

White Paper
On the Case of

Andrés Felipe Arias Leiva
Citizen of the Republic of Colombia



v.

Government of the Republic of Colombia

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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, narco trafficking, 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, 10, and Juan Pedro, 7. 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. 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 Judge John O’Sullivan cleared Arias’ extradition to Colombia. 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.” The defense then filed an appeal, a motion for bond, and a Habeas Corpus petition, but on August 27, 2018, and September 6, 2018, respectively, US Magistrate Judge Andrea M. Simonton denied the motion for bond and Habeas Corpus petition.

On October 30, 2018, US District Judge James Lawrence King denied a motion for stay of extradition pending Arias' appeal that Arias had previously filed. Arias' counsel then filed an appeal and motion for stay of extradition before the US Court of Appeals for the 11th Circuit, but this motion was denied on December 21, 2018. Arias' case has now been forwarded to the State Department, which must decide whether to begin his extradition process.

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. On November 14, 2018, the Human Rights Committee found that the Colombian government had violated Arias' rights under ICCPR Article 14(5), which guarantees a right to appeal, and Article 25, which guarantees the right to take part in the conduct of public affairs. Accordingly, the Human Rights Committee urged the Colombian government to "guarantee[] an effective and legal remedy" in Arias' case and to take all necessary measures to "prevent similar violations from occurring in the future." Unfortunately, on February 13, 2019, the Colombian Supreme Court ruled against the Human Rights Committee's recommendation, indicating Arias would not be provided with the right to appeal his case. The Court also upheld the validity of the extradition request against Arias.

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.²

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.³ 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.⁴ 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.⁵ Coca production in Colombia has also soared to the highest level in two decades. It is believed that the peace deal has created a perverse incentive for the increased production of coca in the country.⁶

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.⁷ 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.⁸ The harassment of these media outlets

² *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>.

³ *Id.*

⁴ 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-f4a01fb0fa1>.

⁵ *Dozens of Rights Activists Killed in Colombia in 2016*, BBC, Mar. 16, 2017, available at <http://www.bbc.com/news/world-latin-america-39299865>.

⁶ *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>.

⁷ *Freedom of the Press 2015: Colombia*, FREEDOM HOUSE, available at <https://freedomhouse.org/report/freedom-press/2015/colombia>.

⁸ *Id.*

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.⁹ 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.”¹⁰ Additionally, in recent years, government surveillance of the press has come to be an issue.¹¹

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.¹² This problem comes from both overburdened and inefficient judicial system, as well as the subornation and intimidation of judges, prosecutors, and witnesses.¹³ 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.”¹⁴ Some 1,332 of those same people were convicted and sentenced.¹⁵

b. US-Colombia Relations

The US and Colombia have had a historically close relationship. Diplomatic relations have endured since 1822, shortly after Colombian Independence.¹⁶ Colombia has been a close ally of the US since the 1940s, and even contributed troops to the Korean War.¹⁷ In the 1960s and 1970s Colombia became one of the largest recipients of US assistance.¹⁸ 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.¹⁹ 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.²⁰ 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

⁹ *Id.*

¹⁰ *Id.*

¹¹ 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.*

¹² 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/>.

¹³ STATE DEPARTMENT 2015 HUMAN RIGHTS REPORT, *supra* note 12.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *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>.

¹⁷ COLOMBIA: A COUNTRY STUDY (Dennis M. Hanratty & Sandra W. Meditz, eds., 1988)

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*; *U.S.-Colombia Security Partnership*, EMBASSY OF COLOMBIA, <http://www.colombiaemb.org/security>.

force in Colombia, much to the US's chagrin (which had many extradition cases pending).²¹ 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.²² 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).²³

Mutual support between the two nations continues today.²⁴ Since 2000, Colombia has received more than five billion dollars in aid from the US.²⁵ 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.²⁶ And in 2012, the US-Colombia Trade Promotion Agreement, a long anticipated free trade agreement, entered into force.²⁷ 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.”²⁸ Economically, the US is Colombia's largest trade partner.²⁹

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 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.³⁰

The issue of increased coca production is likely to remain on the forefront of US-Colombia relations during the new administration of President Iván Duque. Duque, who was elected to be Santos' successor on June 17, 2018, under the banner of Uribe's Democratic Center party, has committed to adhering to US-supported efforts to decrease coca production in

²¹ COLOMBIA: A COUNTRY STUDY, *supra* note 17.

²² *A History of Partnership*, EMBASSY OF COLOMBIA, <http://www.colombiaemb.org/partnership>.

²³ *Colombia Profile: Timeline*, *supra* note 2.

²⁴ *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>.

²⁵ *U.S. Policy in Colombia*, AMNESTY INT'L, available at <http://www.amnestyusa.org/our-work/countries/americas/colombia/us-policy-in-colombia>.

²⁶ Steve Schifferes, *US Names 'Coalition of the Willing'*, BBC, Mar. 18, 2003, available at <http://news.bbc.co.uk/2/hi/americas/2862343.stm>.

²⁷ *Fact Sheet: U.S. Relations with Colombia*, *supra* note 16; *Fact Sheet: The United States and Colombia*, *supra* note 24.

²⁸ *Fact Sheet: U.S. Relations with Colombia*, *supra* note 16.

²⁹ *Id.*

³⁰ 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>.

