



RESEARCH SERIES: USE AND ABUSE OF EXTRADITION IN THE WAR ON DRUGS*

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Flawed Motives Make for Unnecessary Extraditions

Executive Summary

In recent months, the United States' and Colombian press have detailed the case of Gabriel Consuegra Martinez and his son, Gabriel Consuegra Arroyo. The two "banana vendors" were extradited to the United States and released by US authorities after admitting to small roles in a drug conspiracy case. They are now back in Colombia, trying to piece together their lives again. From news reports, it's clear they were bit players at most, and perhaps even innocent.

The Consuegras case is not isolated. The Fundacion Ideas para la Paz (FIP), a non-profit think tank based in Colombia, found several similar cases. FIP believes the cases illustrate a troubling trend. For many reasons, extradition's net has been cast far and wide, and sometimes with devastating consequences. This trend can be blamed on both the Colombian and US governments.

The Colombian Government motivated by its need to please its principal trading partner and funding source for its war against drug traffickers and rebel groups, has blindly increased the number of extraditions with little regard to maintaining the integrity of its own justice system. FIP knows of at least two cases of mistaken identity, the results of which were completely unwarranted extraditions. Many others are clearly low-level members caught up in larger conspiracy cases. This, in part, can be explained by the multiplicity of US laws that regulate behaviors related to conspiracy. Colombia's government should keep this in mind when they consider whether the cases warrant extradition.

Perhaps more important and less understood is the dynamic from the US side. Far from a coherent and monolithic anti-drug operation, the US counternarcotics effort is rife with rivalry, infighting, lack of communication and a battle over limited resources. The three most important agencies: Drug Enforcement Administration

(DEA), Federal Bureau of Investigation (FBI) and Immigration and Customs Enforcement (ICE) draw from many of the same pools of money. They have to both justify their existing funds and seek new sources. The competition has turned into a numbers game, particularly for the DEA, which seems to track progress more by quantity than quality. For years, the DEA has sought to maintain its nearly monolithic control over drug crimes, ceding little to its rivals. The quest has led to countless convictions of non-violent criminals in the US that are clogging the prison system. The same dynamic has played out abroad, with small level players like the Consuegras being tied to larger conspiracies, extradited and imprisoned in the US alongside their small-time US counterparts.

In addition, the expansion of US jurisdiction has given these law enforcement agencies new territories. They have coupled these with new, broader laws that can sweep virtually anyone into their net. These conspiracy laws in the US give the agents and prosecutors powerful tools to prosecute virtually anyone connected to a drug crime and claim them as a statistical achievement.

These extraditions are draining vital resources from both governments and clogging the judicial systems and jails with suspects who play little or no role in the organizations they are alleged to conspire with. They seem to serve little purpose other than to satisfy a need to fulfill obligations on the part of the Colombians and create the appearance of progress on the part of the US. They are also creating havoc and irreparable damage to numerous families who have to deal with both the stigma and economic costs of these processes.

While we believe that extradition remains a necessary and important tool to fight criminal organizations, FIP believes that these cases undermine the public's belief in the mechanism's effectiveness. They also illustrate a crude reality in Colombia: The accused in many of these cases are not permitted due process.

Context

Colombia remains the number one recipient of United States assistance in the hemisphere receiving upwards of \$600 million

per year in military, economic and judicial aid.¹ The relationship between the two nations has become particularly important in recent years as Colombia has sought to quell a long-standing armed conflict involving left-wing guerrillas and right-wing paramilitaries,

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both of whom rely heavily on the drug trade to finance their battles against each other and the State. What's more, as regional leaders such as Venezuela's Hugo Chavez shift away from the United States' sphere of influence, Colombia has emerged as a powerful and reliable ally in support of US interests.

It's within this context that judicial cooperation between the two countries has flowered. The US has given millions to help Colombia overhaul its justice system, build jails, and strengthen its investigation and forensic capabilities. At the same time, Colombia has responded with an unprecedented amount of cooperation on cases related to the United States' nationals, as well as terrorism and drug cases. Colombia has also extradited unparalleled numbers of suspected criminals.

