
17 is pending in District Court, a State Department will not
18 proceed on the consideration; however, there is no set time
19 limit since the habeas is under 2241 and not 2255.
20 In a general case, the fugitive needs to get his
21 habeas on file as soon as possible because that is what stops
22 the State Department consideration until it's disposed of in
23 District Court.
24 **THE COURT:** What he's saying, if you don't file your
25 habeas soon, they could scoop him up and send him to Colombia.

1 **MR. MARKUS:** They could, but the last case I saw in
2 this Court a few weeks ago, I believe what happened after the
3 hearing, a letter was sent to the defense team saying we will
4 give you 30 or 45 days to file the habeas. I imagine that's
5 what is going to happen here so we won't have to file it
6 tonight.
7 So Your Honor, I would ask that we be given a bond.
8 That can always be revisited by the District Judge if he or she
9 does not believe it's a serious issue.
10 **THE COURT:** I agree with you it's a serious issue.
11 That's not what the question is. That's not what the
12 measurement is whether it's a serious issue.
13 **MR. MARKUS:** I agree. It's whether there are
14 exceptional circumstances. Those same circumstances, the same
15 evidence, the same Eleventh Circuit which we call binding
16 decisions, are still out there saying there is no treaty. We
17 believe that makes this case different from all others. I
18 think the Court, a year ago, I think what Your Honor is saying
19 circumstances have now changed that the Court has ordered him
20 extradited so he has a greater risk of flight. I can address
21 that.
22 The reality is Doctor Arias wants to be here. He does
23 not want to be in Colombia. He's here fighting there is no
24 extradition treaty between the United States and Colombia.
25 **THE COURT:** I agree that he's not likely to flee

1 Colombia, I don't think because then that would be the whole
2 reason why we had this hearing and why you're going to proceed
3 with habeas. There are certainly other countries where he
4 might want to go to where he's not extradited. Perhaps he
5 would like to go to Canada and try to get asylum there.
6 **MR. MARKUS:** A couple points regarding that. He lives
7 in a home in Weston with his wife and two children. There are
8 plenty of ways to ensure that he shows up. We can use a GPS
9 monitor. This isn't a typical person who comes before the
10 Court. I think you heard from him and you see the support he
11 has in the courtroom. This isn't somebody who is going to not
12 follow this Court's order and do that. I would ask that the
13 Court take a chance. I don't think it's a serious risk here
14 that he's going to go anywhere. If the government disagrees,
15 they can appeal that and raise it with the District Judge. If
16 the Court gives us a deadline, we will file a habeas and
17 whatever deadline that the Court wants. We just ask that the
18 bond issue be stayed while we file that habeas and be raised
19 before a District Judge. This is a serious case with a serious
20 individual, Your Honor. I am here to tell the Court that he
21 will show up as he always has.
22 This Court ruled a long time ago there was no treaty
23 in affect and Doctor Arias did everything that was asked of
24 him. During the hurricane, Doctor Arias called his Probation
25 Office about the hurricane. Probation Officer told him get in

1 the car and get out of the state. Doctor Arias drove. Guess
2 what, he came back, Your Honor.
3 **THE COURT:** Doesn't the State Statute say that he
4 shall issue his warrant for the commitment of the person so
5 charged to the proper jail remain to such surrender that shall
6 be made.
7 **MR. MARKUS:** Yes, unless there is a bond condition.
8 **THE COURT:** This is talking about after the hearing.
9 This is not before the hearing. This doesn't say shall
10 consider bond or do something else. It says "shall issue his
11 warrant for the person so charged to the proper jail."
12 **MR. EMERY:** Your Honor, I also remind the Court that
13 the fugitive was out on bond in Colombia. As soon as he heard
14 that the Clemens Supreme Court was coming down with the
15 decision, he fled. He left his family in Colombia and fled to
16 the United States. So he has a history of fleeing when he
17 knows his back is against the wall.
18 Your Honor, that's exactly what is going on here.
19 **MR. MARKUS:** He asked permission, Your Honor.
20 **MR. EMERY:** There is no discretion, 3184, "shall".
21 **MR. MARKUS:** Your Honor, he asked for permission to
22 leave for the United States from this government before he
23 left. He didn't just flee. That's number one.
24 **MR. EMERY:** No, that's not true, Your Honor.
25 **MR. MARKUS:** Well, you wouldn't let us call the

1 witnesses so you wouldn't know.

2 **THE COURT:** The last sentence, if basically I deem

3 that he's extraditable, then he, being the Judge, "shall issue

4 his warrant of the commission of the person so charged to the

5 proper jail there to remain until such surrender shall be

6 made." Before that, it says that the warrant should be done to

7 the Magistrate Judge. There, it doesn't say "shall be detained

8 until such time as the determination is made."

9 **MR. MARKUS:** Judge, I don't think this prohibits the

10 Court from making the findings, issuing the warrant and then

11 granting a bond while the case proceeds. In fact, if the Court

12 finds that it must, then I would ask for a specific thing. I

13 would ask that the Court stay its ruling for a certain amount

14 of time so we can address this issue on the papers. I would

15 like an opportunity to brief the issue.

16 First, I think the Court has the inherent power to

17 grant a bond.

18 Number two, if the Court finds that it doesn't, I

19 would ask that the Court stay its ruling so that we can brief

20 this.

21 Number three, if the Court doesn't want to do that, I

22 would ask that Mr. Arias, at least, be permitted to surrender,

23 Your Honor.

24 We were expecting the Court to write a written order

25 in the future. He has not said goodbye to his wife and

1 children. This is kind of harsh considering this is here on a
2 final hearing where he has done everything asked of him. I am
3 just asking the Court for those three options.
4 **THE COURT:** I'm going to find those. I find he's a
5 risk of flight. Although he, apparently, talked to the people
6 in the Embassy before coming here, he did flee Colombia.
7 Whether or not the United States encouraged him or said he
8 could come, he fled the Colombian Court when he knew that
9 verdict was coming down, which was not good for him.
10 Today, he has got another verdict which is not good
11 for him. He has got every reason to flee. His first process
12 he is facing eminent extradition to Colombia where he is bound
13 to serve 200 something months in jail. There are lots of other
14 countries that he could get to rather easily that might be more
15 lenient or might refuse an extradition request or any other
16 sort of thing. I find that he's a serious risk of flight. I
17 also find independent of that, the statute says "he shall be
18 committed to the proper jail". It doesn't provide the Court
19 with discretion. I think you have come up with a way of doing
20 that by staying my order and not doing that, but the reason I
21 won't do that is to find that he's a risk of flight. If I gave
22 you time to file a motion to brief it to the Court, it might be
23 that I wouldn't see Doctor Arias again. For those reasons,
24 he's remanded to the Marshal to be held until such time that
25 the State Department calls him to be surrendered to Colombia.

1 All right, anything else I can help anyone with?
2 **MR. EMERY:** No, Your Honor. Thank you.
3 **THE COURT:** All right. Good afternoon.
4
5
6 CERTIFICATE
7 I, Robin Marie Dispenzieri, Registered Professional
8 Reporter and Official Federal Reporter, certify that the
9 foregoing is a correct transcript from the record of
10 proceedings in the above-entitled matter.
11 Dated this 20th day of November, 2017.
12
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16 /s/Robin Marie Dispenzieri
17 Robin Marie Dispenzieri, RPR CFR
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M.

CERTIFICATE OF ACCURACY

STATE OF WASHINGTON, DC

EMILY S. GOLDMAN being duly sworn deposes and says:

That I am familiar with both the English and Spanish languages.

That I have made the attached translation(s) from the document in the Spanish language and hereby certify that the same are true and complete translation(s) to the best of my acknowledgement, ability and belief.

Name:

The above instrument was acknowledged before me this December 11, 2018, by Emily Goldman who is personally known to me and who did take an oath.

Notary Public/State of District of Columbia

Name of Acknowledgement

Notary Public/Title Rank

BRIGETTE M. VANNALL WALLACE
NOTARY PUBLIC
EXP. 10-14-21
DISTRICT OF COLUMBIA

United Nations

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Advance unedited edition

Human Rights Committee

Ruling approved by the Committee based on Article 5, paragraph 4 of the Optional Protocol, with regard to communication number 2537/2015[1,2]

Submitted by: Andrés Felipe Arias Leiva (represented by lawyer Victor Javier Mosquera Marin)
Alleged victim: the author
State Party: Colombia
Date of communication: August 11, 2014
References: Decision by the Special Rapporteurs in accordance with Article 97 of the Regulations, transmitted to the State Party on January 21, 2015 (it was not published as a document)
Date ruling approved: July 27, 2018
Matter: Sentencing in a sole instance of the former minister by the highest jurisdictional organ
Substance of the case: Right to due process; right to be heard by a competent, independent, and impartial tribunal; right to presumption of innocence; right to having a conviction and sentence be reviewed by a higher court; equality before the law; right to participate in directing public affairs and to be elected

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[1] Adopted by the Committee in its 123rd period of sessions (July 2-27, 2018).
[2] The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Cistof Heyns, Bamariam Koita, Marcia VJ. Kran, Mauro Politi, Jose Manuel Santos Pais, Yuval Shany, and Margo Waterval. Attached to the present ruling is the text of an individual vote of a member of the Committee in the language in which it was issued (English).

Procedural issues: Exhaustion of domestic remedies, abuse of the right to submit communications, sufficient grounds for the complaint
Articles of the Covenant: 7, 9(1-4), 10(1), 11, 14(1)(2)(3a, b, c)(5)(6)(7), 15, 16, 17, 18, 19, 25, and 26
Articles of the Optional Protocol: 2, 3, 5(2)(b)

1.1 The author of the communication is Andrés Felipe Arias Leiva, a Colombian citizen born in 1973. He alleges he is a victim of a violation committed by the State Party of his rights contained in Articles 7, 9(1-4), 10(1), 11, 14(1)(2)(3a,b,c)(5)(6)(7), 15, 16, 17, 18, 19, 25, and 26 of the Covenant. The author is represented by a lawyer. The Optional Protocol entered into force for the State on March 23, 1976.

1.2 On January 21, 2015, the Committee, through its Special Rapporteur for New Communications and Interim Measures, decided not to request interim measures in favor of the author, in accordance with Article 92 of the Committee Regulations.

1.3 On March 23, 2015, the State Party submitted its observations regarding admissibility and asked the Committee to examine the issue of admissibility separately from the substance of the communication. On June 24, 2015, the Committee, through its Special Rapporteur for New Communications and Interim Measures, decided to reject the request of the State Party to examine the admissibility of the communication separately from the substance.

1.4 On April 20, 2016, the Committee, through its Special Rapporteur for New Communications and Interim Measures, in applying Article 92 [of] its Regulations, decided to ask the State Party to consider taking protective measures to prevent any act of harassment or threat against the life and/or physical integrity of the author's lawyer, due to his participation in the communication, while it is being examined by the Committee.

The facts set forth by the author

2.1 Between 2005 and 2009, the author was the Minister of Agriculture and was in charge of an agriculture program dubbed '*Agro Ingreso Seguro*' [Secure Agro Earnings] (AIS). With an eye to implementing and executing part of this program, the author directly signed several science and technology cooperation agreements with the *Instituto Interamericano de Cooperación para la*

Agricultura [Inter-American Institute for Agricultural Cooperation] (IICA). At an undetermined time, some irregularities were discovered in the AIS program's management.

2.2 The author alleges that on March 9, 2010, the Office of the Attorney General's Technical Investigation Organ concluded that he had not committed any illegal acts. On August 19, 2010, the General Comptroller reached the same conclusion regarding the same facts.

2.3 On April 12, 2010, the General Comptroller of the Republic opened a preliminary investigation into irregularities with fiscal impact on the execution of the AIS program, in which public resources and subsidies would have been delivered in an irregular manner. On August 10, 2010, the Comptroller decided to close the file on the preliminary investigation.

2.4 According to the author, on October 13, 2010, Mrs. V.M., who at that time worked as a radio station journalist, expressed a negative opinion regarding the case of the author and his criminal responsibility for the alleged irregularities in the administration of the AIS program. Afterward, this person was named Attorney General of the Nation [*Fiscal General de la Nación*] (Attorney General), and prior to being officially informed of the crimes he was charged with, the Attorney General actively participated in the criminal trial against him, without recusing herself for having already put forward an opinion.

2.5 In July 2011, the author was administratively punished by the Office of the Inspector General of the Nation [*Procuraduría General de la Nación*] for the irregularities that occurred when he oversaw the AIS program.

2.6 On July 21, 2011, within the framework of an investigation that originated from a denunciation filed in 2009, the Office of the Attorney General of the Nation formulated charges before the Superior Court of Bogotá (TSB) against the author, as ex-Minister. On September 16, 2011, the Attorney General filed an indictment against the author with the Supreme Court of Justice (CSJ) for signing a contract without complying with legal requirements and embezzlement by appropriation, in accordance with Articles 410 and 297 of the Criminal Code (Law 599 of 2000). On October 12, 2011, the Attorney General

formally charged the author as the alleged responsible party for these crimes and requested his preventive detention. The author alleges that the public hearing was held in a theater; that the public in attendance celebrated with applause the measure of preventive detention; and that the Attorney General revealed information regarding telephone numbers and the address of his family residence. As a result, his wife and children received threats by telephone, and two days after the hearing, his house was robbed by criminals who pretended they were with the Office of the Attorney General.

2.7 The author was held in preventive detention by order of the TSB. On three occasions, he unsuccessfully asked the TSB to be released, since the Court considered that the author could influence the witnesses in the case. The author alleges that the Office of the Attorney General employed delaying tactics to keep him imprisoned, and that she falsified and adulterated evidence that was presented against him.

2.8 The author alleges that the CSJ judge that was leading his judging arbitrarily ordered the beginning of the trial without providing the necessary time to the parties to assess the evidence and prepare their defense. The author alleges that he asked the CSJ that it respect the time established by law for the purposes of preparing his defense.

2.9 On June 14, 2013, the TSB ordered a cessation of the preventive detention of the author and that he be released.

2.10 In October 2013, the Colombian Ministry of the Interior evaluated the risks to the author and to the lives of his family, declaring them to be persons under 'extraordinary risk.' The author alleges that in this context, fearing for his life and the lives of his family, he decided to flee the country and traveled to the United States on June 14, 2014.

2.11 On June 13, 2014, 48 hours prior to the presidential elections, the CSJ announced that the author would be charged with irregularities in the execution of the agricultural program. The author alleges that the contents of the sentence were leaked to the media.

2.12 On July 17, 2014, the CSJ sentenced the author to 209 months (17 years and five months) in prison and a fine of 30,800,000,000 pesos for the crimes of embezzlement by appropriation and signing contracts without complying with legal requirements. In addition, it ordered the interdiction of the author's public rights for the same period of time as the principal sentence and disqualification in the exercise of public functions, as provided for by Article 122 of the Constitution, with the modification introduced by Legislative Act No. 1 of 2004.[3] The sentence indicated that no appeal whatsoever was warranted against it. The author alleges that only five of the eight judges on the CSJ participated in the entire criminal trial.

2.13 In August 2014, the author requested political asylum in the United States of America for himself and his family.

The denunciation

3.1 The author maintains that the State Party violated the rights to which he is entitled by virtue of Articles 7, 9(1-4), 10(1), 11, 14(1)(2)(3b, c)(5)(6)(7), 15, 16, 17, 18, 19, 25, and 26 of the Covenant.[4]

3.2 The author maintains that his long and unjustified preventive detention, the conditions of the arraignment hearing (see 2.6) constituted cruel, inhuman, and degrading treatment that runs contrary to Articles 7 and 17(1) of the Covenant.

3.3 As regards Article 9 (1-4) of the Covenant, the author affirms that his right to liberty and safety was violated by the facts described in the preceding paragraph, since his preventive detention was ordered without the existence of a cause that justified that measure. The preventive detention of the author was unjustified and not necessary in his case. He adds that he was accused of committing crimes against public administration and that these are not

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[3] Legislative Act 01 of 2004, Article 1: "The final fifth paragraph of Article 122 of the Political Constitution shall be as follows: Notwithstanding the other sanctions that are established by law, those who have been sentenced at any time for committing crimes that affect the assets of the State may not register as candidates to popularly elected posts, nor elected or be designated as public servants, nor sign personally or be represented by a person, contracts with the State . . ."

[4] The communication was not based on the allegations, by virtue of Articles 11, 16, 18, and 25, being limited to invoking these articles.

considered grave in any legal system. His requests to have his preventive detention revoked were arbitrarily rejected by judicial authorities.

3.4 The author affirms that his rights to equality before the courts and to an "impartial trial" were violated, by virtue of Article 14(1) of the Covenant. He did not receive the same treatment as other co-defendants in the trial, as he was the only one in preventive detention for "many months." His sentence was not proportional to the gravity of the crime, and other co-defendants received smaller sentences for the same facts. During the criminal trial, there was no equality in terms of procedural measures, as generally the Office of the Attorney General has greater competence to be able to gather and present evidence than to defend the accused. He did not have sufficient time or means to prepare his defense. The author affirms that the Attorney General was not impartial, given that she had conflicts of interest deriving from prior personal problems with the author's lawyer, and that she had expressed an opinion on the author's case when she was working as a journalist in a radio station. In addition, the judge writing for the CSJ, who directed the trial and wrote the draft judgement, declared an impediment at the start of the trial, in light of the fact that she had a conflict of interest, as she was a victim in another criminal trial against other officials in the government of former President Uribe, due to alleged illegal monitoring performed of CSJ judges. However, the CSJ did not accept his request and she continued conducting the trial and even wrote the draft judgement.

3.5 The author maintains that his right to the presumption of innocence under Article 14(2) was also violated due to the fact that the Attorney General had previously expressed her opinion regarding the author's case prior to assuming that post, when she was working as a journalist. He believes that the mention of his case in the Office of the Attorney General's 2011 management report under the title "connotation cases" also violated his [right to] presumption of innocence. In addition, the CSJ unduly assessed and observed the evidence provided at trial, such that the author was sentenced despite the fact that his behavior did not constitute the elements of the crime of embezzlement, or that he had signed contracts without complying with legal requirements.

3.6 The author affirms that he did not have the necessary time or means to prepare his defense, in violation of Article 14(3)(b) of the Covenant. A report from the Judicial Police dated March 9, 2010, according to which the Technical Investigation Organ of the Office of the Attorney General of the Nation (CTI) had concluded that the author had not committed irregular conduct, was not admitted as evidence by the CSJ. In addition, the CSJ also denied the author's request to have a graphological test performed with the objective of disputing a document admitted as evidence. The Office of the President of the Republic also refused to provide to the author with the minutes of the Councils of Ministers in which the AIS program had been discussed.

3.7 The author alleges that he was not tried within a reasonable period of time, in violation of Article 14(3)(c) of the Covenant.

3.8 The author affirms that criminal trials in the CSJ against high officials in a sole instance, established in Article 235 of the Constitution, is contrary to Article 14(5) of the Covenant. In his case, the author did not have the opportunity to appeal the sentencing statement and punishment imposed by the CSJ in its sentence of July 17, 2014.

3.9 The author also alleges that the State Party violated his rights, by virtue of Article 14(6), because given that there is no judge or court for such a purpose, another judge could not subsequently revoke his guilty verdict.

3.10 The author alleges that he was tried twice for the same facts, in violation of Article 14(7) of the Covenant. In July 2011, the Office of the Inspector General of the Nation administratively sanctioned the author for irregularities in the AIS program which occurred when he was Minister. However, such responsibility was attributed as an offense without having established fraud. Afterward, the same facts were the object of a criminal trial before the CSJ, which ended with its sentence. He adds that other public entities had concluded that there was no evidence to indicate his alleged criminal responsibility. For example, the Office of the Attorney General initially rejected that the author was criminally responsible for the irregularities that occurred in the grants awarded by the AIS program, the Office of the Comptroller shelved the preliminary investigation, and the Administrative Court of Cundinamarca, within the framework of a trial against the Minister's

legal advisor in which the author was not a party, concluded that the science and technology cooperation agreements were not illegal.

3.11 With regard to Article 15 of the Covenant, the author affirms that he was sentenced for acts or omissions that were not crimes, given the absence of responsibility in accordance with Article 32(10)(1) of the Criminal Code. The signing of the science and technology cooperation agreements was based on the understanding that prevailed in the Ministry of Agriculture and among its legal and technical experts regarding the topic; as such, in all cases the author would have acted under an error of the kind that excluded criminal responsibility. Even if this were not the case, his conduct was guilty and without the existence of any malicious intent he would not have been subject to criminal sanction. Therefore, he was sentenced for acts or omissions that were not criminal.

3.12 The author affirms that he is a victim of a violation by the State Party of the rights to which he is entitled, by virtue of Articles 19(1) and 26 of the Covenant, given that the criminal trial against him is an element of the persecution by the current government of the State Party due to his political opinions and his position against the peace process between the government and the *Fuerzas Revolucionarias Armadas de Colombia* [Revolutionary Armed Forces of Colombia] (FARC). He affirms that the authorities harassed people who were potential candidates in the presidential election held on June 15, 2014. He also faces discrimination for the same reasons, hindering his ability to enjoy his civil and political rights, in particular the right to appeal the conviction and sentence adopted against him by the CSJ.

3.13 Lastly, the author affirms that all of these facts constitute a violation of his right to human dignity, by virtue of Article 10(1) of the Covenant.

Observations of the State Party regarding admissibility

4.1 By means of a note verbale on March 23, 2015, the State Party formulated its observations regarding the admissibility of the communication and asked the Committee to have it declared inadmissible.

4.2 The State Party indicates that the communication presents a distorted, partial, and imprecise explanation of the facts, as well as judgements of value

and partial interpretations of the legal grounds. With regard to the facts of the case, it indicates that within the framework of a denunciation submitted in 2009, the Office of the Attorney General, in accordance with Article 251 of the Constitution, formulated an accusation against the author in his capacity as the ex-Minister of Agriculture and Rural Development on July 21, 2011, to the TSB. On October 12, it formulated a charge before the Court of Criminal Cassation of the CSJ, which was responsible for trying the author.

4.3 The Office of the Attorney General requested the preventive detention of the author, due to the existence of evidentiary elements that indicated a risk of obstruction of justice. On July 21, 2011, the TSB, based on the control of guarantees, ordered the preventive detention of the author after holding the public hearing in which the author and the Office of the Inspector General of the Nation participated. On June 14, 2013, the judicial authorities revoked this measure due to the fact that the Office of the Attorney General had complied with its evidentiary activity and therefore, the risk of obstruction of justice had disappeared. The author continued appearing at trial; however, despite having been summoned, he did not attend the hearing when the CSJ ruling was read. Nor did he later make an appearance before the CSJ, and until the date when the State Party's observations were presented to the Committee, he did not appear to serve his punishment.

4.4 The State Party presents a detailed description of the regulations of the Constitution, legal provisions and jurisprudence regarding the jurisdiction that are applicable to ministers of government, and the processes of investigation and judgement in criminal matters, for which the Criminal Court of the CSJ is responsible. The jurisprudence of its national courts has noted that the CSJ's trying of officials does not disclaim due process, and that the principle of reviewing criminal convictions by a higher instance is not absolute, as it is not a part of the essential core of the right to due process. This principle can have exceptions, as long as they are reasonable and proportional and observe the right to equality and substantial due process.[5]

4.5 An order to establish the review of convictions by a higher instance in criminal procedures related to high privileged officials cannot be derived from

[5] The State Party is referencing the sentences of the Constitutional Court C-142 of 1993, C-591 of 1996, C-545 of 2008, C-650-2001, and C-254A of 2012.

either the Covenant or other human rights treaties. The States Parties enjoy broad leeway to shape the proceedings and design effective mechanisms for the protection of rights, without being required in criminal trials of high privileged officials to necessarily have a second criminal instance. Trying these persons as high privileged officials in the criminal court of highest instance is in and of itself a form of comprehensively guaranteeing due process. The State Party maintains that the formulation of a "second instance" cannot be specifically deduced from the wording of Article 14(5) of the Covenant, given that the text literally indicates a "higher court." This wording can be interpreted in the sense that the mention of a "higher court" implies the need for the case to be heard by a court with greater academic and professional attributes that guarantees a correct assessment of the matters put before it for its consideration.

4.6 In the case of the author, on July 17, 2014, the Criminal Court rendered a guilty verdict against him during a sole-instance trial for the crimes of embezzlement in favor of third parties and the signing of contracts without complying with legal requirements. The criminal trial was not politically motivated. In its charge, the Office of the Attorney General evaluated that the author, as Minister of Agriculture, was unaware of the principles and regulations that govern State contracting during the procedures and the signing of three agreements with IICA, within whose framework of execution resources were illegally provided to individuals, to the detriment of State assets. The work of the CSJ was limited to determining the criminal responsibility of the author, without assessing the purposes or importance of the AIS program.