Colombia, unlike Santos.³¹ His support for efforts such as forced eradication and aerial spraying of pesticides is likely to decrease tensions between the two countries.³²

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.³³ In response, President Santos – once a loyal follower of Uribe – has neutralized members of the opposition through persecutory legal action and a biased judiciary.³⁴

During President Uribe's administration, Santos served in Uribe's administration as his Minister of Defense, and their relationship was one of close mentorship.³⁵ 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.³⁶ Santos' policy pivot has been characterized as a "tacit critique of his predecessor."³⁷ 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.

³¹ Nicholas Casey and Susan Abad, *Colombia Elects Iván Duque, a Young Populist, as President*, NEW YORK TIMES, June 17, 2018, available at <https://www.nytimes.com/2018/06/17/world/americas/colombia-election-ivan-duque.html>.

³² *Colombia's Duque: Trump, United States Support 'Our Agenda' for War on Drugs*, TELESUR, June 26, 2018, available at <https://www.telesurtv.net/english/news/Colombias-Duque-Trump-United-States-Support-Our-Agenda-for-War-on-Drugs-20180626-0019.html>.

³³ 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>.

³⁴ Juan Esteban Lewin, *El Círculo 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 Uribismo en la Justicia*, EL TIEMPO, Apr. 19, 2015, available at <http://www.eltiempo.com/archivo/documento/CMS-15593157>.

³⁵ *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>.

³⁶ *Santos v Uribe*, supra note 35; *Colombia Profile: Leaders*, supra note 35.

³⁷ *Santos v Uribe*, supra note 35.

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.³⁸ 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.³⁹ 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.⁴⁰ 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.⁴¹ After Santos was sworn in as President, he reneged on campaign promises and controversially revoked Uribe's nominations.⁴² 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.⁴³

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.⁴⁴ 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.⁴⁵ As a result of perceived politicization and numerous corruption scandals, public confidence in the

³⁸ 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.

³⁹ *Dos Magistrados, A Explicar Relación con Giorgio Sale*, EL TIEMPO, Sept. 18, 2008, available at <http://www.eltiempo.com/archivo/documento/MAM-3098195>.

⁴⁰ *La Corte Suprema de Justicia Tiene La Palabra*, EL TIEMPO, Apr. 30, 2008, available at <http://www.eltiempo.com/archivo/documento/CMS-4135104>.

⁴¹ *Colombia in the Political Doldrums*, WikiLeaks, Nov. 17, 2009, available at https://wikileaks.org/plusd/cables/09BOGOTA3405_a.html.

⁴² *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>.

⁴³ *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>.

⁴⁴ *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/>.

⁴⁵ *"El Fiscal Es un Cuervo Criado Por Santos": Morelli desde Roma*, Noticias, Sept. 16, 2014, available at <http://www.noticiasren.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>.

Attorney General's office, as well as other parts of the judiciary, dropped to less than 20 percent, according to various national polls.⁴⁶

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.⁴⁷ 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.⁴⁸

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;

⁴⁶ *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>.

⁴⁷ *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>.

⁴⁸ *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>.

- and the former Minister of Agriculture under President Uribe and 2010 Presidential Candidate, Andrés Felipe Arias Leiva.⁴⁹

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.⁵⁰ 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.”⁵¹ 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.⁵² 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.⁵³ 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.⁵⁴ Additionally, according to the recordings, the involvement of two others – María del Rosario González and José Luis Barceló – cannot be ruled out.⁵⁵ It is worth noting that the only Justice not mentioned in the DEA wiretap – Eugenio Fernández – was the only Justice to have issued a dissent against Arias’ conviction.⁵⁶

President Santos finished his presidency with an approval rating of 15%.⁵⁷ Criticisms

⁴⁹ *El Círculo de Uribe*, supra note 34; *Ya Son 8 Funcionarios del Gobierno Uribe Condenados*, supra note 34; and *Las Batallas Perdidas*, supra note 34.

⁵⁰ 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/>.

⁵¹ *Id.*

⁵² *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 anticorrupción 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.*”).

⁵³ 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/>.

⁵⁴ *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.

⁵⁵ *Id.* (María del Rosario González and José Luis Barceló are specifically mentioned in this recording; however, the extent of their involvement, if any, remains unclear).

⁵⁶ *Id.*

⁵⁷ Adriaan Alsema, *Santos to Leave Office with One of the Worst Approval Ratings Ever*, COLOMBIA REPORTS, June 14, 2018, available at <https://colombiareports.com/santos-to-leave-office-with-one-of-the-worst-approval-ratings-ever/>.

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.⁵⁸ He 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.⁵⁹

⁵⁸ 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>.

⁵⁹ *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>.

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.⁶⁰ 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.⁶¹ 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 1993.⁶² 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.⁶³

b. Beginnings in Politics & *Agro Ingreso Seguro*

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 2002.⁶⁴ On February 16, 2004, Arias was appointed Vice

⁶⁰ 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>.

⁶¹ *Id.*

⁶² 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>.

⁶³ *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.

⁶⁴ *Id.*

Minister of Agriculture of the Republic of Colombia.⁶⁵ As Vice Minister, Arias headed the Colombian Agricultural Negotiating Team during the Free Trade Agreement (FTA) negotiations with the US.⁶⁶ One year later, on February 4, 2005, Arias was appointed as Minister of Agriculture and Rural Development of the Republic of Colombia.⁶⁷

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.⁶⁸

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.⁶⁹ 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.⁷⁰ 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 2009.⁷¹ In particular, the OAS-IICA was the entity in charge of evaluating and qualifying those applying for the irrigation subsidy.⁷² The OAS-IICA acted independently in administering the irrigation 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.

⁶⁵ *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.

⁶⁶ *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>.