Since President Alvaro Uribe took power in 2002, Colombia has extradited over 900 suspected criminals, most of them to the United States. Colombia now extradites between 150 and 200 people per year to the US, compared to just ten per year ten years ago. Some of those extradited are big name traffickers like Diego Montoya, alias "Don Diego," a major cartel leader recently sentenced to 45 years in an American prison. But others appear to have profiles closer to that of the Gabriel Consuegra Martinez and his son, Gabriel Consuegra Arroyo.

The Consuegras were small banana sellers who were caught in an anti-drug operation in Barranquilla, incarcerated in Colombia's maximum security prison, then extradited to the United States, where they pleaded guilty and were released after serving short prison terms. The case was covered extensively in the Colombian and US press and became a symbol of the Colombian and US governments' overzealous approach.

As the Washington Post said, "A range of critics - defense lawyers, analysts and even a former American ambassador who once strongly advocated extradition here - are questioning a policy that they say has gone beyond targeting drug kingpins to scooping up players on the periphery of the narcotics trade. They say extradition is not only expensive for the US government but also indirectly suggests that Colombia's justice system, despite improvements, cannot handle prosecuting complex drug-trafficking cases."²

The Consuegra case also raised important questions about extradition. How and why had it become so routine? How come Colombia did not have a more effective way of filtering out these smaller players? What were the motives of the United States prosecutors and agents to include these smaller players in the indictments? Would these cases erode support for extradition in the future, especially since the Washington Post article suggested that there could be "dozens" more cases like it?³

As a first step in exploring this issue, Fundacion Ideas para la Paz sought and found several cases that are similar to that of the Consuegras.⁴ Far from attempting to discern innocence or guilt, our investigation tried to determine whether the accused had significant roles in the case they were linked with, were allowed due process in Colombia and a fair trial in the United States. What's more, FIP sought to get behind why an increasing number of small

time players were being caught in the dragnet. The answers put both the United States and Colombian practices in question.

Marlon Guerrero-Roman

Guerrero-Roman was a taxi driver from Cartagena who was arrested December 9, 2005, and charged with conspiracy to import cocaine to the United States. According to the US government's statements on the case, Guerrero-Roman was part of a large network of traffickers that moved cocaine from Colombia, through Mexico and into the United States. The statement of facts provided for the case lumps Guerrero-Roman into the ring, as if he were operating as one of the leaders. He's named alongside seven co-conspirators who "worked to ensure that these quantities of cocaine would be transported onboard maritime vessels from Colombia to pre-destined meeting locations in the Caribbean for further transport to Mexico or directly to Mexico. Once the cocaine shipment was in Mexico the cocaine would be transported through Mexico and into the United States."⁵

Guerrero-Roman's role in this conspiracy was to pass information, in sealed envelopes, concerning the movement of naval vessels off the coast of Colombia. It's not clear if he knew what information was in the envelopes or if he knew the purpose of the information that he was moving between members of the drug ring. The US government indicted Guerrero-Roman with one count of "conspiracy to distribute 5 kilograms of cocaine" and another count of "aiding and abetting."⁶ The US government later admitted that his participation was "minimal."⁷ Nevertheless, Guerrero-Roman was incarcerated in Combita maximum-security prison in Boyaca, Colombia where he became a "carrito" or utility man for the big traffickers - bringing their food, washing their clothes and doing other chores - to maintain himself and his family. After nearly 11 months at Combita, he was extradited to Washington DC. There, his case was prolonged when prosecutors asked for more time to gather evidence. In all, he spent another 23 months in jail before pleading guilty to one count of a lesser charge and being released for time served.⁸

Tito Molina-Bermudez

Tito Molina-Bermudez was the son of a baker who lived near the Venezuelan border. Part of his income came from contraband, including fraudulent Venezuelan passports and IDs. On October 21, 2004, he was arrested and charged with providing fraudulent documents in Colombia. Later, US prosecutors filed an indictment that charged him with aiding a conspiracy to export cocaine to the United States. US prosecutors alleged that the co-conspirators had shipped cocaine from Colombia through Guatemala and Mexico into the United States for years.

The US Prosecutors, however, built their case around one load of cocaine that was intercepted by Mexican authorities on February

10, 2003. The pilots flying the cocaine into Mexico were arrested. The owners of the cocaine, fearful the pilots would tell authorities who they were, needed to travel to Mexico to speak to them, so they hired Molina-Bermudez to furnish them with what the prosecutors say were “fraudulent identity and travel documents.”⁹ These documents, obtained after the cocaine was seized, were the only documents connecting Molina-Bermudez to the conspiracy.