4.7 The trial held by the CSJ respected all of the fundamental guarantees of the author as the defendant. For example, in order to guarantee the right to defense, on May 16, 2012 the Criminal Court invalidated the action taken immediately after the preparatory hearing and set the installation of the oral trial for June 14, 2012. In the charging hearing on October 12, 2011, the judge writing for the CSJ and another judge declared themselves to have impediments to deciding at what procedural moment to limit the number of representatives of the victims, in the interest of comparing them with the defenders. The impediment was based on the fact that the two judges had filed an action to protect constitutional rights [*'acción de tutela'*] against the

decision adopted by the Criminal Court regarding the same matter in a trial against two officials assigned to the Office of the President of the Republic who were charged with illegal monitoring and interceptions of various persons, among them CSJ judges, a procedure in which they had been recognized as having the capacity of victims. Within this framework, the Criminal Court denied the impediment because it deemed that there existed neither a direct nor an indirect relationship between this decision and the case against the author which had to be resolved by these judges, among others. In addition, the author had not declared during the trial the alleged existence of grounds for recusal with respect to the judges.

4.8 The guilty verdict and punishment imposed against the author did not constitute a violation of the principle of non bis in idem. While the author faced investigations of a fiscal, disciplinary, and criminal nature for facts related to the management of the AIS program, these actions had purposes, goals, and scope that differed from the criminal process. In addition, they did not fully protect identity.

4.9 The punishment imposed on the author by the CSJ is not disproportionate, nor is it a response to discretional criteria but rather, to the application of guidelines imposed by the law to individualize the punishment, in accordance with what the CSJ detailed in his sentence. The other persons who were criminally tried who received lesser sentences had accepted benefits for collaborating with the justice system and early termination of their trials, which can result in significant reductions in sentences.

4.10 Article 339 of the Code of Criminal Procedure (CPP) provides that during the sentencing hearing, the parties express the legal grounds for the impediments to the authorities' participation. Nonetheless, in the criminal trial against the author, none of the parties indicated that the Attorney General had a conflict of interest. In addition, the Attorney General delegated her actions to the Tenth District Attorney ['*Décimo Fiscal*'] before the CSJ, who represented the public prosecutor's office in the preparatory hearing and oral trial.

4.11 The author had every means to contribute evidence in the criminal trial. However, in accordance with Article 359 of the CPP, the parties and interested

parties may request that the judge exclude illegal evidentiary measures, or reject them, or declare them inadmissible, for example, when they are useless, repetitive, or aimed at proving obvious facts or that for other reasons do not require proof. Furthermore, the author had the necessary time to prepare his defense. The preparatory hearing held 12 sessions between December 14, 2011 and May 14, 2012, a period of time in which the author requested and received a suspension of the proceedings while he received responses to numerous requests for information and documents. The author's defense participated actively and the rights of all of the parties and interested parties were guaranteed. The documents incorporated into the trial, the majority of which are public documents, were obtained and introduced with due formality, subject to contest. All of the evidence presented was duly assessed by the CSJ, as is reflected by the extensive and meticulous considerations of the sentence.

4.12 The requests of the author to obtain the minutes of the Council of Ministers and have a graphological test performed on a witness were carried out in the due process hearing, and the judicial authorities examined the reasons for the request, its relevance, and suitability.

4.13 The CSJ never ordered the author's preventive detention, as this decision, as well as its suspension or revocation, was within the exclusive purview of the TSB, which acted as the Guarantee Control Judge.

4.14 The State Party maintains that the author expects the Committee to assume the role as an appeals instance to address matters that were duly defined by the CSJ, in particular his criminal responsibility, due to his non-conformity with the judicial process and sentence issued against him. Therefore, the communication should be declared inadmissible, in accordance with Article 2 of the Optional Protocol.

4.15 The State Party deems that the communication constitutes an abuse of the right to submit communications and therefore, is inadmissible by virtue of Article 96 of the Committee's Regulations. It makes detailed reference to specific passages of the communication and maintains that it presents information that is false, distorted, incomplete, and not very clear, as highlighted above (see 4.2-4.13).

4.16 The communication does not comply with the admissibility requirement established in Article 5(2)(b) of the Optional Protocol. The author had diverse means for contesting the CSJ conviction, as well as the action to review CSJ sentences that are enforceable, in accordance with Article 192 of the CPP, the action for protecting fundamental rights set forth in the Constitution, and the request to nullify procedural actions due to illegal evidence, the incompetence of the judge, and the violation of fundamental freedoms, in accordance with Articles 455 through 458 of the CPP.

4.17 The State Party makes reference to the observation in the foregoing paragraphs and maintains that the author's allegations regarding the violation of the rights enshrined in the Covenant are manifestly unfounded.

Comments of the author regarding the observations of the State Party on admissibility

5.1 On April 19 and July 16 and 17, 2015, the author submitted comments on the observations of the State Party. He indicated that his communication complies with the criteria of admissibility established in the Optional Protocol and reiterated his allegations of violations that had been submitted in his initial communication.

5.2 The author reiterates his allegations with respect to the fact that the criminal process against him constituted a violation of Article 14(5) of the Covenant. The appeals indicated by the State Party (see 4.16) do not permit a substantial review of the guilty verdict and punishment. The appeal for reconsideration is not appropriate against this type of sentence from the CSJ.[6] An action to protect constitutional rights [*'acción de tutela'*] is not a suitable appeal, since the provisions establish that the privileged persons who should be tried by the CSJ in a sole instance are those with Constitutional rank; as such, it is not possible to ask that a judge protect a right which the Constitution itself says is non-existent. In addition, in accordance with Article 181 of the CPP, the appeal of cassation is appropriate *"against sentences issued in a second instance in trials . . ."* The appeal to review is an extraordinary appeal, such

[6] The author makes reference to the CSJ sentence, trial no. 33054 of January 19, 2011, in which the Court indicated that these sentences are not subject to appeal and ". . . do not admit any contest whatsoever. Nor is it possible for them to be appealed for reconsideration."

that debate in the trial is not permitted but rather, when it is over and new evidence emerges, or a jurisprudential change occurs, or a new element emerges enabling the reopening of debate, while not allowing for controversy regarding that which has already been definitively ruled on.

5.3 The rules that regulate the criminal trials of high privileged officials in the CSJ as the sole instance, without the ability to appeal the conviction and sentence to a higher court, violate Article 26 of the Covenant, since it denies access to this right to some public officials.

5.4 The trial pursued against him, and particularly the actions of the Office of the Attorney General, were politically motivated.

5.5 The author did not disqualify the justice writing for the CSJ due to conflict of interest; however, this fact does not mean that such conflicts did not exist. In addition, the CSJ itself denied the request for impediment of the justice. Other CSJ justices who participated in some of the stages of the trial also had to recuse themselves due to conflicts of interest, as they were in the same situation as the justice writing for the CSJ.

5.6 Holding the indictment hearing and request for preventive detention against him in a theater constituted inhuman and degrading treatment for the author.

5.7 The author alleges that his preventive detention, lasting two years, surpassed "extensively the terms for keeping him detained."

5.8 The author alleges that the evidence he requested during the trial, which was not admitted by the CSJ, was proper, pertinent, and useful.

5.9 In terms of admissibility of the communication, the author emphasizes that the actual sentence of the CSJ indicates that "no appeal whatsoever" is warranted against it. Therefore, he has no appropriate and effective appeal that allows for the review of the conviction and sentence imposed by the CSJ in a sole-instance trial. Nor are the other appeals referenced by the State Party appropriate or effective (see 5.2).

Observations of the State Party regarding substance

6.1 On October 21, 2015, the State Party submitted its observations regarding the substance of the communication and reiterated that the latter did not comply with the criteria of admissibility established in the Optional Protocol. In particular, the State Party reiterated its arguments regarding the absence of legal grounds for the author's allegations.

6.2 The State Party reiterates that it considers that the criminal trial pursued by the CSJ against the author does not constitute a violation of Article 14(5) of the Covenant.

6.3 Nor do the criminal trial or the conviction and sentence imposed constitute violations of equality before the courts and the law, as established in Articles 14(1) and 26 of the Covenant.

6.4 The detention of the author was ordered within the framework of the criminal trial against him by the judicial authorities in accordance with the law; therefore, this measure did not violate Article 9 of the Covenant. Nor did the criminal trial constitute a violation of the rights to which he is entitled by virtue of Article 7 of the Covenant. The conviction and sentence imposed on the author by the CSJ do not constitute a violation of his rights under Article 15 of the Covenant.

Comments of the author regarding substance

7.1 On December 3, 2015, the author submitted his comments regarding the substance of the communication and reiterated his allegations regarding the violation of the Covenant presented previously.

7.2 With regard to Article 14(2) of the Covenant, the author adds that prolonged preventive detention can also indirectly affect the presumption of innocence.

7.3 Incongruities exist between the factual situations for which he was charged and those for which he was finally sentenced, which violated Article 14(3) of the Covenant.

7.4 The criminal trial pursued against him constituted a violation of Article 11 of the Covenant.

7.5 The author alleges that he suffered from the violation of the rights to which he is entitled by virtue of Article 16 of the Covenant, given that, together with his family, he was forced to leave the State Party due to reasons of security, and to establish residency in the United States. In 2014, the author turned to the State Party in Miami; however, the consular officials humiliated the author and arbitrarily withheld his passport so as to prevent him from carrying out the procedure, denying him his right to legal status.

7.6 The conviction and sentence imposed on the author constitute a violation of the rights to which he is entitled by virtue of Article 25 of the Covenant, since they disqualify him for life from being able to be elected to a public post or serve as a public official, resulting in his inability to stand for election or directly participate in guiding public affairs.

Additional information

8.1 Through correspondence dated July 15 and August 26, 2016, February 10 and June 12, 2017, and March 21, 2018, the author informed the Committee that on April 24, 2015 the Constitutional Court had declared unconstitutional several articles of the CPP which omitted the possibility of contesting all convictions before a hierarchical or functional superior [court], and urged the Congress of the Republic, during a one-year period, to fully regulate the right to contest all convictions. Otherwise, it would be understood that the contesting of all convictions was proper.

8.2 In the absence of legislation adopted by the Congress, on April 22, 2016 the author communicated to the CSJ that he was contesting the ruling issued against him on July 17, 2014.

8.3 On April 28, 2016, the CSJ issued a sentence in which it indicated that the provision of the Constitutional Court was applicable to sentences that were not enforceable as of April 24, 2016. On May 25, 2016, the CSJ declared the author's request to be unfounded.

8.4 On January 18, 2018, the legislative branch, by means of Legislative Act no. 001 of 2018, modified the Constitution in order to guarantee the right of government ministers to the review of [their] criminal convictions by a higher court [*'doble instancia penal'*].

8.5 In light of the modification to the Constitution, on February 22, 2018, the author filed an appeal to challenge with the CSJ. On March 7, 2018, a CSJ justice declared the appeal inadmissible.

9.1 On June 12, 2018, the State Party submitted additional observations and reiterated its position regarding Article 14(5) of the Covenant, considering it not to have been violated.

9.2 With regard to the author's allegations of the violation of Article 25 of the Covenant, the State Party emphasized that the CSJ declared the author to be criminally responsible for the crimes of signing a contract without complying with legal requirements and embezzlement by appropriation, and additionally sentenced him to "disqualification for civil service" as provided for in Article 122 of the Constitution. The rights to participate in the guidance of public affairs and be elected can be the object of limitations, as long as there is compliance with the parameters of legality, objectivity, reasonableness, and proportionality, such as in the case of the author.

Deliberations of the Committee

Examination of admissibility

10.1 Prior to examining any complaint formulated in a communication, the Committee must decide, in accordance with Article 93 of its Regulations whether or not the case is admissible, by virtue of the Optional Protocol.

10.2 In compliance with the requirements of Article 5, paragraph 2(a) of the Optional Protocol, the Committee has made certain that the same matter is not being examined within the framework of another examination proceeding or institutional arrangement.

10.3 The Committee takes note of the arguments of the State Party that the author has not exhausted all of the available domestic remedies, due to the fact that he had diverse means for contesting the CSJ conviction of July 17, 2014 (paragraph 4.16). The Committee also takes note of the author's allegations that such appeals were not suitable or effective (paragraph 5.2). The Committee observes that the actual sentence of the CSJ established that no "appeal whatsoever [was warranted]" against it (paragraph 2.11); that the State Party has not explained in what manner the appeals mentioned in its observations would be effective in the author's case; and that said appeals do not permit a substantial review of the conviction and sentence. Given that the State Party has not formulated objections regarding the exhaustion of domestic remedies with regard to other specific allegations made by the author, the Committee considers that the requirements of Article 5(2)(b) of the Optional Protocol have been satisfied.

10.4 The Committee takes note of the argument of the State Party that it should consider inadmissible the communication, given it constitutes an abuse of the right to submit communications (paragraph 4.15). Nonetheless, the Committee observes that the mere discrepancy between the State Party and author of the communication regarding the facts and application of the law, and regarding the relevance of the jurisprudence of the national courts of the Committee that would be applicable in the case do not constitute an abuse of the right to submit a communication.[7] As such, the Committee considers that the communication does not constitute an abuse of the right to submit a communication, by virtue of the provisions of Article 3 of the Optional Protocol.

10.5 The Committee takes note of the author's allegations, by virtue of Article 9 of the Covenant, that the State Party violated his right to liberty and safety. He maintains that the measure of preventive detention against him was unjustified; that his requests that said measure be revoked were dismissed by the TSB; and that the duration of this measure exceeded the terms for legally detaining him (paragraphs 3.3, 5.7). The Committee additionally takes note of the argument of the State Party that the author's preventive detention was ordered by the competent court and maintained for approximately one year and seven months, in accordance with the law. The Committee observes that

[7] See *Henao et al. vs. Colombia* (CCPR/C/119/2121/2011), paragraph 8.3.

on July 21, 2001, the TSB ordered the preventive detention of the author. According to the State Party, this measure was taken at the request of the Office of the Attorney General because there was a risk of obstruction of justice. Therefore, the measure was revoked on June 14, 2013 by the same court, due to the fact that the Office of the Attorney General had fulfilled its evidentiary activity and that this risk no longer existed (paragraphs 4.3, 4.13, 6.5). In light of the fact that the author did not discredit said assertions, the Committee considers that the allegations related to Article 9 of the Covenant have not been sufficiently substantiated for the purpose of admissibility, and concludes that they are inadmissible, in accordance with Article 2 of the Optional Protocol.

10.6 The Committee takes note of the allegations of the author that the State Party violated his rights to equality before the court and the law and to an impartial trial, as established in Articles 14(1) and 26 of the Covenant, given that he did not receive the same treatment as his co-defendants in the trial; that the sentence imposed by the CSJ was disproportionate; that there was no equality of procedural methods between his defense and the Office of the Attorney General during the trial; that the Attorney General had earlier proffered an opinion regarding his case; and that the justice writing for the CSJ had a conflict of interest (paragraph 3.4). The Committee also takes note of the arguments made by the State Party that the trial pursued against the author corresponded to the type of criminal trial against citizens who, due to the posts they hold as high officials, enjoy privilege; that the justice writing for the CSJ declared she faced an impediment solely in determining at what procedural moment the number of victims' representatives should be limited, but that the CSJ's Criminal Court denied the impediment because it deemed there was neither a direct nor an indirect relationship between the case in which the justice was a victim and the case of the author; and that the Attorney General delegated her actions to another public prosecutor who participated in the preparatory hearing and oral trial (paragraphs 4.4-4.5, 4.7, 4.10, 6.3). In terms of the sentence imposed, the State Party maintains that it is not disproportionate and that it responds to the guidelines imposed by the law for individualizing sentences, taking into account that the author was a high official and the maximum authority in the State entity under his care; and that the other co-defendants who received lesser sentences had accepted benefits and an early termination of their trials in return for collaborating with the

justice system (paragraph 4.9). With regard to the foregoing, the Committee considers that the author has not sufficiently substantiated these complaints for the purpose of admissibility and declares them inadmissible, by virtue of Article 2 of the Optional Protocol.

10.7 The Committee takes note of the author's allegations under Article 14(2)(3a-c) of the Covenant, that his right to the presumption of innocence was violated by the State Party (paragraph 3.5); that he did not have the appropriate time and means to prepare his defense, as the authorities denied him access to the evidence and the CSJ did not admit essential evidence for his defense; and that he was not tried in a reasonable period of time (paragraphs 3.6-3.7, 5.8, 7.2-7.3). The Committee also takes note of the observations of the State Party that the author had every means to prepare his defense and contribute evidence in the criminal trial and that all of the evidence was duly evaluated by judicial authorities (4.6, 4.11-4.12). The Committee observes that the author's allegations regarding the essential character of the unadmitted evidence and that he was allegedly not tried within a reasonable period of time are not sufficiently substantiated. What's more, his allegations refer fundamentally to the evaluation of the facts and evidence by the courts of the State Party. The Committee recalls its case law in accordance with which it is incumbent on the courts of States Parties to evaluate the facts and evidence in each particular case, or the application of domestic legislation, unless it is demonstrated that that evaluation or application was clearly arbitrary or was equivalent to a manifest error or failure of justice.[8] The Committee has examined the materials submitted by the parties, including the CSJ sentence, and considers that said materials do not demonstrate that the criminal trial pursued against the author suffers from such defects. Therefore, the Committee considers that the author has not sufficiently substantiated his denunciation of the violation of the rights to which he is entitled by virtue of Article 14(2)(3a-c); as such, it is inadmissible in accordance with Article 2 of the Optional Protocol.

10.8 The Committee takes note of the author's allegations with regard to Article 14(7) of the Covenant that he was tried twice for the same facts

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[8] See Communications No. 1616/2007, *Manzano y Otros c. Colombia* [Manzano et al. v. Colombia], a ruling adopted on March 19, 2010, paragraph 6.4, and No. 1622/2007, *L.D.L.P. c. España* [L.D.L.P. v. Spain], a ruling adopted on July 26, 2011, paragraph 6.3.

(paragraph 3.10). The Committee observes, nonetheless, that from the information made available by the parties (see also paragraph 4.8), it cannot be concluded that the sanction imposed on the author by the Office of the Inspector General [*Procuraduría*] within the framework of an administrative-disciplinary proceeding is equivalent to a criminal sanction, and recalls that the guarantee of this provision of the Covenant solely concerns criminal offenses in the sense of Article 14 of the Covenant.[9] Therefore, the Committee considers that these allegations have not been sufficiently substantiated with regard to admissibility, and that they are inadmissible in accordance with Article 2 of the Optional Protocol.

10.9 The Committee takes note of the author's allegations regarding Article 15(1) of the Covenant, that he was sentenced for acts or omissions that were not crimes. The author basically maintains that it was not proved during the criminal trial that his conduct satisfied the elements of these criminal types; that he had acted in error of a kind that excludes criminal responsibility; and that his conduct was not malicious (paragraph 3.11). The Committee observes, nonetheless, that the author does not question that the crimes of embezzlement by appropriation and the signing of contracts without complying with legal requirements, for which he was sentenced by the CSJ, did not exist at the time of the facts. As such, the Committee considers that the allegations related to Article 15(1) of the Covenant have not been sufficiently substantiated with regard to admissibility, and that they are inadmissible in accordance with Article 2 of the Optional Protocol.

10.10 The Committee takes note of the author's allegations that the State Party violated his rights under Articles 7, 10(1), 17(1), 18, 19, and 26 of the Covenant with regard to the manner in which some hearings were held, the alleged political motivations of the criminal trial against the author, and his preventive detention, as well as the consequences deriving from this trial (paragraphs 3.2, 3.12, 3.14, 5.3-5.4, 5.6). The Committee considers that these allegations have not been sufficiently substantiated with regard to admissibility, and that they are inadmissible in accordance with Article 2 of the Optional Protocol.

10.11 The Committee takes note of the author's general allegations that his rights by virtue of Articles 11, 14(6), and 16 of the Covenant were violated by

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[9] General Comment No. 32, paragraph 57.

the State Party (paragraphs 3.1, 3.9, 7.4-7.5). Nonetheless, in light of the information that it has before it, in particular that which was offered by the author, the Committee observes that a possible violation of these rights cannot be inferred in the circumstances of the case, and that these complaints are manifestly unfounded. Consequently, the Committee concludes that these complaints are inadmissible in accordance with Article 2 of the Optional Protocol.

10.12 The Committee takes note of the author's allegations with regard to Articles 14(5) and 25 of the Covenant (paragraphs 3.8, 5.2, 7.6). The Committee also takes note of the State Party's argument that this complaint should be declared inadmissible due to being unsubstantiated (paragraphs 4.17, 6.1, 9.2). Nonetheless, the Committee considers that the author's complaints have been sufficiently substantiated for the purpose of admissibility. Therefore, the Committee declares that the author's complaints, by virtue of Articles 14(5) and 25 of the Covenant, are admissible and appropriate for its examination as to substance.

Examination of the issue in terms of substance

11.1 The Committee has examined the present communication, keeping in mind all of the information that has been furnished to it by the parties, in accordance with the provisions of Article 5, paragraph 1 of the Optional Protocol.

11.2 The Committee takes note of the author's allegation that the criminal trial against him constituted a violation of Article 14(5) of the Covenant, given that no mechanism exists that permits him to appeal the sentence and request a review by a higher court of the conviction and sentence issued by the CSJ's Criminal Court on July 17, 2014 (paragraphs 3.8, 6.9). With regard to the fact that the Constitutional Court declared unconstitutional several articles of the Code of Criminal Procedure that omitted the possibility of contesting all convictions before a hierarchical or functional superior [court], and to a modification of the Constitution, the author filed two appeals challenging the conviction before the CSJ itself which were declared inadmissible on May 25, 2016 and March 7, 2018, respectively (paragraphs 8.1-8.3, 8.5).

11.3 The Committee also takes note of the State Party's arguments that a "second instance" cannot be specifically deduced from the wording of Article 14(5) of the Covenant, as the text literally indicates a "higher court"; that this wording can be interpreted in the sense

that the reference to a "higher court" entails the need for the case to be heard by a court with greater academic and professional attributes that guarantees a correct assessment of the matters put before it for its consideration; that States Parties enjoy extensive leeway to configure the procedures and design effective mechanisms for protecting rights, without necessarily requiring in the cases of high privileged officials that they have [access to] a second criminal instance; and that the trying of these persons, in the capacity of high privileged officials, by the highest criminal court is in and of itself a way to comprehensively guarantee due process (paragraphs 4.4-4.5, 6.2).

11.4 The Committee recalls that Article 14(5) of the Covenant establishes that a person who is declared guilty of a crime has the right to having the conviction and sentence that has been imposed upon him/her submitted to a higher court, in accordance with what is required by law. The Committee recalls that the expression "in accordance with what is required by law" does not have the intention of leaving the actual existence of the right to review to the discretion of the States Parties. While the legislation of a State Party can provide in certain instances that a person, due to his/her post, be tried by a court of greater hierarchy than that which would naturally be appropriate, this circumstance cannot in and of itself lessen the right of the defendant to the review of his/her sentence and conviction by a court.[10] In the present case, the State Party has not indicated the existence of an appeal available to the author to request that the conviction and sentence be reviewed by another court.[11] Consequently, the Committee concludes that the State Party violated the rights to which the author is entitled by virtue of Article 14(5) of the Covenant.

11.5 The Committee takes note of the author's allegations that the CSJ sentence of July 17, 2014 constitutes a violation of the rights to which the author is entitled by virtue of Article 25 of the Covenant, in that it disqualifies him for life from being elected to a public post or serving as a public servant (paragraph 7.6).

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[10] See *Terron c. España* [Terron v. Spain] (CCPR/C/82/D/1073/2002), paragraph 7.4. Also see General Observation No. 32, paragraphs 45-47.

[11] The Committee likewise observes that the effects of the declaration of unconstitutionality of several articles of the Code of Criminal Procedure regarding the matter by the Constitutional Court on April 24, 2015 do not encompass the author's case, given that in a sentence on April 28, 2016, the CSJ determined that the provision of the Constitutional Court was applicable with respect to sentences that were not enforceable by April 24, 2016. In addition, following the modification of the Constitution by Legislative Act No. 001 of 2018, the author filed an appeal to contest before the SCJ that was declared inadmissible on March 7, 2018 (paragraphs 8.4-8.5).

11.6 The Committee recalls that Article 25 of the Covenant recognizes and protects the right of every citizen to participate in directing public affairs, the right to vote and be elected, and the right to have access to the civil service. Regardless of the type of constitution or government a State adopts, the exercise of these rights by the citizenry may not be suspended or denied, save for those reasons set forth in the law that are reasonable and objective.[12] The Committee also remembers that if the reason to suspend the right to vote and stand for elective office is having been convicted of a crime, said restriction must be duly proportionate to the crime and conviction.[13] The Committee also remembers that when that conviction is clearly arbitrary or equivalent to a manifest error or failure of justice, or the judicial actions that give rise to the conviction violate the right to due process, the restriction of the rights protected by Article 25 could become arbitrary.[14]

11.7 The Committee observes that on July 17, 2014, the CSJ declared the author guilty of the crimes of embezzlement of funds by appropriation and signing documents without complying with legal requirements. Given that the author was sentenced for crimes affecting State assets, the CSJ additionally sentenced the author to disqualification from civil service. The observations of the State Party do not refute the permanent character of the disqualification. On the contrary, it maintains that said measure was imposed by the CSJ within the framework of a just criminal trial, and that said measure is legal, objective, reasonable, and proportionate (paragraph 9.2). In addition, the Committee observes that the CSJ also ordered the interdiction of the author's public rights for the same period of time as the principal sentence (17 years and 5 months), and that the author has not questioned this order. Within this framework, the Committee must determine if the lifetime disqualification of the author's rights under Article 25, applied after completing his principal sentence, is compatible with the Covenant. In this regard, the Committee considers it a legitimate goal for States Parties to fight against acts of corruption, protect public funds, and therefore, the public interest, with an eye to preserving democratic order. In this manner, a State Party can pursue the legitimate interest of restricting access to membership in the civil service to those persons convicted of crimes of corruption. To that end, the State Party can impose lifetime disqualifications on rights under Article 25 of the Covenant solely in exceptional cases, with regard to grave crimes and when justified by the individual circumstances of the sentenced person. Any disqualification must be grounded in objective reasons and be predictable.[15] In the present case, the Committee

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[12] See General Observation No. 25 of the Committee, paragraphs 3 and 4.