⁶⁷ *Cambios en Agricultura y el Banco de la República*, EL PAÍS, Jan. 22, 2005, available at <http://historico.elpais.com.co/paionline/notas/Enero222005/A622N1.html>.

⁶⁸ *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>.

⁶⁹ 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>.

⁷⁰ Document on file with author.

⁷¹ 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>.

⁷² *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>.

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.⁷³ 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.⁷⁴ 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.⁷⁵

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.⁷⁶ As Uribe's chosen successor, Arias was extremely popular and became an early favorite in the polls for the Conservative Party primaries.⁷⁷ 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.⁷⁸ Their accusations came on the heels of a scandal within the 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.⁷⁹ The false accusations of

⁷³ 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>.

⁷⁴ *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>.

⁷⁵ *El Ranking de los Ministros*, EL TIEMPO, Aug. 12, 2007, available at <http://www.eltiempo.com/archivo/documento/MAM-2615411>.

⁷⁶ *¡'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 Ministro 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/>.

⁷⁷ *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>.

⁷⁸ *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, available at <http://www.semana.com/nacion/articulo/irregularidades-campana-arias-defiende-coronell-reafirma/112898-3>.

⁷⁹ *Ex Señorita Colombia Valerie Domínguez Renuncia*, supra note 72; *Andrés Felipe Arias Sale Debilitado y Juan Manuel Santos Logra Ventaja en Medio del Escándalo de AIS*, EL TIEMPO, Oct. 10, 2009, available at

embezzlement and the irrigation subsidy scandal adversely impacted Arias' campaign, causing him to lose the primaries and his prospect of becoming President.⁸⁰

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.⁸¹ 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.⁸²

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 2014.⁸³ Although Arias did not win the primaries, he still garnered over one million votes, an accomplishment given the extensive effort to discredit him.⁸⁴

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.⁸⁵ 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 announced his candidacy.⁸⁶ An *El Tiempo* columnist was dismissed by the paper for critiquing the paper's bias in this regard.⁸⁷ In her column, she had argued that the paper's reporting on the

<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 78.

⁸⁰ *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>.

⁸¹ *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.

⁸² *Id.*

⁸³ *Tabla de Datos: Cuestionarios 5756*, OPINÓMETRO, July 1, 2009, available at <http://www.cne.gov.co/cne/media/file/encuestas/ft1145.pdf>.

⁸⁴ *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.

⁸⁵ *El Ranking de los Ministros*, supra note 75.

⁸⁶ *Andrés Felipe Airas Sale Debilitado*, supra note 79.

⁸⁷ 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.

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.⁸⁸ In June of 2010, *El Tiempo*'s self-fulfilling prophecy was borne out, and Juan Manuel Santos was elected President of Colombia.⁸⁹

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.⁹⁰

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.⁹¹ 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.⁹² 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.⁹³ 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 agreed with Schroeder and Arias in concluding that the specific agreement between the Ministry and OAS-IICA actually did not require pre-contractual studies.⁹⁴

⁸⁸ Claudia López, *Reflexiones Sobre un Escándalo*, EL TIEMPO, Oct. 13, 2009, available at <http://www.eltiempo.com/archivo/documento/MAM-3666495>.

⁸⁹ Sibylla Brodzinsky, *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>.

⁹⁰ Document on file with author.

⁹¹ Document on File with Author.

⁹² *Archivada Investigación Contra Andrés Felipe Arias en el CNE*, EL TIEMPO, Jan. 27, 2011, available at <http://www.eltiempo.com/archivo/documento/CMS-8802035>.

⁹³ *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.nets.

⁹⁴ *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>.

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.⁹⁵

⁹⁵ *Imputan Cargos a Ex Ministro Andrés F. Arias 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>.

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.⁹⁶ 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.⁹⁷ 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 narco-traffickers.⁹⁸ 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.⁹⁹

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.¹⁰⁰ Attorney General Morales also directed her campaign of 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:

⁹⁶ 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/>.

⁹⁷ *El Churchill Criollo*, SEMANA, Feb. 19, 2011, available at <http://www.semana.com/nacion/articulo/el-churchill-criollo/235749-3>.

⁹⁸ *Fiscalía Capturó a Carlos Alonso Lucio*, *supra* note 43; *Carlos Alonso Lucio Fue Contratado por las AUC*, *supra* note 43; and *Diario de 'Chupeta'*, *supra* note 43.

⁹⁹ *Masiva Extradición de Jefes Paramilitares*, EL ESPECTADOR, May 13, 2008, available at <http://www.elespectador.com/noticias/judicial/articulo-masiva-extradicion-de-jefes-paramilitares>.

¹⁰⁰ “*Existe una Grabación de Viviane Morales (...) en la cual Prejuzga y Destila Loca Animadversión Hacia Mi*”: *Andrés Felipe Arias*, LA SEMANA, Feb. 22, 2012, available at <http://www.semana.com/nacion/articulo/existe-grabacion-viviane-morales--cual-prejuzga-destila-locas-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 <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-persecucion-politica/395966-3>.

- **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.¹⁰¹ The Attorney General also claimed that Arias embezzled funds in favor of the OAS-IICA.¹⁰²

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*),¹⁰³ represented by former Supreme Court Justice Jorge Aníbal Gómez Gallego.¹⁰⁴ Instead of holding the hearing in a standard hearing room of the Superior Tribunal of Bogotá, it 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.¹⁰⁵

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.¹⁰⁶ 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

¹⁰¹ *Archivada Investigación Contra Andrés Felipe Arias*, *supra* note 92.

¹⁰² *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>.

¹⁰³ 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.

¹⁰⁴ *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.