Molina-Bermudez was convicted in Colombia of providing fraudulent documents and sent to jail. Two and a half years after he was arrested, he was extradited to the United States. US prosecutors again filed an extension to obtain more evidence and six months later, Molina-Bermudez pleaded guilty to one count of conspiracy to distribute an illegal substance in the US. Prosecutors recommended to the judge that Molina-Bermudez receive time served because he was a “minimal participant.”¹⁰ The judge released Molina-Bermudez the day of his sentencing.

Nelson Vargas Rueda

Nelson Vargas Rueda is a small farmer from the battle-scarred department of Arauca in Colombia. Authorities arrested him in a bar near his town on March 22, 2000, after a fight in a bar. He showed them his identification, but they believed he was Gildardo Gonzalez, a.k.a. “Marrano,” or “Pig,” a commander in the Revolutionary Armed Forces of Colombia, FARC. Gonzalez was wanted in the United States for murdering three US activists in 1999.

Vargas Rueda was arrested, imprisoned and charged with “rebellion.” While in prison, he was shot and his leg had to get amputated. In 2001, the United States issued an indictment that named both Vargas Rueda, a.k.a. “Alfredo,” and the real alias “Marrano,” among other FARC members, as suspects in the murder of the three North American activists.¹¹ Colombian authorities, seemingly ignoring or missing the evidence that Vargas and Gonzalez were not the same person, kept Vargas Rueda in jail and maintained that he was Gonzalez. Using this indictment, the US government requested Gonzalez’s extradition. Shortly thereafter, in 2003, Colombia’s Supreme Court approved it, and five weeks later, Vargas Rueda was extradited to the United States in the place of Gonzalez, becoming the first alleged “FARC” member extradited.¹²

Vargas Rueda remained imprisoned in Miami for two months until he got transferred to Washington where he was appointed a public defender. Vargas was released because the prosecutor couldn’t contribute any evidence or testimonies to support the case and the judge had no choice but to declare Vargas as innocent, that’s the main reason why the case against him fell apart. He returned to Colombia without any money. His wife had left him with their children. He did not return to Arauca and has had more problems with Colombian authorities, who have yet to strike him from the list of FARC members.

United States’ Increased Jurisdiction

To understand the story of how small-time traffickers have been increasingly caught in the US dragnet, we have to start by looking at the history of US law enforcement activities at home and abroad. For most of its history, United States regarded most criminal activity within their jurisdiction and fought to maintain control over investigations and prosecutions. However, with time and the changing nature of criminal activities, federal authorities slowly increased the central government’s jurisdiction in state cases. This coincided with an increasing concern about criminal activities abroad that impacted the United States, particularly illegal narcotics and terrorism.

The FBI began sending agents abroad in the 1930s and later established a permanent presence in many countries to liaison with the local law enforcement. Customs, treasury and other agencies followed, including counternarcotics agents who began operating abroad in the 1940s. These international policemen immediately distinguished themselves from the other agencies since they had operational capacities and worked directly with the local law enforcement. With the creation of the Drug Enforcement Administration in 1973, the DEA began establishing law enforcement offices throughout the world that would eventually make it the largest of the US law enforcement presence abroad by a wide margin.

US law opened the way for more investigations abroad. Title 21, which governs the use and traffic of narcotics, gave DEA agents a tool to prosecute anyone who trafficked illegal drugs to the United States. Conspiracy laws designed to breakdown mafias gave them the tools to spread their indictments to the furthest reaches of an organization. US officials also frequently evoked international conventions to expand their jurisdiction on matters of narcotics, most notably the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1988.¹⁴

Laws designed to attack terrorist groups gave other agencies power to investigate crimes abroad. The Comprehensive Crime Control Act in 1984, and the Omnibus Diplomatic Security and Antiterrorism Act in 1986, provided FBI agents the impetus to begin operating in foreign nations following terrorist attacks on US citizens and installations abroad.¹⁵ The State Department facilitated this process further by creating a list of foreign terrorist organizations in 1999, which could be used to go after groups across the globe and anyone who supports them. Anti-money laundering legislation gave other agencies the justification to begin operating more aggressively abroad as well.