[13] See General Observation No. 25 of the Committee, paragraph 14, and *Dissanayake v. Sri Lanka* (CCPR/C/93/D/1373/2005), paragraph 8.5.

[14] *Nasheed v. Maldivas* (CCPR/C/122/D/2270/2013&2851/2016), paragraph 8.6.

[15] *Paksas v. Lithuania* (CCPR/C/110/D/2155/2012), paragraph 8.4.

observes that the author was declared guilty of grave crimes committed during the exercise of his responsibilities as Minister of Agriculture, the highest official in the ministry, and that said crimes significantly affected State assets. Having established the criminal responsibility of the author, the CSJ automatically imposed a lifetime disqualification on his rights under Article 25 of the Covenant, in accordance with Article 122 of the Constitution, amended by Legislative Act No. 1 of 2004, in force at the moment of the facts in question (see footnote no. 1). The duration of this disqualification considerably exceeds the duration of the principal sentence imposed on the author. The Committee observes that the disqualification established in Article 122 of the Constitution is formulated in broad terms and is not subject to any time limit and that, in addition, the conditions for imposing said restriction are also formulated in a general manner, thereby limiting its predictability. What's more, in light of the information made available to the Committee by the parties, the Committee observes that the CSJ did not perform a significant individualized evaluation of the proportionality of the restriction of the author's rights by virtue of Article 25 of the Covenant. In the operative part of its ruling, in which it imposed the disqualification in question, the CSJ did not explicitly consider the particular circumstances of the grave crimes for which the author was sentenced. Nor did the CSJ provide grounds for how the particular circumstances of the case justified the imposition of lifetime disqualification. In light of that, the Committee considers that the information available does not permit it to conclude that in the present case the lifetime restrictions imposed on the rights of the author under Article 25 of the Covenant are proportionate. Consequently, the Committee concludes that the State Party violated the rights of the author by virtue of Article 25 of the Covenant.

12. The Human Rights Committee, acting by virtue of Article 5, paragraph 4 of the Optional Protocol to the International Covenant on Civil and Political Rights, rules that the facts it has before it lay bare a violation of Articles 14(5) and 25 of the Covenant.

13. In accordance with Article 2(3)(a) of the Covenant, the State Party has an obligation to provide the author with an effective appeal process. That requires comprehensive reparation for individuals whose rights have been violated. The Committee considers that in the present case, its ruling regarding the substance of the complaint constitutes sufficient reparation for the violation ruled. The State Party also has the obligation to adopt all measures that are necessary to prevent similar violations from being committed in the future, including reviewing its legislation with an eye to guaranteeing that any restriction of rights to access to public service and to being elected are reasonable and proportionate and based on an individualized evaluation of each case.

14. Bearing in mind that by being a Party to the Optional Protocol, the State Party recognizes the competence of the Committee to determine whether or not there has been a violation of the Covenant and that, in accordance with Article 2 of the Covenant, the State Party has committed to guaranteeing that all individuals within its territory or who are subject to its jurisdiction enjoy the rights recognized in the Covenant and to guaranteeing effective reparation that is legally enforceable when a violation is proven; the Committee wishes to receive from the State Party, within a period of 180 days, information regarding the measures it has adopted to apply the present ruling. It likewise asks the State Party to publish and widely disseminate the Committee's ruling.

Naciones Unidas CCPR/C/123/D/2537/2015

Pacto Internacional de Derechos Civiles y Políticos

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Comité de Derechos Humanos

Dictamen aprobado por el Comité a tenor del artículo 5, párrafo 4, del Protocolo Facultativo, respecto de la comunicación Nº 2537/2015*,**

Presentada por:	Andrés Felipe Arias Leiva (representado por abogado, Víctor Javier Mosquera Marín)
Presunta víctima:	El autor
Estado parte:	Colombia
Fecha de la comunicación:	11 de agosto de 2014
Referencias:	Decisión de los Relatores Especiales con arreglo al artículo 97 del reglamento, transmitida al Estado parte el 21 de enero de 2015 (no se publicó como documento)
Fecha de aprobación del dictamen:	27 de julio de 2018
Asunto:	Condena en única instancia de ex ministro por el órgano jurisdiccional más alto
Cuestiones de fondo:	Derecho al debido proceso; derecho a ser oído por un tribunal competente, independiente e imparcial; derecho a la presunción de inocencia; derecho a que el fallo condenatorio y la pena sean revisados por un tribunal superior; igualdad

* Adoptado por el Comité en su 123° período de sesiones (2 a 27 de julio de 2018).

** Participaron en el examen de la comunicación los siguientes miembros del Comité: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Olivier de Frouville, Ahmed Amin Fathalla, Christof Heyns, Bamariam Koita, Marcia V.J. Kran, Mauro Politi, José Manuel Santos Pais, Yuval Shany y Margo Waterval. Se adjunta en anexo del presente dictamen el texto de un voto particular de un miembro del Comité, en el idioma de presentación (inglés).

	ante la ley; derecho a participar en la dirección de asuntos públicos y a ser elegido
Cuestiones de procedimiento:	Agotamiento de los recursos internos, abuso del derecho a presentar comunicaciones, fundamentación suficiente de la queja
Artículos del Pacto:	7, 9(1-4), 10(1), 11, 14(1)(2)(3a, b, c)(5)(6)(7), 15, 16, 17, 18, 19, 25 y 26
Artículos del Protocolo Facultativo:	2, 3, 5(2)(b)

1.1 El autor de la comunicación es Andrés Felipe Arias Leiva, ciudadano colombiano, nacido en 1973. Alega ser víctima de una violación por el Estado parte de sus derechos contenidos en los artículos 7, 9(1-4), 10(1), 11, 14(1)(2)(3a,b,c)(5)(6)(7), 15, 16, 17, 18, 19, 25 y 26, del Pacto. El autor está representado por abogado. El Protocolo Facultativo entró en vigor para el Estado parte el 23 de marzo de 1976.

1.2 El 21 de enero de 2015, el Comité, por conducto de su Relator Especial sobre nuevas comunicaciones y medidas provisionales, decidió no solicitar medidas provisionales a favor del autor de conformidad con el artículo 92 del reglamento del Comité.

1.3 El 23 de marzo de 2015, el Estado parte presentó sus observaciones sobre la admisibilidad y solicitó al Comité que la cuestión de la admisibilidad sea examinada de forma separada del fondo de la comunicación. El 24 de junio de 2015, el Comité, por conducto de su Relator Especial sobre nuevas comunicaciones y medidas provisionales, decidió rechazar la solicitud del Estado parte de examinar la admisibilidad de la comunicación de forma separada del fondo.

1.4 El 20 de abril de 2016, el Comité, por conducto de su Relator Especial sobre nuevas comunicaciones y medidas provisionales, en aplicación del artículo 92 su reglamento, decidió solicitar al Estado parte que considere tomar medidas de protección para prevenir cualquier acto de hostigamiento o amenaza contra la vida y/o integridad física del abogado del autor, en razón de su participación en la comunicación, mientras la misma está siendo examinada por el Comité.

Los hechos expuestos por el autor

2.1 Entre 2005 y 2009, el autor fue Ministro de Agricultura y estuvo a cargo de un programa de agricultura llamado "Agro Ingreso Seguro" (AIS). Con el fin de implementar y ejecutar parte de este programa, el autor suscribió de manera directa varios convenios de cooperación científica y tecnológica con el Instituto Interamericano de Cooperación para la Agricultura (IICA). En algún momento no determinado, se descubrieron algunas irregularidades en la gestión del programa AIS.

2.2 El autor alega que el 9 de marzo de 2010, el Cuerpo Técnico de Investigación de la Fiscalía General de la Nación concluyó que no había cometido actos irregulares. El 19 de agosto de 2010, la Contraloría General concluyó en el mismo sentido por los mismos hechos.

2.3 El 12 de abril de 2010, la Contraloría General de la República abrió una indagación preliminar por irregularidades con incidencia fiscal en la ejecución del programa IAS en la que se habría entregado recursos públicos y subsidios de forma irregular. El 10 de agosto de 2010, la Contraloría decidió archivar la indagación preliminar.

2.4 Según el autor, el 13 de octubre de 2010, la Sra. V.M., quien en ese momento se desempeñaba como periodista de una radio, manifestó una opinión negativa sobre el caso del autor y su responsabilidad penal por las supuestas irregularidades en la administración del programa AIS. Posteriormente, esta persona fue nombrada Fiscal General de la Nación

(Fiscal General), y antes de ser oficialmente informado de los cargos que se le imputaban, la Fiscal General y participó activamente en el proceso penal en su contra, sin recusarse por haber adelantado opinión.

2.5 En julio de 2011, el autor fue sancionado administrativamente por la Procuraduría General de la Nación, con relación a las irregularidades que ocurrieron cuando estaba a cargo del programa AIS.

2.6 El 21 de julio de 2011, en el marco de una investigación originada en una denuncia presentada en el año 2009, la Fiscalía General de la Nación formuló ante el Tribunal Superior de Bogotá (TSB) imputación contra el autor, como ex ministro. El 16 de septiembre de 2011, la Fiscal General radicó escrito de acusación contra el autor ante la Corte Suprema de Justicia (CSJ) por celebración de contrato sin cumplimiento de requisitos legales y peculado por apropiación, con arreglo a los artículos 410 y 297 del Código Penal (Ley 599 de 2000). El 12 de octubre de 2011, la Fiscal General acusó formalmente al autor como presunto responsable de estos delitos y solicitó detención preventiva. El autor alega que la audiencia pública se llevó a cabo en un teatro; que el público asistente celebró con aplausos la medida de detención preventiva; y que la Fiscalía divulgó información sobre números telefónicos y la dirección de su residencia familiar. Como resultado, su esposa y sus hijos fueron amenazados por teléfono y, dos días después de la audiencia, su casa fue robada por delincuentes que pretendían pertenecer a la Fiscalía.

2.7 El autor estuvo en detención preventiva por orden del TSB. En tres ocasiones, solicitó al TSB ser puesto en libertad, sin éxito toda vez que el Tribunal consideró que el autor podía influir en los testigos del caso. El autor alega que la Fiscalía tomó medidas dilatorias para mantenerlo privado de libertad y que falsificó y adulteró pruebas que fueron presentadas en su contra.

2.8 El autor alega que la magistrada de la CSJ que lideraba su juzgamiento ordenó de manera arbitraria el inicio del juicio, sin conceder el tiempo necesario a las partes para valorar las pruebas y preparar la defensa. El autor alega que solicitó a la CSJ que se respetase el tiempo establecido por ley para efectos de preparar su defensa.

2.9 El 14 de junio de 2013, el TSB ordenó el cese de la detención preventiva del autor y que sea puesto en libertad.

2.10 En octubre de 2013, el Ministerio del Interior de Colombia evaluó los riesgos para el autor y la vida de su familia, declarándolos personas bajo "riesgo extraordinario". El autor alega que en este contexto y temiendo por su vida y la de su familia, decidió abandonar el país y viajó a los Estados Unidos el 14 de junio de 2014.

2.11 El 13 de junio de 2014, 48 horas antes de las elecciones presidenciales, la CSJ anunció que el autor sería condenado por irregularidades en la ejecución del programa agrícola. El autor alega que el contenido de la sentencia fue filtrado a medios de comunicación.

2.12 El 17 de julio de 2014, la CSJ condenó al autor a 209 meses (17 años y 5 meses) de prisión y una multa de 30,800,000,000 de pesos por los delitos de peculado por apropiación y celebración de contratos sin cumplimiento de requisitos legales. Además, ordenó la interdicción de derechos públicos del autor por el mismo lapso de la pena principal e inhabilitación pare el ejercicio de funciones públicas dispuestas en el artículo 122 de la Constitución, con la modificación introducida por el acto legislativo N° 1 de 2004[1]. La

[1] Acto Legislativo 01 de 2004, artículo 1. "El quinto inciso final del artículo 122 de la Constitución Política quedará así: Sin perjuicio de las demás sanciones que establezca la ley, no podrán ser inscritos como candidatos a cargos de elección popular, ni elegidos, ni designados como servidores públicos, ni celebrar personalmente, o por interpuesta persona, contratos con el Estado, quienes hayan

sentencia señaló que contra ella no procedía recurso alguno. El autor alega que sólo 5 de los 8 magistrados de la CSJ participaron en todo el proceso penal.

2.13 En agosto de 2014, el autor solicitó asilo político en los Estados Unidos de América para él y su familia.

La denuncia

3.1 El autor sostiene que el Estado parte violó los derechos que le asisten en virtud de los artículos 7, 9(1-4), 10(1), 11, 14(1)(2)(3b, c)(5)(6)(7), 15, 16, 17, 18, 19, 25 y 26 del Pacto[2].

3.2 El autor sostiene que su larga e injustificada detención preventiva, las condiciones de la audiencia de imputación (véase 2.6), constituyeron un trato cruel, inhumano y degradante contrario a los artículos 7 y 17(1) del Pacto.

3.3 Con relación con el artículo 9(1-4) del Pacto, el autor afirma que su derecho a la libertad y la seguridad fue violado por los hechos descritos en el párrafo anterior, y toda vez que se ordenó su detención preventiva sin que existiera una causa que justificara esta medida. La prisión preventiva del autor era injustificada y no era necesaria en su caso. Agrega que fue imputado por delitos contra la administración pública y que estos no son considerados graves en ningún ordenamiento jurídico. Sus solicitudes de revocación de la detención preventiva fueron rechazadas arbitrariamente por las autoridades judiciales.

3.4 El autor afirma que se violó sus derechos a la igualdad ante los tribunales y a un "juicio imparcial" en virtud del artículo 14(1) del Pacto. No recibió el mismo trato que otros coacusados en el proceso, ya que fue el único detenido en prisión preventiva durante "muchos meses". Su sentencia no fue proporcional a la gravedad del delito y otros coacusados por los mismos hechos recibieron sentencias con penas menores. Durante el proceso penal, no existió igualdad de medios procesales ya que en general la Fiscalía tiene más competencias para poder recabar y presentar pruebas que la defensa del acusado. No contó con el tiempo y los medios adecuados para la preparación de su defensa. El autor afirma que la Fiscal General no fue imparcial ya que tenía conflictos de interés derivados de problemas personales previos con el abogado del autor, y a que se había pronunciado sobre el caso del autor cuando trabajaba como periodista en una radio. Por otra parte, la magistrada ponente de la CSJ, quien dirigió el juicio y elaboró el proyecto de sentencia, manifestó impedimento al inicio de juicio por considerar que tenía un conflicto de interés ya que era una víctima en otro proceso penal contra otros funcionarios del gobierno del ex presidente Uribe, debido a supuestos seguimientos ilegales realizados a magistrados de la CSJ. Sin embargo, la CSJ no aceptó su solicitud y ésta continuó dirigiendo el juicio e incluso elaboró el proyecto de sentencia.

3.5 El autor sostiene que su derecho a la presunción de inocencia bajo el artículo 14 (2) también fue violado por el hecho de que la Fiscal General había adelantado su opinión sobre el caso del autor antes de asumir ese cargo, cuando se desempeñaba como periodista. Considera que la mención de su caso en el informe de gestión del año 2011 de la Fiscalía General bajo el título "casos de connotación" también violó su presunción de inocencia. Por otra parte, la CSJ valoró y apreció de forma indebida las pruebas aportadas al juicio, de forma que condenó al autor a pesar de que su conducta no constituyera los elementos del delito de peculado ni que hubiese celebrado contratos sin cumplimiento de los requisitos legales.

3.6 El autor afirma que no dispuso del tiempo y de los medios adecuados para la preparación de su defensa, en violación del artículo 14(3)(b) del Pacto. Un informe de la Policía Judicial de 9 de marzo de 2010, según el cual el Cuerpo Técnico de Investigación de la Fiscalía General

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sido condenados, en cualquier tiempo, por la comisión de delitos que afecten el patrimonio del Estado...".

[2] La comunicación no fundamenta las alegaciones en virtud de los artículos 11, 16, 18 y 25 limitándose a invocar estos artículos.

de la Nación (CTI) había concluido que el autor no incurrió en conducta irregular, no fue admitido como prueba por la CSJ. Por otra parte, la CSJ también denegó la solicitud del autor de que se realice prueba grafológica que tenía por objeto controvertir un documento admitido como prueba. La Presidencia de la República también se negó a entregar al autor las actas de los Consejos de Ministros en los cuales se había discutido el programa AIS.

3.7 El autor alega que no fue juzgado en un plazo razonable, en violación del artículo 14 (3) (c) del Pacto.

3.8 El autor afirma que el proceso penal contra altos funcionarios por la CSJ, en única instancia, establecido en el artículo 235 de la Constitución es contrario al artículo 14(5) del Pacto. En su caso, el autor no tuvo oportunidad de apelar el fallo condenatorio y la pena impuesta por la CSJ en su sentencia de 17 de julio de 2014.

3.9 El autor también alega que el Estado parte violó sus derechos en virtud del artículo 14 (6) porque, ya que no existe un juez o tribunal para tal fin, otro juez no pudo revocar su sentencia condenatoria ulteriormente.

3.10 El autor alega que fue juzgado dos veces por los mismos hechos en violación del artículo 14(7) del Pacto. En julio de 2011, la Procuraduría General de la Nación sancionó administrativamente al autor por irregularidades en el programa AIS, sucedidas cuando era Ministro. Sin embargo, tal responsabilidad fue atribuida como culpa sin establecerse dolo. Posteriormente, los mismos hechos fueron objeto del proceso penal ante la CSJ que concluyó con su condena. Agrega que otras entidades públicas habían concluido que no había evidencia que indique su supuesta responsabilidad penal. Por ejemplo, la Fiscalía inicialmente descartó que el autor fuese responsable penal por las irregularidades sucedidas en las subvenciones otorgadas por el programa AIS, la Contraloría archivó la indagación preliminar, y el Tribunal Administrativo de Cundinamarca, en el marco de un proceso contra el asesor legal del Ministerio –en el que el autor no fue parte- concluyó que los convenios de cooperación científica y tecnológica no eran ilegales.

3.11 Con relación al artículo 15 del Pacto, el autor afirma que fue condenado por actos u omisiones que no eran delitos, existiendo ausencia de responsabilidad con arreglo al artículo 32(10)(1) del Código Penal. La celebración de convenios de cooperación científica y tecnológica se fundamentó en el entendimiento que imperaba en el Ministerio de Agricultura y sus expertos jurídicos y técnicos sobre el tema, por lo que en cualquier caso el autor habría actuado bajo un error de tipo que excluía su responsabilidad penal. Aunque este no fuera el caso, su conducta fue culposa y sin existir dolo no estaría sujeta a sanción penal. Por tanto, fue condenado por actos u omisiones que no eran delictivos.

3.12 El autor afirma que es víctima de una violación por el Estado parte, de los derechos que le asisten en virtud de los artículos 19(1) y 26 del Pacto, ya que el proceso penal en su contra forma parte de una persecución por el actual gobierno del Estado parte a causa de sus opiniones políticas y su posición contra el proceso de paz entre el gobierno y las Fuerzas Revolucionarias Armadas de Colombia (FARC). Afirma que las autoridades perseguían a personas que podían ser candidatos potenciales para las elecciones presidenciales celebradas el 15 de junio de 2014. También es discriminado por los mismos motivos, impidiéndole gozar sus derechos civiles y políticos, en particular el derecho de recurrir el fallo condenatorio y la sentencia adoptados en su contra por la CSJ.

3.13 Por último, el autor afirma que todos estos hechos constituyen una violación de su derecho a la dignidad humana en virtud del artículo 10(1) del Pacto.

Observaciones del Estado parte sobre la admisibilidad

4.1 Mediante nota verbal de 23 de marzo de 2015, el Estado parte formuló sus observaciones sobre la admisibilidad de la comunicación y solicitó al Comité que sea declarada inadmisible.

4.2 El Estado parte señala que la comunicación presenta una exposición de los hechos distorsionada, parcial e inexacta, así como juicios de valor e interpretaciones parciales de fundamentos de derecho. Con relación a los hechos del caso, indica que en el marco de una denuncia presentada en el 2009, la Fiscalía, con arreglo al artículo 251 de la Constitución, formuló imputación contra el autor, en calidad de exministro de agricultura y desarrollo rural, el 21 de julio de 2011, ante TSB. El 12 de octubre, formuló acusación ante la Sala de Casación Penal de la CSJ, que estuvo a cargo del juzgamiento del autor.

4.3 La Fiscalía solicitó la detención preventiva del autor debido a que había elementos probatorios que indicaban un riesgo de obstrucción a la justicia. El 21 de julio de 2011, el TSB, en función de control de garantías, ordenó la detención preventiva del autor, después de celebrar audiencia pública, en la que participaron el autor y la Procuraduría General de la Nación. El 14 de junio de 2013, las autoridades judiciales revocaron esta medida debido a que la Fiscalía había cumplido con su actividad probatoria y, por tanto, había desaparecido el riesgo de obstrucción a la justicia. El autor continúo compareciendo en el proceso; sin embargo, a pesar de haber sido convocado, no acudió a la audiencia de lectura de fallo de la CSJ. Tampoco se presentó posteriormente a la CSJ y hasta la fecha en que las observaciones del Estado parte fueron presentadas al Comité no había comparecido a cumplir su pena.

4.4 El Estado parte presenta una detallada descripción sobre las normas de la Constitución, las disposiciones legales y jurisprudencia sobre el fuero aplicable a ministros de gobierno y los procesos de investigación y juzgamiento en materia penal, a cargo de la Sala Penal de la CSJ. La jurisprudencia de sus tribunales nacionales ha señalado que el juzgamiento de funcionarios por la CSJ no desconoce el debido proceso y que el principio de la doble instancia penal no es absoluto, pues no hace parte del núcleo esencial del derecho al debido proceso. Este principio puede tener excepciones, siempre que estas sean razonables y proporcionales y observen el derecho a la igualdad y al debido proceso sustancial[3].

4.5 Tanto del Pacto como de otros tratados de derechos humanos no se deduce un mandato a establecer la doble instancia en los procesos penales relativos a altos funcionarios aforados. Los Estados partes gozan de un amplio margen para configurar los procedimientos y para diseñar los mecanismos eficaces de protección de los derechos sin que se requiera que en el proceso penal de los altos funcionarios aforados necesariamente tenga una segunda instancia penal. El juzgamiento de estas personas, en calidad de altos funcionarios aforados, por el órgano de más alta instancia en materia penal es en sí misma una forma de garantizar de manera integral el debido proceso. El Estado parte mantiene que de la redacción del artículo 14(5) del Pacto no se deduce taxativamente la formulación de una "segunda instancia", ya que el texto indica literalmente "tribunal superior". Esta redacción puede interpretarse en el sentido que la mención a "tribunal superior" implica la necesidad de que el caso sea conocido por un tribunal con mayores cualidades académicas y profesionales, que garanticen una correcta valoración de los asuntos puestos a su consideración.

4.6 En el caso del autor, el 17 de julio de 2014, la Sala Penal profirió sentencia condenatoria en su contra, en proceso de única instancia, por los delitos de peculado a favor de terceros y celebración de contratos sin cumplimiento de requisitos legales. El proceso penal no tuvo motivaciones políticas. En su acusación, la Fiscalía consideró que el autor, como Ministro de Agricultura, desconoció principios y normas que rigen la contratación del

[3] El Estado parte se refiere a las sentencias de la Corte Constitucional C-142 de 1993, C-591 de 1996, C-545 de 2008, C-650-2001 y C-254A de 2012.

Estado, durante el trámite y la celebración de tres convenios suscritos con el IICA, en cuyo marco de ejecución se entregó ilegalmente recursos a particulares, en detrimento del patrimonio estatal. La labor de la CSJ se limitó a determinar la responsabilidad penal del autor sin valorar los fines o importancia del programa AIS.

4.7 El juicio llevado a cabo por la CSJ respetó todas las garantías fundamentales del autor, como acusado. Por ejemplo, con el fin de garantizar el derecho a la defensa, el 16 de mayo de 2012 la Sala Penal dejó sin efecto la actuación cumplida inmediatamente después de la audiencia preparatoria y fijó la instalación de juicio oral para el 14 de junio de 2012. En la audiencia de acusación, el 12 de octubre de 2011, la magistrada ponente de la CSJ y otro magistrado se declararon impedidos para decidir a partir de qué momento procesal debía limitarse el número de los representantes de las víctimas, en aras de equipararlos con el de los defensores. El impedimento se fundó en que los dos magistrados habían presentado acción de tutela contra la decisión que sobre el mismo asunto adoptó la Sala Penal en un juicio contra dos funcionarios adscritos a la Presidencia de la República, acusados de seguimiento e interceptaciones ilegales a distintas personas, entre ellas magistrados de la CSJ, trámite en el cual se les había reconocido la calidad de víctima. En este marco, la Sala Penal negó el impedimento porque estimó que no había relación directa ni indirecta entre esa decisión y el caso contra el autor que debían resolver estos magistrados, entre otros. Además, el autor no manifestó durante el proceso la supuesta existencia de causales de recusación respecto de los magistrados.