¹⁰⁵ *Fiscalía Solicitó la Detención Preventiva de Andrés Felipe Arias*, NOTICIAS CARACOL, July 21, 2011, available at <https://www.youtube.com/watch?v=eZNbnfVfaOc>.

¹⁰⁶ *La Corte Suprema de Justicia Tiene La Palabra*, *supra* note 40; *Dos Magistrados, A Explicar Relación con Giorgio Sale*, *supra* note 39.

weeks after the hearing.¹⁰⁷

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.¹⁰⁸ 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.¹⁰⁹ 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.¹¹⁰ 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.¹¹¹ Additionally, Colombian law stipulates that preventive detention is "exceptional in nature" and that statutes authorizing its use "can only be restrictively interpreted and its [preventive detention's] application should be necessary, appropriate, proportional and reasonable" given the rights guaranteed by the Constitution.¹¹²

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.¹¹³ 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.¹¹⁴ As part of its continued effort to publicly humiliate Arias in

¹⁰⁷ *Padrino de Matrimonio*, SEMANA, Oct. 15, 2011, available at <http://www.semana.com/confidenciales/articulo/padrino-matrimonio/247982-3>.

¹⁰⁸ 'Cárcel o Exilio', *supra* note 100.

¹⁰⁹ *Frustran Planes para Asesinar al Presidente 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>.

¹¹⁰ *Jueces Deciden*, *supra* note 104.

¹¹¹ 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>.

¹¹² *Id.*, at Art. 295.

¹¹³ *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>.

¹¹⁴ *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>.

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.¹¹⁵ 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.¹¹⁶

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.¹¹⁷ 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.¹¹⁸ 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 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.¹¹⁹ During his preventive detention, Arias unsuccessfully requested his release three times.¹²⁰ On each of these occasions, the independent

¹¹⁵ *Andrés Felipe Arias Será Traslado a la Cárcel de la Picota*, NOTICIAS CARACOL, July 26, 2011, available at <https://www.youtube.com/watch?v=ZmQeofDYxXQ>.

¹¹⁶ *Dictan Medida de Aseguramiento*, *supra* note 113.

¹¹⁷ *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>.

¹¹⁸ *Id.*

¹¹⁹ *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>.

¹²⁰ *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>;

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.¹²¹

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.¹²² Judge Rodríguez found no evidence to support the allegation that Arias would obstruct justice, as the Attorney General had been alleging.¹²³ 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.¹²⁴

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.¹²⁵ This bias was later confirmed when a private discussion of the Supreme Court Justices leaked demonstrating consensus that the Supreme Court Justices must make decisions based on political expedience and without dissenting votes.¹²⁶

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.¹²⁷

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 narco-traffickers and illicit activities and, in response, many of the Justices publicly aligned themselves against President Uribe and his administration.¹²⁸

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>.

¹²¹ *Niegan, Por Tercera Vez, supra* note 120; and *¿Y entoncesCuál 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>.

¹²² *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>.

¹²³ *Id.*

¹²⁴ Document on file with author.

¹²⁵ See §I.c. for further discussion of this.

¹²⁶ *Los Audios de la 'Mata Hari'*, *supra* note 47.

¹²⁷ *La Corte Suprema de Justicia Tiene La Palabra*, *supra* note 40.

¹²⁸ *La Corte Suprema de Justicia Tiene La Palabra*, *supra* note 40; *Dos Magistrados, A Explicar Relación con Giorgio Sale*, *supra* note 39.

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,¹²⁹ 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.¹³⁰ 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 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.¹³¹ 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.¹³² Similarly, the Office of

¹²⁹ *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 47; and Mauricio 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>.

¹³⁰ *Corte Aceptó Impedimentos de Dos Magistrados*, supra note 48; *Leonidas Bustos*, supra note 48.

¹³¹ *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,356e9a7bdf49a310VgnVCM500009cceeb0aRCRD.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>.

¹³² *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.

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.¹³³

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.¹³⁴ 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 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.¹³⁵

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.¹³⁶ However, that same day, the Supreme Court leaked the news that it had convicted Arias. The Director of the National Protection Agency, responsible for

¹³³ *Colombia's Council of State Unseats Vivian Morales*, *supra* note 44.

¹³⁴ *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>.

¹³⁵ *Id.*

¹³⁶ *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>.

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.¹³⁷ 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 \$15,398,134.¹³⁸ 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.¹³⁹ 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.

Supreme Court Justice Eugenio Fernández Carlier dissented from the decision and wrote an opinion criticizing the Court's ruling.¹⁴⁰ 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."¹⁴¹ 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.¹⁴² 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.¹⁴³

¹³⁷ 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.

¹³⁸ 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.

¹³⁹ Document on File with Author.

¹⁴⁰ *Fuerte Reproche a la Fiscalía 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>.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

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 guilty; 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. 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."¹⁴⁴ Additionally, members of the panel of experts that reviewed denials of irrigation subsidies under

¹⁴⁴ *Escándalo 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>.

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.
- 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,"¹⁴⁵ 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.

¹⁴⁵ *Aplazan Versión Libre de Álvaro Uribe* - CARACOL RADIO, *supra* note 129; *Aplazan Versión Libre de Álvaro Uribe* - EL PAÍS, *supra* note 129; *Los Audios de la 'Mata Hari'*, *supra* note 47; and *La Corte que Se Torcio*, *supra* note 129.

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 2016.¹⁴⁶ 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.