Following the terrorist attacks on September 11, 2001, the US sought even further jurisdiction abroad. The Patriot Act gave federal law enforcement agencies wide-reaching tools to seek criminals abroad. The DEA, for instance, could target anyone who traffics drugs and is connected to a terrorist organization, regardless of whether the drugs are entering the United States.¹⁶ When the US did not have the jurisdiction, it sought criminals using extra-legal

means, namely extraordinary rendition. But in most cases, the US maintained strong enough relations to seek criminals abroad using the traditional tool: extradition.

Without a Filter

Although there is a treaty governing extradition between the United States and Colombia, only the United States recognizes it.¹⁷ In Colombia, after a complicated series of lawsuits in the mid-1980s the extradition of Colombian nationals was prohibited until 1997, when it was permitted again. The matter fell to Colombian legislators to establish the terms under which extraditions can occur, which is regulated by the Colombian Penal Code. The process, nonetheless, is straightforward: the request goes to the Ministry of Foreign Relations, which reviews it and sends it to the Justice and Interior Ministry. Justice reviews the accusation and the corresponding documents that verify identity of the accused, etc., then sends them to the Supreme Court of Justice, which delivers a decision. A negative decision is final. A positive decision moves the case to the executive who can still deny the request.

The process includes verification that the two countries' criminal codes coincide sufficiently on the particular crime in question, assurance that the crime in question is not being processed a second time (double jeopardy), assurances that the US will not try the accused for criminal acts not listed in the indictment, and assurances that the sentences given in the United States will not exceed those given for the crime in Colombia (e.g., there is no death penalty in Colombia).

What's more, at each point, the government has the obligation to identify the person. However, the Colombian authorities' dealings with Nelson Vargas Rueda illustrate the haste with which they go through this process and the inability of the system to properly deal with potential errors. While there are many false IDs in Colombia and the use of false IDs is a common way to avoid detection by the authorities, there is little that can excuse the numerous times in which the authorities misidentified Vargas Rueda.

More troubling still, the case shows how quickly Colombian authorities appear ready to extradite any suspect, and the swiftness with which they appear willing to proceed with nearly any extradition. At the heart of the issue is how much, or how little proof Colombian authorities are ready to accept as the basis upon which they will extradite a suspect. Although extraditions pass through four government offices, there appears to be little oversight of the cases. A benign interpretation would be that there is a lack of cooperation and coordination between the institutions in charge of the different phases of extradition.

However, these institutions also have the faculty to probe and question the indictments in a much more rigorous manner but appear content to accept most of the accusations *a priori*. What's more, in at least one case that was rejected by the Supreme Court earlier this year, Colombian officials told the United States' Jus-

tice Department that it should simply reword the indictment and request the suspect's extradition anew. The implication was that the judicial reasoning applied by the Court could simply be undone with some decisions about language.

Colombian suspects also have little recourse to fight their extraditions. As opposed to Mexican suspects, Colombians or other nationalities awaiting extradition cannot present a *tutela*, a broad-sweeping legal mechanism similar to habeas corpus designed to protect citizens from being unjustly accused and prosecuted. In addition, Colombia is willing to accept the US justice system's broad interpretation of conspiracy. In the case of the smaller players, many fall victims because they can be linked to larger conspiracies under US law.

A more cynical interpretation of the extraditions would be that it has become a political tool by the government of President Álvaro Uribe to gain favor in the United States. This includes the increasingly high numbers of extraditions and the profile of those extradited. Whereas most of those extradited were once high profile drug traffickers, now the list includes paramilitaries and guerrilla commanders, as well as the small time traffickers.

Without entering into the question of innocence or guilt, it's clear the smaller players do not seem to represent the type of threat that the Colombian and US government seem to be tackling when Colombia extradites paramilitary commanders and large cartel leaders. Indeed, as illustrated below, in the worst case scenario, they may simply represent a statistic that permits both Colombia and the United States to continue their claims that they are fighting illegal narcotics trafficking.

Turf Battles

The general view in Colombia is that the United States government works as a monolithic creature, each part in sync with the other, each section working seamlessly with the rest. The reality is that the US government is an organism with many moving parts. Some of these parts work very well with others. Some parts despise other parts. All seem to be in competition with each other. Even within agencies, rivalries exist and competition is fierce.