4.8 El fallo condenatorio y la pena impuesta contra el autor no constituyeron una violación del principio non bis in ídem. Si bien el autor afrontó investigaciones de naturaleza fiscal, disciplinaria y penal por hechos relaciones con la gestión del programa AIS, estas acciones tenían propósitos, fines y alcances distintos al proceso penal. Además, no guardaban total identidad.

4.9 La pena impuesta al autor por la CSJ no es desproporcional ni responde a criterios discrecionales sino a la aplicación de las pautas que la ley impone para la individualización de la pena, conforme la CSJ detalló en su sentencia. Las otras personas procesadas penalmente que recibieron penas menores se habían acogido beneficios por colaboración con la justicia y terminación anticipada del proceso, los que pueden resultar en significativas rebajas de las penas.

4.10 El artículo 339 del Código de Procedimiento Penal (CPP) prevé que durante la audiencia de acusación, las partes expresen las causales de impedimentos de participación de las autoridades. Sin embargo, en el proceso penal contra el autor, ninguna de las partes señaló que la Fiscal General tuviera conflicto de intereses. Además, la Fiscal General delegó su actuación al Fiscal Décimo ante la CSJ, quien representó a la fiscalía en la audiencia preparatoria y el juicio oral.

4.11 El autor contó con todos los medios para aportar pruebas en el proceso penal. Sin embargo, con arreglo al artículo 359 del CPP, las partes e intervinientes pueden solicitar al juez la exclusión de los medios probatorios ilegales, su rechazo o su inadmisibilidad, por ejemplo, cuando resulten inútiles, repetitivos o encaminados a probar hechos notorios o que por otros motivos no requieren demostración. Por otro lado, el autor contó con el tiempo necesario para preparar su defensa. La audiencia preparatoria tuvo 12 sesiones entre el 14 de diciembre de 2011 y el 14 de mayo de 2012, lapso en el cual el autor solicitó y obtuvo la suspensión del trámite mientras recibía respuesta a numerosas peticiones de información y documentos. La defensa del autor participó activamente y se garantizaron los derechos de todas las partes e intervinientes. Los documentos incorporados en el proceso, en su mayoría documentos públicos, fueron obtenidos e introducidos con las formalidades debidas, sujetos a contradicción. Todas las pruebas actuadas fueron debidamente valoradas por la CSJ, como se refleja en las extensas y minuciosas consideraciones de la sentencia.

4.12 Las solicitudes del autor para obtener las actas del consejo de ministros y prueba grafológica de un testigo se realizaron en la audiencia de control de garantías, y las autoridades judiciales examinaron las razones de la solicitud, su pertinencia e idoneidad.

4.13 La CSJ nunca ordenó la detención preventiva del autor, ya que esta decisión como su suspensión o revocatoria fue competencia exclusiva del TSB, que actuó como Juez con función de Control de Garantías.

4.14 El Estado parte sostiene que el autor pretende que el Comité asuma un papel de instancia de apelación para tratar asuntos que fueron debidamente definidos por la CSJ, en particular su responsabilidad penal, debido a su inconformidad con el proceso judicial y la sentencia en su contra. Por tanto, la comunicación debe ser declarada inadmisible con arreglo al artículo 2 del Protocolo Facultativo.

4.15 El Estado parte considera que la comunicación constituye un abuso del derecho a presentar una comunicación y, por tanto, es inadmisible en virtud del artículo 96 del Reglamento del Comité. Se refiere de forma detallada a pasajes específicos de la comunicación y sostiene que esta presenta información falsa, distorsionada, incompleta y poco clara, resaltadas anteriormente (véase 4.2-4.13).

4.16 La comunicación no cumple con el requisito de admisibilidad establecido en el artículo 5(2)(b) del Protocolo Facultativo. El autor disponía de diversos medios de impugnación de la sentencia condenatoria de la CSJ, como la acción de revisión contra sentencias de la CSJ que se encuentre ejecutoriadas, con arreglo al artículo 192 el CPP, la acción de tutela prevista en la Constitución, y la solicitud de nulidad de actos procesales por prueba ilícita, incompetencia del juez y violación a garantías fundamentales, con arreglo a los artículos 455 a 458 del CPP.

4.17 El Estado parte se refiere a las observaciones de los párrafos anteriores y sostiene que las alegaciones del autor de violación de los derechos del Pacto son manifiestamente infundadas.

Comentarios del autor a las observaciones del Estado parte sobre la admisibilidad

5.1 El 19 de abril y 16 y 17 de julio de 2015, el autor presentó comentarios sobre las observaciones del Estado parte. Señaló que su comunicación cumple con los criterios de admisibilidad establecidos en el Protocolo Facultativo, y reiteró las alegaciones de violación presentadas en su comunicación inicial.

5.2 El autor reitera sus alegaciones respecto a que el proceso penal en su contra constituyó una violación del artículo 14(5) del Pacto. Los recursos señalados por el Estado parte (véase 4.16) no permiten una revisión sustancial del fallo condenatorio y la pena. El recurso de reposición no procede contra este tipo de sentencias de la CSJ[4]. La acción de tutela no es un recurso idóneo toda vez que las disposiciones que establecen que las personas aforadas sean juzgadas por la CSJ, en única instancia, tienen rango constitucional, por lo que no es posible solicitar a un juez que ampare un derecho que en la misma Constitución es inexistente. Por otra parte, de acuerdo al artículo 181 del CPP, el recurso de casación procede "*contra las sentencias proferidas en segunda instancia en los procesos...*". El recurso de revisión es un recurso extraordinario, de manera que no se permite un debate dentro del proceso, sino cuando el mismo ha terminado y aparece una prueba nueva, o se da un cambio jurisprudencial, o emerge un elemento nuevo que permite reabrir el debate, pero no admite una controversia sobre lo que ya está fallado de manera definitiva.

[4] El autor se refiere a la sentencia de la CSJ, proceso No. 33054, de 19 de enero de 2011, en que la Corte señaló que estas sentencias no son pasibles del recurso de apelación y "...no admiten impugnación alguna. Ni siquiera son dables al recurso de reposición."

5.3 Las normas que regulan el proceso penal de altos funcionarios aforados por la CSJ, en única instancia, sin que se pueda someter el fallo condenatorio y la pena a un tribunal superior, violan el artículo 26 del Pacto toda vez que niega el acceso a este derecho a algunos funcionarios públicos.

5.4 El proceso seguido en su contra y en particular la actuación de la Fiscalía tuvo motivaciones políticas.

5.5 El autor no recusó a la magistrada ponente de la CSJ por conflicto de intereses. Sin embargo, este hecho no significa que tales conflictos no existieran. Por otra parte, la propia CSJ denegó la solicitud de impedimento de la magistrada. Otros magistrados de la CSJ que participaron en algunas de las etapas del proceso también debieron recusarse por conflicto de intereses ya que estaban en la misma situación que la magistrada ponente.

5.6 La celebración de la audiencia de imputación de cargos y solicitud de medida de aseguramiento en su contra en un teatro constituyó un trato inhumano y denigrante para el autor.

5.7 El autor alega que su detención preventiva que duró 2 años, venció "ampliamente los términos para mantenerlo detenido".

5.8 El autor alega que las pruebas que solicitó durante el proceso y que fueron inadmitidas por la CSJ eran convenientes, pertinentes y útiles.

5.9 En cuanto a la admisibilidad de la comunicación, el autor resalta que la propia sentencia de la CSJ señala que contra ella "no procede recurso alguno". Por lo tanto, no cuenta con ningún recurso adecuado y efectivo que permita la revisión del fallo condenatorio y la pena impuesta por la CSJ, en proceso de única instancia. Los otros recursos a los que hace referencia el Estado parte tampoco son adecuados y eficaces (véase 5.2).

Observaciones del Estado parte sobre el fondo

6.1 El 21 de octubre de 2015, el Estado parte presentó sus observaciones sobre el fondo de la comunicación y reiteró que la misma no cumplía con los criterios de admisibilidad establecidos en el Protocolo Facultativo. En particular, el Estado parte reiteró sus argumentos sobre la falta de fundamentación de las alegaciones del autor.

6.2 El Estado parte reitera que considera que el proceso penal seguido ante la CSJ contra el autor no constituye una violación del artículo 14(5) del Pacto.

6.3 Tanto el proceso penal como la condena y pena impuesta tampoco constituyen una violación al derecho de igualdad ante los tribunales y la ley, establecidos en los artículos 14(1) y 26 del Pacto.

6.4 La detención del autor fue ordenada en el marco del proceso penal en su contra por las autoridades judiciales con arreglo a ley; por tanto, esta medida no violó el artículo 9 del Pacto. El proceso penal tampoco constituyó una violación de los derechos que le asisten en virtud del artículo 7 del Pacto. El fallo condenatorio y pena impuestos al autor por la CSJ no constituyen una violación de sus derechos bajo el artículo 15 del Pacto.

Comentarios del autor sobre el fondo

7.1 El 3 de diciembre de 2015, el autor presentó sus comentarios sobre el fondo de la comunicación y reiteró las alegaciones de violación del Pacto presentadas anteriormente.

7.2 Con relación al artículo 14(2) del Pacto, el autor agrega que una detención preventiva prolongada también puede afectar la presunción de inocencia en forma indirecta.

7.3 Existió incongruencias entre las situaciones fácticas por las cuales fue acusado y aquellas por las que fue finalmente condenado, lo que violó el artículo 14(3)(a) del Pacto.

7.4 El proceso penal seguido en su contra constituyó una violación del artículo 11 del Pacto.

7.5 El autor alega que sufrió una violación de los derechos que le asisten en virtud del artículo 16 del Pacto ya que, junto con su familia, se vio obligado a salir del Estado parte por razones de seguridad, y fijar su residencia en los Estados Unidos. En 2014, el autor acudió al Consulado del Estado parte en Miami. Sin embargo, los funcionaros consulares humillaron al autor y retuvieron arbitrariamente su pasaporte para impedirle realizar trámite, denegándole su derecho a la personalidad jurídica.

7.6 El fallo condenatorio y la pena impuesta al autor constituyen una violación de los derechos que le asisten en virtud del artículo 25 del Pacto, toda vez que lo inhabilitan de por vida a poder ser elegido a un cargo público o a ser funcionario público. Por lo que no podrá ser candidato a elecciones ni participar directamente en la dirección de asuntos públicos.

Información adicional

8.1 Mediante correspondencia de fecha 15 de julio y 26 de agosto de 2016, 10 de febrero y 12 de junio de 2017, y 21 de marzo de 2018, el autor informó al Comité que el 24 de abril de 2015, la Corte Constitucional declaró inconstitucional varios artículos del CPP que omitían la posibilidad de impugnar todas las sentencias condenatorias ante el superior jerárquico o funcional; y exhortó al Congreso de la República para que, en el término de un año, regule íntegramente el derecho a impugnar todas las sentencias condenatorias. De lo contrario, se debía entender que procede la impugnación contra todas las sentencias condenatorias.

8.2 En ausencia de legislación adoptada por el Congreso, el 22 de abril de 2016 el autor comunicó a la CSJ que impugnaba el fallo emitido en su contra el 17 de julio de 2014.

8.3 El 28 de abril de 2016, la CSJ emitió una sentencia en que señalaba que la disposición de la Corte Constitucional era aplicable respecto de sentencias que no se encontraban ejecutoriadas para el 24 de abril de 2016. El 25 de mayo de 2016, la CSJ declaró improcedente la solicitud del autor.

8.4 El 18 de enero de 2018, el Poder Legislativo, mediante acto legislativo No. 001 de 2018, modificó la Constitución de forma que se garantice el derecho a la doble instancia penal para los Ministros de gobierno.

8.5 A la luz de esta modificación de la Constitución, el 22 de febrero de 2018, el autor presentó un recurso impugnatorio ante la CSJ. El 7 de marzo de 2018, un magistrado de la CSJ declaró el recurso improcedente.

9.1 El 12 de junio de 2018, el Estado parte presentó observaciones adicionales y reiteró su posición con relación al artículo 14(5) del Pacto, considerando que no fue violado.

9.2 Con relación a las alegaciones del autor de violación del artículo 25 del Pacto, el Estado parte resaltó que la CSJ declaró al autor penalmente responsable de los delitos de celebración de contrato sin cumplimiento de requisitos legales y peculado por apropiación y, además, lo condenó "a la inhabilidad para el ejercicio de funciones públicas" dispuesta en el artículo 122 de la Constitución. Los derechos a participar en la dirección de los asuntos públicos y a ser elegido pueden ser objeto de limitaciones, siempre y cuando se cumpla con parámetros de legalidad, objetividad, razonabilidad y proporcionalidad, como en el caso del autor.

Deliberaciones del Comité

Examen de la admisibilidad

10.1 Antes de examinar toda queja formulada en una comunicación, el Comité debe decidir, de conformidad con el artículo 93 de su reglamento, si el caso es o no admisible en virtud del Protocolo Facultativo.

10.2 En cumplimiento de lo exigido en el artículo 5, párrafo 2 a), del Protocolo Facultativo, el Comité se ha cerciorado de que el mismo asunto no está siendo examinado en el marco de otro procedimiento de examen o arreglo internacional.

10.3 El Comité toma nota de los argumentos del Estado parte de que el autor no ha agotado todos los recursos internos disponibles debido a que disponía de diversos medios de impugnación de la sentencia condenatoria de la CSJ de 17 de julio de 2014 (para 4.16). El Comité también toma nota de las alegaciones del autor de que tales recursos no eran idóneos y efectivos (para.5.2). El Comité observa que la propia sentencia de la CSJ estableció que contra ella no "[procedía] recurso alguno" (para 2.11); que el Estado parte no ha explicado de qué forma los recursos mencionados en sus observaciones serían efectivos en el caso del autor; y que dichos recursos no permiten una revisión sustancial del fallo condenatorio y la pena. Puesto que el Estado parte no ha formulado objeciones sobre el agotamiento de los recursos internos en relación con otras alegaciones específicas del autor, el Comité considera que se han cumplido los requisitos del artículo 5(2)(b) del Protocolo Facultativo.

10.4 El Comité toma nota del argumento del Estado parte de que debería considerarse inadmisible la comunicación por constituir un abuso del derecho a presentar una comunicación (para 4.15). El Comité observa, sin embargo, que la mera discrepancia entre el Estado parte y el autor de la comunicación sobre los hechos y la aplicación de la ley, y sobre la pertinencia de la jurisprudencia de los tribunales nacionales del Comité que serían aplicables al caso, no constituyen un abuso del derecho a presentar una comunicación[5]. Por tanto, el Comité considera que la comunicación no constituye un abuso de derecho a presentar una comunicación en virtud de lo dispuesto en el artículo 3 del Protocolo Facultativo.

10.5 El Comité toma nota de las alegaciones del autor en virtud del artículo 9 del Pacto, de que el Estado parte violó su derecho a la libertad y la seguridad. Sostiene que la medida de detención preventiva en su contra no estaba justificada; que sus solicitudes de revocación de esta medida fueron desestimadas por el TSB; y que la duración de esta medida excedió los términos para mantenerlo legalmente detenido (paras. 3.3, 5.7). El Comité también toma nota del argumento del Estado parte de que la detención preventiva del autor fue ordenada por el tribunal competente y mantenida por aproximadamente 1 año y 7 meses con arreglo a la ley. El Comité observa que el 21 de julio de 2001, el TSB ordenó la detención preventiva del autor. De acuerdo al Estado parte, esta medida fue tomada a solicitud de la Fiscalía, porque había un riesgo de obstrucción a la justicia. Por lo tanto, la medida fue revocada el 14 de junio de 2013 por el mismo tribunal, debido a que la Fiscalía había cumplido con su actividad probatoria y que este riesgo ya no existía (paras. 4.3, 4.13, 6.5). Al no haber desvirtuado el autor estas afirmaciones, el Comité considera que las alegaciones relativas al artículo 9 del Pacto no se han fundamentado suficientemente a los efectos de la admisibilidad, y concluye que son inadmisibles con arreglo al artículo 2 del Protocolo Facultativo.

10.6 El Comité toma nota de las alegaciones del autor de que el Estado parte violó sus derechos a la igualdad ante los tribunales y la ley y a un juicio imparcial establecidos en los artículos 14(1) y 26 del Pacto, toda vez que no recibió el mismo trato que otros coacusados en el proceso; que la pena impuesta por la CSJ fue desproporcional; que no existió igualdad de medios procesales entre su defensa y la fiscalía durante el proceso; que la Fiscal General

[5] Véase Henao et al c. Colombia, (CCPR/C/119/2121/2011), párr. 8.3.

había adelantado opinión sobre su caso y que la magistrada ponente de la CSJ tenía un conflicto de interés (para 3.4). El Comité también toma nota de los argumentos del Estado parte de que el proceso seguido contra el autor correspondió al tipo de proceso penal contra ciudadanos que debido a los cargos que desempeñan, como altos funcionarios, gozan de aforamiento; que la magistrada ponente se declaró impedida únicamente para determinar a partir de qué momento procesal debía limitarse el número de los representantes de las víctimas, pero que la Sala Penal de la CSJ negó el impedimento porque estimó que no había relación directa ni indirecta entre el caso en que la magistrada era víctima y el caso del autor; y que la Fiscal General delegó su actuación en otro fiscal que participó en la audiencia preparatoria y juicio oral (paras. 4.4-4.5, 4.7, 4.10, 6.3). En cuanto a la pena impuesta, el Estado parte mantiene que no es desproporcional y que responde a las pautas que la ley impone para individualizar la pena, tomando en cuenta que el autor fue un alto funcionario y máximo responsable de la entidad estatal a su cargo; y que los otros coacusados que recibieron penas menores se habían acogido beneficios por colaboración con la justicia y terminación anticipada del proceso (para. 4.9). En atención a lo anterior, el Comité considera que el autor no ha fundamentado suficientemente estas quejas, a efectos de la admisibilidad y las declara inadmisibles en virtud del artículo 2 del Protocolo Facultativo.

10.7 El Comité toma nota de las alegaciones del autor bajo el artículo 14(2)(3a-c) del Pacto, de que su derecho a la presunción de inocencia fue violado por el Estado parte (para. 3.5); que no dispuso del tiempo y de los medios adecuados para la preparación de su defensa, ya que las autoridades le negaron el acceso a pruebas y la CSJ no admitió pruebas esenciales para su defensa; y que no fue juzgado en un plazo razonable (paras. 3.6-3.7, 5.8, 7.2-7.3). El Comité también toma nota de las observaciones del Estado parte de que el autor contó con todos los medios para preparar su defensa y aportar pruebas en el proceso pena y que todas las pruebas fueron debidamente valoradas por las autoridades judiciales (4.6, 4.11-4.12). El Comité observa que las alegaciones del autor, sobre el carácter esencial de las pruebas inadmitidas y la supuesta falta de juzgamiento en un plazo razonable, no están suficientemente fundamentadas. Más aún, sus alegaciones se refieren fundamentalmente a la evaluación de los hechos y las pruebas por los tribunales del Estado parte. El Comité recuerda su jurisprudencia con arreglo a la cual incumbe a los tribunales de los Estados partes evaluar los hechos y las pruebas en cada caso particular, o la aplicación de la legislación interna, a menos que se demuestre que esa evaluación o aplicación fue claramente arbitraria o equivalió a error manifiesto o denegación de justicia[6]. El Comité ha examinado los materiales presentados por las partes, incluida la sentencia de la CSJ, y considera que dichos materiales no muestran que el proceso penal seguido contra el autor adoleciese de tales defectos. Por consiguiente, el Comité considera que el autor no ha fundamentado suficientemente su denuncia de violación de los derechos que le asisten en virtud del artículo 14(2)(3a-c), por lo que resulta inadmisible con arreglo al artículo 2 del Protocolo Facultativo.

10.8 El Comité toma nota de las alegaciones del autor con relación al artículo 14(7) del Pacto, de que fue juzgado dos veces por los mismos hechos (para. 3.10). El Comité observa, sin embargo, que de la información puesta a disposición por las partes (véase también para. 4.8), no se puede concluir que la sanción impuesta al autor por la Procuraduría, en el marco de un procedimiento administrativo-disciplinario, equivale a una sanción de carácter penal y recuerda que la garantía de esta disposición del Pacto concierne a los delitos penales solamente, y no a las medidas disciplinarias que no equivalen a una sanción por un delito penal en el sentido del artículo 14 del Pacto[7]. Por tanto, el Comité considera que estas

[6] Véase comunicaciones N° 1616/2007, *Manzano y Otros c. Colombia*, decisión adoptada el 19 de marzo de 2010, párr. 6.4., y N° 1622/2007, *L.D.L.P c. España*, decisión adoptada el 26 de julio de 2011, párr. 6.3.

[7] Comentario General No. 32, párr. 57.

alegaciones no han sido suficientemente fundamentadas, a efectos de la admisibilidad, y que son inadmisibles con arreglo al artículo 2 del Pacto.

10.9 El Comité toma nota de las alegaciones del autor sobre el artículo 15(1) el Pacto, de que fue condenado por actos u omisiones que no eran delitos. El autor fundamentalmente sostiene que no se probó durante el proceso penal que su conducta satisficiera los elementos de estos tipos penales; que había actuado bajo un error de tipo que excluía su responsabilidad penal; y que su conducta no era dolosa (para. 3.11). El Comité observa, sin embargo, que el autor no cuestiona que los delitos de peculado por apropiación y celebración de contratos sin cumplimento de requisitos legales, por los cuales fue condenado por la CSJ, no existieran al momento de los hechos. Por tanto, el Comité considera que las alegaciones relativas al artículo 15(1) del Pacto, no se han fundamentado suficientemente a los efectos de la admisibilidad, y concluye que son inadmisibles con arreglo al artículo 2 del Protocolo Facultativo.

10.10 El Comité toma nota de las alegaciones del autor de que el Estado parte violó sus derechos bajo los artículos 7, 10(1), 17(1), 18, 19, y 26, del Pacto, con relación a la forma en que se habrían llevado a cabo algunas audiencias, las supuestas motivaciones políticas del proceso penal en contra del autor y su detención preventiva, así como las consecuencias derivadas de este proceso (paras. 3.2, 3.12, 3.14, 5.3-5.4, 5.6). El Comité considera que estas alegaciones no han sido suficientemente fundamentadas, a efectos de la admisibilidad, y las declara inadmisibles con arreglo al artículo 2 del Protocolo Facultativo.

10.11 El Comité toma nota de las alegaciones generales del autor de que sus derechos en virtud de los artículos 11, 14(6) y 16 del Pacto fueron violados por el Estado parte (paras. 3.1, 3.9, 7.4-7.5). Sin embargo, a la luz de la información que tiene ante sí, en particular la ofrecida por el autor, el Comité observa que no se puede inferir una posible violación de estos derechos en las circunstancias del caso y que estas quejas son manifiestamente infundadas. En consecuencia, el Comité concluye que estas quejas son inadmisibles de conformidad con el artículo 2 del Protocolo Facultativo.

10.12 El Comité toma nota de las alegaciones del autor con relación los artículos 14(5) y 25 del Pacto (paras. 3.8, 5.2, 7.6). El Comité también toma nota del argumento del Estado parte de que esta queja debe ser declarada inadmisible por falta de fundamentación (paras. 4.17, 6.1, 9.2). El Comité considera, sin embargo, que las quejas del autor han sido suficientemente fundamentadas a los efectos de la admisibilidad. Por tanto, el Comité declara que las quejas del autor en virtud de los artículos 14(5) y 25 del Pacto son admisibles y procede a su examen en cuanto al fondo.

Examen de la cuestión en cuanto al fondo

11.1 El Comité ha examinado la presente comunicación teniendo en cuenta toda la información que le han facilitado las partes, de conformidad con lo dispuesto en el artículo 5, párrafo 1, del Protocolo Facultativo.

11.2 El Comité toma nota de la alegación del autor de que el proceso penal en su contra constituyó una violación del artículo 14(5) del Pacto, toda vez que no existe un mecanismo que le permita apelar la sentencia y solicitar la revisión por un tribunal superior del fallo condenatorio y la pena establecida por la Sala Penal de la CSJ el 17 de julio de 2014 (paras.3.8, 6.9). En atención a que la Corte Constitucional declaró inconstitucional varios artículos del Código de Procedimientos Penales que omitían la posibilidad de impugnar todas las sentencias condenatorias ante el superior jerárquico o funcional, y a una modificatoria de la Constitución, el autor presentó dos recursos de impugnación del fallo condenatorio ante la propia CSJ, que fueron declarados improcedentes el 25 de mayo de 2016 y 7 de marzo de 2018, respectivamente (paras. 8.1-8.3, 8.5).