On November 14, 2018, the Human Rights Committee found that the Supreme Court's refusal to provide Arias with a right to appeal violated his rights under ICCPR Article 14(5), which guarantees a right to appeal. It also found the Colombian government had violated Arias' rights under Article 25, which guarantees the right to take part in the conduct of public affairs. But though the Human Rights Committee urged the Colombian government to "guarantee[] an effective and legal remedy" in Arias' case, the Colombian Supreme Court again indicated on February 13, 2019, that it would not provide Arias with the right to appeal his case.¹⁴⁷

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 WikiLeaks cables.¹⁴⁸

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.¹⁴⁹ The National Protection Agency never investigated the incident.

¹⁴⁶ *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>.

¹⁴⁷ Luz Helena Fonseca, *Corte Suprema Deja en Firme Extradición del Exministro Andrés Felipe Arias*, WRADIO, Feb. 13, 2019, available at <http://www.wradio.com.co/noticias/actualidad/corte-suprema-deja-en-firme-extradicion-del-exministro-andres-felipe-arias/20190213/nota/3863792.aspx>.

¹⁴⁸ *Colombia in the Political Doldrums*, *supra* note 41.

¹⁴⁹ Document on file with author.

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.¹⁵⁰

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, 2014.¹⁵¹ 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.¹⁵² 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.¹⁵³ Two days before the presidential run-off election, on June 13, 2014, the Supreme Court leaked reports that it had convicted Arias.¹⁵⁴ Simultaneously, the Director of the National Protection 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.¹⁵⁵ The timing of these reports was intended to discredit *Centro Democrático* and influence the election results. Prior to these reports, polling showed *Centro*

¹⁵⁰ Document on file with author.

¹⁵¹ *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>.

¹⁵² *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/apalazan_para_el_15_de_mayo_sentido_del_fallo_a_andres_felipe_arias-BWEC_289697.

¹⁵³ *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>.

¹⁵⁴ *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, 2014, available at <http://www.pulzo.com/nacion/versiones-contradictorias-sobre-fallo-de-andres-felipe-arias-por-el-caso-ais-en-la-corte/156201>.

¹⁵⁵ Villamizar Tweet, *supra* note 137.

Democrático winning the election; however, President Santos ended up winning with 50.95 percent of the vote.¹⁵⁶

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.¹⁵⁷

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.¹⁵⁸ 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.¹⁵⁹ And on July 17, 2014, Minister of Foreign Affairs María Ángela Holguín, speaking in a multilateral summit in Brazil, cited 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.¹⁶⁰

¹⁵⁶ *Empate Técnico Entre Santos y Zuluaga 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>.

¹⁵⁷ *¿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>.

¹⁵⁸ *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>.

¹⁵⁹ *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>.

¹⁶⁰ *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>.

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.¹⁶¹ 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.¹⁶² 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.¹⁶³

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.

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.¹⁶⁴

¹⁶¹ Document on file with author.

¹⁶² Document on file with author.

¹⁶³ *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/>.

¹⁶⁴ 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).

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.¹⁶⁵ He also ordered Arias to be arrested on the consideration that there was a flight risk.¹⁶⁶ 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.”¹⁶⁷ 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.”¹⁶⁸ The defense filed an appeal to contest Judge John O’Sullivan’s decision and was granted 30 days to form their argument.¹⁶⁹ On October 27, 2017, the defense filed a Habeas Corpus petition, which was followed by a motion for bond on November 6, 2017.¹⁷⁰

Since then, Arias has remained detained and separated from his family. Arias’ lawyers presented their oral arguments for the motion for bond and Habeas Corpus petition before US District Court for the Southern District of Florida Magistrate Judge Andrea M. Simonton on April 9, 2018, but decisions on both matters were postponed.¹⁷¹ As a result, Arias’ lawyers filed a ninety-day notice in the Federal Court of Miami on July 11, 2018, urging the Court to grant Arias bail and noting the inexcusable delays in the judicial proceedings against him.¹⁷² Meanwhile, on July 17, 2018, the Colombian Supreme Court formally reiterated its request to the Colombian Ministry of Justice that Arias be immediately extradited.¹⁷³ On August 27, 2018, Judge Simonton denied Arias’ motion for bond, and on September 6, 2018, she denied his Habeas Corpus petition. And on October 30, 2018, US District Judge James Lawrence King denied a motion for stay of extradition pending Arias’ ongoing appeal of the case that Arias had previously filed.

Following these decisions, Arias’ counsel appealed his case before the US Court of Appeals for the 11th Circuit, arguing that Arias’ extradition order has no legal basis because the

¹⁶⁵ *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>

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *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>

¹⁶⁹ 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>

¹⁷⁰ Documents on file with author.

¹⁷¹ Jeanne Kuang, *Lawyers Tell Court: Former Colombian Official Andrés Arias is Wrongly Locked Up*, INJUSTICE WATCH, Apr. 9, 2018, available at <https://www.injusticewatch.org/news/2018/judge-to-consider-extradition-case-of-former-colombian-official-andres-arias/>.

¹⁷² *Defensa de Andrés Felipe Arias Presiona a la Corte Federal de Miami con Aviso de 90 Días*, W RADIO, July 11, 2018, available at <http://www.wradio.com.co/noticias/judicial/defensa-de-andres-felipe-arias-presiona-a-la-corte-federal-de-miami-con-aviso-de-90-dias/20180711/nota/3772544.aspx>.

¹⁷³ *Corte Suprema Insistirá en Extradición del Exministro Andrés Felipe Arias*, EL ESPECTADOR, July 17, 2018, available at <https://www.elespectador.com/noticias/judicial/corte-suprema-insistira-en-extradicion-del-exministro-andres-felipe-arias-articulo-800785>.