The process begins at the top, where bosses are under pressure to show "results" in order to justify budgets and possibly obtain more resources. It inevitably filters to the bottom, where agents scramble to produce those "results." This is a constant struggle. The heads of the three major agencies that fight drugs and terrorism abroad – the DEA, the FBI and Immigration and ICE – all appear before congress annually to discuss their achievements during the year past and challenges for the year ahead. The agents, meanwhile, get biannual and annual performance reviews.

Among those agencies, the DEA has the clearest mandate to operate abroad. Indeed, DEA agents far outnumber any other agency's personnel around the globe and work more closely with

local law enforcement. In Colombia alone, there are between 30 and 50 agents at any one time, compared to three to five for the FBI. Its increased activity abroad has helped it grow exponentially. The DEA's budget has gone from \$800 million in 1990 to close to \$2 billion in 2009, while the number of agents is up from 3,000 in 1990 to close to 5,000 today. And while the total budget has remained stagnant in recent years, it's increased for DEA activities abroad.¹⁸

The justification for these increases is nebulous at best. DEA chiefs called before congress routinely cite statistics that are nearly impossible to substantiate. These include the amount of money the agency has "denied to drug traffickers," which was, according to interim director Michele Leonhart, \$3.5 billion in 2007.¹⁹ They also include shifty data on street prices for illegal substances and dips in drug usage amongst teens.

Still, there is no way to substantiate these declarations, and other government agencies routinely criticize the DEA for having no clear way of evaluating its own or its agents' performances. In 2003, the Office of Management and Budget, a White House oversight body, said the agency failed to demonstrate progress on the war on drugs, did not hold its management accountable and had no clear long-term goals or strategies.²⁰ In a 2007 internal audit, the Department of Justice (DOJ), citing an Office of the Inspector General report, said that, "While the DEA had developed a strategic plan in line with DOJ's strategic plan, the agency had not developed objectives and measures definitive enough to effectively evaluate performance and operational outcome."²¹ And a General Accounting Office report this year stated that, "DEA has not incorporated post-9/11 responsibilities and activities, or established appropriate performance measures that provide a basis for assessing progress to their goals."²²

The amorphous nature of DEA progress in the war on drugs has contributed to the confusion about its ends. As the priorities of the US government shifted towards fighting terrorism after the September 11 attacks, for example, the DEA sought to shift its emphasis as well. This was undoubtedly related to the fact that the agency's budget remained stagnant, while other law enforcement agencies saw upwards of 10 percent budget increases following September 11. In addition to seeking greater jurisdiction with the Patriot Act's reenactment in 2005, the DEA became part of a larger effort to share information and intelligence with other agencies. It also sought to play a larger role in arms trafficking and terrorism cases, traditionally the jurisdiction of the FBI. In Colombia, this effort manifested itself in numerous DEA-led indictments of members of the Revolutionary Armed Forces of Colombia, the country's largest guerrilla group.

The contradictions made for complicated turf battles amongst the agencies, in part because the DEA sought greater jurisdiction in terrorism cases, even while it refused to relinquish its traditional control over drug trafficking cases. The battle over so-called "Title 21" cases came to a head this year, as the drug war shifted to the US-Mexican border. There, DEA sought control over all drug cas-

es, even when seizures occurred at the border or at ports, which would traditionally give ICE agents jurisdiction. A General Accounting Office report found that ICE agents often withheld information from DEA agents, and that DEA agents limited the ICE agents ability to pursue investigations. The problems became so acute that they may have endangered the lives of DEA agents, according to the report.²³ In June, the US government settled the dispute, granting ICE more leeway and agents to pursue "Title 21" cases. The outcome of this dispute could be critical when congress calls the agency heads for a hearing next year and asks for "results."

Flawed Incentives

These two elements – increased jurisdiction in a foreign land and a greater need to show "results" to compete with other agencies – come together in a place like Colombia where agents have tremendous leeway to pursue criminals. To be sure, some of the only real "results" an agent or agency can claim are indictments, arrests, and extraditions. From a funding perspective, this appears as man-hours dedicated to what are known as Priority Targets (POTs) or Consolidated Priority Targets (CPOTs). And during congressional testimonies, the chiefs declare that certain percentages of man-hours are being directed towards dismantling these targets. During regular performance reviews with agents, however, the bosses' questions are more direct: how many indictments, arrests and extraditions?