11.3 El Comité también toma nota de los argumentos del Estado parte de que no se deduce taxativamente de la redacción del artículo 14(5) del Pacto la formulación de una "segunda instancia", ya que el texto indica literalmente "tribunal superior"; que esta redacción puede interpretarse en el sentido que la mención a "tribunal superior" implica la necesidad de que el caso sea conocido por un tribunal con mayores cualidades académicas y profesionales, que garanticen una correcta valoración de los asuntos puestos a su consideración; que los Estados partes gozan de un amplio margen para configurar los procedimientos y para diseñar los mecanismos eficaces de protección de los derechos sin que se requiera que en los casos de los altos funcionarios aforados necesariamente tenga una segunda instancia penal; y que el juzgamiento de estas personas, en calidad de altos funcionarios aforados, por el órgano de más alta instancia en materia penal es en sí misma una forma de garantizar de manera integral el debido proceso (paras 4.4-4.5.6.2).

11.4 El Comité recuerda que el artículo 14(5) del Pacto establece que una persona declarada culpable de un delito tiene derecho a que el fallo condenatorio y la pena que se le haya impuesto sean sometidos a un tribunal superior, conforme a lo prescrito por la ley. El Comité recuerda que la expresión "conforme a lo prescrito por la ley" no tiene la intención de dejar la existencia misma del derecho a la revisión a la discreción de los Estados partes. Si bien la legislación de un Estado parte puede disponer en ciertas ocasiones que una persona en razón de su cargo sea juzgada por un tribunal de mayor jerarquía que el que naturalmente correspondería, esta circunstancia no puede por sí sola menoscabar el derecho del acusado a la revisión de su sentencia y condena por un tribunal[8]. En el presente caso, el Estado parte no ha señalado la existencia de un recurso disponible para que el autor pueda solicitar que el fallo condenatorio y condena fueran revisados por otro tribunal.[9] Por consiguiente, el Comité concluye que el Estado parte violó los derechos que asisten al autor en virtud del artículo 14(5) del Pacto.

11.5 El Comité toma nota de las alegaciones del autor de que la sentencia de la CSJ de 17 de julio de 2014 constituye una violación de los derechos que le asisten en virtud del artículo 25 del Pacto, toda vez que lo inhabilita de por vida a poder ser elegido a un cargo público o a ser funcionario público (para 7.6).

11.6 El Comité recuerda que en el artículo 25 del Pacto se reconoce y ampara el derecho de todo ciudadano a participar en la dirección de los asuntos públicos, el derecho a votar y a ser elegido, y el derecho a tener acceso a la función pública. Cualquiera que sea la forma de constitución o gobierno que adopte un Estado, el ejercicio de estos derechos por los ciudadanos no puede suspenderse ni negarse, salvo por los motivos previstos en la legislación y que sean razonables y objetivos[10]. El Comité recuerda también que, si el motivo para suspender el derecho a votar y a presentarse a cargos electivos es la condena por un delito, dicha restricción debe guardar la debida proporción con el delito y la condena[11]. El Comité recuerda también que, cuando esa condena sea claramente arbitraria o equivalga a un error

[8] *Véase Terron* c. *España* (CCPR/C/82/D/1073/2002), párr. 7.4. Véase también observación general nº 32, párr. 45-47.

[9] El Comité observa asimismo que los efectos de la declaratoria de inconstitucionalidad de varios artículos del Código de Procedimientos Penales sobre la materia por la Corte Constitucional de 24 de abril de 2015 no alcanzan al caso del autor, ya que en una sentencia de 28 de abril de 2016, la CSJ determinó que la disposición de la Corte Constitucional era aplicable respecto de sentencias que no se encontraban ejecutoriadas para el 24 de abril de 2016. Por otra parte, posteriormente a la modificación de la Constitución, mediante acto legislativo No. 001 de 2018, el autor presentó un recurso impugnatorio ante la CSJ que fue declarado improcedente el 7 de marzo de 2018 (paras. 8.4-8.5).

[10] Véase la observación general núm. 25 del Comité, párrs. 3 y 4.

[11] Véase la observación general núm. 25 del Comité, párr. 14, y *Dissanayake c. Sri Lanka* (CCPR/C/93/D/1373/2005), párr. 8.5.

manifiesto o a una denegación de justicia, o las actuaciones judiciales que den lugar a la condena vulneren el derecho al debido proceso, la restricción de los derechos amparados por el artículo 25 podría volverse arbitraria.[12]

11.7 El Comité observa que el 17 de julio de 2014, la CSJ declaró culpable al autor de los delitos de malversación de fondos por apropiación y celebración de contratos sin cumplimiento de los requisitos legales. Dado que el autor fue condenado por delitos que afectaban el patrimonio del Estado, la CSJ también condenó al autor a la inhabilitación para el ejercicio de la función pública. Las observaciones del Estado parte no refutan el carácter permanente de la inhabilitación. Por el contrario, sostienen que dicha medida fue impuesta por la CSJ un el marco de un proceso penal justo; y que la misma es legal, objetiva, razonable y proporcional (para. 9.2). Por otra parte, el Comité observa que la CSJ también ordenó la interdicción de los derechos públicos del autor por el mismo lapso de la pena principal (17 años y 5 meses) y que el autor no ha cuestionado esta orden. A este marco, el Comité debe determinar si la inhabilitación de por vida sobre los derechos del autor bajo el artículo 25, aplicada después de cumplir la pena principal, es compatible con el Pacto. A este respecto, el Comité considera que constituye un fin legítimo para los Estados partes luchar contra los actos de corrupción, proteger el erario y, por tanto, el interés público, con el fin de preservar el orden democrático. De esta manera, un Estado parte puede perseguir el legítimo interés de restringir el acceso al ejercicio de la función pública a aquellas personas condenadas por crímenes de corrupción. Con ese fin, el Estado parte puede imponer inhabilitaciones de por vida a derechos bajo el artículo 25 del Pacto únicamente en casos excepcionales, en relación con delitos graves, y cuando se justifique por las circunstancias individuales de la persona sentenciada. Cualquier inhabilitación debe estar fundada en motivos objetivos y ser previsible.[13] En el presente caso, el Comité observa que el autor fue declarado culpable de graves delitos cometidos en el ejercicio de sus funciones como Ministro de Agricultura, el más alto funcionario en el ministerio y que tales delitos afectaron significativamente el patrimonio del Estado. Habiendo establecido la responsabilidad penal del autor, el CSJ automáticamente impuso una inhabilitación de por vida sobre sus derechos bajo el artículo 25 del Pacto, de conformidad con el artículo 122 de la Constitución, enmendado por el Acto Legislativo N° 1 de 2004, en vigor en al momento de los hechos en cuestión (véase nota a pie de página n° 1). La duración de esta inhabilitación excede considerablemente la duración de la pena principal del autor. El Comité observa que la inhabilitación establecida en el artículo 122 de la Constitución es formulada en términos amplios y no está sujeta a ningún límite temporal y que, por otro lado, las condiciones para imponer dicha restricción son también formuladas de forma general, limitando así su previsibilidad. Más aún, a la luz de la información puesta a disposición del Comité por las partes, el Comité observa que la CSJ no realizó una evaluación individualizada significativa de la proporcionalidad de la restricción a los derechos del autor en virtud del artículo 25 del Pacto. En la parte resolutiva de su sentencia, en la que se impuso la inhabilitación en cuestión, la CSJ no consideró explícitamente las particulares circunstancias de los graves crímenes por los que el autor fue sentenciado. La CSJ tampoco fundamentó de qué forma las particulares circunstancias del caso podían justificar la imposición de una inhabilitación de por vida. En vista de ello, el Comité considera que la información disponible no le permitirle concluir que, en el presente caso, las restricciones de por vida impuestas a los derechos del autor bajo el artículo 25 del Pacto por la CSJ sean proporcionales. En consecuencia, el Comité concluye que el Estado Parte violó los derechos del autor en virtud del artículo 25 del Pacto.

12. El Comité de Derechos Humanos, actuando en virtud del artículo 5, párrafo 4, del Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos, dictamina que

[12] *Nasheed c. Maldivas* (CCPR/C/122/D/2270/2013&2851/2016), para. 8.6.
[13] *Paksas c. Lituania* (CCPR/C/110/D/2155/2012), para. 8.4.

los hechos que tiene ante sí ponen de manifiesto una violación de los artículos 14(5) y 25 del Pacto.

13. De conformidad con el artículo 2(3)(a), del Pacto, el Estado parte tiene la obligación de proporcionar al autor un recurso efectivo. Ello requiere una reparación integral a los individuos cuyos derechos hayan sido violados. El Comité considera que, en el presente caso, su dictamen sobre el fondo de la reclamación constituye una reparación suficiente para la violación dictaminada. El Estado parte también tiene la obligación de adoptar todas las medidas que sean necesarias para evitar que se cometan violaciones semejantes en el futuro, incluyendo la revisión de su legislación con el fin de garantizar que cualquier restricción de los derechos a tener acceso a la función pública y a ser elegido sea razonable y proporcional y basada en una evaluación individualizada de cada caso.

14. Teniendo presente que, por ser parte en el Protocolo Facultativo, el Estado parte reconoce la competencia del Comité para determinar si ha habido o no violación del Pacto y que, con arreglo al artículo 2 del Pacto, el Estado parte se ha comprometido a garantizar a todos los individuos que se encuentren en su territorio o estén sujetos a su jurisdicción los derechos reconocidos en el Pacto y a garantizar una reparación efectiva y jurídicamente exigible cuando se compruebe una violación, el Comité desea recibir del Estado parte, en un plazo de 180 días, información sobre las medidas que haya adoptado para aplicar el presente dictamen. Se pide asimismo al Estado parte que publique el dictamen del Comité y le dé amplia difusión.

Individual opinion of Committee Member Sarah Cleveland (concurring).

1. I concur in the Committee's finding of a violation of the author's right to appellate review of his conviction under article 14(5) of the Covenant, and its determination that its Views on the merits of the author's claims constitute sufficient remedy for the violation found. I write separately to express my understanding of the Committee's conclusion that the author's rights under article 25 of the Covenant were also violated.

2. As the Committee observes, consistent with article 25, States may have a legitimate interest in prohibiting an individual from holding public office as a result of serious criminal conduct. Like term limits on public office, such restrictions can in fact serve the public interest in promoting effective democratic governance and ensuring effective participation of the general public in political life. Any such restrictions on public service, however, must be established by law and be objective and reasonable. They must be proportionate to the severity of the crime, and they must be applied consistent with due process.[14]

3. A permanent prohibition on public service can satisfy these criteria under certain circumstances, as the Committee notes. This is particularly true where a high-level government official commits serious crimes, including large-scale corruption involving state assets.

4. The requirement that a lifelong ban on public service must be proportionate to the individual circumstances could be satisfied in at least two ways. First, an automatic lifelong ban could apply only to a narrow set of cases: a clearly-defined range of serious crimes, when committed by a narrow range of high-level public servants. As former Committee Member Gerald Neuman has observed, a number of States expressly provide in their constitutions for ineligibility for public service as an authorized or mandatory consequence of impeachment.[15] Alternatively, a law could provide more broadly for the possibility of a prohibition on public service, but that law could be applied only based on an independent judicial assessment of the proportionality of the ban to the circumstances in each individual case.

5. In the present case, the Colombian constitutional provision at the time imposed an automatic ban on public service for life for any person convicted of offenses affecting State assets.[16] The provision did not further specify what crimes fall into this category. It did not further address their severity or their impact on State assets. Nor was application of the automatic ban limited to high-level public servants. Finally, the State party did not suggest that the provision had been narrowed or clarified through judicial interpretation. The provision therefore fell under the second category above, for which an individual proportionality assessment would be required.

6. My colleagues conclude that the constitutional provision thus was too vague to render the sanction foreseeable. This may be true with respect to the full range of crimes that might fall

[14] General Comment No. 25: The right to participate in public affairs (art. 25) (1996), paras. 4, 14. Cf. European Commission for Democracy Through Law (Venice Commissions), Amicus curiae brief for the European Court of Human Rights in the case of Berlusconi v. Italy, CDL-AD(2017)025-e (collecting the legislation of 62 countries relating to procedural protections regarding disqualification from standing for public office).

[15] Paksas v. Lithuania, Communication No. 2155/2012 (2014) (Individual opinion by Committee Member Mr. Gerald L. Neuman).

[16] The relevant Constitutional provision in force in 2004 stated: "Sin perjuicio de las demás sanciones que establezca la ley, no podrán ser inscritos como candidatos a cargos de elección popular, ni elegidos, ni designados como servidores públicos, ni celebrar personalmente, o por interpuesta persona, contratos con el Estado, quienes hayan sido condenados, en cualquier tiempo, por la comisión de delitos que afecten el patrimonio del Estado...".

within its ambit. However, on the facts of this case, application of the automatic ban on public service for life for persons convicted of offenses "affecting State assets" was entirely foreseeable. The Committee emphasizes that the author was convicted of embezzling public assets sufficient to result in a prison sentence of 17.5 years and a fine of approximately € 12,187,765.

7. The Committee also concludes that automatic application of the constitutional prohibition could yield disproportionate results and that the Supreme Court failed to assess the proportionality of the lifetime ban to the author's individual circumstances. Nothing in the Committee's opinion, however, suggests that had the Supreme Court engaged in this assessment, a lifetime ban on public service would have been disproportionate in this case. The author was the Minister of Agriculture, a high-ranking government official. He was convicted for large-scale corruption of public funds, totaling millions of dollars. And the crime was based on actions taken while in office. He therefore was convicted of an egregious abuse of the public trust, and theft of public funds, while wielding substantial public power.

8. The Supreme Court obviously was aware of these facts at the time that it applied the ban in this particular case. It also is entirely possible that that Court did assess the proportionality of the ban to the author's circumstances, and concluded that the ban was proportionate, but did not articulate that rationale given the categorical constitutional provision. However, the State party did not submit that such a proportionality analysis did, in fact, occur, or that the decision of the Supreme Court should be upheld on this basis.

9. In the end, therefore, the Committee essentially finds a violation because the Supreme Court did not formally articulate a finding that the lifetime ban on public service was proportionate in this case. Such an interpretation is also consistent with the Committee's conclusion that its Views constitute sufficient remedy for the violation found. Based on this understanding, I concur in the Committee's decision in this case.

N.

STATEMENT

My name is Luis Carlos Restrepo Ramirez, a Colombian citizen with Identity Document No. 19221754 from Bogota. Between August 2002 and March 2009, I was in office as High Commissioner for Peace of the Colombian Government.

During my work, in early 2009, I was informed about a terrorist attack that the illegal armed group FARC would carry out against Dr. Andrés Felipe Arias, former Minister of Agriculture of the Colombian Government, and who was starting his campaign to become a presidential candidate.

As it was my duty, I personally communicated this information to Dr. Arias and to his Chief of Security, to take the necessary protective measures.

I attest,

Luis Carlos Restrepo Ramirez
July 8, 2014

REPUBLICA DE COLOMBIA

PASAPORTE
PASSPORT

TIPO / *TYPE*	COD. PAIS / *CODE COUNTRY*	PASAPORTE Nº / *PASSPORT No.*
D	COL	CC 19221754

APELLIDOS / *SURNAME*
RESTREPO RAMIREZ

NOMBRES / *GIVEN NAMES*
LUIS CARLOS

FECHA Y LUGAR DE NACIMIENTO / *DATE AND PLACE OF BIRTH*
24 Ene 1954 FILANDIA - QUINDIO

SEXO / *SEX* — LUGAR Y FECHA DE EXPEDICION / *PLACE AND DATE OF ISSUE*
M BOGOTA D.C. 28 JUL 2008

FECHA DE VENCIMIENTO / *DATE OF EXPIRY* — AUTORIDAD / *AUTHORITY*
7 Ago 2010

FIRMA DEL TITULAR

MINISTERIO DE RELACIONES EXTERIORES
DIRECCION DE ASUNTOS CONSULARES

EXPEDIDO A FAVOR DE

LUIS CARLOS RESTREPO RAMIREZ

CARGO O CATEGORIA

ALTO COMISIONADO PARA LA PAZ

El presente Pasaporte reemplaza la libreta No. D031085 expedida el 30 de Agosto de 2002 en CANCILLERIA
BOGOTA D.C. 28 JUL 2008

FIRMA AUTORIZADA

O.

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Bogotá, June 18, 2014

US Department of Homeland Security

I´m Francisco Santos former vicepresident of Colombia between 2002 and 2010. I was elected in the same ticket with President Alvaro Uribe Velez.

Prior to that I was Editor of the biggest newspaper in the country, El Tiempo, where I also wrote a column that was very aggressive against the drug barons and the guerrilla and paramilitary groups. In retaliation for what I wrote, Pablo Escobar kidnapped me for 8 months. After I was freed I created a human rights NGO that helped victims of this crime called Pais Libre (Free Country).

I became a Human Rights activist and led the biggest protests against the criminal groups in the late 90´s. IN the year 2000 the guerrilla group Farc had a plan to kill me so I had to leave for exile in Spain for two years.

This history led Mr. Uribe to pick me as his running mate. Once in government he gave me the task of protecting human rights, which in 2002 were in crisis. During eight years we worked to protect union leaders, human rights NGO´s, political opposition, indigenous groups and social activists.

I met former minister of Agriculture Andrés Felipe Arias during our government. We developed a strong ideological bond forged in our common and radical opposition to drug gangs ands the terrorist groups Farc and Eln. As such we have very strongly opposed the peace talks by the current government with the latter groups that are taking place in Cuba.

Our political relationship is very strong. During the primaries in my party (Centro Democratico) for the presidential campaign he wrote most of the speeches and led the team that structured the political platform. Obviously, regarding security and peace talks it took a hardline approach towards both issues.

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I can testify that Andrés Felipe Arias, his wife Catalina and their two little kids, Eloisa and Juan Pedro, have been systematically threatened due to his political and ideological stance. Indeed today Mr. Arias is one of the most threatened and persecuted persons in Colombia right now. Those threats can be attributed not only to the terrorist group Farc but also to the Executive and judicial branch of

Colombia in retaliation for his political views and his well-known loyalty to our political party now in opposition.

It is not fortuitous that he was illegally sent to prison during almost two years without solid evidence. Needless to say, Mr. Arias was arrested, psychologically tortured and inhumanly separated from his family only because of his political views.

Just as Mr. Arias is being prosecuted without any judicial guarantees, many members of our party have been unfairly incarcerated solely for opposing the political agenda of President Juan Manuel Santos and the judicial branch. Former presidential candidate Luis Alfredo Ramos, former High Comissioner for Peace Luis Carlos Restrepo and journalist Ernesto Yamhure have been prosecuted unfairly just as it's happening with Mr. Arias.

With deep pain and great sadness for he is one of the brightest colombians with a great future, I was informed that Andrés Felipe Arias and his family are seeking asylum in the United States as a way to protect his life and freedom. I plead with the American authorities that his petition is granted.

Sincerely yours

Francisco Santos Calderón
Vicepresidente of Colombia 2002-2010

P.

JUDICIAL

2009-08-27 22:36:42

Frustan planes para asesinar a Presidente Uribe y a Andrés Arias

El Cuerpo Técnico de Investigación de la Fiscalía y el Ejército capturaron la madrugada de hoy en Bogotá, en el barrio Colina Campestre, a Fredy Cortés Urquijo, alias Francisco, presunto guerrillero del frente Antonio Nariño de las Farc y quien pretendía atentar contra el presidente de la República, Álvaro Uribe Vélez, y el ex ministro de Agricultura Andrés Felipe Arias.

Frustan planes para asesinar a Presidente Uribe y a Andrés Arias

Frustan planes para asesinar a Presidente Uribe y a Andrés Arias

El Director del CTI seccional Cundinamarca, Álvaro Escobar Gil, señaló que "este personaje ·enía bajo sus hombros el lograr los planes denominados el Plan Final y el Plan Euro. Estos planes iban dirigidos, el primero, a atentar contra la vida del primer mandatario, y el segundo pretendía terminar con la vida del ex funcionario".

De acuerdo con el director seccional, el atentado en contra del Jefe de Estado consistía en establecer una logística para atacar la nave en la que se dirigía Uribe Vélez y por eso el guerrillero hacía labores de inteligencia en el aeropuerto de Catam.

Según la Fiscalía, durante a la captura, los agentes judiciales encontraron documentos en los que figuraban números de placas correspondientes a vehículos asignados a un dirigente político, es decir, de Arias.

En la casa del detenido también fue hallado un computador, pero no se ha detallado la información que contiene.

El operativo fue posible gracias a que en los computadores que pertenecían a John Fredy Balcázar Castillo y/o Bernardo Mosquera Machado, alias El Negro Antonio, quien está privado de la libertad, se encontró información relacionada con los ataques y eso se sumó a declaraciones de reinsertados de la columna Antonio Nariño de las Farc.

Escobar Gil también aseveró que se presume que los atentados se iban a realizar con explosivos, de acuerdo al perfil de alias "Francisco", quien es uno de los expertos en manejo de armas de alto poder y material explosivo.

El supuesto guerrillero es sindicado por concierto para delinquir con fines terroristas y rebelión.

esta hora se realiza en los juzgados de Paloquemao, la audiencia ante un Juez de Control de Garantías para legalizar la captura, imputar cargos por rebelión y concierto para delinquir y solicitar la imposición de una medida de aseguramiento.

Ranking de noticias

+ Recientes + Vistas sección + Vistas

1 Santos frena la reforma tributaria estructural
2 Video registró hurto en el Centro de Bucaramanga
3 "Rápido y furioso 8" podría rodarse en Cuba
4 Príncipe de Marruecos no soporta que le besen la mano
5 Más de 70 barrios amanecen sin agua en Bucaramanga

COLOMBIA

02 / sep / 2009 8:51 am **95 comentarios**

Desarticulan comandos, enviados por el 'mono Jojoy', para atentar contra Uribe

Las autoridades colombianas han logrado desarticular, en los últimos días, un grupo de **comandos de las FARC enviados por el "Mono Jojoy" para atentar contra el Presidente Uribe** y altos cargos de su Gobierno.

Así lo revela hoy un reportaje del **diario bogotano El Tiempo**

> Las autoridades creen que con la captura en Cartagena el pasado sábado de alias 'Pavel', señalado de reclutar jóvenes para las milicias y el P-C3, se desarticuló definitivamente el plan de las Farc. **Además del Presidente y sus ministros, la guerrilla, según las autoridades, tenía entre sus objetivos al menos una decena de instalaciones** clave en la capital de la República.
>
> Alias 'Pavel' es un universitario que, según los archivos descubiertos en al menos tres computadores incautados en golpes a las Farc, debía coordinar la voladura de varios CAI en Bogotá y albergues de desmovilizados.
>
> **La primera pista se encontró el pasado 27 de febrero** en las montañas del páramo de Sumapaz. Allí el Ejército logró recuperar el computador del

'Negro Antonio', y aunque las autoridades demoraron tres meses (hasta mayo) para abrir los archivos más importantes, ese trabajo permitió poner al descubierto un plan que incluía derribar el avión presidencial.

Al principio los investigadores creyeron que solo se trataba de 'proyectos', pero con el análisis de los archivos descubrieron que **eran planes muy bien diseñados y listos para ejecutar a través de 9 estructuras dirigidas por 'Carlos Antonio Lozada', jefe de milicias de las Farc y quien depende directamente del 'Mono Jojoy'.** En los computadores, precisamente, se encontró la última foto que se conoce de 'Lozada', que fue negociador de las Farc en el Caguán.

Lo que se encontró en el computador de 'Antonio' se cruzó con lo hallado en las USB y discos duros incautados a otros tres guerrilleros de importancia: 'Gaitán', 'Chucho' y 'Camila', jefe de una de las estructuras y quien cayó en Bogotá gracias a la primera información. Precisamente, **en su ordenador estaba el polémico video en el que el 'Mono Jojoy' habla sobre la muerte de 'Manuel Marulanda' y menciona la campaña presidencial en Ecuador.**

"Una vez tuvimos el mapa de los atentados que 'Carlos Antonio Lozada' estaba coordinando en Bogotá, empezó la parte de la inteligencia, lo que deja hasta el momento la captura de las cabezas de las 9 estructuras encargadas de los planes", le dijo a EL TIEMPO uno de los oficiales que han estado al frente de la operación.

Los últimos correos de 'Lozada' llegaron el pasado mes de mayo. En el expediente de la investigación, que reunió esfuerzos del Ejercito, la Dijín de la Policía y el CTI, aparecen los guerrilleros y sus misiones.

El comandante de las Fuerzas Militares, general Freddy Padilla de León, señaló que **este golpe hace parte de la cadena de operaciones que la Fuerza Pública ha lanzado contra el bloque Oriental en los últimos cuatro meses.**

"El bloque Oriental ha sufrido varias bajas y golpes a su estructura logística. Uno de ellos, tal vez el más importante, es la muerte de Julián Villamizar, alias 'Byron Yepes', un hombre que movía las finanzas de 'Jojoy' a través de la extorsión y el secuestro", resaltó el general.

Para los investigadores, **la desarticulación de esta red debilita la estructura logística del bloque Oriental,** ya que los nueve capturados, además de tener formación académica universitaria, conocían perfectamente la inteligencia e información confidencial de los atentados que tenían como misión perpetrar.