US-Colombia Extradition Treaty is not in force. On October 30, 2018, his counsel filed a motion for a stay of extradition pending the appeal.¹⁷⁴ Unfortunately, on December 21, 2018, the 11th Circuit Court of Appeals denied Arias' motion and his case was forwarded to the State Department, which will make the final decision on whether to begin his extradition process. In making this determination, the Secretary of State must contemplate *de novo* considerations against extradition, which in Arias' case include the fact that he was illegally convicted by a politicized court, denied the right to appeal his conviction, and that he faces a risk of torture if returned to Colombia.

¹⁷⁴ Mary Anastasia O'Grady, *Will the U.S. Extradite an Innocent Man*, WALL STREET JOURNAL, Nov. 4, 2018, available at <https://www.wsj.com/articles/will-the-u-s-extradite-an-innocent-man-1541361770>.

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 party¹⁷⁵ to the International Covenant on Civil and Political Rights¹⁷⁶ (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.¹⁷⁷

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

¹⁷⁵ 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 Status: ICCPR*, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREA TY&mtdsg_no=IV-4&chapter=4&lang=en#EndDec.

¹⁷⁶ *ICCPR*, *supra* note 175, at Art. 9(1).

¹⁷⁷ Constitution of Colombia, 1991, Art. 93, *English translation available at* http://confinder.richmond.edu/admin/docs/colombia_const2.pdf [hereinafter *Colombian Constitution*].

expression and opinion, freedom of association, and freedom to take part in public affairs and be elected without unreasonable restrictions.¹⁷⁸

I. *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).¹⁷⁹ Freedom of expression includes the "freedom to hold opinions 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."¹⁸⁰ Freedom of expression also includes the right to political discourse.¹⁸¹ 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 punishment¹⁸²

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."¹⁸³ Article 18 enshrines the right to "[f]reedom of conscience . . . No one will be importuned on account of his/her convictions or belief" ¹⁸⁴

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

¹⁷⁸ *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 175, at Arts. 19, 21, and 25.

¹⁷⁹ 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).

¹⁸⁰ *ICCPR*, *supra* note 175, 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 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"); see also *UDHR*, *supra* note 178, 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").

¹⁸¹ *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.

¹⁸² *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.

¹⁸³ *Colombian Constitution*, *supra* note 177, at Art. 20.

¹⁸⁴ *Id.*, at Art. 18.

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 2011.¹⁸⁵ These acts, 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 ICCPR¹⁸⁶ and the UDHR.¹⁸⁷ 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"¹⁸⁸

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

¹⁸⁵ *El Churchill Criollo*, *supra* note 97.

¹⁸⁶ *ICCPR*, *supra* note 175, 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").

¹⁸⁷ *UDHR*, *supra* note 178, 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").

¹⁸⁸ *Colombian Constitution*, *supra* note 177, at Art. 38.

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 by the ICCPR¹⁸⁹ and the UDHR.¹⁹⁰ 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.¹⁹¹

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."¹⁹² 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.¹⁹³

¹⁸⁹ *ICCPR*, *supra* note 175, 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").

¹⁹⁰ *UDHR*, *supra* note 178, 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").

¹⁹¹ *Colombian Constitution*, *supra* note 177, at Art. 40.

¹⁹² *Human Rights Committee General Comment No. 25 (1996)*, CCPR/C/21/Rev.1/Add.7, at ¶ 8 (emphasis added).

¹⁹³ *Id.*, at ¶ 15 (emphasis added).

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.¹⁹⁴

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.

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

¹⁹⁴ See *Tran Thi Thuy et al. v. Government of Viet Nam*, Opinion No. 46/2011, adopted Sept. 2, 2011, ¶¶ 21, 22, 26.

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.”¹⁹⁵ 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.”¹⁹⁶ The Body of Principles also safeguards the right of an individual to “be informed at the time of his arrest of the reason for his arrest and . . . be promptly informed of any charges against him.”¹⁹⁷

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.¹⁹⁸ 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.¹⁹⁹ 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*

¹⁹⁵ ICCPR, *supra* note 175, at Art. 9(2).

¹⁹⁶ *Id.*, at Art. 14(3)(a).

¹⁹⁷ *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*].

¹⁹⁸ 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.

¹⁹⁹ *Id.*, at Art. 29.

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.”²⁰⁰ The ICCPR goes on to say “It shall not be the general rule that persons awaiting trial shall be detained in custody,”²⁰¹ 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.”²⁰² The Human Rights Committee has concluded that ICCPR is violated when a state cannot sufficiently explain why “setting an appropriate sum of bail and other conditions of release” does not satisfy any concern about the accused.²⁰³

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.²⁰⁴ 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.²⁰⁵

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,²⁰⁶ 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.²⁰⁷ 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

²⁰⁰ ICCPR, *supra* note 175, at Art. 9. *See, also, UDHR, supra* note 178, at Art. 9 (1948) (“No one shall be subjected to arbitrary arrest, detention or exile”), and *Body of Principles, supra* note 197, at Principle 2 (“Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law”).

²⁰¹ ICCPR, *supra* note 175, at Art. 9(3).

²⁰² 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.

²⁰³ *Id.*

²⁰⁴ Ley 906 de 2004, *supra* note 111, at Art. 308.

²⁰⁵ *Id.*, at Art. 295.

²⁰⁶ *See, supra* note 103.

²⁰⁷ *Dictan Medida de Aseguramiento, supra* note 113.

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 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.²⁰⁸ 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.

²⁰⁸ Ley 906 de 2004, *supra* note 111, at Art. 314.