To strengthen these "results," agents beef up indictments and in counternarcotics circles, the cases of these low-level traffickers being attached to high-level indictments are well known. To a certain extent, it began in the United States, where small time traffickers and users are routinely jailed and given long sentences, a practice that has led to the highest incarceration rate in the world. In the FBI, they're known as "low-level fruit" or "mopes."²⁴ In DEA parlance, one former agent said they're called "Johnny Greensneakers." "He's easy to catch, easy to convict, and he's a stat," the former DEA agent told FIP.²⁵

The agents' own incentives play a powerful role in how they develop their criminal investigations and indictments. In practical terms, the goal of any agent is to reach what is known as level 13, or GS-13, the highest pay grade for an agent. In the DEA and the FBI, this means getting high grades during regular performance reviews. Better reviews normally mean quicker ascendancy. The performance reviews include evaluations of "critical elements" of the job: development of informants, open investigations, surveillance of someone's phone, tapping someone's phone calls, undercover operations, indictments, arrests and extraditions. These reviews are conducted by the special agent in charge of local operation on semiannual and sometimes a quarterly basis.

For our purposes, FIP spoke to current and former FBI and DEA agents, who had slightly different perspectives on how important indictments, arrests and extraditions were in the international arena.

The FBI seemed to emphasize quality of the target, whereas the DEA seemed to emphasize the quantity of the targets. “The DEA has statistical fever,” the same former DEA agent said. “You need to get those numbers.”²⁶ By numbers he means arrests and extraditions. He added that during the reviews, his superiors would frequently ask him about why he did not have a higher number of arrests. “You won’t see it written down anywhere, but that’s what they care about,” the former DEA agent said, referring to the number of arrests.²⁷

A former FBI agent agreed with this assessment and said at times it applied to his agency as well, often for the budgetary reasons mentioned above. “Extradition of low level members of a drug trafficking organization, it’s a gimmie, it’s a bump in the stats. You got bodies. It doesn’t necessarily mean the investigation was particularly successful realistically speaking, but it looks good on paper. It looks good as far as the number of indictments and subsequent extraditions that came out of a particular case. Where again it’s easy. And if somebody happens to fall into that network that dragnet at the local level can be lumped into the conspiracy they are. And the government agencies both in the host country and the US look all the more better for it. There’s a justification by numbers that needs to be demonstrated to hold on to whatever’s left of the counternarcotics portion of law enforcement’s budget because everything else is being diverted to national defense and counterterrorism.”²⁸

The former agent added that political considerations are also a factor in developing some of these indictments, particularly if they’re related to well-known criminal enterprises and guerrilla organizations, as it may have been in the case of Nelson Vargas Rueda.²⁹

The results, they said, is a constant search for a “Johnny Greensneakers” in places like Colombia. “For some agencies, a stat is a stat. One arrest is one arrest. One extradition is one extradition,” one current FBI agent said. “We’re wrestling with this constantly. We have to find a way to take information we have and help them [Colombian authorities] get better. We don’t want to be complicit [in these unnecessary extraditions]. We want to make sure that some cancer is torn away, but we don’t want to gut the whole body.”³⁰

The Political Impact of the Extraditions

The extraditions of low-level members have made headlines in Colombia and given some Colombians and US observers pause as they consider the increasingly broad use of the tool that was once reserved for the most dangerous criminals. As one current FBI agent put it, “If I were DOJ or the embassy, I would take a hard look at who we’re asking for...We always talk about how we have to draw the line somewhere. [What they’re doing now], it’s not a valid use of extradition. If you abuse one of the tools at our disposal, you’ll lose it or it may cease to be useful. Like anything, it has to be used judiciously.”³¹

The fear of losing extradition as a tool may be exaggerated, but recent cases in which Colombia’s Supreme Court rejected US requests for extraditions have made clear that the tide is shifting, and there is concern at high levels about the way extradition has been employed. Other cases involving war criminals have also led to questions about the use of extradition as a means to curry political favor rather than slow criminal enterprises. To be sure, Colombia remains the US’s staunchest ally in a region where other governments have become more openly anti-US. What’s more, Colombia remains dependent on US aid, receiving close to \$600 million annually and the Colombian government is lobbying for the US to pass a bilateral free trade agreement that has stalled because of concerns over human rights violations in the Andean nation.