Las autoridades siguen atentas, pues no descartan que las Farc intenten nuevamente hacer otras acciones.

Los guerrilleros encargados de los atentados

'Camila' (Capturada 30 mayo): Le incautan computador, debía responder por atentados contra José Obdulio Gaviria y Fernando Londoño. Tenía la misión de bloquear las entradas a Bogotá con atentados en vía a Villavicencio, la Calle 80 y autopista norte. Jefe del P-C3 en Bogotá.

'David' (Capturado 25 de agosto): Tenía la misión de ejecutar el 'plan Azulejo' contra el empresario Luis Carlos Sarmiento Angulo. Se llamaba así porque su escolta usa carros azules. Era el jefe de 'Camila' y tenía a su cargo atentados contra una cadena de supermercados.

'Francisco' (Capturado 26 de agosto): Profesor de la U.N., señalado de ser el responsable ejecutar el atentado contra el candidato Andrés Felipe Arias, el ministro Fabio Valencia Cossio, volar tres subestaciones eléctricas en Bogotá para dejar a la ciudad sin luz y organizar la logística para cometer otros atentados contra personalidades.

'Simón' (Capturado 29 de agosto): Tenía la misión de atentar contra el ex fiscal Mario Iguarán, coordinar acciones contra cajeros de una entidad bancaria, atentado contar el director de la Policía Oscar Naranjo y Dirección de la Policía.

'Pavel' (Capturado 29 de agosto): 'Carlos Antonio Lozada' lo había designado para atentar contra varios Cai de Bogotá. Tenía en su poder un listado de estudiantes universitarios supuestamente reclutados y tenía

direcciones de albergues de desmovilizados para atentados.

Las frases de los correos de Lozada encontrados en el computador de 'Camila'

- "No podemos perder la comunicación por este medio, pero es necesario conseguir con urgencia a la persona que encripte las comunicaciones".

- "No nos podemos descuidar con los correos. Es importante la verificación de todo lo que mandan de allá, que no venga cargado (con chips) y nos jodan"

- "Si logramos darle a la mitad de los cajeros damos un golpe de opinión muy duro. Esa misión no puede fallar y ojo con los contactos, que sean confiables".

EL UNIVERSAL

Frustran planes para asesinar al presidente Uribe y al ex ministro Arias

COLPRENSA | @ElUniversalCtg (https://twitter.com/ElUniversalCtg) | BOGOTÁ | 28 de Agosto de 2009 12:01 am |

Andrés Felipe Arias, ex ministro de Agricultura. (http://www.eluniversal.com.co/sites/default/files/27B4ARIAS.jpg)

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LA EVIDENCIA

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Recluyen en La Picota a Julian Urquijo implicado en plan para asesinar a Uribe

 agosto 28, 2009 8:32 am

–tienen contra Julian Urquijo, alias Francisco, como integrante de la columna urbana Antonio Nariño de las FARC y su vinculación a un presunto plan terrorista para atentar contra el presidente Alvaro Uribe.

Aunque, Urquijo negó los cargos, un juez de control garantías legalizó su captura y le profirio medida de aseguramiento, por lo que hoy fue recluido en la Cárcel de la Picota, al sur de Bogotá.

Como lo informo oportunamente el Noticiero Santa Fe, Julian Urquijo, un profesional egresado de la Universidad Nacional, con maestría en agronomía, fue capturado en una residencia del barrio Colina Campestre, al norte de la capital.

En el allanamiento a la vivienda, se le decomisaron dos computadores y varias USB con abundante información que lo vinculan a las Farc y a operaciones de seguimiento a las actividades del presidente Alvaro Uribe, para un supuesto plan contra su vida, que se proyectaba ejecutar en el aeropuerto militar Catam en Bogotá.

La investigación de la Fiscalía se originó en documentos hallados en el computador de John Fredy Balcázar Castillo y/o Bernardo Mosquera Machado, alias 'El Negro Antonio', quien se encuentra privado de la libertad.

El plan terrorista incluía atentar contra el ex ministro y precandidato presidencial Andrés Felipe, Arias.

De otro lado, la Policía Nacional capturó en las últimas horas en Bogotá a Fidel Camilo Villarraga Castillo, alias 'David', acusado de ser el segundo cabecilla de inteligencia del Frente Urbano 'Antonio Nariño' de las Farc, y uno de los principales responsables de atentados terroristas en la capital del país durante los últimos años.

El hombre, con diez años en las filas guerrilleras, era el encargado de la red logística y de finanzas de la mencionada estructura, según informó la Dirección de Investigación Criminal (Dijin). Tenía orden de captura vigente de la Fiscalía por los delitos de concierto para delinquir y rebelión.

Junto a alias David fue capturada su progenitora Flor Alba Castillo Camelo, señalada como responsable de la organización de masas del Partido Comunista Colombiano Clandestino (Pccc). También Presentaba orden de captura por los delitos de concierto para delinquir y rebelión.

Alias 'David' fue capturado por unidades de la Dijin en un centro comercial ubicado en el sector de Álamos Norte, en Bogotá, y llevaba entre sus pertenencias 5 millones 590 mil pesos y 5 mil 400 dólares en efectivo.

Luego de la captura, la Fiscalía ordenó una diligencia de allanamiento al lugar de residencia, donde encontró información física y magnética alusiva a las Farc, así como 25 tarros que contenían 10 kilos de pólvora negra, una bolsa con un kilo de polvo de aluminio, una batería de 12 voltios y 150 metros de cordón detonante.

La Policía conserva importante información de inteligencia, decomisada en computadores a las Farc, en la que figura repetidamente el nombre de alias 'David' vinculado a actividades como correo humano, inteligencia delictiva y de logística al servicio de esa guerrilla.

Compártelo:

Relacionado

Capturan a guerrillera implicada en atentado durante primera posesión de Uribe
En "Judicial"

Judicializan a guerrillera de las Farc capturada en Bogotá
En "Nacional"

Capturan a la compañera sentimental de alias Negro Antonio, cabecilla de frente de las Farc
En "Judicial"

Escrito por Ariel Cabrera | Clasificada bajo Justicia, Noticia Extraordinaria

Una respuesta sobre "Recluyen en La Picota a Julian Urquijo implicado en plan para asesinar a Uribe"

1. hernan en agosto 28th, 2009 10:02 am

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- **¿Usted considera que con la llegada de la oposición al Parlamento, Venezuela cambiará su rumbo político y social?**

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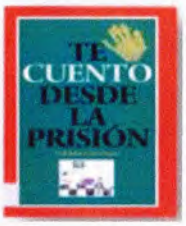
Q.



Carta de un exprisionero político colombiano

¡Déjate de bobadas, Andrés Felipe Arias!

"La solidaridad es propiedad privada de los de abajo, los de arriba solo tienen intereses, y creo que hasta de eso te has dado cuenta."

Fredy Julián Cortés Urquijo / Domingo 14 de abril de 2013

Sorprendidos estamos, los que alguna vez hemos pasado por una cárcel colombiana, mas aun los que continúan viviendo en ese sepulcro de hombres vivos, cuando esta semana te escuchamos señor ex ministro Arias, famoso en Colombia por el escándalo de "hago ingreso seguro", contando en Blu radio lo difícil que ha sido tu situación como prisionero. Has dicho que te han tratado con crueldad y desolación.

¡Déjate de pendejadas Andrés Felipe!, que no tienes idea del infierno que es una cárcel de verdad. Nunca has tenido que dormir en una cama dura sin colchón y sin abrigo, en una celda húmeda y fría encerrado desde las 4 de la tarde hasta las 6 de la mañana; por el contrario, vives en buena cama, custodiado y servido por humildes soldados amables que hacen que tu estadía en esa "cárcel", donde sólo los ladrones de cuello blanco como tu van a parar, sea mas confortable que cualquier vivienda de un humilde colombiano. Te sigues tomando unos amarillitos en la noche, tienes televisor, celular y hasta acceso ilimitado a internet, en cambio el preso común en muchas cárceles no tiene derecho ni siquiera a un simple radio. Sí, imagínate que en una cárcel de verdad no dejan tener televisor. Hasta mejor será.

De la comida ni te cuento, tú comes a la carta, los presos en general comen comida mal preparada, sucia y bastante "balanceada" en harinas, es decir, por ponerte un ejemplo: sopa de pasta con pasta y papas; de carne ni hablar, son 40 gr. de carne reglamentarios, que muchas veces son recortados para el beneficio del contratista de turno. Ni comparación con los filetes que

+ de Fredy Julián Cortés Urquijo

Fredy Julián Cortés Urquijo es Ingeniero Mecánico de la Universidad Nacional, profesor auxiliar en la facultad de Ingeniería de la Universidad Nacional de Bogotá y estudiante de maestría en Ingeniería de la UN. Pofesional con una destacada formación ética, técnica y humana donde se resaltan sus trabajos e investigaciones para la agroindustria a través de proyectos financiados por Colciencias en convenio con Corpoica (Corporación Colombiana de Investigacion Agropopecuaria), la Universidad Nacional y la Universidad Industrial de Santander, durante los últimos años prestó sus servicios como profesor auxiliar de posgrado en los cursos Taller Agrícola 1 y 3 del Departamento de Ingeniería Civil y Agrícola de la Universidad Nacional. Se vinculó a la UN como docente auxiliar de la Facultad de Ingeniería para dar los cursos Taller Agrícola II en el mismo departamento. Para el segundo semestre de 2009, tramitó la vinculación como profesor auxiliar para dictar el curso Elementos de máquinas agrícolas, así

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te han de llevar nuestros héroes de la patria, héroes pagados con impuestos de los colombianos para que custodien tus lujos.

No te ha tocado cuidar tu espalda porque no sabes en que momento un delincuente común drogado te puede atravesar con una platina la espalda, tampoco te habrá tocado estar cuidando tus cositas previniendo que otro interno te las robe o la guardia entre a hacer una rascada a tu celda y vuelva mierda, literalmente mierda tus pocas cositas, libros y carticas que en la cárcel son un tesoro. Tal vez el único peligro en ese lujo de sitio que tienes por cárcel es que te caigas de las graditas a la entrada y te peles tus huesitos de la rodilla.

De salud, pues que te digo, un prisionero político acaba de morir, Juan Camilo Lizarazo; duró meses pidiendo que le dieran un servicio médico adecuado a sus dolencias y terminó muriendo. No creo que el director del Inpec y los soldados de la escuela de caballería te dejen morir si te enfermaras. De seguro hasta tu medicina prepagada te sigue cubriendo y no ese engendro de la salud llamado Caprecom que cubre mediocremente a 120.000 presos en todo el país. ¡No hombre, no te quejes!, no tienes ni idea de lo que es una cárcel.

Las visitas ni te digo, solo cada mes, un domingo, un preso común tiene derecho a amar a su mujer, te aseguro que no habrás tenido que acostar a tu mujer en un colchón usado por todos los internos con sus propias mujeres, y no creo que tampoco un guardián te golpee la puerta a la media hora para decirte que el tiempo ha terminado. ¡Solo media hora!. Bueno, a menos que seas eyaculador precoz. Y los hijos, te cuento que los presos comunes solo pueden ver a sus hijos un domingo al mes. A ti, en cambio, te han visto varias veces entre semana con tu familia de visita salir al frente, en el inmenso jardín de tu casa cárcel de lujo, ese que queda cerca de uno de los salones que alquila la escuela de caballería para eventos sociales. ¡Que dura es tu cárceli.

Tampoco te ha tocado un baño típico de una cárcel, de seguro hasta un soldado de nuestra patria te lavará el baño, porque tus vírgenes manos no han cogido en su vida ni un trapito ni una escoba. Tampoco te habrá tocado vivir en celdas de 6 metros cuadrados con 8 personas mas, aguantando olores, droga, pedos y ruidos que trastornan la tranquilidad de cualquier individuo sano; a lo mucho en tus noches te despertarás por alguna indigestión producto de tus lujosas cenas.

Y de la justicia no te quejes, ¿sabes cuánto han durado varios presos políticos en calidad de sindicados? diez, doce años. Lo mas seguro es que alguna de tus oscuras influencias te sacará pronto de la cárcel y lavará tu imagen, además si este país no cambia te veremos de candidato presidencial en unos cuantos años.

Mira también como sales a decir que si dijeras que eres de las Farc te trataría

mismo se destaca profesionalmente en asesorías a diversas empresas del sector privado.

• La mejor arma del opresor es la mente del oprimido
• Miembros del parlamento de Bélgica se suman a petición por el cese al fuego bilateral e inmediato
• ¿Quién está detrás del noticiero insurgente de las Farc-Ep?
• Señores de los medios, los colombianos exigimos de parte de ustedes compromiso con la paz
• Te Cuento desde la Prisión

+ en Colombia

• Gloria Inés Ramírez saluda a la Cumbre Agraria, Campesina, Étnica y Popular
• Sobre la Participación Política de la población civil y su Foro
• Solidaridad con premio nobel ante ataques de Uribe Vélez
• Se viene el Cabildo de Juventud
• Santos anuncia extinción definitiva del DAS en Colombia
• Deuda con la humanidad II. 23 años de falsos positivos (1988-2011)
• Gobierno busca medidas para restituir derechos de la Unión Patriótica
• Luiz Inácio Lula da Silva se suma a la movilización por la paz del 9 de abril

Temas relacionados

Presos políticos

mejor la justicia, pues te cuento que a los guerrilleros de "la far", los del ELN y los defensores de derechos humanos víctimas de falsos positivos, nos han tratado exageradamente mal, no te imaginas cuanto. Pero tenemos una ventaja, hay una cantidad de gente que nos defiende, nos apoya, que hace campañas por nosotros, en fin una solidaridad que envidias por que los de tu clase no te han enviado ni una carta de acompañamiento, ni siquiera la "Jucon": las juventudes conservadoras, han salido en marcha para apoyarte, ¿qué envidia verdad?.

A los presos políticos nos mandan ropa, tarjeticas para llamar, cartas de miles de colombianos que nos quieren, páginas web y eventos por doquier apoyando la libertad de los presos políticos en Colombia y tú sólo tienes una entrevista en Blu radio, y hasta te dieron palo. Ni siquiera tus compañeros del congreso y de la política barata han sido solidarios contigo, así es la vida. Es que la solidaridad es propiedad privada de los de abajo, los de arriba solo tienen intereses, y creo que hasta de eso te has dado cuenta.

Tampoco se te ocurra pedir ingreso a las Farc, por lo que conocí de los guerrilleros en la cárcel, con tu comportamiento lo más probable es que no dures mucho y no tarden en hacerte un consejo de guerra, y ahí si que dirás que prefieres la escuela de caballería.

Por último hombre, no te quejes, sigue disfrutando de este tiempito en ese hotel de lujo que te tocó, mucho mejor que las viviendas de más de la mitad de los colombianos. Estuviste de malas porque muchos como tu están disfrutando de sus torcidos y hasta se mueren y nunca responderán por sus cochinadas.

Mientras tanto, nosotros los verdaderos prisioneros políticos, aun en peores condiciones pero con una solidaridad tan bonita cercana a la ternura, resistimos para sobrellevar este infierno exclusivo únicamente para los hombres dignos.

Un abrazo de paz.

R.

M. Agricultura de Álvaro Uribe Vélez Andrés F. Arias, fue CONDENADO tras escándalo Agro Ingreso Seguro

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REFERENCE: G/SO 215/51 COL (45)
CE/GT/mbe 2537/2015

20 de abril de 2016

Estimado señor:

Tengo el honor de acusar recibo de la información adicional de fecha 18 de abril de 2016, con respecto a la comunicación N° 2537/2015, que usted presentó al Comité de Derechos Humanos, de conformidad con el Protocolo Facultativo del Pacto Internacional de Derechos Civiles y Políticos, en nombre del Sr. Andrés Felipe Arias Leiva.

Una copia de esta información ha sido transmitida al Estado parte, para información.

A la vista de las alegaciones recibidas, el Relator Especial de Nuevas Comunicaciones y Medidas Provisionales, actuando a nombre del Comité, en aplicación del artículo 92 del Reglamento del Comité, decidió solicitar al Estado parte, que considere tomar medidas de protección para prevenir cualquier acto de hostigamiento o amenaza contra su vida y/o integridad personal, en razón de su participación en la comunicación como representante del autor, mientras la misma está siendo examinada por el Comité.

Esta solicitud no tiene ninguna consecuencia en relación con futuras decisiones del Comité sobre la admisibilidad o el fondo de la comunicación.

Le saluda atentamente,

Ibrahim Salama
Director
División de Tratados de Derechos Humanos

Señor
Víctor Javier Mosquera Marín
Carrera 71A N 50-30
CAP 111071
Bogotá, Colombia
victormosqueramarin@gmail.com
contacto@derechosyjusticia.com.co

T.

MuerteAUribe
@MuereUribe

@williamhhhh @TwitterEspanol Porque no hay ningún delito en amenazar o matar uribists, es legal, es legítima defensa porque son paracos.

12/26/16 1:29 PM

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U.

Fui notificado por el Gobierno de una sentencia de muerte: Fernando Londoño

NACIONAL POLÍTICA

Enero 11, 2017 - 11:46 Am - Tags: Fernando Londoño, Gobierno, Sentencia De Muerte


Foto: Colprensa - Raul Palacios

El exministro Fernando Londoño Hoyos criticó fuertemente al Gobierno nacional por haber reducido su esquema de seguridad y aseguró que esa decisión prácticamente ya lo condenó a muerte.

En su programa La Hora de la Verdad, Londoño dijo que el servicio que le prestaba la Policía Nacional era crucial por la experiencia que los hombres de esa institución tienen en el cuidado de las personas en riesgo.

"Le quiero decir al Gobierno nacional que me he dado por notificado a una sentencia de muerte contrariando el artículo 11 de la Constitución. Pero que no

"Chucky"

A UN CLIC
ENTRETENIMIENTO

Enero 10, 2017
Sofía Vergara respondió a las críticas por broma en los Globo de Oro

A UN CLIC
ENTRETENIMIENTO

Enero 10, 2017
Hermano de Kim Kardashian estaría vinculado al robo de joyas de la actriz

A UN CLIC
ENTRETENIMIENTO

Enero 10, 2017
No tengo dudas de que ya estoy en la historia del fútbol: Cristiano Ronaldo

A UN CLIC
DEPORTES FÚTBOL

me doy por vencido, que no me entrego, que no me doy en fuga, que daré la cara y que seguiré cumpliendo con mi deber", señaló.

De igual forma, el exministro Londoño dijo tener información de que los hombres que tiene asignados por la Unidad Nacional de Protección están siendo utilizados también como escoltas de las Farc.

"Están infiltrados y ya están siendo obligados en mis ausencias a servirle de escoltas a los miembros del Secretariado de las Farc cuando llegan a Bogotá. Mis escoltas, escoltan también a los miembros del Secretariado de las Farc", manifestó.

Fernando Londoño también deja entrever que el director de la UNP, Diego Mora, habría acordado con las Farc la reducción de los esquemas de seguridad en el país para garantizar la protección de los guerrilleros.

Noticias Relacionadas

Denuncian reducción del esquema de seguridad a Fernando Londoño

No tengo ambiciones políticas: exministro Fernando Londoño

Condenan a 56 años de cárcel a autor de atentado contra exministro Fernando Londoño

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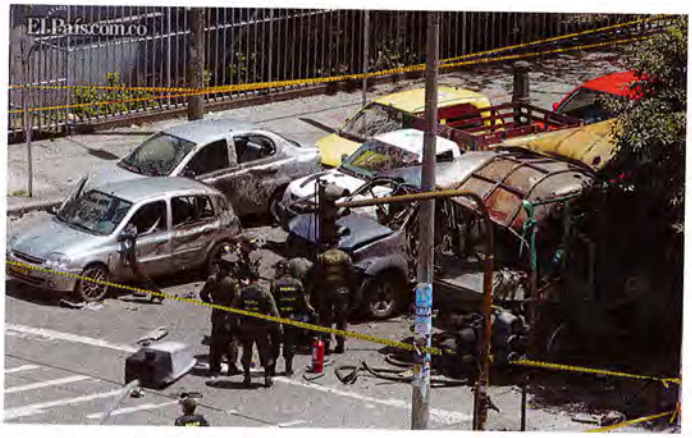
ENERO 11, 2017

Así fue el atentado contra ex ministro del Interior Fernando Londoño

Martes, Mayo 15, 2012 | Autor: Elpais.com.co | Colprensa



(/elpais/sites/default/files/2012/05/colombia-explosion_spanxrm1.jpg)

Panorama tras el atentando contra el ex ministro Fernando Londoño, ocurrido el 15 de mayo en Bogotá.
Agencia EFE

Este martes en su programa matutino 'La hora de la verdad', de la cadena Súper, el exministro Fernando Londoño, dedicó su ya tradicional editorial al debate sobre el marco jurídico para la paz.

"Lo que avanzará hoy, y dará un paso de gigante hacia su aprobación en el Congreso, es la impunidad total para las Farc. Las Farc hoy celebrarán un acuerdo con el presidente de la República" , sostuvo Londoño. Casi tres horas más tarde era víctima de un atentado

Videos Relacionados

Video: primeras imágenes del atentado en el norte de Bogotá

(http://www.elpais.com.co/elpais/atentado-en-bogota/videos/primeras-imagenes-del-atentado-en-norte-bogota)

Fotos Relacionadas

Impresionantes imágenes del atentado en el norte de Bogotá

(/elpais/cali/fotos/impresionantes-imagenes-del-atentado-en-norte-

(http://www.elpais.com.co/elpais/judicial/noticias/fernando-londono-encuentra-estable-dice-director-clinica-country) al parecer perpetrado por esa guerrilla.

Ocurrió poco antes de las once de la mañana, en una esquina del barrio San Felipe, en el norte de Bogotá. A esa hora el carro de Londoño llegó hasta la esquina de la calle 74 con avenida Caracas y el semáforo cambió a rojo. El cruce es obligado para quienes quieren alcanzar dos de las vías más importantes de la capital de la República: la quince y la séptima.

Junto al vehículo del ex ministro había una buseta perteneciente a la empresa La Nacional de Transportes, de número interno 3574 y placas SIG 125. Además, habían seis vehículos más esperando a cruzar la Caracas. Todos resultaron afectados por el artefacto explosivo ubicado sobre el vehículo blindado de Londoño.

¿Pero cómo lograron la colocación del artefacto sin que los escoltas se percataran del mismo? Dos hipótesis se tejieron sobre el hecho. La primera daba cuenta de que sería un artefacto lanzado contra el automotor por un hombre que se había bajado de la buseta y luego huyó hacia el sur.

Tal teoría fue descartada hora y media después de haberse perpetrado el hecho. Por lo que se dio paso a la segunda conjetura y sobre la que ahora trabajan las autoridades. De acuerdo con los expertos en explosivos se trata de una bomba conocida como lapa (ver recuadro) , la cual fue dejada por un sujeto que estaba en la esquina noroccidental a la espera del carro de Londoño.

De allí que se presuma que **el atentado fue preparado con tiempo. Sabían la ruta del ex ministro, los tiempos en los que se movía, el tipo de blindaje del carro por lo que determinaron qué tipo de explosivo emplear para causar el mayor daño posible.**

Pánico en la mañana

En la madrugada del martes Bogotá se despertó con miedo. Sobre las cinco mañana, en el barrio Eduardo Santos, céntrico sector de Bogotá, las autoridades interceptaron un vehículo que estaba cargado con 130 barras de indugel, explosivo de alto poder. Después de la desactivación, el general Luis Eduardo Martínez, comandante de la Policía Metropolitana, dijo que desde el lunes habían recibido información sobre la presencia de un carro con explosivos en la ciudad.

"Una fuente humana nos alertó y nos previno de lo que podría suceder", sostuvo Martínez al tiempo que advirtió que se detuvo una persona, identificada como Mario Tulio Ochoa Montiel, que estaría involucrada en los hechos.

A esa hora de la mañana, poco después de las siete, unidades de la Sijín expertas en el manejo de explosivos se trasladaron hacia la diagonal cuarta con carrera 18, donde hallaron el automotor.

bogota)

Notas Relacionadas

No se sabe quién atentó contra Londoño, sostiene el Gobierno

(http://www.elpais.com.co/elpais/judicial/noticias/confirma-farc-sean-responsables-del-atentado-contra-londono)

Ex ministro Fernando Londoño sobrevive a atentado

(http://www.elpais.com.co/elpais/judicial/noticias/fuerte-explosion-en-bogota-deja-menos-dos-personas-heridas)

"Atentado en Bogotá es un intento para desestabilizar coalición del presidente Santos"

(http://www.elpais.com.co/elpais/judicial/noticias/atentado-en-bogota-intento-para-desestabilizar-coalicion-del-presidente-santos)

Perfil del exministro del Interior y de Justicia, Fernando Londoño Hoyos

(http://www.elpais.com.co/elpais/judicial/noticias/perfil-del-dexministro-del-interior-y-justicia-fernando-londono-hoyos)

Fernando Londoño se encuentra estable, dice director de Clínica Country

(http://www.elpais.com.co/elpais/judicial/noticias/fernando-londono-encuentra-estable-dice-director-clinica-country)

Así es la bomba que habría sido usada en el atentado contra el ex ministro Londoño

(http://www.elpais.com.co/elpais/colombia/noticias/asi-bomba-habria-sido-usada-en-atentado-contra-ex-ministro-londono)

A ese momento se pensaba que el artefacto sería una especie de retaliación contra el Gobierno por la entrada en vigencia del Tratado de Libre Comercio con los Estados Unidos, por lo que las autoridades se quedaron en el sector tratando de verificar la presencia de otros artefactos.

