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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.

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