Extraditions, which remain at record highs, are a signal that cooperation continues. But the recent cases of low level members returning from their odysseys abroad have led some people to ask themselves who the rest of those over 900 people really were. What’s more, Colombia’s poor oversight and blatant lack of due process in the case of Nelson Vargas Rueda illustrate just how quickly the Colombian authorities are ready to placate the interests of their US counterparts.

In the United States, the extraditions of low-level members have little political impact outside of the circles of lawmakers who follow Colombian-US relations. The real political question comes as we analyze exactly what criteria the counterdrug agencies are using when they develop these indictments and whether the costs of bringing some of these low-level figures to the United States for short-term incarcerations is worth it.

Legal Impact of the Extraditions

The blatant disregard for due process in the case of Nelson Vargas Rueda should raise questions about how the Colombian judicial and diplomatic system is processing these cases. Authorities had numerous opportunities to identify him, and failed to do so. It took a US court to do that for them. But larger questions should also be raised about oversight in general. At one point filters for extraditions were political. In other words, extradition was once reserved for cases of big name criminals. However, now extraditions appear routine, and there are no more clear filters.

This in part has to do with the lack of legal filters that developed in the process. Colombian institutions have made it a bureaucratic rather than a legal proceeding. The cases against those extradited often rest on generalized notions and political bias rather than facts. The decisions to extradite these people without due process seem to be based on political expediency as well, rather than a judicious search for the facts.

In addition, the extraditions seem to undermine a key part of judicial cooperation: that of strengthening the Colombian judicial system. For years, the US has provided Colombia with workshops on how to shift its system to an accusatorial model, and money

and advice on how to build prisons, among other forms of assistance. However, extraditions, especially in cases where the accused faced similar charges in Colombia, reinforce the notion that Colombia's judicial system cannot handle these cases when in fact, there is increasing evidence that it can and should.

Human Impact of the Extraditions

After Nelson Vargas Rueda was deported back to Colombia, President Alvaro Uribe felt compelled to offer a tepid apology. If I've committed an error, then the State cannot defend that error," he said. "Humility is sometimes difficult in public office, but given the mistake, I have to accept it."³² ("Si se cometió el error, el Estado no se puede poner a defender el error," dijo. "La humildad es muy difícil en el ejercicio público, pero ante un error hay que aceptarlo.") But little could console Vargas Rueda. He'd lost a leg, his family and his livelihood. To be sure, as illustrated above, the human costs of this process are incalculable. Families fall apart. Jobs are lost forever. Lives are ruined. The stigma attached to being an extraditable is difficult to overcome.

Both the Colombian and US governments seem unaware or unconcerned by this. These smaller or even innocent players have fewer resources to draw attention to their plights, which does not make them less important. On the contrary, their struggles illustrate just how deeply flawed the system has become and the urgent need for reform.

Conclusion

Extradition, once a tool reserved for big time drug traffickers and criminals, has been increasingly used as a tool to extradite low-level figures with little or nothing to do with international criminal enterprises. Along the way, it's become more of a political than a legal tool, a means by which Colombian and US authorities can illustrate progress in their fight against the illegal narcotics trade without regard to the consequences that this fight has on the legal systems of both countries and the credibility of the governments in question, as well as the impact it has on the families of those extradited. The Colombian government uses the increase numbers of extradited to illustrate that they are cooperating with their principal trading partner the United States; US officials, prosecutors and agents use the increase numbers of extradited to show they are fighting the war on drugs. The results may make for good statistics, but they make for terrible press and may, in the long run, undermine the use of an important judicial tool for both countries.

Recommendations

To the Colombian Government:

- Demand more information from the United States government. The Colombian authorities have the right to know more about who is part of any conspiracy.
- Set the bar higher for extraditions. Make US agents and prosecutors understand that cases are made with solid, verifiable evidence, not hearsay, rumor and reputation. The Supreme Court and the Presidency, which have the final say on extraditions, are critically important in this regard and have the faculty to make these requests through their decisions and contact with the US government.
- Find out who the person is before he or she is extradited. On at least two occasions, the wrong person has been extradited. This is not just embarrassing, as President Uribe said; it illustrates a deep flaw in the system, and the verification of anyone's identity that needs to be resolved.