Sobre este particular, cabe resaltar dos conjeturas. La primera, que llama la atención de que el carro haya sido abandonado en el barrio que lleva el nombre del tío abuelo del presidente Juan Manuel Santos por lo que en su momento se relacionó con el tema del TLC. Segundo, las unidades antiexplosivos al parecer fueron objeto de una distracción y fueron movilizados a ese sector mientras se preparaba el atentado del norte contra Londoño.

Miedo en el norte

Los testigos que entregaron su declaración ante las autoridades dieron cuenta del hombre que estaba sobre la esquina noroccidental haciéndose pasar por vendedor ambulante. Entre su indumentaria estaba una gorra (cachucha) gris que tenía pegada una peluca de trenzas. Así se evidenció luego de que en la escena del crimen fuera hallado el accesorio y del que seguramente saldrán muchas pistas.

Tan pronto llegó el carro de Londoño al semáforo, el sujeto se acercó rápidamente y le instaló la bomba. Luego salió hacia la Caracas donde lo esperaba una moto en la cual salió hacia el sur con rumbo hasta ahora desconocido.

Así quedó registrado en un video de una cámara de seguridad de una ferretería del sector y otro de una vigilancia de la Policía. Sobre este material trabajan las autoridades para individualizar al sujeto.

Apenas el sujeto subió la moto, vino la explosión que dejó el saldo de 51 heridos y dos personas muertas que son el intendente Rosemberg Burbano Ramos (http://www.elpais.com.co/elpais/judicial/noticias/intendente-policia-victimas-del-atentado-contra-londono), del cuerpo de escoltas de Londoño, y José Ricardo Rodríguez, el conductor del ex ministro.

El explosivo empleado fue el conocido como C4 y se estima que pudo ser cerca de un kilo el que prácticamente acabó con la camioneta del exministro, dejó daños materiales en la zona y un pánico como hace mucho tiempo no se vivía en la capital de la República.

Las heridas que le provocaron a Londoño obligaron a una intervención quirúrgica la cual se practicaba en el mismo momento en que en el Senado se discutía el Marco Legal para la Paz, el cual a juicio del exministro "es la impunidad total para las Farc".

¿Qué es la bomba lapa?

Un potente imán, dos carcazas y el material explosivo son los componentes de la bomba tipo lapa como la que le instalaron al vehículo del exministro Fernando Londoño Hoyos en la mañana de este martes. Uno de los grupos guerrilleros que empleaba esta práctica era ETA, de España, quien por lo general ubicaba el artefacto debajo de la silla del conductor o muy cerca del tanque de gasolina.

Expertos en el tema de explosivos señalan que una de las formas de activación puede ser mediante un péndulo que al momento en que el vehículo esté en marcha se mueva para activar un detonador ubicado sobre una de las carcazas. Esta modalidad requiere de mayor tiempo de instalación.

Otra forma de detonación es mediante una activación a distancia. Y, al parecer, fue la que se empleó en el caso del atentado en Bogotá. Es uno de los más habituales por lo que quien la activa puede ver la explosión del artefacto la cual se da una vez se coloque el dispositivo en el vehículo.

CONTINÚA **LEYENDO**

Así funcionará el esquema de seguridad para las Farc cuando se firme la paz

Dos muertos, evacuados y Dakar alterado por alud en Argentina

Ya se pueden reclamar los recibos del predial

Fernando Londoño se encuentra estable, dice director de Clínica Country

COMENTARIOS

POLÍTICA 28 AGO 2012 - 11:30 PM

Farc habrían pagado $1.000 millones para que se ejecutara el crimen

Atentado contra Fernando Londoño, ¿otra alianza siniestra?

Las autoridades capturaron a cinco supuestos miembros de una banda criminal que habría sido contratada por las Farc para atentar contra el exministro.

Por: Redacción Judicial

El atentado contra el exministro Fernando Londoño, ocurrido en mayo en Bogotá, causó la muerte de dos personas y heridas a otras 51, entre ellas, el mismo Londoño. / Jaime Caicedo

EL ESPECTADOR

Política | Mar, 08/28/2012 - 23:30

Atentado contra Fernando Londoño, ¿otra alianza siniestra?

Por: Redacción Judicial

Las autoridades capturaron a cinco supuestos miembros de una banda criminal que habría sido contratada por las Farc para atentar contra el exministro.

Una alianza siniestra entre las Farc y la criminalidad estaría detrás del atentado contra el exministro Fernando Londoño, ocurrido el 15 de mayo en Bogotá. Esa organización guerrillera habría pagado $ 1.000 millones a una banda criminal en Cali para que perpetrara el crimen. Esa es la hipótesis que maneja la Fiscalía después de que las autoridades confirmaran las capturas de cinco presuntos implicados en el ataque, que dejó como saldo dos muertos y 51 heridos.

El Espectador conoció que una mujer conocida bajo el alias de Zuley, junto con su esposo, maneja esta oficina de cobro que intenta hacerle competencia a la de Envigado. De hecho, fuentes consultadas afirmaron que controla buena parte de las negociaciones de la mafia en Buenaventura y el sur del país, con conexiones estratégicas con enlaces del capo Daniel El Loco Barrera y el llamado bloque Sur de la subversión. Tal parece que la columna móvil Teófilo Forero de las Farc subcontrató con la organización de Zuley la realización del atentado. Para eso escogió a cinco jóvenes –dos de ellos menores– en Cali, a quienes entrenó durante dos meses en el manejo de explosivos.

A Bogotá llegaron en el mes de marzo, se alojaron en casas de la organización de Zuley y sólo

una semana antes del atentado al exministro Londoño les dicen que él iba a ser su objetivo. El fiscal general Eduardo Montealegre comentó que los detenidos, aprehendidos durante operativos del CTI y la Dijín en Bogotá, Cali y Cauca, hacían parte de una red delincuencial con conexiones con la mafia. Entre los capturados está alias Piloto o Carne, quien habría sido el encargado de poner la bomba lapa en el costado izquierdo del carro blindado en que se movilizaba el exministro.

Según el ministro de Defensa, Juan Carlos Pinzón, aunque Piloto tiene 17 años, "ha participado ya en actividades de microtráfico, porte ilegal de armas, hurto de motocicletas y, al parecer, en algunos homicidios". Él sería el mismo que en los videos de seguridad aparece con una peluca y un disfraz. Al allanar su hogar, las autoridades encontraron varias evidencias que lo incriminarían. El fiscal Montealegre aseveró que "la legislación en estos casos permite que se le imponga una pena privativa, pero el sitio de reclusión tiene que ser especial".

Para las autoridades uno de los jefes de esta oficina de cobro es Diego Fernando Tabares, alias Lucho quien se encontraba pagando una condena de 34 años de prisión, aunque por supuestos quebrantos de salud gozaba de detención domiciliaria. Tabares posee un extenso prontuario criminal y según la Policía hizo parte de una organización internacional de secuestradores, apodada Los Pelacos (Persecución a Ladrones de Corbata).

Otro indicio de la implicación de la Teófilo Forero en el crimen es el modus operandi. Esta organización guerrillera acostumbra usar explosivos tipo lapa como los que se usaron en el atentado contra Fernando Londoño. Se sabe que paciéntemente monitorearon las rutas del exministro, sus horarios de entrada y de salida a la emisora Radio Súper y hasta quiénes lo visitaban en su casa. Para asegurarse de no cometer error alguno esta organización desplegó informantes y escogió el 15 de mayo para el ataque.

De acuerdo con la investigación de la Fiscalía, los delincuentes que se movieron de Cali a Bogotá fueron recibidos por Ulises Castellanos Beltrán, alias Apu. Él, otro de los capturados, habría sido el encargado de darles las indicaciones finales. Según la Policía, Apu presenta antecedentes por tráfico de armas y receptación de automotores (trafico de carros robados). Al cierre de esta edición las autoridades se preparaban para legalizar las capturas ante jueces de la República. Aunque la Fiscalía no descarta otras hipótesis, la de la alianza siniestra de las Farc y la criminalidad en Cali, sigue siendo la más fuerte. En los últimos años esta organización guerrillera ha estrechado sus lazos con otras mafias.

En regiones como Cauca y Nariño estos nexos son más evidentes. En últimas el narcotráfico como combustible de la guerra. Hoy por hoy los milicianos ya no parecen ser usados para ataques de terroristas. La modalidad que se impone es la de subcontratar estos servicios con bandas criminales. Esta vez, al parecer, fue con la organización de Zuley.

Dirección web fuente:
http://www.elespectador.com/noticias/politica/atentado-contra-fernando-londono-otra-alianza-siniestra-articulo-370881

EL ESPECTADOR

Judicial | Mar, 05/15/2012 - 19:49

¿Por qué contra Fernando Londoño Hoyos?

Por: Jorge A. Restrepo, profesor Universidad Javeriana

Londoño no sólo es el símbolo de quienes causaron la derrota a los grupos guerrilleros. Y no es gratuito que esto ocurra con la discusión del marco para la paz.

Desde hace más de tres años no se presentaban atentados terroristas de magnitud en la ciudad. La explosión del martes rompió la sensación de normalidad que desde enero de 2009 se había logrado consolidar en Bogotá: cada vez nos preocupábamos más por reducir la violencia homicida proveniente del crimen organizado y por reducir el crimen común contra la propiedad que por eventuales atentados con explosivos y magnicidios.

Este tipo de ataques, hay que recordarlo, buscan generar un gran impacto en la población, en términos de provocar una gran sensación de inseguridad extrema y, sobre todo, radicalizar las posiciones en torno a grandes decisiones políticas de la sociedad.

El intento de asesinato a Fernando Londoño, una persona que articula de manera elocuente las posiciones más radicales de la centroderecha, que es símbolo del uribismo radical, que es cercano a las Fuerzas Militares y que, al tiempo, es objeto de odio y rutinariamente denigrado por la izquierda, supone grandes beneficios para el radicalismo armado guerrillero como para eventuales terroristas de derecha.

Londoño no sólo es el símbolo de quienes causaron la derrota a los grupos guerrilleros, sino

que también es, desde otra perspectiva, un objetivo potencial de alto valor para quienes quieran desestabilizar el actual arreglo político que gobierna el país: el atentado afecta contundentemente la percepción de la capacidad de proveer seguridad por parte del gobierno Santos: si esto le puede suceder a Londoño, ¿qué no podría pasarle a cualquier otro que esté en oposición del gobierno actual?

En cuanto al momento, no es gratuito que esto ocurra cuando se acerca la culminación de la discusión en el Congreso del marco para la paz, el cual ha sido cuestionado por el radicalismo conservador. Más de uno argüirá que no es necesario este proyecto y mostrará como prueba el atentado.

El terrorismo es pues tremendamente efectivo, pues inmediatamente radicaliza a los ya radicales que buscan cuestionar la estrategia de seguridad de Santos, sus credenciales en materia de lucha contra el conflicto, su misma pertenencia al eje uribista y la misma unidad nacional.

Imagino los reclamos del ala conservadora de la opinión política, exigiendo más seguridad, negar el marco para la paz, más protección, volver a las estrategias de seguridad e incluso venganza contra un ente aún desconocido.

Ojalá los más serenos líderes políticos logren entender que este tipo de reacciones de temperamento logran hacer realidad lo que buscan los terroristas: continuar el conflicto y sustituir el debate parlamentario por posiciones emocionales que cierran la puerta de la negociación por dentro y por varios años.

*Director Centro de Recursos para Análisis de Conflictos.

Dirección web fuente:
http://www.elespectador.com/noticias/judicial/contra-fernando-londono-hoyos-articulo-346485

V.

FARC-EP

No más Álvaro Uribe, no más Centro Democrático. Muerte a los destructores de paz, seguidores y participantes. ¡No más farsas!

Sus calumnias, mentiras, opiniones y escritos en medios de comunicación y redes sociales como TWITTER, generan desinformación y confusión a la población civil fomentando un ambiente nocivo y hostil para la paz.

Los frentes, columnas, compañías y unidades de las FARC-EP, presentes en todo el territorio Colombiano, hemos decidido de manera conjunta que se declare objetivo militar.

Paola Holguín @Paolaholguin

Nicolás Ocampo @Nicocampo20

Pablo Sabogal @Elpablo07

Juan Pablo Echeverry @Jpecheverry

Hassan Nassar @Hassanassar

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Jorge Ramírez Acevedo @Jorgefanidco

Juan Camilo Revelo @Juanreveloj

Ernesto Macías Tovar @Emaciastovar

Los colombianos y colombianas queremos lograr la paz y hemos de recordarles que no respondemos por sus vidas, propiedades y serán nuestro objetivo claro de aquí en adelante. Además les queda totalmente prohibido los proselitismos políticos a favor de Álvaro Uribe Vélez y del partido Centro Democrático. Ustedes son los responsables de la confusión y la mala interpretación de la opinión pública.

Un Zuluaga y un Uribe encabezando la oposición a sus políticas en el senado materializaran la putrefacta naturaleza del régimen político colombiano.

FARC-EP
¡HEMOS JURADO VENCER!... ¡Y VENCEREMOS!
Montañas de Colombia, Agosto de 2014

Fuerzas Armadas Revolucionarias de Colombia - Ejército del Pueblo
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W.

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	Dpto	Mpio	Ent	U. Receptora	Año	Consecutivo

INVESTIGADOR DE CAMPO –FPJ-11-

Este informe será rendido por la Policía Judicial para aquellas tareas puntuales que no sean objeto de informe ejecutivo

Departamento	CUNDINAMARCA	Municipio	BOGOTA	Fecha	12-07-2011	Hora:	1 4 0 0

MT 1909 - 1910
DN.CTI-UPJIF – 615295

1. Destino del informe:

Doctor
JORGE BETANCUR ECHEVERRI
FISCAL 108
CARRERA 50 # 54 – 18, PISO 05.

Conforme a lo establecido en los artículos 209, 255, 257, 261 y 275 del C.P.P. me permito rendir el siguiente informe.

2. Objetivo de la diligencia

(...) inspeccionar el correo electrónico personal del señor ANDRES FELIPE ARIAS LEIVA, a partir de los mensajes amenazantes que ha venido recibiendo. Se ubica al señor ARIAS LEIVA a través de los números telefónicos 3175153563 – 0916947384 – 3187954899 (...).

3. Dirección en donde se realiza la actuación

Calle 47 # 13-59 piso 02, edificio postgrados Universidad Católica de Colombia
Diagonal 22B # 52-01 Edificio (T) piso 01, Unidad de Delitos Informáticos

4. Actuaciones realizadas

- Inspección cuenta de twitter del señor Andres Felipe Arias Leiva, correspondiente a @AndresFArias_.
- Extracción mensajes cuenta de twitter del señor Andres Felipe Arias Leiva, correspondiente a @AndresFArias_.
- Se ingresa a twitter y se descarga una copia de los mensajes cuenta de usuario @SantiagoParadaT.

5. Toma de muestras

No. de EMP y EF	Sitio de recolección	Descripción de EMP y EF
01	Diagonal 22B # 52-01 Edificio (T) piso 01, Unidad de Delitos Informáticos	Un (01) CD-R marca PRINCO, identificado en el anillo central con el serial P3280202085903Y1 y marcado en manuscrita "mensajes twitter cuenta @AndresFArias_ NUNC 050016000206201069445"
N/A	**N/A**	**N/A**
N/A	**N/A**	**N/A**

Nota: En el evento en que se recolecten EMP o EF, inicie los registros de cadena de custodia.

6. Descripción clara y precisa de la forma, técnica e instrumentos utilizados

El día 07 de julio de 2011 se hace presencia en la oficina del señor ANDRES FELIPE ARIAS LEIVA identificado con C.C. 98.563.388 de ENVIGADO (ANTIOQUIA), ubicada en la calle 47 # 13-59 piso 02 con el propósito de realizar inspección a la cuenta en twitter correspondiente a @AndresFArias_ y extraer los mensajes que originaron el interponer la denuncia que se investiga.

Durante la inspección que se pretende realizar, el señor ANDRES FELIPE ARIAS indica que en la cuenta de correo electrónico personal (afalfirme@gimail.com) tiene almacenados los link hacia los mensajes que según el denunciante contenían amenazas, estos se listan a continuación:

Diciembre 28: http://twitter.com/#!/SantiagoParadaT/status/19927545008885761

Febrero 9: http://twitter.com/#!/SantiagoParadaT/status/35327895412936704

- Se accede al vínculo http://twitter.com/#!/SantiagoParadaT/status/19927545008885761, se toma una impresión de pantalla de lo que se visualiza

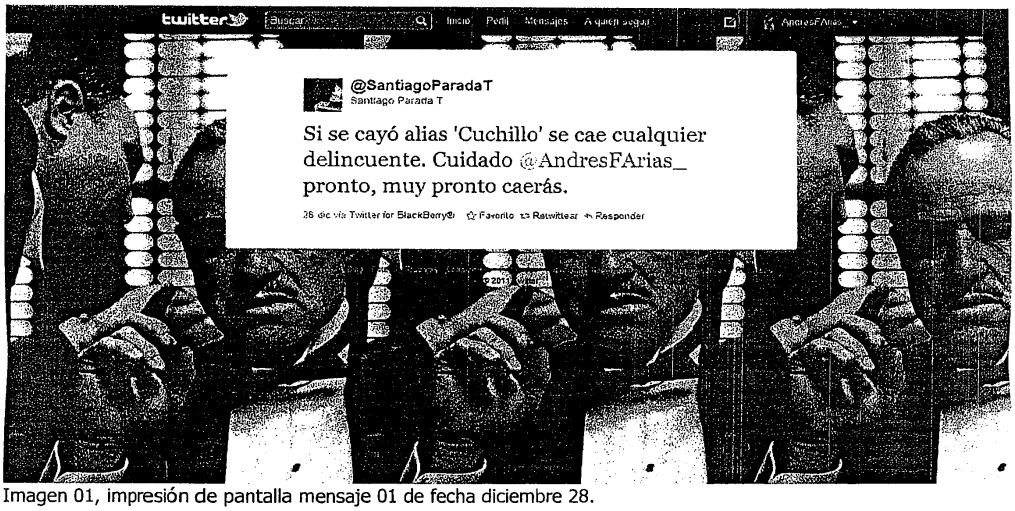

Imagen 01, impresión de pantalla mensaje 01 de fecha diciembre 28.

Se extrae el contenido del mensaje y se presenta a continuación:

Si se cayó alias 'Cuchillo' se cae cualquier delincuente. Cuidado @AndresFArias_pronto, muy pronto caerás.

Tal como se puede observar en la anterior imagen, este mensaje fue enviado desde la cuenta de twitter @SantiagoParadaT y presenta fecha del 28 de diciembre.

- Se accede al vínculo http://twitter.com/#!/SantiagoParadaT/status/35327895412936704 y se toma una impresión de pantalla de lo que se visualiza

Imagen 02, impresión de pantalla mensaje 02 de fecha febrero 9.

Se extrae el contenido del mensaje y se presenta a continuación:

@AndresFArias_ donde se esta escondiendo dr. Arias?

Tal como se puede observar en la anterior imagen, este mensaje presenta fecha del 9 de febrero y fue enviado desde la cuenta de twitter @SantiagoParadaT, en respuesta al "trino" o mensaje de @AndresFArias citando "comparto mi columna en El Tiempo con ustedes http://bit.ly/gJaFz8"

Se guarda la imagen (avatar) con que se encuentra la cuenta de usuario @SantiagoParadaT y se muestra a continuación:

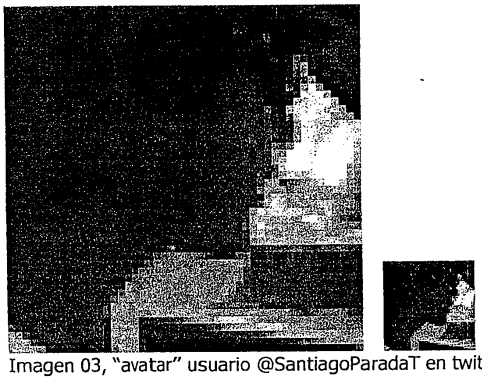

Imagen 03, "avatar" usuario @SantiagoParadaT en twitter

Debido a que cuando se cierra una cuenta en twitter, los mensajes no son accesibles, es decir que los links suministrados por el señor ANDRES FELIPE ARIAS LEIVA durante la inspección no se lograrían ver, por lo anteriormente descrito es que se ingresa a los enlaces aportados que corresponden a http://twitter.com/#!/SantiagoParadaT/status/19927545008885761 y

...p://twitter.com/#!/SantiagoParadaT/status/35327895412936704 , se guarda copia del contenido de estos como páginas web, este mismo procedimiento se realiza con el enlace http://bit.ly/gJaFz8, que muestra un artículo online de EL TIEMPO; finalmente se busca el perfil @SantiagoParadaT en twitter y se guardan una copia de éste en el que se muestran los mensajes generados desde el 15 de enero hasta el 11 de julio de 2011, se genera el código hash Md5 de cada uno de estos archivos, el resultado de esta actividad se presenta en la siguiente tabla:

HASH MD5	NOMBRE DE ARCHIVO / UBICACION
9cb55f083b6e21c1bc8564eb1d271cb9	7616_166876701277_609511277_4099091_4125947_n_normal.jpg
519faaae67ca34f2453ada081dc4d8a7	Los hechos.htm
640700ad5573a00250af25ba7bd38243	Santiago Parada T (SantiagoParadaT) en Twitter.htm
259bd2511e92ff019774291783b4defa	Twitter @SantiagoParadaT @AndresFArias_ donde se es ....htm
f50e344692007eb05a7b4e17801f1248	Twitter @SantiagoParadaT Si se cayó alias 'Cuchillo ....htm

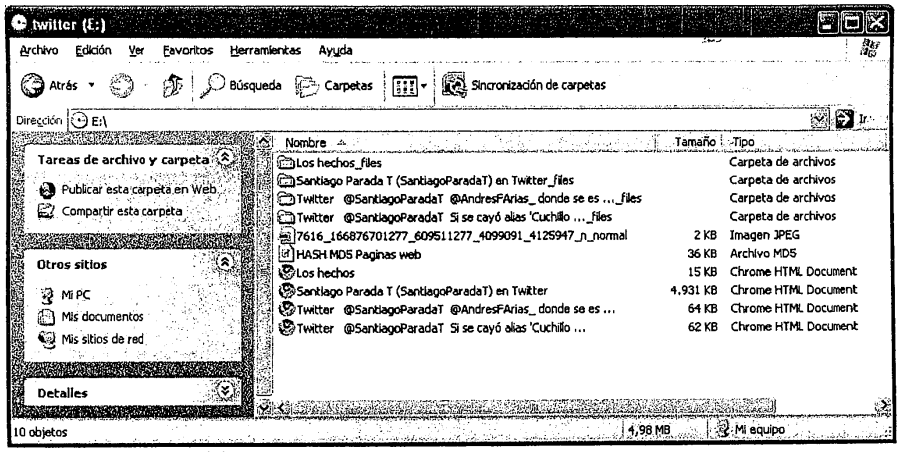

Imagen 04, contenido del CD-R

Los diferentes archivos posteriormente son grabados en el CD-R marca PRINCO, identificado en el anillo central con el serial P3280202085903Y1 y marcado en manuscrita "NUNC 05001600020620106944 5 mensajes twitter cuenta @AndresFArias_". Finalmente, este medio de almacenamiento magnético es debidamente embalado, rotulado y se inicia la respectiva cadena de custodia.

Dentro de la configuración que ofrece twitter NO contempla la opción de recibir notificaciones en el buzón de correo electrónico cuando se reciben este tipo de mensajes, esto se puede comprobar en la opción configuración de la cuenta de twitter.

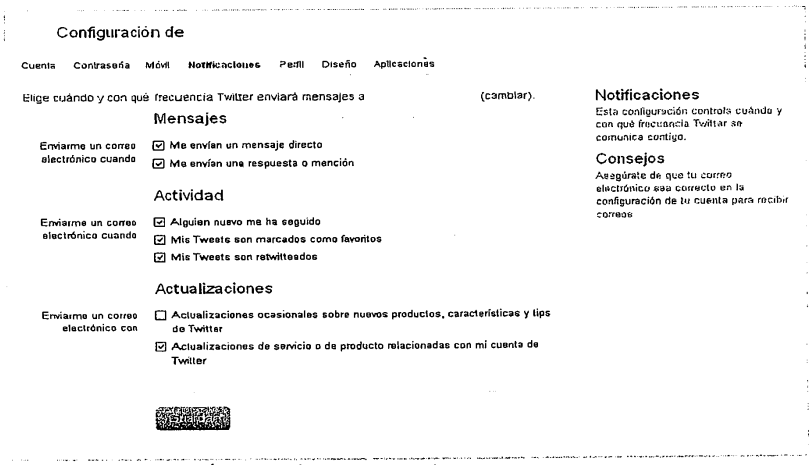

Imagen 05, configuración de Notificaciones en twitter.

