

InjusticeWatch

April 4, 2018

Colombian former official Andrés Arias seeks asylum, faces extradition

A plea unheard: A Colombian former official says the U.S. promised help getting political asylum. Instead, he faces extradition without an asylum hearing.

By Jeanne Kuang

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.



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

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.

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.



Courtesy of Catalina Serrano

Andrés Arias's diplomatic visa, which he used to travel to the United States for trade negotiations

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.

“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.



Colombia presidential archives

George W. Bush presents the Presidential Medal of Freedom to then-Colombian president Alvaro Uribe, a close American ally, in January, 2009

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.

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.



Courtesy of Catalina Serrano

Andrés Arias Leiva, with his wife Catalina Serrano and their children, in 2017

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.

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.

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

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

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."