To the United States Government:

- Continue to strengthen and build justice systems abroad. The US, especially following September 11 attacks, operates as the world's policeman, which can have terrible results like those illustrated in this report. There are limits to US effectiveness. Reinforce strengths, such as training forensic investigators, and eliminate flawed policies, such as tacitly approving the extradition of any and all suspects on weakly built indictments.
- Provide realistic and measurable goals for counterdrug and counterterrorism agencies. As defined, the wars against drugs and terrorism are infinite in time and scope. This inevitably leads to terrible mistakes and, in the long term, more difficult relations with partners and foes alike.
- Take away incentives for agents that include simply measuring the number of arrests. Put the emphasis on quality rather than quantity, and make the agents prove they have followed that prescription for success.

¹ *Just the Facts* (<http://justf.org/Country?country=Colombia>), which provides sources for each bill passed or being considered that includes aid to Colombia.

² "U.S. Criticized for Extraditing Minor Colombian Drug Suspects," *The Washington Post*, July 31, 2009.

³ *Ibid.*

⁴ Anecdotal evidence from defense lawyers in the US suggest there may be many more, but finding them would require a far more exhaustive search of the records in the US and Colombia.

⁵ Criminal Case No. 05-341, "Statement of Facts," p.2.

⁶ Process No 25076, Supreme Court, Colombia, May 16, 2006, p.3.

⁷ *Ibid.*, "The Government's Sentencing Memorandum", p. 2.

⁸ *Ibid.*, "Plea Agreement".

⁹ Criminal Case No. 04-465, "Statement of Facts," p. 3.

¹⁰ *Ibid.*, "Plea Agreement", p. 2.

- ¹¹ Criminal Case: “United States v. Fuerzas Armadas Revolucionarias de Colombia, German Briceño Robles Suarez, El Marrano, Jeronimo, Gustavo Bocota Aguablanca, Nelson Vargas Rueda, June 11, 2001.”
- ¹² “Rebelde de las FARC será extraditado,” BBCMundo.com, May 8, 2003.
- ¹³ Nadelmann, Ethan, *Cops Across Borders*, (Pennsylvania State University Press, University Park, Pennsylvania, 1993) pp.139-150.
- ¹⁴ US Ambassador to Colombia in the mid-1990s, Myles Frechette, frequently cited the convention when asked about Colombia’s prohibition of extradition during that time period. Colombia reinstated extradition in 1997.
- ¹⁵ Nadelmann, p. 157.
- ¹⁶ Section 122 of the USA PATRIOT Improvement and Reauthorization Act of 2005 (codified at 21 U.S.C. § 960a).
- ¹⁷ Articles 24 and 25 of the Vienna Convention establish that a treaty enters into force “in such manner and upon such date as it may provide or as the negotiating states may agree...Failing any such provision or agreement, a treaty enters into force as soon as consent to be bound by the treaty has been established for all the negotiating States.”
- ¹⁸ These budget projections come from studying Department of Justice requests to Congress over a multiyear period.
- ¹⁹ Testimony by Michele Leonhart before Appropriations Subcommittee of the House of Representatives, March 12, 2008.
- ²⁰ “White House Report Stings Drug Agency on Abilities,” *The New York Times*, February 4, 2003.
- ²¹ US Department of Justice, Office of the Inspector General, Audit Division Report, February 2007, p.12.
- ²² “Better Coordination with the Department of Homeland Security and an Updated Accountability Framework Can Further Enhance DEA’s Efforts to Meet Post-9/11 Responsibilities,” General Accounting Office, O-09-63, March 2009, p.18.
- ²³ *Ibid.*
- ²⁴ FIP interview with former and current FBI agents who wished to remain anonymous.
- ²⁵ FIP interview with former DEA agent who wished to remain anonymous.
- ²⁶ *Ibid.*
- ²⁷ *Ibid.*
- ²⁸ FIP interview with former FBI agent who wished to remain anonymous.
- ²⁹ *Ibid.*
- ³⁰ FIP interview with current US law enforcement agent who wished to remain anonymous.
- ³¹ FIP interview with FBI agent who wished to remain anonymous.
- ³² “Polémica Por Caso De Supuesto Marrano,” *El Tiempo*, July 8, 2004.