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.

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.”²⁰⁹ 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.”²¹⁰

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.²¹¹ 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.²¹² 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.²¹³ 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.

²⁰⁹ ICCPR, *supra* note 175, at Art. 14(1).

²¹⁰ *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.

²¹¹ Ley 599 de 2000, *supra* note 198, at Art. 397.

²¹² *Id.*, at Art. 58.

²¹³ *Id.*

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.

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."²¹⁴ 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."²¹⁵ 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.²¹⁶ This right is further guaranteed by Colombia's Constitution: "[The courts'] decisions are independent . . . The functioning of the judiciary will be decentralized and autonomous."²¹⁷ 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

²¹⁴ ICCPR, *supra* note 175, 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...").

²¹⁵ UDHR, *supra* note 178, 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").

²¹⁶ 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.

²¹⁷ *Colombian Constitution*, *supra* note 177, at Arts. 29 ("Due process will be applied in all cases...") & 228.

wiretap released by the US Drug Enforcement Agency (DEA).²¹⁸ 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.²¹⁹ 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.

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.²²⁰ 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

²¹⁸ *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.

²¹⁹ *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>.

²²⁰ *Id.*

interest, as Justice González successfully recused herself from a separate case against other members of Uribe's administration.²²¹ 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.²²²

Early in Arias' trial, Justice González disclosed this bias, yet she was allowed to remain on the case as head Justice.²²³ 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.

Additionally, the biased Court led by Justice González allowed Attorney General Morales to present demonstrably inaccurate evidence.²²⁴ 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.²²⁵

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.

²²¹ *Aplazan Versión Libre de Álvaro Uribe* - CARACOL RADIO, *supra* note 129.

²²² *Los Audios de la 'Mata Hari'*, *supra* note 47.

²²³ *Aplazan Versión Libre de Álvaro Uribe* - CARACOL RADIO, *supra* note 129.

²²⁴ *Fiscalía Sabe Quién Es Responsable de AIS: Andrés F. Arias*, *supra* note 131; and *Fiscalía Adulteró Pruebas*, *supra* note 131.

²²⁵ *Fiscalía Dice que No Alteró Pruebas en Caso de Andrés Felipe Arias*, *supra* note 132.

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;
- 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 General²²⁶ 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

²²⁶ 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.

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 2012.²²⁷

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 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.²²⁸

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

²²⁷ *Colombia's Council of State Unseats Vivian Morales*, *supra* note 44.

²²⁸ *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 difícil entender esa sonrisa de Victoria cuando lo que hay aquí es un pliego de carhgos por posibles faltas gravisimas en el cumplimiento de las funciones del ministro de agricultura.")).

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.²²⁹

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 . . ."²³⁰ The UDHR similarly provides that individuals be afforded "all the guarantees necessary for [a] defence."²³¹ The Colombian Constitution also states that "[w]hoever is accused is entitled to defense . . . [and] to present evidence and to refute evidence."²³²

As previously stated, Justice González, the head Justice on Arias' case, attempted to accelerate the trial, in such a 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

²²⁹ *Fiscalía Solicitó la Detención Preventiva de Andrés Felipe Arias*, *supra* note 105.

²³⁰ *ICCPR*, *supra* note 175, at Art. 14(3)(a), (b), (d) & (e).

²³¹ *UDHR*, *supra* note 178, at Art. 11(1).

²³² *Colombian Constitution*, *supra* note 177, at Art. 29.

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 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."²³³ The UDHR also establishes that "[e]veryone charged with a penal offence has the right to be presumed innocent until proved guilty."²³⁴ 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,

²³³ ICCPR, *supra* note 175, at Art. 14(2).

²³⁴ UDHR, *supra* note 178, 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").

therefore, a duty for all public authorities to refrain from prejudging the outcome of a trial.²³⁵ 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.²³⁶ 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... . . .”²³⁷ The Colombian Constitution also states that “[e]very individual is presumed innocent until he/she is proved to be legally guilty.”²³⁸

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.²³⁹ 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

²³⁵ 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).

²³⁶ *Raúl Linares Amundaray v. Bolivarian Republic of Venezuela*, WGAD Opinion No. 28/2012, Nov. 22, 2012, at ¶ 29.

²³⁷ *Body of Principles*, *supra* note 197, at Principle 236.

²³⁸ *Colombian Constitution*, *supra* note 177, at Art. 29.

²³⁹ *Audio de una Grabación de la Fiscal General*, *supra* note 228.

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*

A grossly disproportionate sentence amounts to cruel, inhuman or degrading treatment or punishment contrary to the ICCPR.²⁴⁰ 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"²⁴¹ or not proportionate to the offense or appropriate given the summary nature of the trial.²⁴² 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.²⁴³ The Colombian Constitution similarly protects individuals from "forced sequestration, torture, cruel, inhuman, or degrading treatment or punishment."²⁴⁴ The Colombian Penal Code further establishes that "the imposition of a sentence or security measure will follow principles of necessity, proportionality and reasonableness."²⁴⁵

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.²⁴⁶ 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.

²⁴⁰ ICCPR, *supra* note 175, 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.

²⁴¹ *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).

²⁴² *Nelson Aguiar Ramirez et. al. v. Cuba*, WGAD Opinion No. 9/2003, May 9, 2003, at ¶ 24.

²⁴³ *Dissanayake v. Sri Lanka*, WGAD Opinion No. 1373/2005, July 22, 2008, at ¶ 8.3.

²⁴⁴ *Colombian Constitution*, *supra* note 177, at Art. 12.