7. Resultados de la actividad investigativa (Descripción clara y precisa de los resultados)

El día 07 de julio de 2011 se hace presencia en la oficina del señor ANDRES FELIPE ARIAS LEIVA, ubicada en la calle 47 # 13-59 piso 02 lugar donde se realiza inspección a la cuenta en twitter correspondiente a @AndresFArias_, en la cual –según lo indicado por el denunciante- ha recibido mensajes amenazantes, aportando los enlaces o link de estos mensajes, tomando impresión de pantalla de los mismos, se ingresa a los enlaces aportados (http://twitter.com/#!/SantiagoParadaT/status/19927545008885761 y http://twitter.com/#!/SantiagoParadaT/status/35327895412936704), donde se puede establecer que estos mensajes fueron enviados por twitter utilizando la cuenta de usuario @SantiagoParadaT

Se guarda como página web el contenido de los enlaces listados anteriormente, este proceso también se realiza con el enlace que se muestra en uno de los mensajes http://bit.ly/gJaFz8 y a la cuenta de usuario @SantiagoParadaT. Los diferentes archivos generados se graban en el CD-R marca PRINCO, identificado en el anillo central con el serial P3280202085903Y1 y marcado en manuscrita "NUNC 050016000206201069445 mensajes twitter cuenta @AndresFArias_". Finalmente, este medio de almacenamiento magnético es debidamente embalado, rotulado y se inicia la respectiva cadena de custodia.

Es de aclarar que este tipo de mensajes NO genera ningún tipo de notificación en la cuenta de correo electrónico con la cual esta creada la cuenta en twitter; motivo por el cual en este momento no es posible determinar la dirección IP desde la cual se han originado los mensajes

Nota: En este punto Indique el destino de los EMP y EF si los hubiere

El disco compacto CD-R marca PRINCO, identificado en el anillo central con el serial P3280202085903Y1 y marcado en manuscrita "NUNC 050016000206201069445 mensajes twitter cuenta @AndresFArias_", es debidamente embalado, rotulado y se inicia la respectiva cadena de custodia, finalmente se entrega adjunto al presente informe de campo.

8. Anexos:

- Seis (06) folios, resultado acta de inspección adelantada el 07 de julio de 2011 a la cuenta en twitter @AndresFArias_
- Un (01) CD-R marca PRINCO, identificado en el anillo central con el serial P3280202085903Y1 y marcado en manuscrita "NUNC 050016000206201069445" mensajes twitter cuenta @AndresFArias_, junto a la respectiva cadena de custodia.

Sugerencias:

Con el propósito de determinar la dirección IP desde la cual se enviaron los mensajes, se sugiere al despacho del señor fiscal que se solicite por medio de carta rogatoria ante la oficina de relaciones exteriores para que se haga el contacto con la oficina de twitter que reporte la(s) dirección(es) IP utilizada(s) para realizar la conexión desde la cuenta @SantiagoParadaT hacia @AndresFArias_ originando los mensajes descritos en el presente informe de campo.

9. Servidor de Policía Judicial:

Entidad	Código	Grupo de PJ	Servidor	Identificación
C. T. I.	11716	DELITOS INFORMATICOS	WILINGTON ALVAREZ ESPITIA	80.159.162
C.T.I	7560	DELITOS INFORMATICOS	JHONY JAIRO MONTOYA PULGARIN	18.506.904

Firma,

Nota: En caso de requerir más espacio para diligenciar alguna de estas casillas, utilice hoja en blanco anexa, relacionado el número de Noticia criminal.

X.

Libertad y Orden

República de Colombia

Unidad Nacional de Protección

Bogotá, D.C.01 Octubre 2013

Ref: ST-C14418 -13

COMUNICACIÓN
VALIDACION ESTUDIO DE NIVEL DE RIESGO EXTRAORDINARIO

PARA **ANDRES FELIPE ARIAS LEIVA**
Dirección BOGOTA, D.C. BOGOTA, D.C. CALLE 121 N° 3a-20 APTO 611 BARRIO
USAQUEN 3175153563

Municipio - Departamento

DE: Secretaría Técnica
Comité de Evaluación de Riesgo Y Recomendación de Medidas – CERREM

Respetado (a) Señor (a) ANDRES FELIPE ARIAS LEIVA

Cordial saludo,

La Unidad Nacional de Protección actuando dentro del marco normativo previsto en el Decreto 4912 del 26 de diciembre 2011, parcialmente modificado y adicionado por el Decreto 1225 del 12 de Junio de 2012, se permite comunicarle que el resultado de su estudio de nivel de riesgo fue ponderado y posteriormente validado como EXTRAORDINARIO, determinación a la cual se llegó teniendo en cuenta las indagaciones, verificaciones y labor de campo hechas por personal calificado que hace parte de la UNP, insumo con el cual se hizo el diligenciamiento del Instrumento Estándar de Valoración de Riesgo, matriz creada por el Ministerio del Interior y de Justicia y encontrada adecuadamente concebida para valorar el riesgo en casos individuales por la Corte Constitucional mediante el Auto 266 de 2009, con base en la cual el Grupo de Valoración Preliminar analizó su situación de riesgo y la remitió al Comité de Evaluación de Riesgo y Recomendación de Medidas – CERREM, el cual contando con quorum deliberatorio y decisorio validó el nivel ponderado.

En el mismo sentido, la Unidad Nacional de Protección, cumpliendo con las responsabilidades que le fueron asignadas de acuerdo con lo dispuesto por el artículo 28 del mencionado Decreto y en particular con el compromiso de *"Presentar, ante el Cerrem el caso con las recomendaciones sobre el nivel de riesgo y de medidas, sugeridas por el Grupo de Valoración Preliminar a fin de que se determine el nivel de riesgo"*, por intermedio de la Secretaría Técnica, llevó su caso ante el órgano colectivo –CERREM- conformado de acuerdo con los artículos 36 y 37 del precitado Decreto, en sesión del día 27 agosto de 2013, siendo miembros permanentes del mismo los siguientes:

- El Director de la Dirección de Derechos Humanos del Ministerio del Interior, quien lo presidirá o su delegado

- El director del Programa Presidencial de Derechos Humanos y DIH, o quien haga sus veces o su delegado.
- El Director de la Unidad Administrativa Especial de Atención y Reparación Integral a las Victimas o su delegado.
- El Director de Protección y Servicios Especiales de la Policía Nacional o su delegado.
- El Coordinador de la Oficina de Derechos Humanos de la Inspección General de la Policía Nacional o su delegado.

E invitados permanentes los siguientes:

- Un delegado del Procurador General de la Nación.
- Un delegado del Defensor del Pueblo.
- Un delegado del Fiscal General de la Nación.
- Un delegado del Alto Comisionado de las Naciones Unidas para los Derechos Humanos.
- Un delegado del Alto Comisionado de las Naciones Unidas para los Refugiados ACNUR, cuando se trate de población desplazada.
- Cuatro (4) delegados de cada una de las poblaciones objeto del Programa de Prevención y Protección, quienes estarán presentes exclusivamente en el análisis de los casos del grupo poblacional al que pertenecen.

Por su parte el Comité de Evaluación de Riesgo y Recomendación de Medidas –CERREM-, cumpliendo con las funciones que le fueron asignadas de acuerdo con el artículo 38 del Decreto 4912 de 2011, contando con quórum deliberatorio y conforme con lo dispuesto en el numeral 2° del precitado artículo, validó la información suministrada por el Grupo de Valoración Preliminar y en su caso particular determinó que en virtud del resultado del estudio de nivel de riesgo el cual fue ponderado como EXTRAORDINARIO, debe ser beneficiario de medidas del Programa de Protección liderado por la Unidad Nacional de Protección. Lo anterior teniendo en cuenta el considerando y el artículo 1° del Decreto 4912 que dispone: *"Organizar el Programa de Prevención y Protección de los derechos a la vida, la libertad, la integridad y la* ***seguridad de personas, grupos y comunidades que se encuentran en situación de riesgo extraordinario o extremo*** *como consecuencia directa del ejercicio de sus actividades o funciones políticas, públicas, sociales o humanitarias, o en razón del ejercicio de su cargo, en cabeza de la Unidad Nacional de Protección, la Policía Nacional y el Ministerio del Interior"* (subraya y negrilla fuera del texto).

Las medidas que fueron recomendadas por parte de los miembros con voz y voto del CERREM, órgano interinstitucional conformado por los funcionarios previamente descritos, atendiendo a su situación de riesgo consisten en:

MEDIDA	TEMPORALIDAD

UNP: Ratificar un (01) vehículo blindado en cabeza del señor Arias y hacer extensivo su servicio al núcleo familiar	Por doce (12) meses, a partir del 27 de agosto de 2013

Aclarando que dichas medidas solo podrán ser modificadas cuando exista una variación de las situaciones que generaron el nivel de riesgo (Cfr. Art. 40 Par 3°); estos hechos que a consideración del beneficiario generan una variación en el nivel de riesgo, deberán ser radicados en la Unidad Nacional de Protección diligenciando el formulario de inscripción para el programa de prevención y protección y estarán sujetos al procedimiento ordinario descrito en el artículo 40 del Decreto 4912 de 2011.

De conformidad con lo anterior y teniendo en cuenta la modificación hecha por el artículo 7° del Decreto 1225 de 2012 al numeral 8° del artículo 40 del Decreto 4912 de 2011, que en su texto definitivo dispone: *" El contenido o parte del contenido del acto administrativo de que trata el numeral anterior será dado a conocer al protegido mediante comunicación escrita de las medidas de protección aprobadas"*, la Unidad Nacional de Protección le comunica que con fundamento en la validación de su estudio de nivel de riesgo, las medidas a implementar son las previamente descritas, las cuales fueron adoptadas por el Director de la Unidad Nacional de Protección, mediante Resolución N° 225 de fecha 26deseptiembre 2013, atendiendo a las recomendaciones hechas por parte del CERREM.

En caso de requerir información acerca del estado de la implementación o de los requisitos para la ejecución de la (s) medida (s) comunicada (s) en el presente documento, por favor comuníquese con los funcionarios relacionados a continuación, teniendo en cuenta la población objeto de la cual usted haga parte.

POBLACIÓN	FUNCIONARIO SUBDIRECCIÓN DE PROTECCIÓN	CORREO ELECTRÓNICO	TELÉFONO
Alcaldes y Concejales	Otoniel Cely Gómez María Oyola Chavez	otoniel.cely@unp.gov.co maria.oyola@unp.gov.co	(571) 4269800 EXT. 9279 (571) 4269800 EXT. 9288
Mujeres, Diputados, Desplazados	Wiston Rodríguez	wiston.rodriguez@unp.gov.co	(571) 4269800 EXT. 9250
Funcionarios y Ex funcionarios públicos, Gobernadores e Indígenas	Ana María Acosta	ana.acosta@unp.gov.co	(571) 4269800 EXT. 9213

UP-PCC y Periodistas	Yamile Triana	yamile.triana@unp.gov.co	(571) 4269800 EXT. 9251
Sindicalistas	Pablo Cesar Gutierrez	pablo.gutierrez@unp.gov.co	(571) 4269800 EXT. 9243
Lideres de Restitución de Tierras	Nelson David Pescador	nelson.pescador@unp.gov.co	(571) 4269800 EXT. 9278
Otras poblaciones Artículo 6 – Decreto 4912 de 2011	Carlos Andrés Bernal	carlos.bernal@unp.gov.co	(571) 4269800 EXT. 9284

Por último, es pertinente informar que frente a la presente no procede recurso alguno, por tratarse de un acto de trámite que comunica los efectos de la voluntad de la administración (1-2), de acuerdo con lo dispuesto por el artículo 75 de la Ley 1437 de 2011, por la cual se expidió el Código de Procedimiento Administrativo y de lo Contencioso Administrativo.

Atentamente,

Cristian Francisco Pulido Acuña
Secretaría Técnica Cerrem

Proyectó: Farid Chemas

[1] Consejo de Estado. Sala de lo Contencioso Administrativo. Sección Segunda. Bogotá, D.C. Sentencia 9 de marzo de 1995. Expediente 9868.
[2] Consejo de Estado. Sala de lo Contencioso Administrativo. Sección Segunda. Sentencia de 3 de marzo de 1980. Expediente 3498.

	INSTRUCTIVO ACTA ENTREGA MEDIO DE COMUNICACION	**Código:** GMP-FT-10	
		Versión: 01	
	GESTIÓN DE MEDIDAS DE PROTECCIÓN	**Fecha:** 09 de Octubre de 2012	
	UNIDAD NACIONAL DE PROTECCIÓN -UNP-	**Página:** 1 de 1	

No.52

FECHA DE ENTREGA: 10/7/2013

DATOS DEL BENEFICIARIO

APELLIDOS Y NOMBRES BENEFICIARIO	Nº DOCUMENTO
ARIAS LEIVA ANDRES FELIPE	98563386

ORGANIZACIÓN A LA QUE PERTENECE	DEPARTAMENTO	MUNICIPIO
Dirigentes o activistas de grupos políticos	CUNDINAMARCA	BOGOTA

MEDIDA	GRUPO POBLACIONAL	No ACTA	FECHA ACTA	TEMPORALIDAD
CELULAR	Dirigentes o activistas de grupos políticos	RES 225	8/27/2013	12

DATOS DEL EQUIPO

MARCA	MODELO	IMEI	SIM	LINEA
OT-296	ALCATEL	013123008339835	57101001302542124	3208391303

ESPECIFICACIONES DEL PLAN

El plan es de 150 minutos al mes para uso a cualquier destino fijo o celular, no acumulables y comunicación ilimitada dentro del NIT de la Unidad Nacional de Protección, servicio de atención *611, identificador de llamadas.

CONDICIONES DE USO

La Unidad Nacional de Protección entrega el medio de comunicación en calidad de préstamo y por recomendación del Comité de Evaluación de Riesgos Y Recomendación De Medidas– CERREM, bajo las siguientes condiciones:
- El beneficiario solo podrá utilizarlo personalmente mediante un uso adecuado.
- El uso del equipo entregado es por el tiempo estipulado en el presente documento. Sin embargo, el CERREM, podrá retirarlo en cualquier tiempo, si así lo considera conveniente, tras una revaluación del nivel de riesgo.

Así mismo, la persona beneficiaria de la medida de protección debe:
. Conservar los elementos entregados en buen estado.

No: 63

FECHA DE ENTREGA: 10/7/2013

DATOS DEL BENEFICIARIO

NOMBRES Y APELLIDOS BENEFICIARIO	Nº DOCUMENTO
ARIAS LEIVA ANDRES FELIPE	98563386

ORGANIZACIÓN A LA QUE PERTENECE
Dirigentes o activistas de grupos políticos

GRUPO POBLACIONAL	No. ACTA	FECHA	TEMPORALIDAD
Dirigentes o activistas de grupos políticos	RES 225	8/27/2013	6

DATOS DEL CHALECO ANTIBALAS

SERIAL	NIVEL DE BLINDAJE	COLOR	TALLA
0157065	IIIA	NEGRO	M

OBSERVACIONES
POR FAVOR ENVIAR FIRMADA AL CORREO david.casallas@unp.gov.co

Elaboró:	Revisó:	Aprobó:
Nombre: Juan Carlos Gualdron	**Nombre**: Jose Luis Aguilar Pinzón	**Nombre:** Alonso Miranda Montenegro
Cargo: Oficial de Protección – Nivel Jerárquico Técnico	**Cargo:** Subdirector de Protección	**Cargo:** Jefe Oficina de Planeación e Información

Y.

OFI13-00026209

Bogotá D.C. martes, 08 de octubre de 2013

Doctor
ANDRES FELIPE ARIAS LEIVA
Beneficiario de la UNP
Bogotá, D.C.

Asunto: Presentación funcionarios

Con un atento saludo, me permito presentar a los funcionarios **Gustavo Mora Bedoya,** Oficial de Protección 15, C.C., 5.947.961 y **Jeison Alexis Hernández López.** Oficial de Protección 11, C.C. 80.047.357, quienes a partir de la fecha conformarán su esquema protectivo.

Le reitero nuestro compromiso institucional, en atender cualquier inquietud relacionada con su protección personal.

Cordialmente,

JOSE LUIS AGUILAR PINZÓN
Subdirector de Protección

Elaboró: Martha Villamizar
Revisó: Luis Antonio Puerto Corredor
Aprobó: Edelberto Diaz Hernández

Correo: martha.villamizar@unp.gov.co

Extensión: 9272

UNP.SP No. 114

Bogotá, Octubre 12 de 2013

Doctor
ANDRES FELIPE ARIAS
Bogotá - Cundinamarca
Beneficiario Unidad Nacional de Protección.

Asunto: Entrega de esquema

Con un cordial saludo, la Unidad Nacional de Protección UNP, de acuerdo con lo dispuesto y por intermedio del Operador Privado Sevicol Ltda., hace entrega de la medida establecida, que comprende lo siguiente:

- Hombres de Protección: Cantidad 01

CARLOS HUMBERTO MURCIA SOTOMAYOR CC.80.272.772; CEL. 317-6459905, ESCOLTA 1

Cada uno de ellos con sus elementos de dotación correspondientes y establecidos en el Contrato No. 204 de 2012

Vehiculo

Vehiculo Corriente	Marca_____	No Aplica__x__	Placas _____	Modelo_____
Vehiculo Blindado	Marca	No Aplica	Placas	Modelo
Motocicleta	Marca		Placas	Modelo

4- Chaleco del Protegido

Serie No.

Fecha de Vencimiento: Marzo 2015

Es de anotar que el (los) hombre (s) de protección asignados para su seguridad, dependen administrativa y operativamente del operador privado.

Le reitero nuestro compromiso y el de la Unidad Nacional de Protección, para atender cualquier inquietud relacionada con su protección personal.

Atentamente,

Mauricio Hernandez
Supervisor del Contrato
Unidad Nacional de Protección

Rene Fabián Garzon Enciso
Coordinador Escoltas U.N.P.
Sevicol Ltda.

Elaboró: Rene Fabian Garzón
Revisó: Ronald Montes

UNP SP No. 060

Bogotá, Octubre 12 de 2013

Doctor
ANDRES FELIPE ARIAS
EX MINISTRO AGRICULTURA
Bogotá - Cundinamarca
Beneficiario Unidad Nacional de Protección

Asunto: Cambio hombre de Protección

Con un cordial saludo, la Unidad Nacional de Protección UNP, de acuerdo con lo dispuesto y por intermedio del Operador Privado Sevicol Ltda., hace entrega de la medida establecida, que comprende lo siguiente

1- Hombres de Protección Cantidad 01

JEFFERSON ARLEY VILLAMIL TORRES C.C 7319083 Cel. 3174400678 PISTOLA TAURUS IGN 6197

Cada uno de ellos con sus elementos de dotacion correspondientes y establecidos en el Contrato No. 204 de 2012

2- Vehiculo

Vehiculo Corriente Marca No Aplica Placas Modelo

Vehiculo Blindado Marca

3- Chaleco del Protegido

Serie No :1

Fecha de Vencimiento:

Celular del Protegido: N/A

Es de anotar que el (los) hombre (s) de protección asignados para su seguridad, dependen administrativa y operativamente del operador privado

Le reitero nuestro compromiso de la Unidad Nacional de Protección, para atender cualquier inquietud relacionada con su protección personal

Atentamente,

Héctor Oswaldo Matiz B.
Sevicol Coordinador Escoltas
PROTECTOR UNP - SEVICOL

Mauricio Hernández
Supervisor del Contrato
Unidad Nacional de Protección

Héctor Oswaldo Matiz Beltran
Coordinador Escoltas U.N.P
Sevicol Ltda

Elaboro: Héctor Oswaldo Matiz Beltran
Revisó: Ronald Murcia

UNP.SP. No.

Bogotá, 30 de octubre de 2013

Doctor
Andrés Felipe Arias
Bogotá D.C.
Beneficiario Unidad Nacional de Protección.

Asunto: **Entrega de esquema**

Con un cordial saludo, la Unidad Nacional de Protección UNP, por intermedio del Operador Privado Unión Temporal Protección 33, el cual se encuentra integrado por Guardianes Compañía líder de Seguridad Ltda., Expertos en Seguridad Ltda., Cobasec Ltda. Y Centinel de Seguridad Ltda., hacen entrega de la medida de protección establecida, que comprende lo siguiente:

Hombres de Protección: 01

- Ronal Javier Mora Gonzalez, C.C. 80257763, Tel: 3187172410

Con sus elementos de dotación correspondientes y establecidos en el Contrato de Prestación de Servicios No.202 de 2012.

Es de anotar que el hombre de protección asignado para su seguridad, depende administrativa y operativamente del operador privado Protección 33.

Le reitero nuestro compromiso de la Unidad Nacional de Protección, para atender cualquier inquietud relacionada con su protección personal.

Atentamente,

Mauricio Hernández González
Supervisor del Contrato
Unidad Nacional de Protección

Omar Quintero Cano
Director de Operaciones U. T. Protección 33

Proyecto:	Mauricio Hernández González Supervisor del Contrato - Unidad Nacional de Protección
Elaboró:	Nelson Valencia Toro Coordinador Bogotá
Revisó:	Omar Quintero Director de Operaciones U. T. Protección 33

Z.

Nohra García

De: Maximus [maximusagrippa@hotmail.com]
Enviado el: miércoles, 11 de diciembre de 2013 11:15 a.m.
Para: Nohra García
Asunto: Imprimir este correo por favor

De: Mauricio Hernandez Gonzalez [mailto:mauricio.hernandez@unp.gov.co]
Enviado el: miércoles, 11 de diciembre de 2013 11:11 a. m.
Para: maximusagrippa@hotmail.com
Asunto: Solicitud

Buen día

De la manera más atenta le comunico que no se cuenta con apoyo logistico para prestar el servicio de apoyo solicitado.

Cordialmente.

Mauricio Hernández González
Subdirección de Protección
Unidad Nacional de Protección
Teléfono: 4269800 Ext 9271
Celular: 3212772442

De: Maximus [mailto:maximusagrippa@hotmail.com]
Enviado el: miércoles, 11 de diciembre de 2013 8:37 a. m.
Para: rgarzon@sevicol.com.co
Asunto: SOLICITUD

Señores: **SEVICOL LTDA**
RENÉ GARZÓN
Coordinador Escoltas UNP

Bogotá

Cordial Saludo.

peajes) en el departamento de Antioquia, entre los días 20 y 27 de diciembre de 2015, toda vez que me desplazaré, en compañía de mi esposa y dos hijos, a la ciudad de Medellín y a los municipios de San Jerónimo, Santafé de Antioquia, y Rionegro. Ello en atención al riesgo de seguridad extraordinario que tenemos mi familia y yo. Igualmente solicito vuelos en los trayectos Bogotá – Medellín y Medellín – Bogotá para el escolta JEFFERSON ARLEY VILLAMIL FORERO (cc 7319083), quien viajará desde el día 19 de diciembre para la respectiva avanzada (y entrega del vehículo), con regreso el 27 de diciembre.

Agradezco la atención prestada

Andrés Felipe Arias
Protegido UNP

ZZ.

Bogota D.C 03 de Diciembre 2013

Señor:
Nelson Valencia
Coordinador esquema Bogota
UT PROTECCION 33
Unidad Nacional de Protección
Ciudad.

Cordial saludo,

Por medio de la presente me dirijo a ustedes para informarles la novedad presentada el día 02 de Diciembre de 2013 siendo las 21:30 pm,cuando nos dirigíamos al sitio de residencia del protegido se observó que desde la 92 con séptima se encontraba un vehículo sospechoso que nos estaba persiguiendo y en cual hizo el trayecto hasta el lugar de residencia; pasando el primer puesto de control y al llegar a la portería principal se dieron cuenta que no tenían acceso y se devolvieron.

Agradezco su colaboración

Atentamente;

Jefferson Villamil
Escolta esquema Dr. Andres Felipe Arias

Ronal Javier Mora
Escolta esquema Dr. Andres Felipe Arias

Recibido
05-12-2013
nelson

CONJUNTO RESIDENCIAL CERROS DE LOS ALPES
NIT. 900.345.633-8
MAIL: cerrosdelosalpes@gmail.com
Calle 121 No 3 A - 20 Tel. 8 00 11 04

SERADMIN LTDA.
SERVICIOS DE ADMINISTRACIÓN INTEGRAL
Profesionales en Administración de Propiedad Horizontal
NIT. 900.133.634-5
AVENIDA CALLE 100 NO 64-51 3-1003 CEL. 310 235 85 85

Bogotá D.C., 11 de Diciembre de 2013

Señora
CATALINA SERRANO
Apto. 611 – Terraza 1ND
Ciudad

Referencia: Video Diciembre 2 de 2013.

Cordial saludo;

Por medio de la presente, me permito enviarle video del dia 2 de Diciembre de 2013 de las 21:24 a las 21:29.

Cordial Saludo.

William I. Velásquez G.
Administrador

Atentamente,

WILLIAM VELÁSQUEZ GIRAL
ADMINISTRADOR Y REPRESENTANTE LEGAL
CONJUNTO RESIDENCIAL CERROS DE LOS ALPES

PRC
13/12/13
8:52