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A One-Sided Treaty With Colombia

State and Justice want to extradite Mr. Arias in the interest of their war on drugs.

By Mary Anastasia O'Grady

The State Department's determination to extradite Andrés Felipe Arias, a former Colombian agriculture minister, at the behest of a left-wing Colombian Supreme Court, marks a new low for Foggy Bottom. Evidence in the case exposes the U.S. government's single-minded but self-defeating drug-war agenda that treats Mr. Arias as collateral damage.

In the U.S., extradition requests are taken to federal court, which has jurisdiction only if a valid extradition treaty exists. For more than 30 years Colombia has said there is no such treaty with the U.S. and it has been unable legally to invoke any treaty to fulfill Washington's extradition requests.

Yet the U.S. is eager to extradite Mr. Arias, seemingly as a good-faith gesture in exchange for Colombian capos to be named later. So the Justice Department, which is arguing the case for Colombia, recruited the State Department to tell the judge in 2016 that there *is* an extradition treaty with Colombia. Courts often defer to the executive branch on treaty issues and Judge John O'Sullivan ruled against Mr. Arias thanks to a written statement from State Department lawyer Tom Heinemann claiming the existence of a valid treaty. Mr. Arias has languished in a Miami detention center since September 2017.

On March 14 in Miami, the case will go before the 11th U.S. Circuit Court of Appeals. In preparation for that hearing, on Feb. 21 Mr. Arias's lawyers—David Markus and Ricardo Bascuas—filed a “second motion for stay of extradition pending appeal.” The filing referred to a line from a declassified cable, sent in 2000 by the U.S. Embassy in Bogotá: “Colombia and the United States have not had a mutually recognized extradition treaty since 1986.”

State saw that and panicked. Within hours it signed the order to put Mr. Arias on a plane to Colombia. That effort was blocked when the appellate court granted an “emergency motion” to keep the government from surrendering Mr. Arias. He will have his day in court.

Mr. Arias was a political acolyte of former center-right President Álvaro Uribe and a favorite in the 2010 presidential race. I wrote in 2016 how he was knocked out of the running by unsubstantiated allegations in the media and how two leftist Colombian attorneys general and a

suspect Supreme Court in 2014 convicted him of fraud with zero evidence. He received an unusually harsh 17-year sentence and an excessive \$8 million fine.

Mr. Arias testified in federal court in Miami that the U.S. Embassy in Bogotá acknowledged at the time that he was a political target and helped him secure a U.S. visa so he could flee in 2014 ahead of his conviction. A June 2014 investigation by Colombia's inspector general found Mr. Arias innocent of all charges. Yet the Colombian Supreme Court recently denied him any appeal, in violation of international law.

Mr. Uribe presented an affidavit to the court in Miami stating that there is no treaty in force between Colombia and the U.S. During his 2010-18 tenure, former President Juan Manuel Santos refused to send the notorious Venezuelan kingpin Walid Makled to the U.S., citing the absence of a treaty.

Later, when Mr. Santos wanted to reel Mr. Arias in from Miami, Colombia sent an unsigned diplomatic note to U.S. federal court arguing that the U.S. is obligated to extradite under the treaty though Colombia is not. As Mr. Arias's legal team has noted in court documents, "Colombia's diplomatic note was carefully worded to avoid saying that there is a treaty in effect. The diplomatic note is perfectly consistent with the newly discovered State Department [cable]. It stated that '[t]he treaty cannot be applied' in Colombia because Colombia never ratified it. Consequently, 'extradition requests that the United States of America presents to Colombia, cannot be processed, neither granted or denied, in accordance to the Treaty.'"

Mr. Arias's lawyers further observed: "The note did not state that Colombia requested Minister Arias' extradition pursuant to the Treaty. It stated merely that Colombia requested his extradition "with the understanding that the United States of America would process it based on the Treaty." The State Department, the lawyers write, "has been aware all along that Colombia's diplomatic note does not say that there is any treaty in effect."

The 2000 cable outlined the problem of the one-sided treaty: Colombia signed it with the U.S. in 1979. "But in 1986 the Colombian Supreme Court declared it unconstitutional. Ever since," the cable says, Colombia has used internal laws to deal with extradition and "has ignored the treaty as it applies to [U.S.] requests."

To overcome the troubles this generates, the cable said, "Embassy recommends that the [U.S.] propose to [Colombia] negotiations of a new extradition treaty."

Almost 20 years later this has not been done because the Colombian underworld opposes it. No wonder Mr. Heinemann refused to appear in Miami federal court when subpoenaed by Mr. Arias's attorneys. Keeping a straight face would have been a challenge.