²⁴⁵ Ley 599 de 2000, *supra* note 198, at Art. 3.

²⁴⁶ *Colombian Constitution*, *supra* note 177, at Art. 122.

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.²⁴⁷ 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.

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.”²⁴⁸ Article 31 of the Colombian Constitution similarly guarantees that “[a]ny judicial sentence may be appealed or adjudicated.”²⁴⁹

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.”²⁵⁰ 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.”²⁵¹

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.

²⁴⁷ 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>.

²⁴⁸ ICCPR, *supra* note 175, at Art. 14(5).

²⁴⁹ *Colombian Constitution*, *supra* note 177, at Art. 31.

²⁵⁰ *Id.*, at 235(4).

²⁵¹ Document on File with Author.

Shortly thereafter, the Constitutional Court clarified its order by stating that the right to appeal would only be guaranteed beginning in 2016.²⁵² 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.²⁵³

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.

²⁵² *Comunicado No. 18, supra* note 146.

²⁵³ *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 Colombia²⁵⁴

“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 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... 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 Colombia²⁵⁵

“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

²⁵⁴ *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>.

²⁵⁵ 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 Colombia²⁵⁶

“...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 Colombia²⁵⁷

“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)²⁵⁸

“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 Republic²⁵⁹

“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-

²⁵⁶ Letter from Francisco Santos Calderón to US Department of Homeland Security, Jun. 18, 2014.

²⁵⁷ Letter from Alejandro Ordoñez Maldonado to US Deputy Attorney General Kenneth Blanco, Aug. 30, 2016.

²⁵⁸ Letter from Lincoln Diaz-Balart to US Judge John O’Sullivan, Sept. 19, 2016.

²⁵⁹ 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 Agriculture²⁶⁰

“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 Adrió Lizarralde, former Colombian Minister of Agriculture²⁶¹

“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 Defense²⁶²

“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 Health²⁶³

“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

²⁶⁰ Letter from Carlos Gustavo Cano to US Judge John O’Sullivan, Sept. 13, 2016.

²⁶¹ Letter from Ruben Dario Lizarralde to US Judge John O’Sullivan, Sept. 27, 2016.

²⁶² Letter from Marta Lucia Ramirez to US Judge John O’Sullivan, Sept. 21, 2016.

²⁶³ Letter from Carlos Ignacio Cuervo Valencia to US Judge John O’Sullivan, Sept. 2016.

Colombian society.” – Paloma Valencia Laserna, Senator, Central Democratic Party of Colombia²⁶⁴

“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 Colombia²⁶⁵

“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 Colombia²⁶⁶

“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 Colombia²⁶⁷

“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 Colombia²⁶⁸

“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,

²⁶⁴ Letter from Paloma Valencia Laserna to US Judge John O’Sullivan, Aug. 29, 2016.

²⁶⁵ Letter from Tatiana Cabello Flórez to US Judge John O’Sullivan, Aug. 30, 2016.

²⁶⁶ Letter from Susana Correa Borrero to US Judge John O’Sullivan, Aug. 30, 2016.

²⁶⁷ Letter from Ernesto Macías Tovar to US Judge John O’Sullivan, Aug. 30, 2016.

²⁶⁸ Letter from María Del Rosario Guerra De La Espriella to US Judge John O’Sullivan, Aug. 31, 2016.

Central Democratic Party of Colombia²⁶⁹

“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 Colombia²⁷⁰

“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 Colombia²⁷¹

“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 Colombia²⁷²

“[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 Colombia²⁷³

“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

²⁶⁹ Letter from Nohora Tovar Rey to US Judge John O’Sullivan, Aug. 31, 2016.

²⁷⁰ Letter from Miguel Henríquez Pinedo to US Judge John O’Sullivan, Aug. 31, 2016.

²⁷¹ Letter from Paola Holguín to US Judge John O’Sullivan, Aug. 31, 2016.

²⁷² Letter from Everth Bustamente Garcia to US Judge John O’Sullivan, Aug. 31, 2016.

²⁷³ 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 Latinoamericana²⁷⁴

“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 Affairs²⁷⁵

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 Journal²⁷⁶

“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*²⁷⁷

“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

²⁷⁴ Letter from Jaime Jaramillio Panesso to US Judge John O’Sullivan, Sept. 13, 2016.

²⁷⁵ Affidavit from Pierto Eduardo Gamarra, Oct. 9, 2014.

²⁷⁶ *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>.

²⁷⁷ 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*²⁷⁸

“...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*²⁷⁹

“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*²⁸⁰

²⁷⁸ Letter from Hernán Gonzalo Jimenez Barrero and Fernando Velásquez Velásquez to US Judge John O’Sullivan, Sept. 15, 2016.

²⁷⁹ Letter from Ana-Mercedes Gómez-Martinez to US Judge John O’Sullivan, Sept. 12, 2016.

²⁸⁰ Hurgando en la Sentencia Contra Arias, Moisés Wasserman, EL TIEMPO, Sept. 15, 2016, available at <http://www.eltiempo.com/opinion/columnistas/mois-es-wasserman/hurgando-en-la-sentencia-contra-arias-mois-es-wasserman-columna-el-tiempo-53745>.

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.

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.

Appendix – Pieces in *Injustice Watch*, *National Review*, *The Hill*, *Washington Times*, and *Wall Street Journal*

THE WALL STREET JOURNAL.

November 4, 2018

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

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.

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."

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 Uribe, 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 kidnapers 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 kidnapers 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.



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 narco trafficking — 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 asylum in 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 narco-trafficker 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.

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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.

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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.